

EIGHTY-SIXTH SESSION

***In re* Argos (No. 2), Eritja, Flösser (No. 2), Glöckner-Leenart (No. 2) and Olivo (No. 2)**

(Application for execution)

Judgment 1812

The Administrative Tribunal,

Considering the applications for execution of Judgment 1682 filed by Mr. Patrick Argos, Mr. Ramon Eritja, Mr. Hans Flösser, Mrs. Godefrida Cornelia Glöckner-Leenart and Mr. Jean-Christophe Olivo on 31 March 1998, the reply of 4 June from the European Molecular Biology Laboratory (EMBL) and the letter of 21 July 1998 from the complainants' counsel informing the Registrar of the Tribunal that they did not wish to file a rejoinder;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. In complaints that the Tribunal ruled on in Judgment 1682 (*in re* Argos and others) staff of the European Molecular Biology Laboratory (EMBL) were claiming the adjustment of their pay in line with the rules of the so-called Coordinated Organizations as from 1 July 1992. The Tribunal held in 8 that the Council of the Laboratory had failed to follow the "guide" that decisions of those Organizations embodied. It allowed the complaints and in point 1 of its decision set aside the impugned decisions insofar as they refused to review the complainants' pay for 1995. It sent the case back to the Laboratory to take new decisions as ordered in point 2 and under 6, 8 and 9. It explained in 6 just how far the decisions of the Coordinated Organizations were binding on the Laboratory, and it cited two earlier judgments. In 9 it bade the Laboratory, "in keeping with its own self-imposed rules, set pay scales for 1995 and pay the complainants accordingly". It awarded interest on "any sums due ... at the rate of 10 per cent a year as from the due date of payment of each sum" and 20,000 French francs in costs (point 3).

2. The judgment went out on 29 January 1998. The Laboratory paid the award of costs and told the staff that the Council would be deciding on their pay at its meeting in July.

3. In these applications for execution, filed on 31 March, the complainants object that the Laboratory has failed to execute two points of the decision: 2, which sent the case back for a new decision; and 5, which conferred the same rights on the interveners. In their submission precedent allows an organisation up to 30 days to execute. They want the Tribunal to award them a penalty in monthly amounts up to the date of execution; compound interest at 10 per cent a year from the date of filing their application on the sums due under Judgment 1682; damages for the failure to execute; and costs.

EMBL invites the Tribunal to dismiss the applications. It says that there is no 30-day rule and that it acted promptly: it paid the costs and at once told the staff what it had done by way of execution, explaining that its Council would be deciding at the next session, in July 1998. Its legal advisers needed time to consider the meaning and consequences of the judgment and the members of its Council to be informed and make up their minds. A decision was not especially urgent anyway, since its staff were to get payment of interest at the rate of 10 per cent a year on any arrears; so it had no reason to summon the Council any earlier ad hoc.

4. A firm line of precedent, that the defendant does not question, allows the filing of applications for execution: see for example, Judgment 1771 (*in re* De Riemaeker No. 4) under 2 and the others cited therein.

The only material issue is whether EMBL has complied with the judgment. It lost no time in paying the lump-sum

awards. But did it tarry over taking the new decision on the complainants' claims to pay?

Contrary to what the complainants make out, there is no single time limit for executing judgments. The Tribunal's practice is to let the organisation have a reasonable amount of time to act, and what is reasonable will depend, among other things, on the circumstances and the issues at stake. To be sure, the Tribunal has said more than once that any lump-sum award by the Tribunal is to be paid in 30 days: see Judgments 1620 (*in re* Moreno de Gómez No. 2) and 1748 (*in re* Limage No. 2). That deadline holds good when the organisation may readily work out the amount due. But it does not when a case is sent back for a new decision: the time to be allowed will then turn on the peculiarities of the case.

This case had to go back to EMBL for a new policy decision on pay that lay with its Council, a body made up of representatives of member States. The Council obviously had to meet and the Administration to look into the matter and make proposals to it. Since it was already scheduled to meet in July 1998, the Administration argues that having it meet any earlier ad hoc would have been awkward; that the intention was to put the matter on its agenda for July; and that the staff would not suffer anyway, being entitled to interest at the rate of 10 per cent a year on any arrears due.

The Tribunal finds the Laboratory's explanation reasonable and convincing.

DECISION

For the above reasons,

The applications are dismissed.

In witness of this judgment, adopted on 18 November 1998, Mr. Michel Gentot, President of the Tribunal, Mr. Jean-François Egli, Judge, and Mr. Seydou Ba, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

A.B. Gardner