

## EIGHTY-NINTH SESSION

***In re* Awoyemi (Nos. 2 and 3)**

**Judgment No. 1965**

**(Application for execution)**

The Administrative Tribunal,

Considering the application for execution of Judgment 1756 filed by Mr Saliu Yinka Awoyemi on 1 June 1999, the reply of 9 July from the United Nations Educational, Scientific and Cultural Organization (UNESCO), the complainant's rejoinder of 20 October and the Organization's surrejoinder of 25 November 1999;

Considering the second application for execution of Judgment 1756 filed by Mr Awoyemi on 11 August 1999, the reply of 30 November 1999 from UNESCO, the complainant's rejoinder of 6 March 2000, and the Organization's surrejoinder of 12 April 2000;

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

Having examined the written submissions;

### CONSIDERATIONS

1. In Judgment 1756 (*in re* Awoyemi), delivered on 9 July 1998, to which reference is made, the Tribunal set aside in part the impugned decision and invited the Director-General to take a new decision as explained under 12. The complainant was also granted 15,000 French francs in costs.

This sum was paid by the Organization.

On 25 September 1998 and 23 March 1999, the complainant requested a new decision.

Having received no reply, he filed an application for execution of the judgment on 1 June 1999 (*in re* Awoyemi No. 2).

On 8 July 1999, the Organization sent the complainant a copy of the report of the Inspector-General, dated 26 October 1998, and informed him that, in the absence of any responsibility on the part of UNESCO, he was not entitled to any moral damages.

The complainant is challenging that decision, which he considers to be in breach of Judgment 1756, in a second application for execution (*in re* Awoyemi No. 3).

In its reply to the first application for execution, UNESCO contends that it executed Judgment 1756 correctly and refers in particular to its communication of 8 July 1999.

2. As both applications seek the execution of the same judgment, they are joined to form the subject of a single judgment.

*The first application*

3. The only reason for filing the first application for execution was the absence of any decision or communication from UNESCO pursuant to the above judgment.

Insofar as it is based on the failure of the Organization to execute the judgment, the application is now groundless following the communication of 8 July 1999 and the complainant no longer has cause of action. Otherwise, the pleas contained in the first application will be examined in the context of the second.

4. The complainant is entitled to costs for his first application if it was justified at the time that it was filed (see Judgment 1920, *in re* Abdul-Quader).

The time necessary for the execution of a judgment depends on the circumstances, and particularly the action required of the Organization (see Judgment 1812, *in re* Argos No. 2 and others). In the present case, the Organization had to provide information to the complainant, if necessary after an additional inquiry. The nature of the case meant that this should have been done without delay. The communication was sent to the complainant one year after the delivery of the judgment. On 1 June 1999, the complainant had good grounds for complaining of an unjustified delay. He is therefore still entitled to costs, the overall amount of which will be determined after the second application has been examined.

#### *The second application*

5. In Judgment 1756, the Tribunal considered the following facts. At 6.45 a.m. on 3 November 1995, members of the drugs squad of the French police went to the home address of the Awoyemi couple, both employees of UNESCO in Paris. They were taken to police headquarters, where they were questioned until about 5 p.m., in particular, on their relationship with their supervisors. One of the supervisors, Mr L., Assistant Director-General, was reported to have received a threatening anonymous letter. According to Mr and Mrs Awoyemi, the police had a letter which might have been from the Director-General. A few days later, they reported the incident to the Organization and asked whether it had prompted the police investigation which they had been put through. They requested the opening of an inquiry but they received no reply. The Tribunal found that Mr Awoyemi (the only party to the suit) had the right to know whether UNESCO had prompted the above-mentioned events and to the opening of an inquiry. The conclusion was that the Director-General was invited to take a new decision on disclosure of the information requested, including the report of the Inspector-General on the inquiry, if it existed, or of a new inquiry, if need be. He also had to answer the claim to moral damages (see under 12).

By a memorandum of 8 July 1999, the Director of Personnel, acting on behalf of the Director-General, sent the complainant the report drawn up by the Inspector-General on 26 October 1998. It concluded that neither the Organization, nor any of the members of its staff, had prompted the incident. There were therefore no grounds for granting the complainant moral damages.

In his report on the inquiry, the Inspector-General stated that:

*"In 1995, at the material time, I personally carried out an inquiry and reached the conclusion that 'there was nothing to indicate [...] that the police search carried out at Mr and Mrs Awoyemi's home could have been done at the request or with the authorisation of any authority of UNESCO'.*

Admittedly, at the same time, Mr L. ... had been the victim of attempted extortion with threats against his relatives and had made a complaint in his personal capacity. In the context of that case, you had given written authorisation for *'agents [or officials of the French Republic] to enter UNESCO premises to discharge their functions for judicial purposes within the context of the complaint filed [by Mr. L.]'*

I therefore reopened the inquiry and conclude that the L. and Awoyemi cases do not appear to be linked for the following reasons:

- Mr and Mrs Awoyemi state in their complaint that the police officers were in possession of a letter bearing your signature and claimed that it authorised the police search. My inquiry found no trace of such a letter in the Secretariat: it is possible, but not certain, that the letter was the one that you had signed in the context of the L. case;

- During their investigation at headquarters in the L. case, the police requested access to the files of a retired official and two serving officials (who were not Mr and Mrs Awoyemi). It may be noted that their request was granted in the first case, but not in the other two;

- Furthermore, according to Mr Awoyemi, the couple were taken to the premises of the drugs squad, whereas the

police officers who intervened in UNESCO in the L. case were from the criminal investigation department;

- I met Mr Awoyemi, who believes that he was denounced to the police during their investigation of the L. case. I then questioned the officials whom I knew to have already been interrogated by the police, none of whom admitted to having denounced Mr Awoyemi.

