

EIGHTY-FIFTH SESSION

***In re* Pinto (No. 2) (Application for execution and interpretation)**

Judgment 1743

The Administrative Tribunal,

Considering the application for the execution and interpretation of Judgment 1646 filed by Mr. Antonio Pinto on 27 November 1997, the reply of 18 December by the International Telecommunication Union (ITU), the complainant's rejoinder of 20 January 1998 and the ITU's surrejoinder of 4 March 1998;

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

Having examined the written proceedings;

CONSIDERATIONS

1. In Judgment 1646 of 10 July 1997 the Tribunal ruled on Mr. Pinto's first complaint against the International Telecommunication Union. It quashed the Secretary-General's decision of 5 July 1996 to uphold one of 27 September 1995 rejecting his application for post CF15/P3/907 as head of the Registration and References Unit and announcing the appointment to it of Mrs. Sylvie Pitt. The Tribunal declared the appointment procedure to have been unlawful and ordered the Union to "carry out anew the procedure for filling the post, this time in keeping with the rules".
2. In execution of Judgment 1646 the Secretary-General took a decision, No. 9366 of 1 September 1997, which has prompted the present application for execution and interpretation. He cancelled Mrs. Pitt's appointment as head of the Unit and again put the post up for competition.
3. The complainant submits that that decision "executes Judgment 1646 only in part and misreads it in ordering another competition" and that the Secretary-General ought to have appointed him to the post because of the ruling in that judgment.
4. The complainant's interpretation is at odds with what Judgment 1646 actually says and is therefore mistaken. Judgment 1306 (*in re* Der Hovsépian No. 2) said:
"When a decision is quashed it is deemed never to have been taken. The Administration must do whatever the correction of the position in law may require and by due process take a new decision that is free from the fatal flaws in the quashed one and that gives effect to the Tribunal's ruling in the light of the reasoning that underlies it."
That is just what Judgment 1646 said in 13: the Tribunal ordered a new procedure to fill the post in keeping with the rules. It barred a direct appointment of the sort the complainant claims.
5. The conclusion is that the Secretary-General's decision adequately executes Judgment 1646.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 20 May 1998, Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 9 July 1998.

(Signed)

Michel Gentot
Julio Barberis
Jean-François Egli

A.B. Gardner

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