

THIRTY-SEVENTH ORDINARY SESSION

***In re* GEISLER, GIROUD, BEHMO,
ARMITANO-GRIVEL, LEHERTE,
SCHRIJVERS, PHILLIPS, MAHIEU
and NIVEAU DE VILLEDARY**

Judgment No. 278

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints against the International Patent Institute (IPI) drawn up by Mr. Joseph Geisler, Mr. Gérard Giroud, Mr. Simon Behmo, Mr. Michel Armitano-Grivel, Mr. André Leherte, Mr. Herman Schrijvers, Mr. Gwilym Phillips and Mr. Luc Mahieu on 16 September 1975, and the complaint drawn up by Mr. Hubert Niveau de Villedary on 17 September 1975 and brought into conformity with the Rules of Court on 20 October 1975, the Institute's reply of 19 December 1975, the first eight complainants' rejoinder of 3 February 1976 and the ninth complainant's rejoinder of 12 February 1976;

Considering that the nine complaints relate to the same matter and should be joined to form the subject of a single decision;

Considering the applications to intervene lodged by

Mr. John Frederick Clapham Atkins,
Mr. Gaëtan Marie René Antoine Ghislain Baetens,
Mr. R.J.F. Baré,
Mr. Michel Henri Jean Bertin,
Mr. Louis Beslier,
Mr. C.G.F. Biggio,
Mr. Ignace Blasband,
Mr. Charles Boehm,
Mr. G.C. Boersma,
Mr. Jean-Pierre Boutruche,
Mr. Petrus Paul Bracke,
Mr. Michel G.R. Brisson,
Mr. Colin Brown,
Mr. H.R.F. Brulez,
Mr. Omer Lea Jozef Bullens,
Mr. Georges Bussieres,
Mr. Jean-Michel Cannard,
Mr. Christian P.M.S. Chaix de Lavarene,
Mr. Jacques Chouly,
Mr. Jacques Coquelin,
Mr. Yves Henri Cristol,
Mr. Jean Raymond Cruchten,
Mr. Ivan A.F. De Buyser,
Mr. Hendrik Jan De Buyzer,
Mr. Ferdinand C.R. De Laet,
Mr. H.A. De Muyt,
Mr. Pierre J.-M. De Roy,
Mr. Christian René Dailloux,
Mr. Ch. E.L. Damitio,
Mr. Maurice Dancer,

Mr. Francois Raymond Devisme,
Mr. Hans W. Chr. Dockhorn,
Mr. Wybo Draisma,
Mr. Pavi Feidt,
Mr. Georges Armand Forlen,
Mr. Jean-Paul André Fouquier,
Mr. Jean-Marie Ganeff,
Mr. Raymond Henri Albert Gautier,
Mr. Michel Ginestet,
Mr. Christian Godin,
Mr. Pierre Goller,
Mr. Ludovicus Albert Dimphna Gysen,
Mr. Emile Hérouan,
Mr. Derek Holmes,
Mr. Winfried Marie Emiel Hoornaert,
Miss G. Huberty,
Mr. Pierre Mare René Keppens,
Mr. Paul Mathieu Georges Kerres,
Mr. Guy Lamadie,
Mr. Raymond Marie Laurent Laugel,
Mr. Daniel Lemereier,
Mr. Christian P.L. Leroy,
Mr. Victor Lipovsky,
Mr. J.A. Maisonneuve,
Mr. Michel Marandon,
Mr. Michel Marchau,
Mr. Christian Maugain,
Mr. Guido Mees,
Mr. Andre Eugene Sydney O.J. Mertens,
Mr. Alain Miller,
Mr. Gerard Henri Josef Mollet,
Mr. Hervé Jacques Nicolas,
Mr. Albert Jean Nuss,
Mr. Geert Romain Adolf Pauwels,
Mr. Frans Pieter Peeters,
Mr. Stefaan Peeters,
Mr. Jan Claus Piriou,
Mr. Mladen Rajic,
Mr. Guy Rempp,
Mr. Alfred Riedinger,
Mr. Antoon Octaaf Andre Ryckebosch,
Mr. Jean Schimberg,
Mr. Jean-Marie Schmitter,
Mr. Roger Schroeder,
Mrs. Nicole Françoise Ghislaine Schuermans,
Mr. Tjing Djien Siem,
Mrs. Hélène Staber-Selzer,
Mr. Max Suter,
Mr. K.H. Tio,
Mr. G.E.R.J. Van Heddeghem,
Mr. M.L.P. Van Schoor,
Mr. Siegfried Van Walle,
Mrs. C. Van Wigcheren-Noblesse,
Mr. Fernand Vancraeynest,
Mr. Alfred Nestor Georges Vangheluwe,
Mr. J.P.M. Verhoest,
Mr. William Verhulst,

