Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

106th Session **Judgment No. 2793**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr F. G. against the European Organization for Nuclear Research (CERN) on 23 July 2007 and corrected on 30 October 2007, the Organization's reply of 13 February 2008, the complainant's rejoinder of 16 May and CERN's surrejoinder of 27 August 2008;

Considering Articles II, paragraph 5, and VII 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. Facts relevant to this dispute are given in Judgments 2615 and 2655 delivered on 7 February and 11 July 2007, respectively, in cases also concerning CERN. Suffice it to recall that in order to contend with an updated technical deficit of 254 million Swiss francs in the CERN Pension Fund, the CERN Council decided on 17 December 2004 to approve a 0 per cent adjustment of pensions, fixed benefits and allowances for 2005 – although the rate of inflation was running at 1.7 per cent – "on the understanding that the whole situation of the Pension Fund w[ould] be re-considered as early as possible in 2005 and a

comprehensive package of measures [would be] submitted to [it] relating to all parties to the Pension Fund, namely the active staff, the beneficiaries and the Organization in order to improve the capacity of the Fund to meet its long-term liabilities". On 16 December 2005 the Council decided to adjust pensions for 2006 by 0.99 per cent, although a rate of inflation of 1.2 per cent had been recorded in Geneva during the reference period.

The complainant, born in 1944, has dual Belgian and Swiss nationality. He joined CERN in 1963 and retired on 31 August 2004; since that date he has drawn a retirement pension paid by the Fund. On 21 December 2005 he filed an appeal with the Chairman of the Governing Board of the Pension Fund in which he challenged the amount of his pension for November 2005 and, incidentally, the above-mentioned decision of December 2004. By letter of 21 February 2006 the Chairman replied that he ought to have challenged this decision directly and within the time limits; for reasons of procedural economy he suggested that the appellant should file a complaint with the Tribunal, which he refused to do.

On 19 October 2006 the CERN Council revised Article II 1.15 of the Rules of the Pension Fund on the annual adjustment of pensions; this article now reads as follows:

> "With a view to protecting the beneficiaries' purchasing power and taking into account the financial balance of the Fund, the Council shall decide annually on the adjustment to be made to pensions, fixed benefits and allowances in accordance with the method defined in Annex C."

Annex C to the Rules is worded:

> "a) As long as the funding ratio of the Fund […] is below 100%, only a part (see b) below) of the Geneva consumer price index for the last twelve-month period (August to August) shall be granted.
>
> b) The adjustment factor to be applied to the Geneva consumer price index shall be determined by the Actuary at each actuarial review, so that on the basis of the actuarial parameters applying at the time of the adjustment, the funding ratio would reach 100% by 31 December 2033. The cumulated loss of purchasing power incurred by a beneficiary from 1 January 2005 shall not exceed 8%.
>
> c) When the funding ratio of the Fund has reached 100%, the full Geneva consumer price index shall be granted.

d) If the funding ratio of the Fund is substantially above 100%, the Council shall consider a mechanism to restore pensions' purchasing power."

By a letter of 18 December 2006 the Administrator of the Pension Fund informed its beneficiaries that, in accordance with the CERN Council's decision of 15 December 2006 adopted pursuant to the new version of Article II 1.15 of the Fund's Rules, pensions would be adjusted by 1.16 per cent for 2007; a rate of inflation of 1.4 per cent had been recorded during the reference period. On 1 March 2007 the complainant wrote to the Chairman of the Governing Board to inform him that he was withdrawing his appeal of 21 December 2005. By a separate letter of the same date he informed him that he was lodging another appeal. In this new appeal, directed against the decision to pay him for January 2007 a pension lower than the amount to which he was "legally entitled", he stated that, owing to the Fund's deficit, the pension adjustment decided by the Council had been less than inflation since December 2004 and that his purchasing power had therefore been eroded. He requested permission to refer the dispute directly to the Tribunal. The Chairman of the Governing Board authorised him to do so in a letter of 27 April 2007, which constitutes the impugned decision. The complainant explains that he is also incidentally challenging the decisions of 17 December 2004, 16 December 2005 and 15 December 2006.

B. According to the complainant, in his case the cumulated loss of purchasing power is only 2.20 per cent, but he explains that, in the future, the fact that the amount of the initial retirement pension will be lower is likely to result in a considerable reduction in pensioners' purchasing power, or even in spoliation. In this connection he cites several judgements of the United Nations Administrative Tribunal, in particular Judgement 403 in which that Tribunal held that revisions of the pension adjustment system could not be used for purposes other than the protection of the purchasing power of retired staff members and could not with greater reason be allowed to result in deprivation.

The complainant submits that CERN is in breach of its "social duties", especially the duty to provide old-age benefits. In his opinion,

the Organization, acting through the Council, must ensure that the Pension Fund is well managed, but the Council has seriously failed in its duties. He underlines that in December 1987 the CERN Review Committee had already noted in its final report that the recommendations of the group of experts which were aimed at absorbing the technical deficit had not been implemented. In addition, after the actuarial review on 1 January 2004, when the Fund had a structural actuarial deficit and its Governing Board was recommending an increase in the contributions of staff members and the Organization, the Council had accepted only a very small part of this solution. The complainant infers from this that the impugned decision is unlawful insofar as it is the consequence of Council decisions not to take the necessary steps to restore the Fund's actuarial balance.

The complainant further contends that the principle of *tu patere legem quam ipse fecisti* was breached, for between 1956 and 1975 the Council did not apply a rule it had established. The resources of the Fund's predecessor, the Staff Insurance Scheme set up in 1956, were guaranteed by CERN since, under the Scheme's Regulations, assets had to be invested in securities providing all necessary guarantees, and if the net interest yield did not reach 3.5 per cent per annum the Organization had to make up the difference. The Council cancelled this guarantee in 1976. The complainant quotes the Review Committee's Final Report to the effect that if the resources had been guaranteed, CERN should have paid 162 million Swiss francs into the Scheme up to 1975.

The complainant also submits that the "general legal principle" established by the Tribunal with respect to the adjustment of remuneration has been breached. In Judgment 1821, under 7, the Tribunal recalled the limits to the discretion of international organisations to set adjustments in staff pay, stating in particular that "the chosen methodology must ensure that the results are stable, foreseeable and clearly understood", and this case law must also apply to pensions. According to the complainant, the package of measures adopted in 2005 comprised a method – contained in Annex C to the latest version of the Pension Fund's Rules – which, apart from sub-

paragraph d), makes it possible to achieve such results. In the complainant's opinion, the vague wording of this sub-paragraph (which applies in the event that the funding ratio is above 100 per cent) prevents part of the method from achieving stable, foreseeable and clearly understood results when the Fund's situation would make it possible to restore pensioners' purchasing power.

The complainant asks the Tribunal to quash the impugned decision and to determine all the relevant legal consequences, in other words to order the Organization to pay him as from 1 January 2007 his pension "at the level to which he is legally entitled", with interest at 8 per cent per annum, and to amend Annex C to the Pension Fund Rules so that sub-paragraph d) "does not prevent the method [for annually adjusting pensions] from achieving stable, foreseeable and clearly understood results". He also claims costs.

C. In its reply CERN submits that the complaint is time-barred insofar as it seeks to challenge the decisions adjusting pensions for 2005 and 2006. Moreover, the claim that the Tribunal should order the Organization to amend Annex C is irreceivable since the Tribunal has no authority to make rules and regulations directly.

On the merits the Organization asserts that the complaint is an attempt by the Staff Association and the CERN Pensioners' Association to pursue a dispute going back to 2005 concerning the lawfulness of decisions regarding pension adjustments which were aimed at reducing the Fund's actuarial deficit. It contends that the arguments developed in the complaint offend the principle of good faith, because by challenging the decision on pension adjustment for 2007 and by relying on new arguments the Staff Association, through the complainant, is trying to call into question the Tribunal's findings in Judgments 2615 and 2655 and to obtain a review of those judgments, which have *res judicata* authority. If the Staff Association and the Pensioners' Association had considered these arguments relevant, they should have raised them in the context of the disputes concerning the decisions to adjust pensions for 2005 and 2006, or even before that, for example by voicing their disagreement when the disputed adjustment method was being worked out. The fact

that they did not advance such arguments earlier shows that they are "afterthoughts". The plea that sub-paragraph d) of Annex C contravenes a general legal principle is also a breach of good faith, since the sub-paragraph was drafted in close collaboration with the Staff Association which, at the time, expressed its complete agreement with the wording that is now being criticised.

Subsidiarily, the Organization asserts that none of the complainant's arguments raises any doubt as to the lawfulness of the disputed decision. In its opinion, this decision complies with the provisions of Article II 1.15 of the Pension Fund's Rules and with Annex C. The pleas that CERN has not fulfilled some of its duties are irrelevant because they essentially constitute criticism of the Organization's management in the past and there is no direct connection between the alleged unlawful actions and the impugned decision. Moreover, the compatibility of sub-paragraph d) of Annex C with the principles identified in the Tribunal's case law has no bearing on the lawfulness of the said decision, since it is based on Article II 1.15 of the Rules and on sub-paragraphs a) and b) of Annex C.

Even more subsidiarily, CERN submits that it has not breached its social duties. It argues that it is aware of its duty to manage the Fund "prudently" and that it has always made every effort to do so, whilst protecting the interests of staff members and pensioners alike. In this case it cannot be accused of violating any management rule. It underlines that over the past 30 years it has made numerous efforts to improve the pension system and to guarantee the payment of pensions in the future. It contends that it has not infringed the principle of *tu patere legem quam ipse fecisti*, because between 1956 and 1975 the net interest yield on the Insurance Scheme's investments was 3.5 per cent or more per annum. Lastly, it states that Article II 1.15 of the Pension Fund's Rules and Annex C "are not in any way unlawful", since the method for adjusting pensions is perfectly clear and understandable. In its view, as long as the Fund shows a funding ratio of less than 100 per cent, the absence of detailed terms for implementing the mechanism to restore purchasing power mentioned

in the above-mentioned sub-paragraph d) has no impact on the personal situation of pensioners.

D. In his rejoinder the complainant observes that since he was neither a complainant nor an intervener in the cases leading to Judgments 2615 and 2655, he cannot submit an application for a review of these judgments; nor indeed can the Staff Association and the CERN Pensioners' Association, which have no access to the Tribunal. Citing the Tribunal's case law, he adds that these judgments do not bind him. With regard to the objection that part of his complaint is time-barred, he states that he is not asking for payment of the sums which would be due to him for 2005 and 2006 if his pension had been adjusted in line with the rate of inflation for 2004 and 2005, but only that his pension for 2007 be paid "at a correct level", in other words taking account of inflation in 2004, 2005 and 2006. In his view, the Tribunal is competent to order the amendment of sub-paragraph d) "to make it lawful".

On the merits the complainant explains that while the method for annually adjusting pensions was indeed worked out in close collaboration with the Staff Association, it is the product of a compromise which it has accepted – pending a Tribunal judgment whereby CERN might be required to make a further effort to improve the Fund's actuarial balance – because the Association's priorities have been respected, namely a limit to the loss of pensioners' purchasing power (sub-paragraphs a) and b) of Annex C), the forgoing by the CERN Council of its discretionary power when the Fund shows a funding ratio of more than 100 per cent (sub-paragraph c)) and the restoration of pensions' purchasing power (sub-paragraph d)). Nevertheless, such collaboration has never meant that the Association would not support a pensioner who alleged unjust management of the Fund in order to challenge the partial adjustment of his or her pension to the cost of living. The Association, which was aware that the Fund is structurally undercapitalised, knew that sub-paragraph d) was unlikely to be implemented in the near future; that is why it postponed the adoption of more precise, binding wording. However, the complainant explains that, as far as he is concerned, the vague wording

is unacceptable because he does not know when and how his purchasing power will be restored once the Pension Fund's funding ratio exceeds 100 per cent. Like the Staff Association, he takes issue with the attitude of CERN which, after decades of mismanagement of the Fund, has followed only some of the unanimous recommendations of the Governing Board of the Pension Fund, as a result of which pensioners have had to shoulder a disproportionate share of the efforts to restore the Fund's actuarial balance.

Moreover, the complainant presses his pleas. He denies that CERN has managed the Fund "prudently": the Fund's financial situation has always been structurally imbalanced and CERN has never forestalled difficulties. The requisite adjustments have always been hard to obtain, partial and belated. Regarding the breach of the principle of *tu patere legem quam ipse fecisti*, he claims that the conditions for applying the guarantee of resources have been met for eight years. While he acknowledges that the imprecise wording of sub-paragraph d) has no bearing on the current personal situation of pensioners, he nevertheless claims the right to demand, in this connection, that the adjustment method should comply with the above-mentioned general legal principle.

E. In its surrejoinder CERN holds that the complainant's rejoinder contains no new argument which would persuade it to alter its position. On the merits it states that there is nothing unlawful in the fact that the Council adopted the new method of adjusting pensions without being able to increase contributions to the proposed rate. This method, which in the event of an actuarial imbalance of the Fund results in a pension adjustment slightly lower than the rise in the cost of living, is justified by two legitimate underlying aims, namely the protection of pensioners against a substantial erosion of their purchasing power and the preservation of the Fund's long-term financial stability. It does not entail any unjust burden on pensioners since it limits their loss of purchasing power to a maximum of 8 per cent.

CONSIDERATIONS

1. Following an actuarial review of the CERN Pension Fund in July 2004, which revealed a substantial deterioration in its financial situation, the CERN Council decided on 17 December 2004 not to increase pensions for the year 2005. This decision, which was therefore tantamount to denying pensioners the inflation offset which they could normally expect, was taken as a protective measure, pending the adoption of a package of measures to stabilise and improve the Fund's financial situation. It was challenged before the Tribunal which, in Judgment 2615, held that it was lawful.

2. By a decision of 15 December 2005 the CERN Council, acting on a proposal of the Governing Board of the Pension Fund, adopted the said package of measures, but limited the increase in the contributions of the Organization and active staff to 0.42 per cent and 0.21 per cent of basic salary, respectively, although the Governing Board had proposed much higher rates of increase.

3. Among the measures approved on that occasion, the CERN Council adopted a new method for the annual adjustment of pensions, to take account of the Pension Fund's financial situation assessed in particular from the point of view of its funding ratio.

According to this method, as long as the funding ratio of the Fund was below 100 per cent, pensioners would be compensated only partially for the inflation recorded in Geneva. The adjustment factor to be applied to the Geneva consumer price index was to be determined in the light of the actuarial reviews conducted every three years so that, on the basis of the parameters applying at the time of the adjustment, the funding ratio would reach 100 per cent by the end of 2033. It was, however, stipulated that the cumulated loss in pensioners' purchasing power as from 1 January 2005 could not exceed 8 per cent. It was also laid down that, when the Pension Fund's funding ratio reached 100 per cent, the full rate of inflation recorded in Geneva would be reflected in pensions, and that if this funding ratio

was substantially above 100 per cent the Council would consider a mechanism to restore pensions' purchasing power.

These new terms for adjusting pensions subsequently gave rise to a revision of the Pension Fund's Rules, which was approved by the Council on 19 October 2006. The wording of Article II 1.15 of these Rules, which concerns the annual adjustment of pensions, was therefore modified accordingly, while the above-mentioned method of adjustment was set out in full in Annex C, to which this article now refers.

4. The decision of 15 December 2005 also provided that, pursuant to this new method, retired staff members would be compensated for only 82.5 per cent of the inflation rate in 2006 and 2007.

5. Applying these provisions, on 16 December 2005 the CERN Council set the adjustment rate for pensions in 2006 at 0.99 per cent.

This decision was likewise challenged before the Tribunal which, in Judgment 2655, dismissed the complaints filed against individual decisions based on it.

6. On 15 December 2006 the Council decided, in accordance with the method and the compensation rate of 82.5 per cent which had been determined the previous year, to set the rate of adjustment for pensions in 2007 at 1.16 per cent, since the inflation recorded in Geneva had been 1.4 per cent.

7. The complainant, who was employed by CERN from 1963 to 2004, has been drawing a retirement pension from the Organization's Pension Fund since 1 September 2004.

Since he was of the opinion that the Council's decision of 15 December 2006 had thus unlawfully introduced an adjustment rate lower than that to which he was entitled, he contacted the Fund in order to challenge the amount of his pension for 2007 as shown in the individual statement he had received for January.

The complainant seeks the quashing of the decision of 27 April 2007 by which the Chairman of the Governing Board of the Pension Fund rejected his appeal and authorised him to refer the case directly to the Tribunal.

8. In his written submissions the complainant, who is a former officer of the CERN Staff Association, does not hide the fact that in reality his complaint has been filed at the Staff Association's initiative and that part of its purpose is to defend the latter's interests because such an association cannot itself file a complaint with the Tribunal. Nevertheless, in these proceedings he is acting in a personal capacity and the complaint is therefore not irreceivable in this respect.

9. In support of his claims the complainant first enters two pleas based on very similar reasoning, namely that the very limited rise in pensions resulting from the Council's decisions of 17 December 2004, 16 December 2005 and 15 December 2006 was caused by CERN's earlier failure to meet its obligations to the Pension Fund. He infers from this that these three decisions were therefore unlawful and that, by extension, the challenged individual decision is itself unlawful.

10. Relying primarily on a 1987 report of the CERN Review Committee and on the triennial actuarial reviews of 1995 and 2004, the complainant first submits that the three decisions in question "stem from previous Council decisions not to take steps to restore the Pension Fund's actuarial balance". He refers in particular to the previous decisions not to "pay the sums due to the Fund pursuant to the resource guarantee and the increase in contributions", which constituted "a breach by CERN of its social duties".

11. Secondly, the complainant asserts that between 1956 and 1975 the Organization flouted a rule set forth – until its repeal in 1976 – in Article 40 (then in Article 39) of the Regulations of the Staff Insurance Scheme, according to which "[i]f the net interest yield [on the Scheme's investments] does not reach 3½ per cent per annum, the

Organization shall make up the difference". He considers that by not meeting this obligation the CERN Council violated the principle of *tu patere legem quam ipse fecisti*, which forbids an authority to disregard the rules it has itself established.

12. Even though most of this line of argument is new compared with that already dismissed by the Tribunal in Judgments 2615 and 2655, it must likewise be rejected.

13. The Tribunal's case law certainly allows any complainant incidentally to challenge the lawfulness of a general decision forming the legal basis of the individual decision which he or she is seeking to have quashed (see Judgments 1000, 1451, 2129 and 2410, or indeed the above-mentioned Judgments 2615 and 2655), and the lawfulness of this general decision may be challenged on the grounds that it was taken pursuant to another decision which was itself unlawful (see for a similar case Judgment 1265, under 22).

14. However, this mechanism whereby the unlawfulness of a decision entails that of a series of subsequent decisions operates only where the decisions in question are taken pursuant to one another, in other words where the decision in the light of which the second is taken forms the legal basis thereof. In this regard, it is not sufficient that the first decision influences the second, or even that there is a causal link between them; the first decision must constitute the legal foundation of the second. In addition, when a decision comprises several provisions, only one of which forms the legal basis of the decision being challenged, any plea of unlawfulness which may be entered against the first decision is naturally effective solely against that provision.

15. It must be observed that neither the Council decision of 17 December 2004 which provided for a zero adjustment to pensions in 2005, nor that of 16 December 2005 which set the rate of pension adjustment at 0.99 per cent for 2006, served as the legal basis of the individual decision setting the amount of the complainant's pension for

2007. Indeed, although this amount was obviously determined by reference to its previous level, the Council's decision of 15 December 2006 defining the rate of pension adjustment for 2007 must be deemed to have entirely replaced the decisions taken for previous years (for an analogous case of successive annual decisions adjusting the salary scale of an international organisation, see Judgment 1329 delivered in a case also concerning CERN). The possible unlawfulness of homologous decisions taken in previous years would therefore have no bearing on the lawfulness of the impugned decision.

16. Above all, neither the decision of 15 December 2006, nor those of 17 December 2004 and 16 December 2005 can be deemed to have been predicated on various "previous decisions" equating with CERN's alleged failure to honour its obligations.

The complainant contends that the deterioration in the Pension Fund's financial situation which was noted in 2004 was substantially caused by failures ascribable to the CERN Council, which in the past had not fulfilled its responsibilities to the Insurance Scheme and which had not provided the Scheme with the resources which the Organization was obliged to grant it. However, even if this argument were well founded, the various decisions embodying these shortcomings – assuming that they could be clearly identified – would by no means constitute the legal basis of the three above-mentioned Council decisions adopted since 2004. They would of course have made those Council decisions necessary and had a causal link with them insofar as the purpose of the latter was to remedy their consequences, but from a legal point of view the Council decisions were not predicated on them. Hence any unlawfulness of the earlier decisions would have no bearing on the lawfulness of the three Council decisions, especially that of 15 December 2006 which forms the legal basis of the impugned decision.

In fact this finding is simply a matter of good sense, for it is hard to see how decisions designed to restore the Pension Fund's financial situation could be criticised on the sole grounds that they had been made necessary by previous allegedly unlawful decisions, which would be tantamount to rendering such restoration legally impossible.

17. At the most it might be tempting to make an exception with regard to the Council decision of 15 December 2005, the lawfulness of which is challenged by the complainant on the grounds that the increase in the contributions of the Organization and the active staff which it introduced was lower than that proposed by the Governing Board of the Pension Fund.

However, while the Council decision of 15 December 2006 was indeed based on that of 15 December 2005 inasmuch as the latter defined a new method of pension adjustment and set compensation for inflation at a rate of 82.5 per cent for 2006 and 2007, it was not based on the 2005 decision insofar as the latter altered the rates of contributions received by the Pension Fund. The Tribunal notes in this regard that the smaller rise in contributions than that initially contemplated was not reflected in any corresponding reduction in compensation for inflation. Consequently, the plea based on the alleged unlawfulness of the decision of 15 December 2005 likewise fails.

Furthermore, this setting of new rates of contributions was by no means unlawful. This decision did not breach any applicable rule, and bearing in mind CERN's tight budget, which the Council was entitled to take into consideration, in this case it cannot be regarded as contrary to the Organization's obligations to the Pension Fund.

18. Pursuing his line of argument, the complainant challenges the lawfulness of Annex C to the Rules of the Pension Fund, which defines the new method for the annual adjustment of pensions.

This challenge relates exclusively to sub-paragraph d) of the annex, which follows the provisions determining the terms for adjusting pensions when the Fund's funding ratio is less than 100 per cent and when this equilibrium is achieved, and which lays down that "[i]f the funding ratio of the Fund is substantially above 100%, the Council shall consider a mechanism to restore pensions' purchasing power". The complainant's criticism of this provision is that it does not establish a more precise threshold for putting this mechanism into operation or define the terms for calculating how to restore purchasing

power. He infers from this that this provision violates the principle identified by the Tribunal in Judgments 1265, 1419 and 1821 that a methodology for determining salary adjustments may be lawfully used only if it permits stable, foreseeable and clearly understood results.

19. However, on the one hand, it must be pointed out that the Council decision of 15 December 2006 setting the amount of pensions for 2007 was not adopted pursuant to sub-paragraph d) of Annex C to the Rules of the Pension Fund. It was issued on the basis of sub-paragraphs a) and b) of this annex, which define the terms for adjusting pensions in situations such as the present one, i.e. where the funding rate of the Fund is less than 100 per cent. It is therefore debatable whether the plea that sub-paragraph d) is unlawful is of any avail.

20. On the other hand, even if the method for adjusting pensions defined in Annex C were to be seen as a nexus of inseparable provisions forming the legal basis of all the Council's decisions determining the annual progression of pensions, in which case such a plea would be conceivable, it would nevertheless have to be rejected.

The principle deriving from the above-mentioned case law that the methodology adopted by an international organisation to determine its staff members' salary adjustments must result in stable, foreseeable and clearly understood results also applies to retirement pensions. The latter must be seen as deferred pay, and in accordance with the principle established by the Tribunal in Judgment 986 that pensions are subject to the same basic rules as pay, a method establishing the terms of adjusting the pensions paid to the retirees of an organisation is to be considered as being governed by the same requirements.

In the present case, the method of adjusting pensions defined in the above-mentioned Annex C did satisfy these requirements. The various provisions of this annex defining the terms for adjusting pensions when the Fund's funding ratio is less than 100 per cent and when it reaches this threshold, which were quoted above, undeniably make it possible to achieve stable, foreseeable and clearly understood results. Moreover, the complainant expressly recognises this in his

written submissions. Sub-paragraph d) concerning the mechanism to restore purchasing power when the funding ratio is substantially higher than the actuarial balance was certainly drafted more succinctly, but in fact it is hard to see how it could have been otherwise, bearing in mind the great uncertainties surrounding the circumstances in which such a restoration of the Pension Fund's financial situation might occur and the fact that this was in any case only a very distant prospect. Consequently, the Tribunal finds that, in the circumstances of the case, the Organization cannot be criticised for not specifying in Annex C the terms for applying the mechanism which is in principle to be used in such an event.

21. Apart from his claim for the quashing of the impugned decision, which must therefore be dismissed, the complainant asks the Tribunal to order the amendment of sub-paragraph d) of Annex C to the Rules of the Pension Fund. Quite apart from the fact that this claim is equally unfounded, it is at all events irreceivable because the Tribunal has no jurisdiction to make such orders (see for example Judgments 1963 and 2244).

22. It follows from the foregoing that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 November 2008, 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 4 February 2009.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet