

## SIXTY-SIXTH SESSION

### *In re* MAUGIS (No. 3)

#### (Application for review)

#### Judgment 980

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 945 filed by Mr. Michel Maugis on 2 January 1989, the reply of the European Southern Observatory (ESO) of 8 February, the complainant's rejoinder of 7 March and the ESO's surrejoinder of 17 April 1989;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article R II 4.35 of the ESO Staff Regulations;

Having examined the written evidence;

#### CONSIDERATIONS:

1. The complainant is applying for review of Judgment 945, which the Tribunal gave on 8 December 1988.

He submits that the Tribunal did not take account in that judgment of a memorandum dated 22 January 1982 and that, if it had, it could not have reached the same conclusion. He puts forward an interpretation of the rules which differs from the Tribunal's and says that the Tribunal ought to have endorsed it. He maintains that the Tribunal should have made certain rulings and that since there was a misunderstanding he ought to have been granted home leave as an exceptional measure.

In his rejoinder he limits the relief he claims to asking the Tribunal to allow his application and declare that the rules in force prescribe a period of 24 months within which home leave may be taken.

2. The Tribunal's judgments carry the authority of *res judicata* and it will review them only in exceptional cases. It will not review on the grounds of an alleged mistake of law or misappraisal of the facts or because it had failed to comment on all the pleas submitted by the parties. A review may be permitted where there was an omission to take account of an essential fact, a mistaken finding of fact involving no exercise of judgment - as distinct from a mistaken appraisal of the facts - an omission to rule on a claim or the discovery of a "new" fact which the complainant discovered too late to cite in the original proceedings.

3. The complainant is in fact asking the Tribunal to change its mind about its interpretation of the rules. The reasons he puts forward are essentially that its judgment showed misappraisal of the facts and a mistake in law in interpreting the rules and failed to endorse his own interpretation. Those are not admissible grounds for review.

4. In his rejoinder the complainant produces a document dated 2 March 1977 which he says he discovered in October 1988 and was therefore unable to rely on in his original complaint. It is an excerpt from a study intended to serve as a background paper for discussion in the Organisation's Finance Committee.

Without considering whether the complainant would have been able with the exercise of reasonable diligence to discover it earlier or whether it could have had the effect of amending the material rule, the Tribunal holds that it does not have the effect which he says it has. The sentence he quotes did not mean that in 1977 a staff member could take home leave during a period of 18 months: it merely meant that at the time members of the family who were allowed to take home leave at other dates must still take it in the course of the period during which the staff member himself was entitled to home leave.

#### DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 27 June 1989.

Jacques Ducoux  
Mella Carroll  
E. Razafindralambo  
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.