Mr. Henri Weber,
Mr. Friedrich Zemek;

Considering Article II, paragraph 5, of the Statute of the Tribunal and the Institute Staff Regulations, particularly Articles 60, 80, 82, 83, 84, 97 and 99;

Having examined the documents in the dossier, the oral proceedings requested by the first eight complainants having been disallowed by the Tribunal;

Considering that the material facts of the case are as follows:

A. On 17 December 1970 the Administrative Council of the Institute declared, among other things, its intention to bring salary scales and related benefits at the Institute into line with those in force in the European Communities. In accordance with that statement, on 22 December 1971 the Administrative Council took a decision revising the Staff Regulations. Certain provisions of the new Staff Regulations came into force on the same date as the Staff Regulations themselves, namely 1 January 1972; others, including those relating to salaries and allowances, were given effect retroactive to 1 January 1971; and others again, including those relating to the social security, pension and welfare scheme, remained temporarily in force in accordance with Article 97 (transitional provision).

B. Shortly after the entry into force of the new Staff Regulations and in accordance with Article 97 thereof a revision was made of some of the old Regulations which had been taken over and which related to rights and duties, the system of work and leave, and discipline. As regards the pension scheme, by communication of 12 October 1972 the Director-General informed the staff of the view the Council had taken at its 114th Session: the Council had reaffirmed that the Staff Regulations and other texts relating to the staff should so far as possible match those applicable to European Communities staff. It had observed, however, that differences might prove necessary - for example in the pension arrangements - because "(a) a particular factual or legal situation exists in the IPI which does not exist in the European Communities; (b) the nature of duties or of the IPI's mandate requires the adoption of different or additional provisions; and (c) account must be taken of the prospects of merging the IPI with the future European Patent Office". (Registry translation)

C. After the Administrative Council's 123rd Session, in December 1974 the staff were told that the Council would not revise the pension provisions until the staff had been transferred to the European Patent office. After taking other forms of action the staff committee and staff union officers informed the Council on 11 March 1975 of "the staff's anxiety at your statement that you think it premature to amend the present provisions before merger" - a view they took to be at odds with the promises made by the Council at its 114th Session. The Council answered that "the minutes of [its] 114th Session revealed neither commitment nor promise". In complainants' view the Council's attitude was detrimental to their interests and, purportedly under Staff Regulation 82, each of them lodged an internal appeal against the Council's decision. The Council examined the appeals at its 126th Session (June 1975). It held that in both purpose and substance they were not internal appeals within the meaning of Staff Regulation 82 and were therefore not referable to the Appeals Committee mentioned in Staff Regulation 84. On 20 June 1975 the Council Chairman wrote to the complainants: "The Council has examined your complaint and found it irreceivable under Staff Regulation 82." The complainants are now appealing to the Tribunal.

D. The first eight complainants state: "The purpose of this complaint is to secure an order against the defendant organisation for payment to the complainants of damages representing the difference between the actuarial equivalent of their respective pension rights under the pension scheme still in force in the Institute and that of their entitlements had the scheme been aligned with that of the European Communities from 1 January 1974". Each of them asks the Tribunal: "(i) to quash the Administrative Council's decision of 20 June 1975; (ii) to order the Institute to compensate the complainant for breach of its undertaking to admit him to a pension scheme aligned from 1 January 1974 with the European Communities scheme; (iii) to appoint an actuary to assess (a) the actuarial values of the complainant's pension rights under the present scheme and of his rights under a scheme aligned with that of the European Communities, from 1 January 1974 until the date of the Tribunal's decision; (b) for the purposes of future calculation the yearly difference between those two actuarial values; and (iv) to order the Institute to pay the complainant 2,000 guilders as costs, plus the fees and expenses of the actuary to be appointed by the Tribunal".

E. The ninth complainant states that he "objects, principally, to the Council's refusal to establish a pension scheme similar to the one in force in the European Communities and, subsidiarily, to the delay in fulfilling a commitment

entered into on 17 December 1970". He asks the Tribunal "to order that the Council's decision be quashed, with whatever legal consequences that may entail".

F. The Institute asks the Tribunal: "(1) to declare itself not competent to hear the complaints; (2) to declare all the complainants' arguments and claims irreceivable; and (3) subsidiarily, to declare the complaints wholly unfounded and in consequence to dismiss them in their entirety".

CONSIDERATIONS:

As to the complaints:

As to their receivability:

The complainants are seeking to have quashed decisions whereby the Administrative Council of the Institute refused to revise the application to them of the staff pension scheme before the merger of the Institute with the European Patent Office. Thus what are being impugned are individual decisions, even though they are based entirely on a decision of a general character affecting all staff members.

Those decisions, which were taken by the Administrative Council, are final. The fact that they dismiss the claims as irreceivable does not deprive them of their final nature and does not prevent their being referred to the Administrative Tribunal.

As to the lawfulness of the impugned decisions:

The complainants contend that in refusing to align the Institute's pension scheme with the scheme in force in the European Communities the Administrative Council infringed commitments towards staff members.

The Administrative Council's decision of 17 December 1970 on total remuneration (salary and related benefits) paid to Institute staff is of no relevance to the pension scheme.

Its decision of 22 December 1971 lays down new Staff Regulations and determines the date of their entry into force at 1 January 1972.

Article 60 of the new Staff Regulations maintains the pension scheme in force and Article 97 makes the Administrative Council responsible for revising that scheme.

Thus at 1 January 1972 the competent body of the Institute had taken no decision in the legal sense of the term to amend the pension scheme and in particular to align it with the scheme in the European Communities.

On 12 October 1972 the Administrative Council took a further decision, which provided, among other things:

"4. As to future revision of the Staff Regulations, pension scheme and any other text applicable to the staff, the Administrative Council has defined its position as follows: 'It considers that the provisions of the Staff Regulations and other texts relating to the staff should so far as possible match those applicable to European Communities staff.'"

It appears clearly from this statement, the precise purport of which is indicated by use of the term "so far as possible", that the Administrative Council did not decide to ensure full conformity between the Institute Staff Regulations and those of the European Communities, that it entered into no legal commitment in that regard and that it merely made a statement of intent which did not provide for any sanction.

The rest of the statement clearly confirms this interpretation and - assuming it were necessary - clarifies the meaning of the words "so far as possible":

"... differences might prove necessary - for example in the pension arrangements - because (a) a particular factual or legal situation exists in the IPI which does not exist in the European Communities; (b) the nature of duties or of the IPI's mandate requires the adoption of different or additional provisions; and (c) account must be taken of the prospects of merging the IPI with the future European Patent Office." Hence it appears from the terms of the statement that the Administrative Council, which has never failed to carry out its earlier promises, undertook to

issue new Staff Regulations, but gave no undertaking as to the particular date for doing so.

At most the Tribunal may criticise the Council's attitude towards the formulation and adoption of the new Staff Regulations, and particularly the time required for the work, only if that attitude implied that there had been a firm undertaking which had allegedly been violated contrary to a general rule of law. It appears from the documents in the dossier that the lengthy delay in carrying out the exercise, to which the complainants object, is accounted for by the difficulties of the exercise and by the uncertainty due to the conversion of the Institute into the European Patent Office. Hence the Administrative Council did not make any undertaking whatever whose violation may be criticised by the Tribunal and, in so far at least as the matter falls within the Tribunal's power of review, neither the action taken by the Council nor its failure to act affords any valid ground for complaint.

As to the claims for compensation:

It appears from the foregoing that for the time being the Tribunal cannot find fault with the Council's attitude. Hence the claims for compensation cannot be granted and the requests by eight of the nine complainants for appointment of an expert to assess the damage allegedly suffered by them serve no purpose.

As to the applications to intervene:

Although the applications to intervene set out above, all of which have been submitted by Institute staff members who have an interest in the quashing of the impugned decision, are receivable, they are, like the complaints themselves, unfounded.

DECISION:

For the above reasons,

1. The above complaints are dismissed.
2. The above applications to intervene are dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 4 October 1976.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet