

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

G.

v.

Eurocontrol

(Application for execution)

139th Session

Judgment No. 4957

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 4592 filed by Mr G. G. on 16 August 2023, the reply of the European Organisation for the Safety of Air Navigation (Eurocontrol) of 29 September 2023, the complainant's rejoinder of 8 December 2023, Eurocontrol's surrejoinder of 28 February 2024, the complainant's further submissions of 13 May 2024 and Eurocontrol's final observations of 29 July 2024;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 4592, delivered in public on 1 February 2023, the Tribunal set aside the decision of the Head of Human Resources of 21 June 2019, taken by delegation of the authority of the Director General, and remitted the case to Eurocontrol for the complainant's internal complaints of 12 November and 12 December 2018 to be duly examined by the Joint Committee for Disputes, a stage in the internal appeal procedure that had been unlawfully disregarded by the

Organisation. The Tribunal also ordered Eurocontrol to pay the complainant moral damages in the amount of 10,000 euros and 7,000 euros in costs.

The complainant is a British citizen born in 1958. Before joining Eurocontrol – from which he has now retired – on 1 June 2006, he was a member of a pension scheme in the United Kingdom (CAAPS). His internal complaints of 12 November and 12 December 2018 arose from requests he had made to the relevant department to transfer the value of his CAAPS pension entitlements into the Eurocontrol pension scheme.

2. In his application for execution filed on 16 August 2023, the complainant submitted that, following the judgment of the Tribunal delivered in public on 1 February 2023, he had not been sent a fresh opinion of the Joint Committee for Disputes or a final decision of the Director General following such an opinion, although over six months had elapsed since the date of the judgment. The complainant stated that the internal complaints on which the Committee's opinion was required dated back to 2018, that he was now retired, and that the Agency was not only delaying the procedures but also knowingly obstructing their efficient and reasonable progress. He therefore requested payment of moral damages in the amount of 15,000 euros, payment of the sum of 10,000 euros in punitive and exemplary damages, payment of a penalty for late payment of 1,500 euros for each additional week of delay from 1 June 2023, and an award of costs in the amount of 6,000 euros.

3. In its reply, Eurocontrol submitted that it had notified the complainant's counsel, by an email of 4 April 2023, that the case had been placed on the agenda for the meeting of the Joint Committee for Disputes of 21 April 2023, and specified that the Committee had subsequently delivered its opinion to the Director General on 1 June 2023. Thus, according to Eurocontrol, although it was true that when the complainant filed the present application for execution, the Committee's opinion of 1 June 2023 had still not been notified to him because the Director General had not made a decision on the two internal complaints that it covered, the fact remained that, in its view, Judgment 4592 had been properly executed by the Organisation in

respect of the remittal of the case to the Committee for a fresh examination of the two internal complaints, which had been duly done by the referral of the case to it and the delivery of its opinion on 21 April and 1 June 2023 respectively. Eurocontrol added that, in respect of the allegedly harmful consequences arising from the manner in which the internal appeal procedure had been implemented to give effect to Judgment 4592, the complainant's request was irreceivable for failure to exhaust internal means of redress.

4. In his rejoinder and further submissions, the complainant insisted on the fact that, both on the date on which he had filed his application for execution and on the dates on which he filed his other submissions with the Tribunal, he had still not received the decision of the Director General following the unanimous opinion delivered by the Joint Committee for Disputes on 1 June 2023 recommending that he be awarded moral damages "*ex aequo et bono*". The complainant therefore requested that the moral damages be increased to 100,000 euros, the punitive and exemplary damages to 25,000 euros, and costs to 8,000 euros.

In its final observations, Eurocontrol maintained that it had executed Judgment 4592 correctly and in a timely manner, insisting on the fact that the judgment did not require it to take an immediate decision on the internal complaints at issue but only to restart the internal procedure by forwarding those complaints to the Joint Committee for Disputes, which it had done. It added that the complainant ought to have waited for the Director General to take a decision before filing a complaint with the Tribunal challenging his delay in doing so and that the Director General had in fact taken his final decision on 4 July 2024, rejecting the internal complaints and explaining why he had chosen not to follow the unanimous recommendation of the Joint Committee for Disputes.

5. The Tribunal recalls that, pursuant to Article VI of its Statute, its judgments are "final and without appeal" and carry *res judicata* authority. Thus, according to the Tribunal's settled case law, such judgments are immediately operative (see, for example, Judgments 4284, consideration 5, 3003, consideration 12, and 3152, consideration 11).

In Judgment 4284, consideration 5, the Tribunal also stated that its judgments must be executed as ruled and that the parties must work together in good faith to this end (see, for example, Judgments 3823, consideration 4, 3635, consideration 4, 3566, consideration 6, and 2684, consideration 6). Judgments must be executed within a reasonable period of time (see Judgments 4708, consideration 6, 4284, consideration 5, 3656, consideration 3, and 2684, consideration 6). As the Tribunal has emphasised in its settled case law on this matter, in order to ascertain whether execution has taken place within a reasonable period of time, all the circumstances of the case must be taken into account, especially the nature and the scope of the action which the organisation is required to take (see in particular, in this connection, Judgments 4284, consideration 6, and 3066, consideration 6).

6. In this regard, the Tribunal observes in the first place that in Judgment 4592 it clearly stated that the impugned decision was set aside and that the case was remitted to the Organisation for the complainant's disputed internal complaints to be duly examined by the Joint Committee for Disputes. In the second place, the Tribunal notes that it is clear from the considerations in that judgment that the impugned decision had to be set aside because the complainant's internal complaints had been unlawfully dismissed summarily, precisely without an opinion of the Joint Committee for Disputes having first been received, which led to the impugned decision being set aside on account of that unlawfulness and the need for the case to be remitted to the Organisation so that such an opinion could be duly obtained before a lawful decision was taken. In consideration 17, the Tribunal in fact stated that, according to its case law, in such circumstances it was appropriate to remit the matter to the Organisation to allow the internal appeal procedure to proceed to its conclusion.

7. In the present case, the Tribunal considers, first of all, that Eurocontrol is plainly wrong to submit that the complainant's application for execution is irreceivable because he has failed to exhaust the internal means of redress. It was in fact the execution of point 2 of the decision in Judgment 4592 that the complainant sought when filing

his application for execution. To that end, he was entitled to rely on the provisions of Article VI, paragraph 1, of the Statute of the Tribunal. The requirement that internal means of redress be exhausted did not apply in that situation.

8. The Tribunal also considers that only a deliberately truncated reading of Judgment 4592 and its decision and considerations could allow the Organisation to submit that merely obtaining the opinion of the Joint Committee for Disputes on 1 June 2023, without the Director General following it up with a decision as he is required to do by the applicable statutory provisions, constituted a correct and complete execution of Judgment 4592.

In fact, in Judgment 4592, considerations 16 and 17, the Tribunal decided that the impugned decision was set aside and that the case was remitted to the Organisation to allow the internal appeal procedure to be restarted and continued until its conclusion, including, in particular, the obtaining of the opinion of the Joint Committee for Disputes, which had until then been unlawfully disregarded by Eurocontrol. However, it goes without saying that, in order to properly execute and comply with the judgment, a decision of the Director General ruling on the complainant's internal complaints should have been issued and notified to him after the receipt of the opinion of the Joint Committee for Disputes of 1 June 2023. The written submissions establish that this decision was not taken by the Director General until 4 July 2024.

9. Thus, while it is true that Judgment 4592 has now been properly executed following the Director General's decision of 4 July 2024, the Tribunal notes that this decision was not finally taken until more than 17 months after the public delivery of the judgment, on 1 February 2023, and more than 13 months after the receipt of the opinion of the Joint Committee for Disputes – which was favourable to the complainant – on 1 June 2023. In each case, these respective delays of 17 and 13 months are plainly excessive, and the Organisation has not offered any explanation or justification in their regard.

10. The Tribunal considers that, in view of the relevant circumstances of the case and its case law on the issue (see, for example, Judgments 4284, consideration 8, and 4078, consideration 24), Eurocontrol's delays in duly and fully executing Judgment 4592 were unreasonable. It follows that Eurocontrol failed in its duty to execute the judgment promptly.

11. Although it is correct that this application for execution has become moot in view of the fact that, firstly, the opinion of the Joint Committee for Disputes on the internal complaints of 12 November and 12 December 2018 was delivered on 1 June 2023 and, secondly, the Director General's decision following that opinion was taken on 4 July 2024, the Tribunal considers that the complainant has nevertheless established that he inevitably suffered moral injury on account of this unjustified delay, given, in particular, the subject-matter of the dispute and the fact that he has already retired. The Tribunal concludes that this injury will be fairly redressed by awarding the complainant moral damages in the amount of 12,000 euros.

12. In respect of the complainant's claim for the award of punitive and exemplary damages on account of the obstruction of the procedure of which he accuses Eurocontrol in this case, the Tribunal recalls its settled case law that such damages can only be awarded in exceptional circumstances (see, for example, Judgments 4832, considerations 56 and 57, 4820, consideration 22, 4819, consideration 22, and 4659, consideration 14). Although the Tribunal considers the unreasonable and unacceptable delay in the complainant's receipt of the final decision to which he was entitled highly regrettable, the circumstances of the present case are not so exceptional as to warrant an additional award of punitive and exemplary damages.

13. Since Judgment 4592 has now been correctly and fully executed, the complainant's request that a penalty for late payment be imposed on the Organisation must also be dismissed.

14. Since he succeeds, the complainant is entitled to costs, which it is appropriate to set at 6,000 euros as he claims in his application for execution.

DECISION

For the above reasons,

1. Eurocontrol shall pay the complainant moral damages in the amount of 12,000 euros.
2. It shall also pay him costs in the amount of 6,000 euros.
3. All other claims are dismissed.

In witness of this judgment, adopted on 14 November 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLEMENT GASCON

MIRKA DREGER