Under these conditions, unless the police were to be questioned, which would amount to the Organization acting as a substitute for Mr Awoyemi (as he requests and as, it appears to me, the Organization has constantly refused to do), I consider that no additional inquiry is needed."

6. In his application for execution of 11 August 1999, Mr Awoyemi requests the Tribunal to:

"order, in particular, any consequent redress for the failure to execute Judgment 1756 ... that is to order UNESCO, under penalty of 10,000 French francs for each day of delay, starting from the date on which the judgment is delivered in the present case:

(a) to execute Judgment No. 1756 ...

(b) to pay [him] an amount equivalent to 6 months' salary for the aggravation of the moral damage due to the failure to execute Judgment No. 1756 cited above, irrespective of any other amount which the Tribunal may grant as the main redress under this head ..."

The complainant's pleas are as follows: the distinction drawn in the present case between a drug-related case and a civil action is not applicable, since he was never involved in a drug-related case, and the questions which the police asked him concerned only the L. case. He says that the Director-General's written authorisation to the police to conduct an investigation on the premises of UNESCO in relation to the L. case is an important new fact. In addition, the report shows that the French police did indeed carry out an investigation in UNESCO. As there was only one case, it must therefore be deduced that the origins of the police investigation at the complainant's home are to be found in UNESCO. In his opinion, the Organization is responsible "even though it is impossible, from the current evidence, to identify individual responsibilities". As its responsibility is "full and total", it should be ordered to pay him moral damages as a result of the police investigation and its consequences.

The Organization argues that the application should be dismissed. It contends that it fully executed Judgment 1756. With regard to the inquiry, it refers to the report of the Inspector-General, which was sent to the complainant. It also provides the following information: on 28 October 1995, following the penal charges brought by Mr L. concerning the "death threats which he had received", the Director-General wrote to the public prosecutor to inform him that he authorised police officers to enter the premises of UNESCO to carry out their duties for judicial purposes in this affair. On 12 October 1995, an identical authorisation, requested by a police superintendent following the murder of a UNESCO official, had been granted by the Assistant Director-General on behalf of the Director-General. On 23 November 1995, the criminal investigation department requested authorisation to consult the personnel files of a former official and two other serving officials. However, the latter were not Mr and Mrs Awoyemi. The Organization authorised the consultation of the former official's file, but refused access to the personnel files of the two serving officials before they had been informed. The Organization observes that the investigation at the complainant's home on 3 November 1995 was ordered by a warrant issued by an investigating judge and, in view of the specialisation of the branch of police which undertook the investigation, it expresses doubts as to its relationship with the charges brought by Mr L. The Organization has provided the Tribunal with the names of all the persons who were questioned during the first internal inquiry (prior to Judgment 1756) and the second inquiry (after the judgment). Some ten persons were questioned, principally those who had already been questioned by the police in relation to Mr L.'s case. UNESCO affirms that it appears that no reprehensible behaviour was found and, in the absence of any fault by the Organization, no moral damages are due.

7. In Judgment 1756, the Tribunal invited UNESCO to inform the complainant of the result of an inquiry to determine whether the Organization had prompted the investigation and detention of the Awoyemi couple by the police on 3 November 1995 and to answer his claim to moral damages.

UNESCO fulfilled both of the above. To that extent, it executed the judgment.

8. Nevertheless, the complainant contends that UNESCO fell short of the execution of the judgment. He considers that the Organization prompted the events which he had to go through and that it should therefore compensate him.

(a) In that judgment, however, the Tribunal never found or suggested that the Organization itself or any of its officials might have been responsible for any communication to the police which might have prompted the police investigation. The requested inquiry, which was based on the mutual respect due between an Organization and its officials, was only intended to clarify the facts, particularly with a view to determining whether any responsibility could be attributed. In that regard, it should be recalled that in their host country agreements international organisations are bound to respect national legislation and collaborate with the services of the host country to combat crime. Assistance provided to the police for this purpose, with a view to the identification of an offender, is not unlawful in itself.

(b) Despite the brevity of the Inspector-General's report, UNESCO's inquiry corresponds to what was expected from Judgment 1756. The Inspector-General heard all the persons who had been questioned by the police (with the exception of Mr L., who had already been questioned during the first inquiry), as well as other persons, and it may reasonably be considered that, had any blameworthy behaviour by any of the officials come to light, it would have been reported.

Even if the letter from the Organization which the police is said to have shown the Awoyemi couple on 3 November 1995 was the letter of 28 October 1995 concerning the L. case, no fault by UNESCO in respect to one of its officials would be proven.

The same would be true if the police investigation had been prompted by objective information received from officials of the Organization on its premises or outside them.

The inquiry was therefore sufficient and revealed no fault which could be held against the Organization or any of its officials.

(c) The claim for moral damages in the case which gave rise to Judgment 1756 was based, firstly, on the complainant's allegation that the Organization was responsible for the police investigation and, secondly, on the refusal of the complainant's request for the disclosure of information. In Judgment 1756, the Tribunal implicitly found that it would be preferable to rule on the matter as a whole.

In fact, the inquiry revealed no evidence of the Organization's responsibility for the police investigation. The Director-General therefore rightly rejected the claims on this point.

However, the unjustified refusal to disclose information found in Judgment 1756 seriously harmed the complainant's personal interests. Damages are therefore justified (see Judgment 1684, *in re Forté*, under 8) and may fairly be set at 1,200 euros.

Having partially succeeded in his two applications for execution, the complainant is entitled to costs.

## DECISION

For the above reasons,

1. The Organization shall pay the complainant 1,200 euros in moral damages and 1,200 euros in costs.
2. His other claims are dismissed.

In witness of this judgment, adopted on 12 May 2000, 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 2000.

*(Signed)*

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 25 July 2000.