

**NINETY-FIRST SESSION**

***In re* Pinto (No. 4)  
(Application for execution)**

**Judgment No. 2075**

The Administrative Tribunal,

Considering the second application for the execution of Judgment 1646 filed by Mr Antonio Pinto on 8 November 2000, the reply by the International Telecommunication Union (ITU) of 18 January 2001, the complainant's rejoinder of 6 February and the ITU's letter of 9 March 2001 waiving its right to submit a surrejoinder;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Facts relevant to this case are set out in Judgments 1646 (*in re* Pinto) and 1743 (*in re* Pinto No. 2). In the former judgment, delivered on 10 July 1997, the Tribunal set aside a decision to reject the complainant's application for the post of Head of the Registration and References Unit, under the reference CF15/P3/907, and appoint another candidate. Finding the process to have been unlawful the Tribunal ruled that "The Union must now carry out anew the procedure for filling the post, this time in keeping with the rules. It may, however, in the meantime take whatever action it wishes to ensure that the work is still done ...". On 27 November 1997 the complainant filed an application for the execution and interpretation of that judgment; his intent was that the Union should appoint him directly to the post without readvertising it.

The ITU did put the post up for competition again, on 4 February 1998 but this time under the title "Head of the References Unit". The next day the complainant explained in a memorandum to the Secretary-General that, in view of his application for execution and interpretation pending before the Tribunal it was "not possible for [him] to apply" for the post, but that he was "still a candidate for the same post under the [previous] vacancy notice". On 9 July 1998 the Tribunal delivered Judgment 1743 dismissing the complainant's application. In a memorandum of 11 August, the complainant requested the Secretary-General to draw up a new short list: the Tribunal having ruled, he was now a candidate for the post. The Secretary-General refused on 21 August. On 15 September the complainant reiterated his request, indicating that he was seeking assurance that the short list for the new competition had been lawfully established. On 21 September the Secretary-General again refused the request. The complainant filed an internal appeal against that decision on 27 October 1998 but withdrew it on 14 December, having discussed matters with the acting Chief of the Personnel and Social Protection Department.

On 7 January 1999 the notice of competition was cancelled. On 9 June 2000 the post was readvertised under the same reference but with a substantially altered job description and under the title "Terminologist".

B. The complainant observes that in Judgment 1646, under 14, the Tribunal dismissed his claim to damages on the grounds that the judgment afforded him satisfaction. While that may be the case in theory, he says, it is not so in practice since the duties of the post as described in the notice of 9 June 2000 have changed completely. As a result they no longer match his qualifications, so he cannot apply for the post.

He contends that, as a consequence "the injury caused him has become real, permanent and irreparable". That is why he presses his initial claim to compensation: 100,000 Swiss francs in moral damages and 320,000 francs for prejudice to his career. He seeks 5,000 francs in costs.

C. In its reply the ITU objects to receivability. It observes that the complainant bases his application on the decision of 9 June 2000 to put the post up for competition. According to Article VII(2) of the Tribunal's Statute he had ninety days in which to lodge a complaint. Having failed to do so he is time-barred.

Subsidiarily, the Union points out that the complainant declined to apply for the post when it was put up for competition on 4 February 1998. He thus wittingly excluded himself from the selection process. The Terminology, References and Computer Aids to Translation Section, in which the post is located, had to be reorganised following an increase in the number of languages used in Union documents. The Chief of the Department of Conferences accordingly revised the post description in the interests of the service. According to the ITU, proper execution of a judgment cannot imply freezing a situation or the duties and characteristics of a post indefinitely to the detriment of the organisation's interests and sound management.

D. In his rejoinder the complainant contends that after the competition was cancelled on 7 January 1999, he expected the same post to be put up for competition again. It was only by chance that, while classifying vacancy notices on 14 September 2000, he noticed that a post for a "Terminologist" advertised on 9 June 2000 had the same reference as the one for Head of the References Unit. He accuses the ITU of lack of transparency by failing to inform him that the post in question had been readvertised under a different title.

## CONSIDERATIONS

1. Facts relevant to this case are set out in Judgments 1646 (*in re* Pinto) and 1743 (*in re* Pinto No. 2).

The ITU initially put the post of Head of the Registration and References Unit up for competition under the reference CF15/P3/907. The complainant's application was discarded and another candidate was appointed to the post.

Deeming that procedure to have been unlawful because the selected candidate did not meet the requirements set in the vacancy notice, the complainant came to the Tribunal, which set aside the impugned decisions and ordered that "The Union must now carry out anew the procedure for filling the post, this time in keeping with the rules".

In execution of that judgment, the Secretary-General cancelled the contested appointment and advertised the post again under the title "Head of the References Unit".

The complainant challenged that decision in an application for execution and interpretation, which gave rise to Judgment 1743. In his view, the ITU ought to have appointed him directly to the post instead of reannouncing the vacancy. Finding his interpretation to be at odds with Judgment 1646, the Tribunal dismissed his application.

However, the complainant did not apply for the new competition despite the Union's advice that he should do so in his own interests.

After completing the competition procedure, the Secretary-General cancelled the vacancy notice, the Chief of the Department of Conferences deeming none of the applicants suitable.

On 9 June 2000 the post was put up for competition once again under the reference CF15/P3/907, but with a different title and job description.

2. In his application filed on 8 November 2000, the complainant contends that the new job description deprived him of any chance of applying for the post. It therefore failed to execute Judgment 1646 properly and thus denied him the benefit of that judgment. Claiming injury which has "become real, permanent and irreparable", he seeks payment of 100,000 Swiss francs in moral damages and 320,000 francs for prejudice to his career, as well as 5,000 francs in costs. These damages, he says, arose from the failure to execute the judgment, not from the decision set aside by Judgment 1646, in which the Tribunal saw no reason to entertain his claim to damages since he was afforded satisfaction.

The Union argues that the application is irreceivable because it is time-barred under Article VII of the Tribunal's Statute. In subsidiary pleas it contends that the third competition shows no breach of Judgment 1646. As to the second competition, it maintains that the complainant was duly informed of it and has only himself to blame if he

declined to apply. It was because that competition was unsuccessful that the Union adjusted the job description to its requirements.

In his rejoinder, the complainant states that he learned of the third vacancy notice on 14 September 2000 only by chance.

3. There being no need to rule on receivability, the Tribunal holds that Judgment 1646 conferred on the complainant no right to be appointed after the post was readvertised. Nor did it prevent the ITU from concluding that the new competition had failed or from putting it up for competition anew under different conditions if the interests of the organisation so required (see Judgment 1771, *in re* De Riemaeker No. 4, under 4, paragraphs (c), (d) and (e), and the cases cited therein).

Furthermore, the Union is not to blame for the complainant's failure to participate in the second competition, since it duly pointed out that it was in his interests to apply for the post.

4. Since his main plea fails, so too must the others.

## DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 9 May 2001, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2001.

*(Signed)*

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet