Registry's translation,
the French text alone being authoritative.

(Application for execution)

104th Session **Judgment No. 2684**

The Administrative Tribunal,

Considering the twelfth complaint filed by Mrs M. P. against the International Telecommunication Union (ITU) on 12 March 2007, which is an application for execution of Judgment 2551, the ITU's reply of 18 May, the complainant's rejoinder of 13 June, the Union's surrejoinder of 7 August, the further submissions filed by the complainant on 31 August and the ITU's comments thereon of 3 October 2007;

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

Having examined the written submissions;

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

A. Judgment 2551 concerning the complainant's eleventh complaint was delivered on 12 July 2006. In point 1 of the decision, the Tribunal referred the case back to the ITU for the latter to appoint a medical board – which was to consider whether the illness leading to the termination of the complainant's contract was service-related or not – and, if appropriate, determine any additional compensation which might be due to her. By a letter of 18 July the Chief of the Personnel and Social Protection Department informed the complainant that instructions had been issued that the ITU should make the payments also ordered by the Tribunal in respect of moral injury and costs. He told the complainant that he would shortly contact her with regard to the execution of the "other parts of the [said] judgment".

After the ITU's Medical Adviser had designated Dr B. to represent the Union on the new Medical Board, on 18 September the complainant provided the name of the physician who would represent her. Her nominee and Dr B. subsequently designated the third physician on the Board. In December 2006 Dr B. announced that he was relinquishing his appointment, a decision which he confirmed on 9 January 2007.

By an e-mail of 17 January 2007 the Medical Adviser informed the Administration that she was waiting for a list of experts and that "as soon as this list [was] received" a detailed opinion would be given on the complainant's case. That same day the complainant wrote a letter to the Secretary-General in which she invited the ITU to "comply with the judgment immediately". Referring to an expert opinion drawn up in December 2005 at the request of the Disability Insurance Office of the Canton of Geneva, she asserted that her illness was service-incurred and that the Union therefore had a duty to redress the injury she had suffered; hence she requested compensation. In his reply of 9 February 2007 the Chief of the Personnel and Social Protection Department pointed out that Dr B. had relinquished his appointment because he considered it contrary to the requirement of neutrality that the complainant should be represented on the Medical Board by her treating physician, who was also a signatory of the first expert opinion; the complainant was accordingly invited to nominate another physician. The Chief of the said department considered it "inadvisable at this stage to comment" on "the other points" raised in her letter of 17 January.

On 26 February 2007 the complainant filed an "application for execution of Judgment 2551 and compensation for miscarriage of justice and delay attributable to the organisation" with both the Appeal Board and the Compensation Committee. By a letter of 8 March 2007, the Chairman of the Appeal Board informed her that, while the Board did not deem itself competent to examine her file since it did not contain a challengeable administrative decision, he would, however, retain her file so that he could pass it on to the Compensation Committee, should it be established.

B. The complainant, who entitles her complaint "Application for the execution of Judgment 2551", denounces the fact that the Medical Board "appointed" in October 2006 has not yet convened. She states that all her attempts to persuade the ITU to nominate another physician to replace Dr B. have been fruitless. Adverting to its request of 9 February 2007 that she should nominate another physician, she observes that "the most elementary code of ethics" forbids a physician to criticise a colleague, especially to third persons. In her opinion, Dr B. decided to relinquish his appointment as soon as he read the expert opinion of December 2005, because he could not have reached a diagnosis to the contrary "without seriously calling his career into question" before the Commission for

the Supervision of Health Professions and Patients' Rights. She emphasises that since her dismissal almost seven years ago she has not received any compensation whatsoever.

The complainant asks the Tribunal to order the application of Articles 11.2(d) and 11.3(c) of Appendix D to Staff Rules of the United Nations containing, inter alia, the rules governing compensation in the event of illness attributable to the performance of official duties. She claims 418,391 Swiss francs on the basis of the aforementioned articles and 336,000 francs – plus 5 per cent interest on this sum – for the "difference in salary [she] would have received at ITU until [she] reached retirement age" if the Union had not terminated her contract with immediate effect on 25 May 2001, less the "disability benefit paid by the United Nations". Lastly, she claims compensation for the moral injury she has suffered and costs.

C. In its reply the ITU submits that the complainant's application for execution is in fact a complaint directed against the Appeal Board's decision to dismiss her appeal. It argues that the said complaint is irreceivable, not only because it is directed against a decision taken by an internal consultative body, but also because it was filed before the expiry of the deadline for the adoption of the Secretary-General's final decision. In addition it takes the complainant to task for not abiding by the procedural rules inasmuch as she did not send a copy of her appeal to the Secretary-General. Nevertheless, accepting that the complaint might "possibly be construed as an application for execution" of Judgment 2551, the Union emphasises that measures were taken immediately to execute point 1 of the decision in that judgment and that it cannot be held responsible for the difficulties it has encountered.

On the merits the Union explains that since 1 April 2007 all medical matters concerning its officials have been handled by the Medical Services Section of the United Nations Office at Geneva (UNOG), which has already "undertaken to contact" the complainant with a view to deciding with her on appropriate steps for setting up the Medical Board as soon as possible. It states that it will keep the Tribunal informed of the latest measures taken by the Section with a view to executing Judgment 2551.

According to the ITU, the 2005 expert report does not establish a causal link between the complainant's state of health and her professional activities. It submits that the allegations made with regard to Dr B. are tainted with an error of fact, since the latter relinquished his appointment in December 2006 whereas the complainant did not provide the expert report in question until January 2007.

D. In her rejoinder the complainant asserts that her complaint constitutes an application for execution of Judgment 2551, although she states that it is also directed against the decision of 9 February 2007 and against "the ITU's unwillingness to comply with the Tribunal's decisions […] by putting forward all kinds of time-wastingexcuses". She adds that she forwarded two copies of her appeal to the Appeal Board and that under Rule 11.1.1, paragraph 4(a), of the ITU Staff Rules, it was incumbent upon the Chairman of that body to send a copy to the Secretary-General. She takes the view that the letter of 8 March 2007 cannot be regarded as the recommendation made by the Appeal Board to the Secretary-General prior to the possible adoption of the final decision.

The complainant argues that the Union has acted in bad faith and is alone responsible for the fact that the Medical Board has never convened. She believes that the ITU will not nominate another representative to sit on the Board until she has withdrawn her own and she states that this new condition being imposed on her is unfair, since her representative has already worked on her file and incurred expenses. She expresses doubts about the processing of her file by the UNOG Medical Services Section, as she has received no reply to a letter she sent to the Chief Medical Officer on 23 May 2007.

The complainant presses her claims but also asks the Tribunal to order that the calculation of the compensation provided for in Appendix D should be "checked by the United Nations itself" and that the expenses "needlessly incurred" by her representative on the Medical Board should be borne by the ITU.

E. In its surrejoinder the Union observes that the rejoinder does not contain any plea which would lead it to alter its position. It does, however, explain that in a memorandum of 28 June 2007, the Chief Medical Officer of UNOG's Medical Services Section reported that the complainant's illness could not deemed to be service- incurred. Since the ITU considers that the reasoning and findings of this physician are "logical and make thoroughly good sense", it announces that it definitively rejects the complainant's claim for compensation and that she will be notified of an individual decision in the very near future.

F. In her further submissions the complainant informs the Tribunal that, by a letter of 27 August 2007, the Deputy Secretary-General in charge of the Administration and Finances Department notified her of the rejection of her claim for compensation. In her opinion, the Chief Medical Officer gave an arbitrary opinion and wrongly appraised the facts. She emphasises that she has never met this physician, who substituted herself for a medical board.

G. In its final comments the ITU states that on 7 September 2007 it received a request from the complainant to review the decision of 27 August. On 14 September the Appeal Board submitted a report to the Secretary-General on a similar case, in which it recommended that a new medical board be set up. The Administration has therefore decided in the instant case to set up such a board and informed the complainant thereof by a letter of 2 October 2007.

CONSIDERATIONS

1. In point 1 of its decision in Judgment 2551, the Tribunal referred the case back to the ITU, particularly in order that the latter might appoint a new medical board to consider whether the illness leading to the termination of the complainant's contract in May 2001 was service-related.

2. The complainant submits that the Union is impeding the execution of that judgment by unduly delaying the appointment of this medical board which has therefore never convened.

3. As the parties have expressed their views *in extenso* in their written submissions, the oral hearing requested by the complainant is superfluous.

4. The Union does not dispute the receivability of the complaint, provided that it is treated as an application for execution. The Tribunal considers that the complaint is in fact an application for execution and that it should therefore be entertained.

The Tribunal's judgments carry the authority of *res judicata* and must be executed as ruled. It is well settled that an application for execution may be filed without it being necessary in principle to exhaust internal remedies when the organisation does not execute the judgment, executes it incompletely or tarries unreasonably in its execution (see Judgments 1771, under 2(b), 1812, under 4, and 1887, under 5 and 8).

5. The Union submits that it immediately executed points 2 and 3 of the decision in Judgment 2551 concerning the payment of damages and costs. On the other hand, it admits that it has proved impossible to set up a medical board as required under point 1 of the ruling, because it has faced serious difficulties beyond its control.

6. It must be emphasised that it is up to the parties to work together in good faith to execute the Tribunal's judgments so as to ensure that they are executed within a reasonable period of time.

It is apparent from the submissions that the procedure for obtaining a further medical opinion, as ordered in Judgment 2551, has been delayed most regrettably in a case in which the Tribunal has already drawn attention to the excessive length of the proceedings.

7. The ITU points out that since 1 April 2007 all medical matters concerning its staff are handled by the Medical Services Section of UNOG. For this reason, the complainant's file was passed on to that Section, which has "undertaken to contact" her with a view to "deciding with her on appropriate steps for setting up as quickly as possible the Medical Board required under the Tribunal's Judgment 2551".

8. On 27 August 2007, i.e. after the filing of its surrejoinder, the Union informed the complainant that, on the basis of the opinion given on 28 June 2007 by the Chief Medical Officer of UNOG's Medical Services Section, it had arrived at the conclusion that her condition was not related to her service at the ITU and that it had decided definitively to dismiss her claim for compensation. The complainant informed the Tribunal of this decision on 31 August 2007.

9. The ITU, which was invited by the Tribunal to submit its comments, informed the latter that it had decided on 2 October 2007 to accede to the complainant's request to review the decision of 27 August and to set up a new medical board.

The Tribunal can only take note of the establishment of a new medical board, whilst emphasising that this case must as from now be treated all the more rapidly on account of its already excessive length.

10. However, it is bound to observe that until the decision of 2 October 2007, the Union failed in its duty to execute Judgment 2551 in good faith. Although the application no longer shows any cause of action, there is justification for awarding the complainant compensation in the amount of 3,000 Swiss francs. She is also entitled to costs in the amount of 1,500 francs.

DECISION

For the above reasons,

1. The ITU shall pay the complainant the amount of 3,000 Swiss francs in compensation for the injury suffered.

2. It shall also pay her 1,500 francs in costs.

3. All other claims are dismissed.

In witness of this judgment, adopted on 15 November 2007, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2008.

Seydou Ba

Claude Rouiller

Patrick Frydman

Catherine Comtet

Updated by SD. Approved by CC. Last update: 27 February 2008.