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

(Application for execution)

104th Session **Judgment No. 2692**

The Administrative Tribunal,

Considering the application for execution of Judgment 2582 filed by Mr F. L. on 25 May 2007, the reply of the International Olive Oil Council (IOOC) of 4 July, the complainant's rejoinder of 30 August and the IOOC's surrejoinder of 25 October 2007;

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

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

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

A. Judgment 2582 concerning the complainant's first complaint was delivered on 7 February 2007. In that case the complainant – a former Executive Director of the IOOC – had asked the Tribunal to set aside the implicit decision to reject his request for payment of end-of-service benefits and to order that such benefits be paid. In consideration 10 of its judgment the Tribunal stated that it was up to the Administration to decide, on the basis of the applicable regulations and whatever information it had available regarding the situation of its former official, whether or not he was entitled to the benefits he was claiming. It was of the opinion that the submissions were not sufficient for it to give a ruling on that point without an administrative inquiry, which only the organisation could undertake. Having set aside the implicit decision resulting from the IOOC's failure to respond to the complainant's request, the Tribunal sent the case back to the Council for the latter to take an explicit, reasoned decision regarding the benefits he was claiming after it had considered whether the complainant's request was well founded "in accordance with the applicable rules and whatever information he has supplied". The organisation was also ordered to pay the complainant 1,000 euros in compensation for moral injury and 2,000 euros in costs.

On 2 March 2007 the complainant wrote to the IOOC to enquire about the execution of the said judgment. He received the reply that the Council "d[id] intend to execute the judgment […] on the terms set" by the Tribunal and that he would be paid the 3,000 euros due to him as soon as the details of his bank account had been received. This sum was paid in April.

By a letter of 12 March the complainant was notified that the Council would contact him with a view to executing Judgment 2582 "on the terms set forth in consideration 10 thereof" as soon as the necessary internal procedures had been carried out. In a letter of 19 March the complainant expressed his willingness to provide any additional information or supporting documentation that might be requested. He deplored the organisation's ambiguous approach to the question of whether it was going to rely only on the information that was already in the file – which in his opinion would have required a different formulation of consideration 10 in that it would then have referred in French to "*[les informations qu'il] a fournies*" and not to "*[les informations qu'il] aura fournies*" – or whether it was going to ask for additional information. On 21 March the IOOC informed him that no final decision regarding the procedure to be followed for the execution of Judgment 2582 could be taken before 26 March. On 30 March the complainant denounced the Council's "obvious procrastination". That same day the Council sent him a letter announcing that the "comments" contained in his letter of 19 March had been studied and that it considered that it now had "sufficient information" to adopt a reasoned, substantiated decision on his request. Nevertheless, the Council offered the complainant the opportunity to present further explanatory material until 30 April.

On 27 April the complainant again raised the question of the interpretation of consideration 10 of the above-mentioned judgment; in his opinion, it was up to the organisation to indicate what additional supporting documents it needed in order to take its decision. Since it had stated in its letter of 30 March that it was in possession of all the requisite information, the complainant considered that, in breach of Judgment 2582, it had failed to conduct an "administrative inquiry involving [his] participation". On 21 May the IOOC informed the complainant that in order to avoid having to wait until the meeting of the Council of Members in November 2007 for a final decision, various possibilities of speeding up the process had been studied; as it had opted for the written procedure, the said decision would probably be notified in the first week of September 2007. The complainant filed his application for

execution with the Tribunal on 25 May 2007.

B. The complainant contends that by referring in the French version of consideration 10 of Judgment 2582 to "*[les informations qu'il] aura fournies*", the Tribunal intended to order an administrative inquiry which presupposed that the IOOC would ask him to supply further documents and information, for if the Tribunal had intended to confine the inquiry to the documents and information already in the IOOC's possession, it would have employed the perfect tense in French ("*a fournies*"). The complainant denounces the fact that, more than three and a half months after the delivery of Judgment 2582, no administrative inquiry had yet been conducted. He holds that his exchange of correspondence with the organisation reflects the latter's procrastination.

The complainant asks the Tribunal to order the IOOC to execute Judgment 2582 in full, with a penalty for default of 1,000 euros per day, and to award him costs.

C. In its reply the IOOC denies that it has procrastinated and says that, on the contrary, it has done everything possible to adopt an explicit, reasoned decision without having to wait for the meeting of the Council of Members in November 2007. It asserts that it has demonstrated good faith throughout the proceedings.

It considers that by employing the future perfect in French in the phrase "*que l'intéressé lui aura fournies*", the Tribunal intended to refer to the information which the complainant had supplied to the IOOC before the delivery of Judgment 2582, because if it had wished to give him the possibility of presenting additional information, it would have employed the future tense in French. It adds that the English version of the disputed phrase confirms its reasoning. In addition, according to the Council, another passage in consideration 10, which mentions the information the Administration "has available", indicates that it was under no obligation to conduct an administrative inquiry.

Moreover, the Council states that it does not understand what the complainant is trying to achieve, as he is again asking for the possibility to produce documents in support of his case, although he has already had innumerable opportunities to do so.

Since the complainant has objected to the procedure the Council chose to follow for the execution of Judgment 2582, and since he would quite clearly have challenged the explicit decision adopted at the end of that procedure, the IOOC announces that it is suspending the procedure until the Tribunal has ruled on whether it is well founded.

D. In his rejoinder the complainant maintains that the organisation has procrastinated: he emphasises that he never expressed objections to the procedure it had chosen and submits that the decision to suspend that procedure is merely a further sign of the IOOC's determination to delay the execution of Judgment 2582, or not to execute it at all. He states that he never considered that he ought to be offered a further opportunity to supply additional information: since the delivery of the judgment more than six months ago, he has simply waited for the Council to indicate what documents it needed in order to be able to take a reasoned decision.

Returning to the merits of the case, he endeavours to show that he meets the conditions for receiving a repatriation grant and points out that, if the Council were to find that he is not entitled to this grant, he is at all events eligible for the service grant which may be awarded upon separation from service.

E. The IOOC reiterates its arguments in its surrejoinder. It contends that the rejoinder contains many contradictions. It considers that it cannot be held responsible for the delay in executing Judgment 2582, because by filing this application for execution, the complainant held up the adoption of the final decision which would otherwise have taken place in September 2007 at the latest.

The Council draws attention to the fact that the proceedings before the Tribunal concern the execution of the above-mentioned judgment and that their purpose is to determine whether the Council has followed the correct procedure for implementing that judgment; they are certainly not meant to decide the substantive issue of whether the complainant meets the conditions for receiving the repatriation grant or the service grant which, until now, has never been claimed by the complainant.

CONSIDERATIONS

1. In Judgment 2582 the Tribunal set aside the implicit decision resulting from the IOOC's failure to respond

to the complainant's request for payment of end-of-service benefits and sent the case back to the organisation for the complainant's entitlements to be determined in accordance with consideration 10 of that judgment. This consideration reads in pertinent part as follows:

"The submissions in this case, including the last items produced by the complainant which the defendant views as having no evidential value, are not sufficient for the Tribunal to give a ruling on that point [i.e. whether or not the complainant is entitled to the benefits he is claiming] without an administrative inquiry, which only the organisation can undertake. It is the latter's prolonged failure to reply which prevented the complainant from exercising his rights […] and the defendant has an obligation to deliver a reasoned decision on the merits of his request. […] The Tribunal […] will send the matter back to the IOOC for the latter, after considering the merits of the complainant's request in accordance with the applicable rules and whatever information he has supplied, to take an explicit, reasoned decision regarding the benefits he is claiming."

The IOOC was ordered to pay the complainant 1,000 euros in compensation for moral injury and 2,000 euros in costs.

2. On 2 March 2007 the complainant wrote to the IOOC regarding the execution of Judgment 2582. The Council expressed its intention to execute the judgment on the terms set by the Tribunal.

By a letter of 19 March the complainant indicated his willingness to provide any additional information or supporting documentation that might be requested and, at the same time, set out his interpretation of the scope of the administrative inquiry referred to in consideration 10 of the judgment. He asserted that the IOOC was taking an ambiguous approach to the question of whether it was going to base its decision solely on the information already in the file, which in his opinion would have required different wording in French, namely "*a fournies*" instead of "*aura fournies*", or whether it was going to ask for additional information, which in his view would have been more consistent with the text of the judgment.

On 21 March the Council informed him that it had taken note of his comments and his willingness to reply to any request for additional information. It confirmed its intention to execute the above-mentioned judgment fully in the swiftest and most efficient manner possible, but it explained that, since the competent officials would be away from headquarters until 26 March 2007, no decision could be adopted before that date.

On 30 March the complainant sent the organisation a letter in which he deplored the fact that it had not yet asked him to supply supporting documentation. He wondered how, in those circumstances, the administrative inquiry ordered by the Tribunal could be held. He denounced what he regarded as the IOOC's procrastination.

In a letter of the same date the Council announced that it considered that it had "sufficient information" to adopt a reasoned, substantiated decision on his request in accordance with the terms of Judgment 2582. By the same letter it informed him that he had until 30 April 2007 to submit further comments or additional explanatory material if he deemed this necessary. It added that "in view of the background to this case and since the next meeting of the Council [of Members] [wa]s scheduled for November […], consideration [was] being given to how best to speed up the adoption of this decision, so as to not to hold up the processing of this case". It further stated that: "To be specific, the possibility of taking advantage of a meeting scheduled for the end of July 2007 to adopt this decision is […] being contemplated."

In a further letter, dated 11 April, the IOOC repeated its offer to make 30 April 2007 the deadline for the receipt of "any additional comments or explanatory material" which the complainant might consider relevant and reaffirmed its intention scrupulously to comply with the terms of Judgment 2582 as quickly as possible. That was why it was studying all the available means of speeding up the adoption of a reasoned, substantiated decision, without having to wait for the meeting of the Council of Members in November 2007.

On 27 April the complainant reiterated his willingness to respond to any request from the IOOC for additional information or supporting documentation.

On 21 May the Council replied that the written procedure provided for in its Rules of Procedure would be initiated so that a decision could be adopted and notified, probably in the first week of September 2007.

3. The complainant considered that the administrative inquiry ordered by the Tribunal presupposed that the Council would ask him to supply additional documents and information. Having noted that, three and a half months

after the delivery of Judgment 2582, no administrative inquiry had yet been held, he filed an application for execution of Judgment 2582 with the Tribunal, in which he requested that the IOOC be ordered to execute the judgment in full, with a penalty for default of 1,000 euros per day.

4. In its reply the Council informed both the Tribunal and the complainant of its decision to suspend the written procedure which it had initiated for the adoption of an explicit, reasoned decision, as ordered by Judgment 2582, until such time as the current proceedings had ended and the Tribunal had ruled on whether the procedure chosen for executing the above-mentioned judgment was appropriate.

5. It must first be pointed out that, under these circumstances, the Tribunal will not rule on a procedure which has not yet been completed and which does not form the subject of any appeal to it. It is incumbent upon the Council to use the means available to it under the applicable regulations to execute Judgment 2582 in full and, in particular, to take an explicit, reasoned decision regarding the benefits the complainant is claiming.

Nor will the Tribunal dwell on the issue of the tense of the verb used in the French version of consideration 10 of Judgment 2582, namely "*aura fournies*". The only question that need be addressed in this connection is whether the IOOC was required to ask the complainant for additional information. The reply must be "no". The Tribunal considers that the Council was perfectly entitled to ask for additional information, or to confine itself to the information at its disposal if it considered that information to be sufficient. The complainant could, if he thought it useful, submit to the Council additional information in his possession.

6. This being so, it is necessary to rule on the merits of the application for execution.

The Tribunal's practice is to let the organisation have a reasonable amount of time to act, and what is reasonable will depend, among other things, on the circumstances and the issues at stake. The Tribunal has said more than once that any lump-sum award by the Tribunal is to be paid within 30 days. That deadline holds good when the organisation may readily work out the amount due. But it does not when a case is sent back to the organisation for a decision: the time to be allowed will then turn on the peculiarities of the case (see Judgment 1812, under 4, and the case law cited therein).

7. In the instant case the sums awarded in Judgment 2582 have already been paid.

It remains for the organisation to reach a conclusion on the benefits claimed by the complainant and, if necessary, to settle them. To that end, it was required to take a decision "in accordance with the applicable regulations and whatever information he has supplied".

The Tribunal considers that, in order to speed up the procedure – which would have been to his advantage – the complainant could have taken the initiative of supplying the organisation with all the documents and information supporting his case, instead of waiting for a hypothetical request from the IOOC, especially since, as indicated above, Judgment 2582 does not explicitly state anywhere that the Council should ask for documents and information. Moreover, in its letter of 30 March 2007 the Council invited the complainant to submit any additional comments or explanations to it before 30 April 2007, and it repeated this invitation on 11 April.

It should likewise be noted that in its letter of 30 March the Council had announced that it had "sufficient information" to be able to take a reasoned, substantiated decision and that, as may be seen from the exchange of correspondence, it had chosen to resort to the written procedure, which is faster, for the adoption of decisions by the Council of Members.

The procedure for executing the judgment was under way and a decision could be expected within a reasonable period of time. The application for execution filed by the complainant might therefore seem premature.

8. However, in its reply the Council notified both the Tribunal and the complainant of its decision to suspend the written procedure it had initiated, on the sole grounds that the complainant had filed an application for execution with the Tribunal.

The Tribunal cannot endorse such action, since the suspension of that procedure can by definition only add to the delay in the execution of its judgment. For that reason, it will order the execution of Judgment 2582 in full within ninety days of the delivery of this judgment with a penalty for default of 500 euros per day.

9. The complainant is entitled to 1,000 euros in costs.

DECISION

For the above reasons,

1. The IOOC must execute Judgment 2582 as stated in consideration 8 above.

2. It shall pay the complainant 1,000 euros in costs.

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.