*Extract from:*

# UNITED NATIONS JURIDICAL YEARBOOK

## 1981

Part Two. Legal activities of the United Nations and related intergovernmental organizations

Chapter V. Decisions of administrative tribunals of the United Nations and related intergovernmental organizations

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# Chapter V

# DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

## A. Decisions of the Administrative Tribunal of the United Nations[1]

### 1. JUDGEMENT NO. 268 (8 MAY 1981): MENDEZ *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[2]

*Accelerated within-grade increments as a language incentive — Applicability to various categories of staff — Meaning of "Staff subject to Geographical Distribution"*

By resolution 2480 B (XXIII) of 21 December 1968, the General Assembly decided, *inter alia*, to shorten the interval between within-grade increments for staff at levels P1 to D2 where adequate and confirmed knowledge of a second official language has been established. By its resolution 2888 (XXVI) of 21 December 1971, the General Assembly incorporated the language incentive into the Staff Regulations by amending Annex I, paragraph 4, accordingly, with regard to "staff subject to geographical distribution who have an adequate and confirmed knowledge of a second official language".

The language incentive scheme has not been applied to staff of UNDP. The applicant requested the Tribunal to order the application of the said scheme to UNDP staff in the P1 to D2 categories.

With regard to the formulation of the applicant's plea, the Tribunal noted that it had competence to hear and pass judgement upon applications submitted in individual cases but it had not been given competence to make orders *erga omnes* which are in the nature of a staff regulation or rule. The Tribunal therefore decided that it would consider only the applicant's individual case, namely the applicability to him of the language incentive.

The applicant had argued that the expression "staff subject to geographical distribution" covered all staff of the United Nations in the professional category and above, excluding only staff in posts with special language requirements.

The Tribunal cited Article 101, paragraph 3, of the Charter and Staff Regulation 4.2 which do not make any distinction with regard to recruitment policy between the different categories of staff and apply equally to the professional category, to the general service, to staff with special language requirements, etc. The Tribunal noted however that the parties were in agreement that the expression "staff subject to geographical distribution" could not be equated to "all staff"; certain categories of the staff were not included in this expression. The parties differed only in the identification of the categories excluded. The applicant asserted that only the general service staff and the language staff did not belong to the class of "staff subject to geographical distribution", while the respondent held that staff in other categories — and among them UNDP staff — belonged to the excluded class.

The Tribunal observed that the disputed expression was not self-explanatory and that it was necessary to look into the history of the practice of the Organization as far as it is relevant to the purposes of the case at hand. From its review of the said practice, the Tribunal concluded that it had become an established practice of the Secretary-General to include in his annual report to the General Assembly on the composition of the Secretariat statistical tables showing "staff in posts subject to geographical distribution." UNDP staff and the staff of subsidiary organs of a similar nature had never been covered by these tables. On the basis of the above, the Tribunal accepted the view of the respondent that in the practice of the Organization, the expression "staff subject to geographical distribution" had developed into a technical term meaning "staff whose posts fall within the scope of geographical distribution according to the system of desirable ranges of posts

apportioned to Member States''. The Tribunal also observed that the *travaux préparatoires* of resolution 2480 B (XXIII) indicated that the above meaning was specifically intended with regard to the language incentive.

A further argument of the applicant's was that the Secretary-General, contrary to Staff Regulation 8.2, did not consult the staff of UNDP before submission of his report which led to the adoption of the General Assembly resolution introducing the language incentive. The Tribunal noted that the applicant himself did not deny that staff representatives were involved in the decision concerning the introduction of the language incentive. The Tribunal could not uphold the view that whenever certain categories of staff were granted advantages, then each and every other category had to be specifically asked to assent.

Finally, the Tribunal rejected the applicant's contention that exclusion of UNDP staff from the applicability of the language incentive constituted a discrimination and a violation of the principle of equal treatment. The Tribunal recalled that the principle of equality meant that those in like case should be treated alike and that those who are not in like case should not be treated alike.

For the above reasons, the Tribunal rejected the application.

2. JUDGEMENT NO. 269 (8 MAY 1981): BARTEL *v.* THE SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION[3]

*Article 7.3 of the Statute of the Tribunal — Non-receivability of appeals unanimously declared frivolous by the joint body — Powers of the Tribunal with regard to applications pertaining to such appeals*

The Advisory Joint Appeals Board of ICAO had unanimously found that the applicant's two appeals were frivolous. Under Article 7.3 of the Tribunal's Statute, applications against recommendations unfavourable to the applicant made by the joint body and accepted by the Secretary-General are receivable unless the joint body unanimously considers that the appeal is frivolous.

The Tribunal took the view that even when the joint body unanimously concluded that an appeal was frivolous, non-receivability of the application was not automatic and that the Tribunal was not precluded from considering whether the joint body's conclusion was vitiated by some irregularity. In the case at hand, the applicant had alleged that the Advisory Joint Appeals Board had considered a confidential staff report which had never been communicated to him, that the proceedings before the Board were tainted and biased by libellous and untrue statements made by the respondent's representative and ruled out of order by the Chairman, and that the Board was improperly composed because it had included a member who was said to have a case pending before the Board. The Tribunal found that the allegation concerning a confidential staff report was not material to the conclusions reached by the Board and could not invalidate those conclusions, including the decision that the appeals were frivolous. With regard to the allegedly libellous and untrue statements by the representative of the respondent, the Tribunal observed that they had been ruled out of order by the Chairman and had not been taken into consideration by the Board. Finally, the fact that one member of the Board may have had a case pending before it did not, in the Tribunal's view, disqualify him from sitting as a member of the Board to hear the applicant's appeals.

Having thus found that the conclusions of the joint body were not vitiated by any irregularity, the Tribunal, taking note of the joint body's unanimous finding that the appeals were frivolous, declared the application not receivable by the Tribunal.

3. JUDGEMENT NO. 270 (13 MAY 1981): SFORZA-CHRANOVSKY *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[4]

*Revision of judgements of the Administrative Tribunal — Powers of the Tribunal with regard thereof — What constituted a newly discovered fact*

The Applicant had requested, under article 12 of the Statute of the Tribunal, a revision of its Judgement No. 250, rendered in his case on 9 October 1979. He relied on a letter dated 14 September

1980 from the Vice-Minister of Foreign Affairs of the Republic of Korea stating that neither he nor anybody else at the Ministry had objected to the personal letter the Applicant had sent him on 14 April 1975. The letter further added that neither its author nor any qualified person in the Ministry had suggested the premature end of the Applicant's mission in the Republic of Korea.

Citing article 12 of its Statute, the Tribunal recalled that its powers of revision were specifically limited by its Statute and that it could not enlarge or abridge him in the exercise of its jurisdiction. The Tribunal cited previous judgements in which the same ruling was set forth.

With regard to the letter on which the request for revision was based, the Tribunal noted that the same member of the Korean Government had addressed to the Applicant on 10 July 1975 a letter which contained basically the same sentiments as expressed in the more recent letter of 1980. With regard to describing the Applicant's letter of 14 April 1975 as personal, the Tribunal noted that copy of the said letter was given to the Assistant Resident Representative of UNDP in Seoul by officials of the Korean Foreign Ministry who described it as "completely unacceptable". The Tribunal found that it was inconceivable that the Assistant Resident Representative be given a copy of a supposedly personal letter unless there had been some reaction to it on the part of the authority which had received it and which took the initiative of passing it on to the United Nations Office in Seoul.

For the above reasons the Tribunal could not consider that the further letter from the Vice-Minister dated 14 September 1980 constituted a newly discovered fact of such a nature as to call in question the legal basis of Judgement No. 250. The application for revision was rejected.

### 4. JUDGEMENT NO. 271 (13 MAY 1981): KENNEDY *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[5]

*Revision of judgements of the Administrative Tribunal — Conditions for admitting an application for revision — Rejection of an application not meeting all the said conditions*

The Applicant had requested revision of Judgement No. 265 rendered in her case on 19 November 1980. She based her request on a "written deposition" dated 15 October 1980 by a physician who was Director of Health, Western Australia.

The Tribunal observed that under article 12 of its Statute, an application for revision of a judgement had to satisfy three conditions before it could be admitted. Those conditions were (*a*) that the application be based on the discovery of some fact of such a nature as to be a decisive factor, provided that the said fact was unknown to the Tribunal at the time when the judgement was given and unknown also to the party claiming revision through no negligence of his; (*b*) that the application be made within 30 days of the discovery of the said fact; and (*c*) that the application be filed within one year of the date of the judgement.

With regard to the first condition, the Tribunal found that the document invoked by the Applicant did not in any manner bring out new facts which might affect the judgement of the Tribunal. The Tribunal further noted that the said document had obviously been solicited, was issued about eight years after the events and referred to issues not relevant to the consideration of the case before the Tribunal.

With regard to the second condition, the Tribunal observed that inasmuch as the Applicant had not established any new facts, it was unnecessary to consider whether the application was time-barred for not having been filed within 30 days of the discovery of a new fact. The Tribunal noted nevertheless that the document on which the request for revision was based was dated 15 October 1980 while the judgement of which revision was requested was not rendered until 19 November 1980, and the application for revision was filed only on 3 February 1981. If it was assumed that the document contained new facts, there had been a gap of over three and a half months before it was brought to the notice of the Tribunal.

For the above reasons, the Tribunal ruled that the application for revision did not meet the requirements of article 12 of the Statute of the Tribunal and rejected the said application.

5. JUDGEMENT NO. 272 (14 MAY 1981): CHATELAIN *v.* THE SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION[6]

*Termination of appointment — Procedural irregularities in arriving at the decision of termination — Compensation for the injured staff member*

The Applicant was offered, and accepted, a 2-year appointment as interpreter with ICAO effective 1 September 1978. The letter of appointment did not specify a probationary period but only referred to the provision of the ICAO Service Code on probation. The said provision prescribed a probationary period of one year during which the appointment may be terminated by 1-month notice in writing or salary in lieu thereof. The decision of the Secretary-General in this respect is characterized as final.

On 31 August 1979, the Applicant was notified of the termination of her appointment with immediate effect. This decision resulted from several misunderstandings between the Applicant and her supervisor and from complaints by the latter as to the Applicant's conduct in the discharge of her duties.

Before the Tribunal, the parties disagreed on the question of whether the decision of termination intervened during the probationary period or after its completion. The Applicant invoked several periods of temporary service prior to the 2-year appointment while the respondent argued that the conditions for taking such previous periods into consideration had not been met.

The Tribunal found that it was unnecessary to decide the above question. Whatever the answer, the decision to terminate the Applicant's appointment could not stand if the adverse reports on which the decision was based were vitiated by non-compliance with the relevant procedures laid down in the ICAO Service Code and in the ICAO General Secretariat Instructions (GSI); or if the decision of termination was not taken in accordance with due process of law. The description of the Secretary-General's decision to terminate a probationary appointment as "final" in para. 5 of article IV, part III, of the Service Code did not mean that this discretionary power, assuming that the Applicant was still on probation at the time of her termination, was beyond judicial control. The decision, in the Tribunal's view, cannot be final if it had been improperly arrived at.

The Tribunal cited a provision of the GSI which required that any adverse staff report should without delay be transmitted to the staff member concerned who may make a written reply thereto. The Tribunal also quoted another provision which called for a personal interview between the reporting officer and the staff member, describing the said interview as the core of the appraisal review process.

The Tribunal observed that the draft report shown to the Applicant on 18 June 1979 was incomplete. Because of the omission of parts of the draft report, the Applicant was not made aware of her right to an appraisal interview or to a written record of it, her right to include in the form the "review by the staff member" or her right to see the comments by the reviewing officer.

The Tribunal further noted that the report in its final form was not transmitted or shown to the Applicant until after the termination of her employment. Furthermore, at no time was the Applicant given a personal interview with the reporting officer, described by the GSI as "the core of the appraisal review process".

For the above reasons, the Tribunal concluded that the procedure followed in arriving at the decision to terminate the Applicant's appointment did not comply with the applicable rules. The Tribunal considered that the Applicants's appointment, whether probationary or not, should not have been terminated on the basis of accusations contained in a confidential staff report unless they were set out with sufficient precision to give her a reasonable opportunity to defend herself, and were communicated to her. To do otherwise was in the Tribunal's view, a denial of due process of law because the written accusations contained in the confidential staff report were not dealt with in conformity with the regulation guaranteeing communication of such a report to the staff member concerned.

The Tribunal, therefore, concluded that the Secretary-General's decision was vitiated for failure to adhere to the procedures prescribed by the ICAO General Secretariat Instructions, and also for failure to accord to the Applicant due process of law. Taking into consideration all the circumstances

of the case, the Tribunal did not grant the Applicant's request for reinstatement, but awarded her compensation in the amount of eight months' net base salary and the costs requested by her in the amount of US$ 150. The request for the removal of certain papers from the Applicant's personal file was rejected but the Tribunal ordered the inclusion and retention of a copy of its judgements in the said file.

6. JUDGEMENT NO. 273 (15 MAY 1981): MORTISHED *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[7]

*Repatriation Grant — Requirement of evidence of relocation as the condition of eligibility — Retroactive effect of such requirement — Acquired rights — Non-retroactive applicability of the new requirement*

In its resolution 33/119 the General Assembly decided that payment of the repatriation grant to entitled staff members shall be made conditional upon the presentation of evidence of actual relocation. Administrative Instruction ST/AI/262 was issued on 29 April 1979 containing the details of the implementation of the General Assembly's resolution. The instruction established 1 July 1979 as the effective date of the new provision and provided further that staff already in service before the said date shall retain the entitlement to repatriation grant proportionate to the years and months of qualifying service which they had already accrued at that date without the necessity of production of evidence of relocation.

Staff Rule 109.5 on repatriation grant was amended to reflect the General Assembly's decision. Subparagraph (*f*) of the amended rule exempted entitlement to repatriation grant accrued before 1 July 1979 from the requirement of evidence of actual relocation.

In its resolution 34/165, the General Assembly decided that — effective 1 January 1981 — no staff member shall be entitled to any part of the repatriation grant unless evidence of relocation of residence away from the country of the last duty station was provided.

Staff rule 109.5 was accordingly amended by the deletion of subparagraph (*f*) referred to above.

The Applicant, who was due to retire on 30 April 1980, challenged the newly imposed requirement that payment of repatriation grant be contingent upon production of evidence of actual relocation. He argued that the repatriation grant was an earned service benefit which could not be retroactively effaced by subsequent amendments to Staff Regulations and Rules.

The Tribunal considered the legal status of staff members and observed that it was governed by the provisions of the letter of appointment as supplemented by documents of general application which are much more detailed. The said documents were an integral part of the contract which the staff member accepted in advance, since his letter of appointment was explicitly "subject to the provisions of the Staff Regulations and Rules, together with such amendments as may from time to time be made". Any new provisions of the Staff Regulations and Rules thus became an integral part of the staff member's contract. The legal status of a staff member was governed by the new provisions immediately on their entry into force.

Citing previous judgements,[8] the Tribunal also observed that supplementary obligations towards a staff member may be assumed by the United Nations at the time of the signing of the contract or subsequently.

The Tribunal cited Staff Regulation 112.1 in which the General Assembly, with reference to the exercise of its own rule-making authority, affirmed the fundamental principle of respect for acquired rights. It further cited Staff Rule 112.2 (*a*) which provided that the Rules may be amended by the Secretary-General in a manner consistent with the Staff Regulations. Thus, the Secretary-General was bound to respect the acquired rights of staff members in the same way as the General Assembly.

Looking into the Applicant's employment history, the Tribunal observed that in 1958 he received an appointment with the United Nations after having worked with ICAO since 1949. The Personnel Action Form reflecting his appointment with the United Nations expressly stated: ". . . services recognized as continuous from 14 February 1949", and "credit towards repatriation grant

commences on 14 February 1949". A formal reference was thus made to the repatriation grant and to the principle of the relationship between the amount of that grant and the length of service. In the Tribunal's view special obligations towards the Applicant were assumed by the United Nations.

The Tribunal considered the history of the repatriation grant, noting that it had been established by General Assembly resolution 470 (V) of 15 December 1950, following the abolition of an annual expatriation allowance. The new grant was payable to staff members with regard to whom the Organization had an obligation to repatriate. The relevant Staff Rule defined the expression "obligation to repatriate" as meaning the obligation to return a staff member to a place outside the country of his duty station. Furthermore, it was stipulated that loss of entitlement to payment of return travel expenses did not affect eligibility for the repatriation grant (Staff Rule 109.5(*i*)). Thus, in the Tribunal's view, the link between the repatriation grant and the actual return to the home country was broken in the Staff Rules as early as 1953.

The Tribunal further observed that in Annex IV to the Staff Regulations on repatriation grant, it was stated that, in principle, the repatriation grant shall be payable to staff members whom the Organization had an obligation to repatriate. The relevant Staff Rule defined the expression "obligation to repatriate" as meaning the obligation to return a staff member to a place outside the Secretary-General the discretionary power to decide what action was appropriate in practice. These provisions of the Staff Regulations, which expressly acknowledged the Secretary-General's rule-making authority with regard to repatriation grant, were still in force. No new provision relating to that grant was added to the Staff Regulations by the General Assembly at either its thirty-third or thirty-fourth sessions. Thus, noted the Tribunal, the question whether the Applicant was entitled to rely on acquired rights did not arise in respect of provisions of the Staff Regulations which fell within the competence of the General Assembly, even though the subject of the application was closely related to the decisions taken by the General Assembly on the repatriation grant.

With reference to subparagraph (*f*) of Rule 109.5, as amended in 1979, the Tribunal noted that the Applicant, having entered on duty before 1 July 1979, fell into the category defined in the said subparagraph. Since he had completed twelve years of service, representing the upper limit of the grant, before 1 July 1979, the Applicant retained his entitlement to the full amount of the grant without the need to produce evidence of relocation.

The question which arose, therefore, was whether the entitlement thus acquired could have been effaced retroactively by the Secretary-General's deletion of subparagraph (*f*) in pursuance of resolution 34/165. The Tribunal noted that at no time did the General Assembly contemplate supplementing or amending the provisions relating to the repatriation grant contained in the Staff Regulations, nor did the Assembly examine the text of the Staff Rules in force since 1979, and it never claimed that there was any defect in the provisions introduced on that date which diminished their validity. The Assembly simply stated a principle of action under which the Secretary-General acted in establishing a new version of Staff Rule 109.5 with effect from 1 January 1980 which replaced the version previously in force on the basis of which the Applicant could have obtained the repatriation grant.

Recalling that it ruled earlier that the Applicant's entitlement to the repatriation grant had been explicitly recognized at the time of his appointment together with the relationship between the amount of the grant and the length of service, the Tribunal concluded that the Applicant had an acquired right to the repatriation grant without the need to produce evidence of actual relocation. In the view of the Tribunal, respect for acquired rights also meant that all the benefits and advantages due to the staff member for services rendered before the coming into force of the new rule remained unaffected. Because of the explicit link between the amount of the grant and the length of service, the Applicant was entitled to invoke an acquired right notwithstanding the terms of Staff Rule 109.5 which came into force on 1 January 1980 with the deletion of subparagraph (*f*) concerning the transitional system.

For the above reasons, the Tribunal ordered the Respondent, in case he failed to recognize the Applicant's acquired right, to pay him as compensation a sum equal to the repatriation grant calculated in accordance with Annex IV to the Staff Regulations.[9]

7. JUDGEMENT NO. 274 (2 OCTOBER 1981): SLETTEN *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[10]

*Loss of personal effects attributable to service — Compensation for same — Meaning of expression "reasonable compensation" — Conditions imposed upon payment of sum awarded as compensation — Waiver by staff member of his right to appeal not a valid condition*

Having suffered the loss of the entire contents of his apartment in Nicosia because of the civil strife in Cyprus, the applicant claimed $10,000 in compensation under Staff Rule 106.5 and Administrative Instruction ST/AI/149 as subsequently amended.

After a lengthy procedure before the Local Claims Board, the Headquarters Claims Board and the Joint Appeals Board, the applicant was ultimately awarded the sum of $5,259 in compensation. He challenged the said award arguing that compensation should be equal to the cash value of the lost property at the time when the loss occurred. The respondent argued that a fair and proper method of calculating compensation was followed, based on replacement cost less depreciation.

The Tribunal stated that the respondent's obligation to pay compensation turned upon the interpretation and application of Staff Rule 106.5 rather than any general principle of law. The said rule provides for the payment of "reasonable compensation", an expression which, in the Tribunal's view, meant a sum equal to the value of the lost effects at the time and place at which the loss occurred, account being taken of the age and condition at that time. Therefore the Tribunal considered that the basis for assessing the value of lost personal effects was the replacement cost of each item at the time and place of the loss and its condition at that time. If the replacement cost of the item in that condition cannot be ascertained, the cost to be taken into consideration should be that of a new item at the time and place of the loss, less depreciation for such elements as age, obsolescence, wear and tear.

The Tribunal noted that the applicant had not established that the sum of $5,259 he was finally offered fell short of the amount calculated according to the above principles. The maximum limit of $10,000 referred to in the pertinent documents was not relevant to the applicant's claim.

Although Staff Rule 106.5 enabled the Secretary-General to impose conditions on the payment of compensation, the Tribunal was of the opinion that this did not empower the Secretary-General to require the staff member to waive his statutory right of appeal to the Joint Appeals Board and to the Tribunal. The Tribunal noted that the Secretary-General had later accepted the reservation made by the applicant, in signing the release, of his right to appeal. It expressed the view that it would be useful if Administrative Instruction ST/AI/149 were amended accordingly.

Because of the delay in payment to the applicant of the initially-offered award of $3,729.96, resulting from the dispute over his reservation of his right to appeal, the Tribunal confirmed the Joint Appeals Board's award of 6 per cent interest on the above-mentioned sum from 18 June 1975 until the date of payment of that sum to the applicant, i.e. 19 December 1980.

The other claims of the applicant were rejected.

8. JUDGEMENT NO. 275 (5 OCTOBER 1981):[11] VASSILIOU *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS

*Time-limits prescribed in Staff Rule 111.3 not relevant to applications to the Tribunal — Receivability of such applications governed solely by article 7 of the Tribunal Statute — Grant of Special Post Allowance — Discretionary power of the Secretary-General with regard thereof — No legal obligation to grant SPA — Consideration by the Secretary-General of recommendations of the Joint Appeals Board — No claim may be based on mere rejection of JAB recommendations unless decision to reject was tainted by prejudice or by any other vitiating factor — Access to documents in the exclusive possession of the Administration — Only production of documents relevant to the proceedings may be ordered*

The Respondent had argued that the claims of the Applicant were not receivable before the Tribunal because they were not made within the time-limits laid out in Staff Rule 111.3. The Tribunal observed that the said Rule governed the receivability of appeals addressed to the JAB

against decisions of the Secretary-General. The point had not been explicitly raised before the JAB. Although the Board found that the Applicant failed to establish the existence of an administrative decision which contravened his letter of appointment, it nevertheless dealt with the Applicant's case on its merits and decided to make no recommendation in support of the appeal. The Tribunal was of the view that the time-limits of Rule 111.3 could not be invoked before it because the receivability of applications submitted to the Tribunal was regulated by article 7 of its Statute. In the case at hand, the time-limits prescribed in article 7 had been observed by the Applicant. The Tribunal, therefore, declared the application receivable.

The Applicant claimed a special post allowance from P-5 to D-2 for the period of 14 October 1965 to 1 February 1969 and for D-1 to D-2 for the period of 1 February 1969 to 1 July 1978. His claim was based on the ground that during the said periods he was discharging the responsibilities of the higher posts. The Tribunal recalled its previous ruling,[12] according to which the length of time during which the staff member assumed increased responsibilities, and the manner in which he discharged them could legitimately be included among the criteria for determining the existence of the exceptional cases justifying the granting of a special post allowance under staff rule 103.11. Recalling the discretionary nature of the decision to grant such an allowance, the Tribunal observed that the above-mentioned factors could not on their own be considered as decisive. The Tribunal found that the Applicant did not have any legal entitlement to the payment of a special post allowance and that in his case the general principle of equal pay for equal work was not violated. The fact that he headed a large unit and that some members of that unit were high-ranking officers did not in itself prove the violation of the said principle. The Tribunal, therefore, rejected the Applicant's claim to the payment of a special post allowance.

While making no recommendation in support of the Applicant's appeal the JAB had recommended that an *ex gratia* payment be made to him in the amount that he would have received had a special post allowance for P-5 to D-1 been granted to him, during the period from 14 October 1965 to 1 February 1969. The Secretary-General had rejected this recommendation of an *ex gratia* payment. Before the Tribunal, the Applicant challenged this decision of the Secretary-General. The Tribunal observed that, with regard to recommendations of the JAB, the obligation of the Secretary-General did not go beyond considering them in good faith and in the light of the relevant principles, regulations and rules. In the case at hand, there was no indication that the Secretary-General failed to observe his obligation or that his decision was tainted by prejudice or by any other vitiating factor.

In connexion with his challenge to the rejection of the recommendation of an *ex gratia* payment, the Applicant had requested the Tribunal to order the Respondent to produce copies of all documents stating advice or recommendations on which the Respondent relied when he made his decision to reject the recommendation. The Tribunal recalled its previous ruling[13] according to which the rules of equity and justice required access to documents and information within the exclusive possession of the Administration in so far as it related to the staff member concerned and was relevant to the proceedings under consideration. Denial of such access would amount to lack of due process. In the case at hand, however, production of the documents requested by the Applicant was, in the Tribunal's view, not relevant to the proceedings. The Secretary-General enjoyed complete freedom to seek or act on the advice of the competent units of the Secretariat.

For the above reasons the Tribunal rejected the application.

### 9. Judgement No. 279 (6 October 1981):[14] Badr *v.* the Secretary-General of the United Nations

*Application seeking the validation for pension purposes of a period of service performed by a participant in the United Nations Joint Staff Pension Fund prior to his admission to the Fund — Competence of the Tribunal, notwithstanding the inclusion in the relevant contract of a clause providing that disputes arising from the contract should be settled by recourse to an arbitration procedure — Rejection of the applicant's claim that his contractual status was in fact that of a technical assistance expert and the claim that the contract did not exclude participation in the Pension Fund*

Prior to entering the service of the United Nations Secretariat in January 1970 and becoming a participant in the United Nations Joint Staff Pension Fund, the applicant had been placed at the disposal of the Republic of the Congo (now the Republic of Zaire) from January 1963 to January 1965, by virtue of a contract, hereinafter called the "judiciary contract", entered into by the applicant and the United Nations under an agreement then about to be concluded between the United Nations and the Government of the Republic of the Congo. In July 1980, he requested that his period of service from January 1963 to January 1965 should be included in his contributory service with respect to the Pension Fund, stating that no decision excluding him from participating in the Fund during the period in question had ever been communicated to him. He argued that the true nature of his appointment covering that period had been that of a technical assistance expert entitled to participation in the Pension Fund. The Deputy Secretary of the Pension Board, having being requested to look into the matter, pointed out that the case raised a preliminary question, namely, the correct interpretation of the terms of the applicant's employment during the period involved, a matter which was not within the competence of the Fund.

The case was submitted to the Tribunal, which noted that, although the Assistant Secretary-General for Personnel Services had considered that the request was not covered by staff rule 111.3 (*a*) since the applicant was not requesting that an administrative decision should be reviewed, he had agreed that it should be given thorough consideration. In addition, the Secretary-General had agreed to the direct submission of the application to the Tribunal. In those circumstances, although the judiciary contract provided that disputes arising from that contract would be settled by recourse to an arbitration procedure, the Tribunal declared that it was competent in accordance with the precedent set in judgement No. 176 (*Fayad*),[15] inasmuch as the parties had agreed to submit to it a dispute concerning an obligation which the United Nations might have incurred *vis-à-vis* a staff member of the Organization.

The Tribunal noted that the purpose of the application was to obtain recognition of the true nature of the applicant's professional activity in the Congo in order to enable him to establish a right to participate in the Pension Fund for that period. The applicant was seeking to establish that his contractual status had in fact been that of a technical assistance expert and even that of a project manager. However, the Tribunal found, after examining the file, that the United Nations had always considered that the applicant's contract belonged to a special category and that at no time during his stay in the Congo had the applicant contested that situation. Even if, despite the terms of the contract, the applicant had not been assigned to a post as judge, the fact was that he had played the role of a magistrate attached to the Ministry of Justice, where he had performed the required duties under the authority of the Congolese Government.

Concerning the situation regarding the Pension Fund during the period covered by the judiciary contract, the Tribunal recognized that the contract contained no special provisions on that subject. However, in view of the stipulation in the contract that "the magistrate does not acquire the status of a member of the United Nations Secretariat", and taking into account various other documents in the file, it held that the applicant's claim that his contract did not exclude participation in the Pension Fund must be rejected. The Tribunal found that the services performed by the applicant from 1963 to 1965 could not enable him to acquire the status of participant in the Pension Fund because he was not a staff member of a member organization and such participation was expressly excluded by "the terms of his appointment", and it accordingly ruled that he was not entitled to any benefit and hence could not avail himself of the provisions of article 24 (*b*) of the regulations of the Pension Fund to obtain restoration of prior contributory service.

10. JUDGEMENT NO. 277 (6 OCTOBER 1981): BARTEL *v.* THE SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)[16]

*Application for revision of a judgement under article 12 of the Statute of the Tribunal — Conditions for receivability of same — Limits on the powers of the Tribunal*

The applicant had requested revision, under article 12 of the Statute of the Tribunal, of Judgement No. 269 rendered in his case on 8 May 1981. The application for revision was based on the alleged discovery, since the first judgement was rendered, that the action taken by ICAO

was based upon inadequate and erroneous information about an investigation conducted during the summer of 1979 by the Montreal police.

The Tribunal recalled that under article 12 of its Statute it could revise a judgement only if some fact unknown to the Tribunal and to the party claiming revision was subsequently discovered, provided that such fact was of such a nature as to be a decisive factor and provided further that ignorance of such fact was not due to the negligence of the party claiming revision.

With regard to the allegedly new fact invoked by the applicant, the Tribunal observed that the events to which that fact related took place almost two years before the judgement was given and that the applicant failed to bring them to the notice of the Tribunal at an earlier date.

The Tribunal recalled that its powers of revision were strictly limited by its Statute and could not be enlarged by the Tribunal in the exercise of its jurisdiction.

For the above reasons, the application for revision was rejected.

### 11. JUDGEMENT NO. 278 (7 OCTOBER 1981): TONG *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[17]

*Forceful closure of a United Nations office — Effect on appointments of local staff — Effective date of termination — Rate of exchange of local currency applicable to conversion of termination benefits and other entitlements*

The applicant was a local staff member of the UNDP office in Phnom Penh, Cambodia, (now Democratic Kampuchea) holding an indefinite appointment. On 17 April 1975, the office was forced to close as a result of the internal conflict in Cambodia. The applicant and his family managed to cross into Viet Nam arriving in Saigon on 6 June 1975.

On 20 May 1976, a letter dated 17 April 1975 was addressed to the applicant through the International Committee of the Red Cross (ICRC) informing him of the termination of his appointment with effect from 17 April 1975. He was also informed that he would receive compensation in lieu of 30 days' notice. The applicant received the said letter on 16 October 1976.

Having filed an appeal with the Joint Appeals Board, with regard to the effective date of the termination, the applicant obtained a favourable recommendation whereby the Board found that the termination became effective only on 20 May 1976 when the letter of termination was sent to the applicant, and that he was therefore entitled to his salary allowances for the period 17 May 1975 to 20 May 1976. In a second appeal, the applicant challenged the rate of exchange applied to the conversion into dollars of his termination benefits and residual salary and allowances. The Board recommended that the rate be established on the basis of a comparison with the salary and allowances of an internationally recruited staff member at the same level as the applicant.

The Secretary-General rejected the Joint Appeals Board's recommendation on the first appeal, thus maintaining the effective date of termination as initially established. Nevertheless, he decided to grant the applicant an *ex gratia* payment in the amount of $1,000. With regard to the second appeal, the Secretary-General decided to maintain the contested decision.

Before the Tribunal the two disputed points were:

(*a*) whether the applicant was entitled to salary until his receipt of written notice of the termination of his appointment; and

(*b*) what method should be followed in calculating the amounts due him upon termination.

The Tribunal considered whether in the extraordinary circumstances of this case the applicant was entitled to consider the relation between UNDP and himself as continuing until he received a written notification that his appointment had been terminated. The Tribunal took note of the fact that on 17 April 1975, armed forces of the Khmer Rouge entered Phnom Penh and forced the closure of the UNDP office there. The international staff of the office were evacuated to Bangkok. Among the twenty or so locally recruited staff, only the applicant and two or three others appeared to have succeeded in escaping. The applicant reached Saigon about 6 June 1975, and from there he sent a telegramme to the UNDP office in Vientiane, Laos, requesting an assignment. The Tribunal further observed that the applicant's contract entitled him to be employed in Cambodia

only. It pointed to the applicant's awareness that his employment had come to an end with the forcible closure of the office as witnessed by his efforts, on arriving in Saigon, to find employment in UNDP at one of its other offices in the region.

The Tribunal found that during this period, the applicant could not reasonably have considered that, from his place of temporary residence in Saigon, his employment with the UNDP office in Phnom Penh was continuing. In the Tribunal's view, the applicant's contract had become ineffective by reason of *force majeure* and his claim to payment of salary until he received written notification was without foundation.

The Tribunal also noted the efforts made by UNDP to find suitable employment for the applicant, which resulted in his being appointed in the field on 6 January 1977 and in his current employment by UNDP at Headquarters under a permanent appointment at the G-5 level.

On the question of the exchange rate, the Tribunal noted that with the installation of the new authorities in Phnom Penh on 17 April 1975, the local currency ceased to have any value and no other currency was established. As a local employee, the applicant was entitled to payment of salary in the local currency and had no right to any payment in dollars. There being no value to the local currency as of the date of payment, and no new local currency having been established, UNDP paid him in US dollars and used an exchange rate of 1650 riels to the dollar, which was the rate applicable to the final month of the applicant's employment at the Phnom Penh office. Given the status of the applicant as a local employee, the Tribunal was unable to find a legal basis for the applicant's claim that a different rate of exchange should have been applied.

For the above reasons, the Tribunal rejected the application.

### 12. Judgement No. 279 (8 October 1981): Mahmoud *v.* the Secretary-General of the United Nations[18]

*Entitlement to daily subsistence allowance — Assignment by the Administration to new duty station — Condition for same — Non-eligibility of staff member who travelled on his own to a place other than his duty station and is assigned to local UN Office at his request*

The Applicant was serving with the UNICEF office in Beirut as a locally recruited staff member. During the civil strife in Beirut, the Applicant's husband, a staff member of UNESCO in that city, was evacuated to Paris. It so happened that his wife, the Applicant, has preceded him to Paris with their two children, on annual leave. The Applicant decided to proceed from Paris to Cairo with her two children in order to put them in school and to await the normalization in Beirut. While in Cairo, she visited the local UNICEF office and requested an assignment. She was given secretarial work with two UNICEF staff members who had been reassigned from Beirut to Cairo. By special arrangement, the Applicant continued to receive in Cairo her Beirut salary in US dollars. This resulted in her receiving a much higher pay than staff members at the same level locally recruited in Cairo.

Having learned that some of the Beirut staff assigned to Cairo were in receipt of a daily subsistence allowance, the Applicant claimed payment of such allowance to her during her stay in Cairo. Her request was denied and upon appeal a majority of the Joint Appeals Board recommended that the decision denying her an allowance be maintained.

The Tribunal noted that in determining the Applicant's status during the period for which she was claiming daily subsistence allowance two relevant factors had to be considered, namely (*a*) the terms and conditions of her service in Beirut as a local recruit, and (*b*) the security arrangements made by UNICEF and by UNESCO, where her husband worked, and the circumstances in which the Applicant moved early in October 1975, from Paris to Cairo. As a local recruit, the Applicant was not eligible for evacuation from Beirut as a security measure. When UNESCO evacuated her husband to Paris, the Applicant and her children were already in that city. Thus, the UNESCO security requirements could have been met if the Applicant and her children had continued to stay in Paris. The Tribunal then observed that it was the Applicant who personally took the decision to proceed to Cairo with her two children without informing UNICEF in Beirut or obtaining authorization for such a move.

The Tribunal further observed that the Applicant had written to UNICEF in Beirut inquiring about the possibility of a temporary assignment to UNICEF in Cairo or, if that proved impossible, the granting of leave without pay. The Tribunal concluded that the Applicant had no firm expectation of working with UNICEF in Cairo where she certainly had no right to work as a local recruit appointed in Beirut.

The Applicant contended that her situation was identical with that of two other staff members of Egyptian nationality locally recruited in Beirut and assigned to the Cairo office who were receiving daily subsistence allowances. In reply to this argument, the Tribunal observed that the circumstances surrounding the Applicant's appointment in Cairo were essentially different in so many respects from those affecting other UNICEF personnel transferred temporarily from Beirut. First, the UNICEF office in Beirut had officially reassigned the others to Cairo, while the Applicant went there because of her concern for security and the schooling of her children. Secondly, the work given her in the Cairo office was by way of accommodation in a spirit of helpfulness, at terms much more favourable with regard to salary payments than what she could legitimately have hoped for. Thirdly, the mere fact that other Egyptians were eventually assigned to Cairo does not by itself establish that the Applicant too would have been so assigned if she had happened to be in Beirut at the time. In the Tribunal's view, the Applicant's situation was not comparable to that of the others. By moving to Cairo on her own initiative and volition she placed herself beyond the scope of the Secretary-General's discretion regarding payment of per diem.

For the above reasons, the application was rejected.

13. JUDGEMENT NO. 280 (9 OCTOBER 1981): BERUBE *v.* THE SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION[19]

*Offer of a post at a lower level — Implication that the alternative is termination — Requirement of due investigation under the ICAO Service Code — Procedural deficiencies not important enough to invalidate the decision — Compensation for procedural deficiencies*

The Applicant was serving with ICAO at the G-7 level when she was offered a choice between agreed termination with payment of an indemnity in the amount of nine months' salary, and re-assignment to another post at the top of the G-5 grade. The Applicant accepted reassignment to a post at a lower level but challenged the decision as involving duress and undue influence and as being contrary to the provisions of the ICAO Service Code and relevant Instructions.

Having reviewed the circumstances of the case, the Tribunal concluded that the treatment accorded to the Applicant amounted to a threat of discharge accompanied by an offer of re-engagement at a lower level. The Tribunal inquired into compliance by the Respondent with the procedure required by the Service Code for decisions of discharge. Such decisions have to be preceded by "due investigation".

The Tribunal ruled that the above-mentioned requirement of "due investigation" had not been complied with because the Applicant had not been shown the investigation report and had been given no opportunity to comment on it before the Respondent reached his decision. Furthermore, an adverse performance evaluation report of 1972 had not been shown to the Applicant, contrary to the relevant provisions of the Instructions.

The Tribunal noted, however, that the substance of the complaints against the Applicant had been known to her for several years and that she had commented on a number of adverse reports. The Secretary-General himself communicated to her orally the substance of the adverse report of 1972.

The Tribunal, therefore, ruled that, while the procedural deficiencies did not invalidate the termination of the Applicant's G-7 contract, they provided ground for payment of compensation.

With regard to the Applicant's contention that her new G-5 contract was vitiated by duress or undue influence, the Tribunal did not consider that the circumstances amounted to duress or to undue influence likely to vitiate the contract.

For the above reasons, the Tribunal awarded the Applicant compensation in the amount of 4,000 Canadian dollars. A separate sum equal to the excess of the contributions made by her to

the Pension Fund for the period of her service above the G-5 level over the contributions she would have made for that period had she remained at the top step of the G-5 level was also awarded.

The Applicant's other claims, including that of reinstatement to the G-7 level, were rejected.

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## B. Decisions of the Administrative Tribunal of the International Labour Organisation[20, 21]

### 1. JUDGEMENT NO. 442 (14 MAY 1981): DE VILLEGAS *v.* INTERNATIONAL LABOUR ORGANISATION

*Application for review of an earlier judgement of the Tribunal — The only pleas in favour of review that may be allowed, provided they are such as to affect the Tribunal's decision, are omission to take account of particular facts, material error, omission to pass judgement on a claim and discovery of new facts*

The complainant requested the review of Judgement No. 404.[22]

The Tribunal first considered the general question of review. It recalled that neither its Statute nor its Rules of Court provided for review of its judgements and that although it had previously heard several applications for review it had not availed itself of those opportunities to consider the general problem of review.

The Tribunal first noted that its judgements, which carried the authority of *res judicata* from the date on which they were delivered, would be reviewed only in exceptional cases. It stated that the following pleas in favour of review would not be allowed: alleged mistake of law, alleged mistake in appraisal of the facts (i.e., the interpretation which the Tribunal placed on the facts), failure to admit evidence and omission to comment on pleas submitted by the parties. However, it observed that certain pleas in favour of review might be allowed if they were such as to affect the Tribunal's decision, namely omission to take account of particular facts, material error, omission to pass judgement on a claim and discovery of a so-called "new" fact, i.e., a fact which the complainant discovered too late to cite in the original proceedings.

With regard to the review proceedings, the Tribunal indicated that it would first determine whether the plea was admissible and that, according to the outcome of that examination, it would dismiss the application or pass on to the second stage and reconsider its judgement on the basis of the evidence adduced in the review proceedings. It added that where a plea was not such as to affect its decision, it would decline not only to reconsider its judgement but also to correct the summary of facts and its legal reasoning.

With regard to the application for review that constituted the subject of Judgement No. 442, the Tribunal noted that it was based first on the disregard of certain facts. It concluded that those facts had either been taken into account or had had no affect on the decision. Secondly, the application for review referred to errors of fact; there again, the Tribunal concluded that the flaws alleged by the complainant had had no influence on the decision and thus afforded no grounds for review.

Thirdly, the complainant invited the Tribunal to strike out from its judgement passages which she considered to be libellous. The Tribunal observed, however, that in those lines it had merely summed up the arguments of the Organisation; the judgement was not libellous and the Tribunal had acted within the scope of its competence. It added that the allegedly libellous nature of a judgement afforded no grounds for reviewing it.

The complainant likewise objected that the Tribunal had not heard her claims for compensation for the moral prejudice she had allegedly suffered. The Tribunal observed, however, that in dismissing all her claims for relief it had rejected by implication her claims for compensation for moral prejudice and that even if its silence afforded valid grounds for review it had no reason to alter its decision so as to award any of the compensation claimed by the complainant.

The complainant also objected that the Tribunal had not considered some of her pleas. The Tribunal emphasized, however, that failure to comment on a plea was not a valid reason for review.

It came to the same conclusion with regard to the objection concerning failure to use a means of obtaining evidence.

Lastly, the Tribunal considered that the new facts cited by the complainant in support of her application for review were not such as to have any effect on the Tribunal's decision and that their discovery afforded no allowable grounds for review.

In the light of the foregoing, the Tribunal dismissed the application.

### 2. JUDGEMENT NO. 443 (14 MAY 1981): VERDRAGER *v.* WORLD HEALTH ORGANIZATION

*Application for review of an earlier judgement of the Tribunal on the ground that the Tribunal omitted to take full account of an item of evidence*

The Tribunal noted that in his fourth application for review of Judgement No. 325,[23] the complainant objected that in dismissing his third application in Judgement No. 439[24] the Tribunal had omitted to take account of one line in an item of evidence; in other words, he was objecting to the Tribunal's evaluation of evidence. The Tribunal found that that was not a plea which could afford grounds for review and accordingly dismissed the application.

### 3. JUDGEMENT NO. 444 (14 MAY 1981): ALEXIS *v.* WORLD HEALTH ORGANIZATION

*Conversion of a two-month temporary contract into a fixed-term appointment after extension of the initial two-month contract — Complaint seeking to have the advantages obtainable under the fixed-term contract dated back to the day on which the initial two-month contract expired — Discretionary power of the Director-General with regard to an application for upgrading of the recruitment level initially agreed between the Administration and the staff member*

After a period of service with ILO, the complainant had been recruited by WHO — at a lower grade than that he had occupied at the end of his employment with ILO — on a basis of a two-month temporary contract, it being in the minds of both parties that the contract would be replaced by a fixed-term appointment.

The complainant was not, however, offered such an appointment until several months later, his temporary contract having been meanwhile extended. The complainant alleged that that cost him some loss in that not all the elements obtainable under the fixed-term contract had been dated back to 6 June, and contended that at the time of his recruitment he had been "assured" that the appointment would be converted within two months. The Tribunal, noting that the complainant did not claim — or at least had not proved — that the assurance was anything more than an expression of hope and belief, dismissed the complainant's claim under that head.

The complainant likewise contended that in establishing his grade and remuneration WHO had taken no account of his qualifications or of his years of service with ILO doing work at an equivalent level. He invoked staff rule 320.1, which read:

> "On appointment, the net base salary of a staff member shall be fixed at step 1 of the grade of the post he is to occupy. In exceptional circumstances it may be fixed at a higher step in the grade in order to maintain the staff member's former income level."

The Tribunal noted, however, that that rule conferred a power on the Director-General for use in exceptional circumstances but conferred no right on an appointee. The Tribunal added:

> "A person seeking an appointment is of course at liberty to refuse the appointment if he considers the salary offered to be too low. But if he accepts the appointment at the salary offered and applies for a rise, the rule imposes no duty on the Director-General of any sort, whether discretionary or otherwise, to grant the application."

Consequently, the Tribunal dismissed the claim under this head also.

The complainant sought payment of compensation as the *ex gratia* action recommended by the WHO Regional Board of Inquiry and Appeal. The Tribunal observed, however, that those were matters outside its competence, since it was concerned only with non-compliance with the Staff Regulations or with terms of appointment.

Lastly, the complainant sought compensation for "the inordinate delay" caused in the hearing of his appeal. The Tribunal found it unnecessary to consider what remedies were open to a complainant who was injuriously affected by procedural delay, since it was clear in any event that the complainant could not be entitled to compensation without showing financial loss or moral damage, neither of which appeared in this case.

4. JUDGEMENT NO. 445 (14 MAY 1981): VELIMIROVIC *v.* WORLD HEALTH ORGANIZATION

*Complaint seeking to have a period of service as a consultant validated for pension purposes*

The complainant sought to have validated for pension purposes a four-month period of service as a consultant in 1966.

The Tribunal observed that in accordance with staff rule 710 consultants who were appointed for periods not exceeding 11 months were excluded from participation in the Pension Fund, and that moreover under the rules applicable prior to 1 June 1972 periods of service as a consultant could not be validated for pension purposes. Since the Tribunal considered that the arguments invoked by the complainant were groundless, it deemed it unnecessary to determine whether, as the Organization contended, the complaint should in any event be dismissed as time-barred and simply dismissed the complaint.

5. JUDGEMENT NO. 446 (14 MAY 1981): ESPINOLA *v.* PAN AMERICAN HEALTH ORGANIZATION (PAHO) (WORLD HEALTH ORGANIZATION)

*Complaint seeking reclassification of a post — Appreciation of the level of a post should be left to persons who are familiar with the work and cannot be called in question unless a mistaken approach to the problem has been taken*

The complainant had applied to have her post of Statistical Assistant reclassified to the Professional level. The Board of Inquiry and Appeal had been unable to reach a unanimous decision, the majority of three had considered that the duties of the post were principally clerical, while the minority had been in favour of reclassifying the post.

The complainant contended that the Tribunal should prefer the minority view, that contention being supported by criticisms in detail of the majority view. The Tribunal considered, however, that the question at issue was one for a general appreciation by persons familiar with the working conditions and could not be solved by a meticulous comparison of duties as set down on paper. It considered that the majority view should be accepted unless there was clear evidence, which there was not in this instance, of a mistaken approach to the problem.

The complainant also alleged violation of certain staff regulations which required the Director in general terms to establish a plan for reclassification of all posts, observing that no such plan had been established for the General Service staff. The Tribunal noted, however, that neither the majority nor the minority had regarded that lack as disabling them from reaching a conclusion on the complainant's application. It concluded that if there had been a violation of the regulations cited, it did not vitiate the decision impugned.

Lastly, the complainant contended that her right to due process had been violated and claimed redress for professional and moral damage. The Tribunal, however, stated that it was not satisfied that there had been such mistreatment of the complainant as would amount to a breach of obligation leading to compensation.

6. JUDGEMENT NO. 447 (14 MAY 1981): QUIÑONES *v.* PAN AMERICAN HEALTH ORGANIZATION (PAHO) (WORLD HEALTH ORGANIZATION)

*Complaint containing an inconsistency, of decisive importance for the receivability of the complaint, regarding the date of notification of the decision impugned — It is for the author of a notification to establish its date — Limits of the Tribunal's power of review with regard to a decision concerning a transfer*

The complainant impugned a decision relating to her transfer. On the form instituting her complaint she had stated that the impugned decision was dated 21 May 1980, although in the

statement appended to the form she had indicated that she had received the decision on 20 May 1980. The Tribunal noted that if the time-limit for filing the complaint was taken as beginning on the latter date, the complaint was irreceivable. It observed that under the general rules on the burden of proof, it was for the author to establish the date on which a communication was received. In this case, the impugned decision had not been sent by registered post or with an official acknowledgement of receipt and was not even dated; moreover, the date of delivery could not be determined from the written evidence. The Tribunal therefore considered that it should accept the complainant's statement. It was true that the complainant had given two dates but the Tribunal felt that 21 May should be the date taken, *inter alia* because it was likely that the complainant had been anxious to respect the time-limit and if she had received the impugned decision on 20 May she would certainly have acted one day earlier. The Tribunal therefore declared the impugned decision receivable.

It then noted that the decision in question concerned a transfer and that the applicable rules conferred wide discretion on the Director. That being so, the decision could be set aside only if it had been taken without authority, or violated a rule of form or procedure, or had been based on an error of fact or of law, or if essential facts had been overlooked, or if there had been a misuse of authority, or if mistaken conclusions had been drawn from the facts.

The Tribunal noted that in deciding to transfer a staff member the Director was bound, by the applicable rules, to take account not only of the interests of the Organization but also of the staff member's particular abilities and interests, provided that was not at variance with the Organization's main interests. It concluded from the evidence in the file that although the Organization had taken account of the complainant's abilities it had disregarded her particular interests when it was in a position to protect them. Concerning the plea of personal prejudice invoked by the complainant, the Tribunal stated that in order for such a plea to succeed there was no need for the staff member to have suffered unequal treatment, i.e. to have been treated less favourably than another. It was enough that he should have suffered treatment which was not warranted on any objective grounds. The Tribunal found that, despite her age and work record, the complainant had been suddenly transferred to a post which did not suit her, no thought having even been given to finding a solution which would more closely match her legitimate interests. It concluded that only prejudice could account for such lack of consideration.

In view of the two violations of the applicable rules, the Tribunal decided that although the complainant could hardly claim assignment to a post which had already been filled or to a post which would have to be created for her, she was entitled to demand that if she applied for a position comparable to the one she had held up to 1979, her application should be preferred to those of others who were equally well qualified. With regard to the claim for compensation for moral prejudice, the Tribunal observed that in the case of a decision which was not tainted, moral prejudice created no entitlement to compensation unless it was especially grave. But if, as in the present case, the decision was unlawful, it was enough if the moral prejudice was serious. The complainant had certainly been affected by the suddenness of a decision which she regarded as an unfair punishment. Furthermore, her reputation had very probably suffered, since her colleagues must have wondered what the reasons were for such an unaccountable transfer. The Tribunal determined the compensation for moral prejudice *ex aequo et bono* at $8,000.

### 7. JUDGEMENT NO. 448 (14 MAY 1981): TRONCOSO *v.* PAN AMERICAN HEALTH ORGANIZATION (PAHO) (WORLD HEALTH ORGANIZATION)

*Complaint inpugning a decision not to extend a temporary appointment — Although such a decision depends largely on the discretion of the Administration, it can be set aside if it is taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if essential facts were overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the facts*

The complainant impugned a decision under which her temporary appointment had been terminated on the basis of a staff rule which stated that "temporary appointments, both fixed-term and short-term, shall terminate automatically on the completion of the agreed period of service".

The Tribunal first decided to admit as evidence excerpts from tape recordings of evidence given to the internal appeals body.

It then observed that, construed literally, the aforementioned staff rule meant that all that was needed for such an appointment to terminate was that the period of the contract should expire. That did not mean, however, that on the expiry of that period the Organization was wholly free to continue to employ the staff member or to let him go: its bodies certainly enjoyed wide discretion, but their decision was subject to review within the limits set by the case law; in other words, it would be set aside if it had been taken without authority or in breach of a rule of form or of procedure, or if it had been based on a mistake of fact or of law, or if essential facts had been overlooked, or if there had been abuse of authority, or if clearly mistaken conclusions had been drawn from the facts.

With regard to the grounds for the impugned decision, the Tribunal observed that it could exercise the power of review which it assumed only in the light of the grounds given for the decision to terminate the appointment, and that if those grounds were not clear from the actual decision it would seek to determine them from the other written evidence. The Tribunal noted that according to evidence given by two of her supervisors before the internal appeals body, the complainant possessed remarkable technical competence and that with respect to her performance, her conduct had been beyond reproach as regards her relations with university circles, but had been criticized as regards her work related to training. With regard to the complainant's political activities, the Tribunal noted that her first-level supervisor had told the internal appeals body he had received oral protests from various Governments, and that the dossier contained no information on the nature of those activities.

With regard to the propriety of the impugned decision, the Tribunal noted that the staff rule providing for the completion of an annual performance report had not been complied with. It considered that although proceedings following a decision not to extend an appointment might sometimes remedy the absence of the report, that had not been the case in the present instance, where the criticisms of the complainant had not only been challenged but were open to various evaluations.

The Tribunal then observed that the impugned decision failed to take account of essential facts in that the Director had overlooked many facts which emerged from the written evidence and did not seem to have inquired into the substance and validity of the protests against the complainant's political activities.

The Tribunal observed that because of the flaws in the impugned decision the Tribunal could either set it aside — which would mean reinstating the complainant — or award compensation. It considered that the mutual trust between the complainant and the Organization had diminished to the point where it was unlikely that she could again be usefully employed and it therefore awarded compensation determined *ex aequo et bono* at 12,000 United States dollars.

8. JUDGEMENT NO. 449 (14 MAY 1981): SALMOUNI ZERHOUNI *v.* UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

*Complaint brought by a person not competent to file a complaint with the Tribunal*

This complaint was dismissed because the complainant, who had never been an official of UNESCO and did not claim to have succeeded to any of the rights of such an official, was not competent to file a complaint with the Tribunal

9. JUDGEMENT NO. 450 (14 MAY 1981): GLORIOSO *v.* THE PAN AMERICAN HEALTH ORGANIZATION (PAHO) (WORLD HEALTH ORGANIZATION)

*Claim of reinstatement in staff member's former position within the Organization — Limits to the Tribunal's power of review of a decision of transfer — Absence of factual error, of procedural flaws and of errors in law — Rejection of the plea to quash the decision to transfer*

Following misunderstandings between herself and her immediate supervisors, the complainant was transferred from one unit to another in the Secretariat of PAHO. Complaining of the menial

nature of her duties in the new post, she claimed reinstatement in her former position or assignment to a comparable one. She also claimed removal of negative appraisals of her performance from her file, the award of a higher grade and compensation for medical expenses and other material and moral injuries suffered as a result of her transfer.

Confirming its previous case law, the Tribunal recalled that the relevant provision of the Staff Rules allowed transfer whenever PAHO's interests required it. It was thus a discretionary matter for the competent authorities. The Tribunal will quash a decision of transfer only if it was taken without authority or in breach of a rule of form or of procedure, or was based on an error of fact or of law, or if essential facts were overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the facts.

After reviewing the facts of the case, the Tribunal observed that the said facts were open to different interpretations. The complainant's arguments in support of her claim did not appear to carry any greater weight than those put forward against it. Accordingly, the impugned decision was not tainted with any error of fact and did not leave essential facts out of account. It was taken within the scope of the discretionary power recognized by the rules.

On the other hand, the Tribunal observed that the provisions of the Staff Regulations and Rules on transfer based such actions on considerations of efficiency, competence and integrity. These rules, however, did not preclude the transfer of the staff member, regardless of how well qualified he may be, if relations with his supervisors became strained. The Director was therefore entitled to transfer the complainant in the circumstances of this case.

The complainant had contended that the decision to transfer was in breach of a staff rule which referred to the staff member's particular abilities and interests in case of transfer. The Tribunal observed that the said provision indeed called for taking into account the staff member's particular abilities and interests, but only "to the extent possible". The Tribunal was of the view that this qualification meant that account would be taken of those considerations provided PAHO's interests did not dictate a different course of action.

Lastly, the Tribunal considered the complainant's allegation that the impugned decision was motivated by prejudice because of her Staff Association activities. The Tribunal found that the complainant failed to establish any causal link between those activities and the decision.

For the above reasons, the Tribunal dismissed the complaint.

10. JUDGEMENT NO. 451 (14 MAY 1981): DOBOSCH *v.* THE PAN AMERICAN HEALTH ORGANIZATION (PAHO) (WORLD HEALTH ORGANIZATION)

*Receivability of the appeal — The requirement that internal means of redress be exhausted not an absolute rule — Failure by the internal appeals body to act for an inordinately long period of time justifies a direct application to the Tribunal*

On 22 November 1978, the complainant appealed to the Board of Inquiry and Appeal for Area VI against a decision not to transfer her to a particular unit within PAHO. The case was forwarded by the Area VI Board to the PAHO Headquarters because the claim was considered to be one of reclassification which fell within the competence of the Headquarters Board. On 12 October 1979, the Headquarters Board returned the case to the Area Board on the grounds that it was not one of those cases which lie within the exclusive purview of the Headquarters Board. The Headquarters Board suggested to the Area Board a hearing within 30 days to make up for lost time. The Board nevertheless scheduled a hearing only in March 1980. At this time, further difficulties arose and the Board did not meet. On 18 April 1980, the complainant appealed directly to the Tribunal.

The Tribunal ruled that the requirement of exhausting internal means of redress for an appeal to the Tribunal to be receivable was not a hard and fast rule even though the Statute of the Tribunal did not allow any derogation from it. If a complainant does all in her power to procure a decision and if, nevertheless, the internal appeals body either by its statement or by its conduct evinces an intention not to give a decision within a reasonable time, justice required that an exception should

be made. It was not mere failure to proceed with all due speed and diligence that justified such an exception, but when the proceedings had been allowed to deteriorate to a point at which there was a denial of justice, an intention not to give a decision may be inferred.

Applying the above principle to the circumstances of the case at hand, the Tribunal pointed out that after a year and three-quarters, the Administration was still in default with its written answer and had not even appointed a representative in the appeal. This, in the Tribunal's view, was an inordinate and inexcusable delay. Noting that the complainant had no obligation to explore ways of putting pressure on the Area Board to discharge its duty, the Tribunal observed that the complainant had done all she could to expedite the proceedings.

For the above reasons, the Tribunal decided to consider the appeal receivable despite the lack of compliance with the rule which requires exhaustion of internal means of redress before an appeal to the Tribunal could be properly lodged.

The complainant's claims concerned mainly reassignment to a particular unit within PAHO. She also requested that the description of her duties be in accordance with her qualifications, that accordingly she be assigned a post in the professional category and that damaging documents be removed from her personnel file. She further claimed damages for moral prejudice and mental distress and for injury to her professional reputation. She also claimed that she be awarded costs. The Tribunal observed that the decision impugned was one dated 24 October 1978, which did not resolve the issue of the complainant's reassignment but appointed a committee to study the request, while at the same time informing the complainant that there was no suitable post at the time in the unit concerned. In the event, on 3 September 1980, an offer was made to the complainant of a post in the unit of her choice at a grade which was to be fixed after six months' service. The complainant turned down this offer. The Tribunal found that it was impossible to argue that the Director's failure to respond instantly and affirmatively to the complainant's demands amounted to an abuse of power. For the preceding reasons, the Tribunal decided to dismiss the complaint on the merits.

With regard to costs, the Tribunal recalled that it was unusual to award them to a complainant who had failed, but since in this case the complainant was successful on the important issue of receivability, the Tribunal awarded her $2,000 towards her costs.

### 11. JUDGEMENT NO. 452 (14 MAY 1981): FOLEY *v.* THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

*Resignation of Staff Member — Re-employment within 12 months as local recruit at lower grade — Claim of reinstatement in non-local status at former grade and step — New claim made for the first time before the Tribunal — Non-receivability of same for failure to exhaust internal recourses — Claim of reinstatement denied*

A staff member since 1968, the complainant resigned her post with FAO on 2 July 1976, having reached grade G-5, Step V and having been granted non-local status. On 6 June 1977, she was re-employed at the G-3 level and was promoted to the G-4 level on 1 October 1977. She was promoted on 1 February 1978 to the G-5 level. Under the rules applicable at the time of her re-employment, she was considered a staff member of local status. She claimed reinstatement in non-local status at her former grade and step but her claim was turned down. This was the decision impugned.

At the outset, the Tribunal declared non-receivable a new claim aiming at payment of certain travel and transport expenses in case the complainant was not to be reinstated as claimed. The Tribunal observed that under Article VII, paragraph 1, of its Statute, the complainant had to exhaust the internal means of remedy prior to appealing to the Tribunal. Since the alternative plea was not made before the internal appeals body, it was not receivable for the first time before the Tribunal.

With regard to the original claim, the Tribunal cited a provision of FAO's staff rules to the effect that if re-employment took place within 12 months of separation, this may, at the option of the Organization, be considered as reinstatement. The Administration had invoked a new policy

laid down in November 1974 under which all General Service staff, regardless of nationality or place of recruitment, would be recruited as local staff after 31 January 1975. The complainant argued that this policy guideline should not be confused with the option given the Administration under the staff rule mentioned above. In exercising the option account should be taken only of the particular circumstances of the staff member and the decision should not be motivated by general conditions. The Tribunal disagreed with this argument, holding that, provided the decision was not taken arbitrarily, the Organization was free to have regard to all relevant considerations, general and particular.

The complainant further contended that the policy decision in question applied only to recruitment and did not apply to reinstatement. Even assuming that this interpretation of the Council declaration of policy was correct, the Tribunal ruled that the Administration was free but not required to reinstate former non-local staff in their previous status. It was a matter of discretion for the Administration and the impugned decision was within this discretion.

Finally, the complainant had contended that there was discrimination in favour of another former non-local staff member who was reinstated, after the policy decision of the Council, as a non-local staff member. Having examined the facts of this other case, the Tribunal concluded that the Administration was not required to follow a general policy if particular circumstances justified a distinction. In the opinion of the Tribunal, there were sufficient grounds for discrimination in the earlier case of the other staff member.

For the above reasons, the Tribunal decided to dismiss the complaint.

12. JUDGEMENT NO. 453 (14 MAY 1981): HEYES *v.* THE WORLD HEALTH ORGANIZATION

*Probationary appointment — Non-confirmation of same — Discretionary decision — Limits on Tribunal's power of review*

The complainant was appointed to serve on a WHO project in the field. His appointment, which commenced on 11 May 1979, was subject to one year's probationary period. Under Staff Rule 1060 of the WHO, such appointments can continue beyond the one-year period only if they are confirmed before the probationary period is over. Since the complainant's performance and conduct had been criticized by his supervisors, a decision was taken not to confirm his appointment.

The complainant contended that he was unfairly dismissed and made several other minor claims concerning his employment. He requested reimbursement of unrecovered expenses, recovery of lost earnings for the period from 11 May 1980 to 10 May 1981 and an official apology from the WHO.

The Tribunal noted that the decision not to confirm the complainant's probationary appointment was, in the circumstances of the case, conclusive unless it could be shown to have been based upon a clearly mistaken appreciation of the relevant facts. The Organization had maintained that the facts indicating unsuitability for international service, and so justifying the decision not to confirm the complainant's probationary appointment were:

(1) the complainant's written complaints about his working conditions and his accommodation, and

(2) his failure to establish satisfactory working relations.

The Tribunal looked into these two sets of facts and concluded that the grounds upon which the Organization supported the impugned decision were not above criticism. The Tribunal inquired, however, whether when the criticism had been absorbed there was enough left to sustain the decision. It observed that there was certainly enough to show that the complainant was a man whom it was difficult, and perhaps impossible to work with. It ruled out the possibility of a future improvement in the complainant's attitude, judging by the correspondence addressed by him to the Director-General of the WHO. The Tribunal ruled that it was not its duty to form its own judgement and substitute it for that of the Director-General. It found it sufficient to state that it was not persuaded that the Director-General's conclusion regarding the complainant's unsuitability for service was clearly a mistake.

For the above reasons, the Tribunal decided to dismiss the complaint.

13. JUDGEMENT NO. 454 (14 MAY 1981): GAVELL *v.* THE UNITED NATIONS FOOD AND AGRICULTURE ORGANIZATION

*Partial commutation of pension benefits into a lump sum — United States income tax on same — Entitlement to reimbursement of the income tax* (No)

Upon his retirement on 31 January 1978, the complainant, who was a United States citizen, obtained from the United Nations Joint Staff Pension Fund the commutation of one-third of his pension entitlements into a lump sum which he received on 24 March 1978. The complainant applied to the Food and Agriculture Organization for reimbursement of the income tax which he had paid on the said sum. He invoked Judgement No. 237 of the U.N. Administrative Tribunal which endorsed the United Nations' practice of reimbursing to retired staff members the amount of the United States income tax paid by them on the lump sum. His request was turned down by the Administration of the FAO which informed him on 14 June 1979 that he was not entitled to reimbursement. In his complaint to the Tribunal, the complainant requested that the FAO be ordered to reimburse the tax in question.

The Tribunal referred to its earlier Judgement No. 426 in which it considered and rejected a similar claim raising the same issues and arguments made against the WHO.[25] Noting that the complainant had failed to distinguish the above-mentioned case from his own, the Tribunal dismissed the complaint.

14. JUDGEMENT NO. 455 (14 MAY 1981): PINI *v.* THE UNITED NATIONS FOOD AND AGRICULTURE ORGANIZATION

*Termination of probationary appointment — Discretionary nature of same — Limits on the Tribunal's power of review*

On 1 November 1975, the complainant was given a fixed-term appointment for two years as a printer, subject to a probationary period of one year. The probationary period was extended by six months to 30 April 1977. On 14 April, the complainant was notified that his appointment would be terminated and that he would receive one month's salary in lieu of notice.

The Tribunal noted that the extension of the probationary period was decided upon because of the complainant's bad performance and with a clear indication to him that without substantial improvement his appointment would be terminated. The Tribunal referred to the findings of an investigation into the complainant's challenge to the decision of termination which showed that the average productive index in the printing shop was 218 while the figure for the complainant was 163. The following lowest individual figure was 190.

The Tribunal noted the discretionary nature of a decision to terminate a probationary appointment. That discretionary nature left the Tribunal with only a limited power of review. Where, as in the case at hand, there was ample evidence to support the conclusion that the complainant's work was unsatisfactory, that was the end of the matter. It was not open to the Tribunal to reassess the evidence as the complainant requested.

For the above reasons, the Tribunal decided to dismiss the complaint.

15. JUDGEMENT NO. 456 (14 MAY 1981): BARBERIS *v.* THE WORLD TOURISM ORGANIZATION

*Communication to staff member — Contention that it was not received acceptable in absence of proof that it was received — Failure by Administration to take a decision upon a claim within 60 days — 90-day time-limit for filing complaint with Tribunal runs following expiry of the 60-day period — Complaint filed beyond the 90-day time-limit non-receivable*

A claim made by the complainant elicited a negative reply from the Administration of WTO dated 3 July 1979 in which the complainant was informed that the Secretary-General saw no need to exercise his rights under the staff regulations to refer the claim to a joint committee for observations and report. The complainant contends that the said reply of 3 July 1979 was never received by her, and that she only knew of it from a reference in a letter dated 5 October.

The Tribunal observed that under the general rules on the burden of proof it is for the sender to establish the date on which a communication was received. For want of evidence as to the actual date of receipt of the letter of 3 July the Tribunal accepted the complainant's statement that the said letter was not received by her.

The Tribunal then recalled the provisions of Article VII of its statute which require exhaustion of internal means of recourse in order for a complaint to the Tribunal to be receivable. The same article provides that the complaint must be filed within 90 days after the notification of the final decision. Finally, Article VII provides that where the Administration fails to take a decision upon any claim within 60 days the staff member may appeal to the Tribunal within 90 days from the date of expiry of the above-mentioned 60-day time-limit.

Having ruled that the letter of 5 July was not received by the complainant the Tribunal considered the case at hand as falling under the provision of article VII of its statute regarding cases where the Administration fails to take a decision upon the staff member's claim. The Tribunal further observed that the complainant's claim was made on 3 April 1979 and repeated on 21 May. Therefore, the complainant was required, under Article VII (3) of the statute, to appeal to the Tribunal within 90 days following the 60-day period after presentation of her claim. The Tribunal noted that the complainant filed her complaint only on 13 March 1980, long after the expiry of the above-mentioned time-limit.

For the above reasons the Tribunal dismissed the claim as time-barred.

16. JUDGEMENT NO. 457 (14 MAY 1981): LEGER AND PEETERS *v.* THE EUROPEAN PATENT ORGANISATION

*Decision not to promote — Discretionary nature of same — Limits on the Tribunal's power of review — Decision not to promote may be invalidated only if tainted with certain specific defects*

The complainants challenged EPO's decision not to include their names in a promotion register prepared by a committee set up in August 1979. They alleged that the Administration did not abide by the selection criteria set for the committee and that according to those criteria they were eligible for promotion. They moved the Tribunal to quash the decision notified on 17 December 1979 and to order their promotion to A.3 from 1 January 1979.

The Tribunal observed that a final decision to promote or not to promote fell squarely within the discretion of the chief administrative officer of the organisation. Such a decision would be set aside only if it was taken without authority or was tainted with a formal or procedural flow, or if it was based on a mistake of fact or of law, or if essential facts were left out of account, or if there was misuse of authority or if clearly mistaken conclusions were drawn from the facts.

The Tribunal found no reason to question the calculation of the length of the complainants' service, which was the main challenge addressed at the decision. There was no mistaken appraisal of facts which vitiated the Committee's decision on the complainants' case. The essential point was that length of service would be taken into account on the condition that earlier experience appeared useful to the work of the organization. It was for the President of the EPO to settle this matter. The Tribunal found no grounds for ruling that the President abused his discretionary power.

For the above reasons the Tribunal decided to dismiss the complaint.

17. JUDGEMENT NO. 458 (14 MAY 1981): GABA *v.* THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

*Direct appeal to the Tribunal without exhaustion of internal recourse procedure — Not receivable except in agreement with the Administration — Silence of the Administration not tantamount to agreement*

The complainant filed his complaint with the Tribunal on 24 November 1980 without first appealing to the Appeals Board. The internal means of redress not having been exhausted the complaint was not receivable.

The complainant had contended that on 30 October 1980 he sought from the Director-General the agreement required for a direct application to the Tribunal, asking for a reply by 15 November 1980. Having received no reply by that date he considered himself free to appeal to the Tribunal, taking the Administration's silence to denote agreement.

The Tribunal noted that the Director-General was not bound to answer the complainant by the deadline he had arbitrarily set at 15 November 1980 and that the complainant was therefore wrong to infer the Director-General's agreement from the absence of a reply. The Tribunal further observed that the complainant had not asked for the Director-General's agreement until over 45 days had elapsed after the notification to him of the impugned decision. The time-limit set in the Appeals Board statutes for addressing an appeal to the Board had already expired by the time the complainant sought the Director-General's agreement to a direct application to the Tribunal. The complainant should therefore have expected the Director-General to withhold his agreement.

The Tribunal rejected the complainant's argument that since an appeal is a procedure introduced for the benefit of the staff, the Director-General's failure to reply raised a presumption of agreement. The Tribunal ruled that the procedure touched the interests of the Organisation as well as those of its staff.

For the above reasons the Tribunal dismissed the complaint as being non-receivable.

18. JUDGEMENT NO. 459 (14 MAY 1981): ZREIKAT *v.* THE WORLD HEALTH ORGANIZATION

*Change of date of birth — The date of birth provided by staff member upon appointment considered as correct for all the purposes of the contract — Changing said date of birth calls for new agreement of the parties — Validity and evidentiary value of documents delivered by Governments not at issue*

The complainant was appointed by the WHO on 1 July 1976 as a translator. In several documents including his personal history form he gave 25 March 1918 as his date of birth. His one-year contract of appointment was extended to 31 March 1978 and at the time the complainant gave the same date. On 10 November 1977, however, he informed the Personnel Office that his date of birth was wrong and he supplied a copy of a birth certificate provided by a Greek Orthodox church in his home country and dated 10 October 1977 which gave his date of birth as 25 March 1920. The Personnel Office amended his file accordingly. The complainant's appointment was further extended to 31 March 1980 when he would have reached the retirement age of 60. On 29 May 1979 the complainant again asked the Personnel Office to correct his date of birth for the second time to 25 March 1925 on the strength of a new certificate from the above-mentioned church giving his date of baptism as 25 May 1925 instead of 17 June 1920. He later provided a birth certificate from the Ministry of Interior in his home country and a certificate from the Swiss social insurance authorities, both showing his date of birth as 25 March 1925. This time the Personnel Office turned down the complainant's request and no further change in his date of birth was made. The Board of Inquiry and Appeal recommended dismissal of the complainant's appeal and the Director-General endorsed that recommendation. The complainant challenged the Director-General's decision before the Tribunal.

The complainant's main argument was that international organizations were under a duty to respect the decisions of national authorities and were bound to accept the date of birth given by them as being the staff member's correct date of birth.

The Tribunal declined to consider the dispute from the standpoint of the validity or the evidentiary value of certificates issued by national authorities. Instead it determined the issue within the framework of the contractual relationship between the staff member and the Organization. The Tribunal observed that upon receiving an appointment a staff member was required to give the date of his birth and that the date so recorded in his contract of appointment may affect his rights and obligations in a number of ways, more particularly with regard to the date on which he would retire. The date of birth supplied by the staff member is therefore warranted by him as correct for all the purposes of the contract.

The Tribunal envisaged only two possibilities for changing the staff member's date of birth. The first possibility was that the contract may be amended by common consent of the parties. This

not being the case the Tribunal may not interfere. The second possibility was that the Tribunal may require the parties to make the amendments called for by the application of the principle of good faith. In this regard the Tribunal found that the complainant could not rely successfully on the said principle since in any case, when the first correction of date was made, he ought to have taken every precaution to determine the exact date of his birth.

For the above reasons the Tribunal decided to dismiss the complaint.

19. JUDGEMENT NO. 460 (14 MAY 1981): ROMBACH *v.* THE EUROPEAN PATENT OFFICE

*Salary upon promotion — Requirement that it should not be reduced as compared to the pre-promotion salary — Special allowance for discharging duties at a higher level — Temporary nature of same — Claim to continued payment of said allowance after promotion denied*

The complainant was in receipt of a special allowance since May 1979 for discharging the duties of a post at a higher level than his own. In September 1979 he was promoted to the higher level with retroactive effect from 1 August 1979. From September 1979 his total net remuneration was reduced by an amount equal to that of the special allowance.

Before the Tribunal the complainant invoked the principle that in no case shall total net remuneration be reduced as the result of advancement to a higher grade. This principle was embodied in the staff regulations.

The Tribunal noted that comparison of the complainant's emoluments before and after promotion showed (*a*) an increase in his base salary; (*b*) cancellation of the special allowance, and (*c*) cancellation of almost the full amount of the compensatory allowance. As a result the complainant's remuneration after promotion was lower by 141.58 guilders, i.e. exactly the amount of the special allowance he was paid since May 1979.

Citing article 49, paragraph 13, of the Staff Regulations the Tribunal noted that the fundamental question was the construction to be put on the term "total net remuneration" which, under the said article, should not be reduced as a result of promotion. Citing article 64 of the Staff Regulations the Tribunal concluded that it must be taken to mean basic salary and any benefits and allowances.

With regard to the complainant's request that he continue to receive the special allowance over and above his salary increase the Tribunal noted that this would be tantamount to receiving two increases in remuneration in respect of a single promotion. To grant such a claim would discriminate against staff members who were being paid no special duty allowances before promotion.

The Tribunal made the distinction between benefits and allowances which are permanent or at least payable over a fairly lengthy period and temporary benefits and allowances payable for a limited time only. The safeguard provided in article 49, paragraph 13, was applicable to the first category of allowances. The special duty allowance was a temporary one. The staff member who received it knew that he would continue to do so only so long as he was performing duties pertaining to a higher grade. When he was promoted to the higher grade there were no grounds for payment of the special duty allowance and no legal basis for it in article 49, paragraph 13.

While denying the complainant's claim to continued payment of the special duty allowance the Tribunal recognized his entitlement to a remuneration which would not be lower than the one he used to receive before his promotion. It therefore quashed the decision reducing the complainant's total net remuneration after promotion and remitted the case to the President of the EPO to enable him to make such special arrangements as may be appropriate to ensure that the complainant's total net remuneration was no lower than the sums he was receiving before promotion.

20. JUDGEMENT NO. 461 (14 MAY 1981): HECKSCHER *v.* THE INTERNATIONAL CENTRE FOR ADVANCED TECHNICAL AND VOCATIONAL TRAINING

*Appeal procedure — Clear challenge to a decision as prerequisite for the existence of an appeal — Exhaustion of internal remedies a condition for the receivability of applications to the Tribunal*

On 22 April 1980, the applicant was informed that his contract would not be renewed beyond 31 July 1980. On 31 March he had written to the Director a communication not expressly related

to the question of non-renewal of contract. After the decision of non-renewal was taken, he again wrote to the Chief of Personnel on 7 May 1980, describing the decision as unwarranted because the allegations made against him were unfounded.

The Tribunal cited Article 12.1 of the Staff Regulations of the International Centre for Advanced Technical and Vocational Training which requires that a complaint be addressed to the Director through the staff member's responsible Chief and through the Chief of Personnel within six months of the decision complained of. The Tribunal observed that for there to be an appeal, the staff member must have clearly indicated his intention to challenge the decision to which he objects. Since the decision was taken on 22 April 1980, the complainant's reliance on the communication dated 31 March 1980 was misplaced. As to the communication dated 7 May 1980, the Tribunal found that it did not constitute a challenge to the decision.

For the above reasons, the Tribunal ruled that the complainant had failed to exhaust the internal remedies and therefore decided to dismiss the complaint.

## 21. Judgement No. 462 (14 May 1981): Vyle *v.* the Food and Agriculture Organization of the United Nations

*Acquired rights — Language allowance — Method of ascertaining continued proficiency — No new rules could deprive the staff member of an allowance to which he became entitled under the then existing rules — No acquired right attaches to a particular method of ascertaining continued proficiency*

The complainant, whose mother tongue was English, passed the language proficiency examination in Spanish and was granted a language allowance. At that time (1972), staff members receiving such an allowance were relieved of the obligation of undergoing a further test every five years provided that the supervisor certified that the staff member's proficiency in the particular language was satisfactory. From 1 January 1976, everyone was required to take the further test every five years. The complainant failed the said test more than once and payment of her allowance was discontinued on 1 May 1978.

The complainant argued that she had obtained entitlement to the allowance under a régime which did not require further tests and that a new rule requiring such tests was retroactive and violated her acquired right to the allowance.

The Tribunal cited FAO Staff Regulation 301.135 and Staff Rule 302.3033 which, read together, require demonstration of continued proficiency in the use of two or more official languages and provide for the possibility of requiring staff members to undergo further tests at intervals of not less than five years in order to demonstrate their continued proficiency.

The Tribunal recalled its case law according to which an acquired right is one which was of decisive importance to the staff member when he accepted an appointment with the Organization. The Tribunal observed that the possibility of obtaining a language allowance under certain conditions was not ordinarily a matter of decisive importance to a new recruit. It is not therefore an acquired right within the meaning of the Tribunal's case law.

The Tribunal, however, elaborated further on the concept of acquired rights, ruling that it should be developed to take account of situations analogous to those which gave rise to the doctrine. When a staff member had earned the right to an allowance under rules in force, it would be inequitable for the rules to be arbitrarily altered so as to deprive him of it. In this sense, a staff member may be said to acquire the right to the allowance under the terms of rules in force at the time when he earned it. This did not mean, in the Tribunal's view, that every detail of the rules must be maintained. It meant that they must not be changed so as to amount to an arbitrary deprivation.

In the case at hand, observed the Tribunal, it was at all times a condition of the continued payment of the language allowance that the staff member demonstrate continued proficiency. It was also at all times the rule that such proficiency could be demonstrated by tests at intervals of not less than five years. The temporary régime which substituted the supervisor's certification for the five-year test did not carry an acquired right to the continuance of this alternative. The essential

condition for continued payment was continued proficiency. The method by which such proficiency was to be ascertained was not of the essence. The alteration of method which resulted in the complainant's being deprived of the allowance because she failed the further test did not constitute an arbitrary deprivation of an acquired right.

For the above reasons, the Tribunal decided to dismiss the complaint.

22. JUDGEMENT NO. 463 (14 MAY 1981): USAKLIGIL *v.* THE WORLD TOURISM ORGANIZATION

*Leave without pay unilaterally imposed — Sudden departure from the duty station — No entitlement to remuneration exists in respect of a period during which no services were rendered — Payment of service benefit at the family rate — Existence of a dependent spouse not a condition for same*

The applicant's appointment was extended for the last time to 31 December 1979 and it was agreed that he would retire on that date. On 13 December 1979, an argument between the Secretary-General of WTO and the applicant erupted, the outcome of which, according to the applicant was that the Secretary-General told him that he could leave the Secretariat at once. This is contested by the Secretary-General who stated that he had said that the complainant could leave if he wished. The complainant handed back the letter extending his appointment and left the duty station the next day (14 December 1979). Three staff movement notices were sent to the complainant. The first notice recorded the fact that the appointment expired on 14 December 1979. The second notice cancelled the first and stated that the appointment expired on 31 December 1979 and that the staff member had been put on leave without pay from 15 to 31 December 1979. This second notice mentioned that the service benefit had been calculated at the family rate. The third notice changed the service benefit by putting after it the words "without dependent" in brackets.

The complainant made two claims:

(*a*) that the period from 15 to 31 December should not be treated as leave without pay because he had never asked for such a leave; and

(*b*) that the service benefit should be calculated with due regard to the fact that he had a wife.

The Tribunal noted that the general rule was that the staff member was not entitled to remuneration in respect of a period during which he has rendered no service. It was open to the Administration to relieve the staff member from his duty without loss of salary, but such relief must be in clear terms. When, as in the case at hand, there was doubt about what the parties said, and what they may have intended, the general rule must be applied. Without resolving the issue of the grant of a special leave without pay unilaterally, the Tribunal found that the complainant was not entitled to payment of salary for the period in question under the above-mentioned general rule.

As to the calculation of the service benefit, the Tribunal rejected WTO's argument to the effect that since no family allowance was paid in respect of the complainant's spouse, the service benefit was properly calculated at the individual rate. The Tribunal observed that the term "spouse" was unqualified in the provision of the staff rules concerning service benefits. To invoke the provisions concerning the grant of family allowances with regard to the calculation of the service benefit was wrong. Family allowances were intended to provide additional remuneration on the grounds of the staff member's family situation during employment. By contrast, service benefit became due only after the termination of employment and was intended to facilitate the transition to other employment or to retirement. The amount of the service benefit due to the complainant should therefore be calculated according to the rate applicable to "officials with dependants" in the relevant schedule.

For the above reasons, the Tribunal quashed the decision not to pay the complainant the service benefit at the family rate and dismissed his claim for payment of salary and of damages.

## C. Decisions of the World Bank Administrative Tribunal[26, 27]

### 1. DECISION NO. 1 (5 JUNE 1981): LOUIS DE MERODE ET AL. *v.* THE WORLD BANK

*Condition of employment — Distinction between "fundamental and essential" conditions and those which are less fundamental and essential — Employing Organization's power to amend unilaterally conditions of employment which are not fundamental and essential — Limitations to same — Entitlement to reimbursement of national income tax, a fundamental and essential condition of employment — Method of computation of reimbursable amount not fundamental and essential — Relevance of practice of Organization in the absence of statutory provisions — Periodic salary adjustments tied to a number of factors including CPI — Challenge to such adjustment on the ground that it resulted in a lesser increase than the increase in the CPI rejected*

The Applicants challenged certain decisions of the Bank:

(*a*) Unilateral changes in the system by which the reimbursable amount representing national income tax is computed, resulting in the reductions of tax reimbursements to staff of US nationality; and

(*b*) A periodic salary adjustment which resulted in an increase less than the increase in the Consumer Price Index (CPI) in the Washington metropolitan area.

Regarding the challenge to the unilateral amendments to the tax reimbursement system, the Tribunal made a distinction between conditions of employment which are fundamental and essential in the balance of rights and duties of the staff member on the one hand, and other conditions of employment which are less fundamental and less essential in this balance, on the other. The Tribunal acknowledged the difficulty of determining in abstract terms the line of demarcation between these two categories of conditions of employment. It held that the distinction turned ultimately upon the circumstances of the particular case. With regard to terminology, the Tribunal preferred to use the terms "fundamental" and "non-fundamental", and "essential" and "non-essential", with reference to the various elements in the conditions of employment, rather than such terminology as "contractual rights" and "statutory rights",[28] giving its reasons for this preference.

The Tribunal further preferred not to use the phrase "acquired rights" as invoked by the Applicants because the content of this phrase was difficult to identify. In the Tribunal's view "acquired rights" is simply a label for elements of the conditions of employment which are unchangeable unilaterally. The cause of their being unchangeable unilaterally is to be found in their fundamental and essential character.

While the fundamental and essential elements of the conditions of employment may not be amended unilaterally, the non-fundamental and non-essential elements are subject to unilateral amendment by the Organization. Its power is, however, subject to certain limitations such as non-retroactivity of the amendments, lack of abuse in the exercise of this discretionary power and proper consideration of all the relevant facts.

Applying the above principles to the tax reimbursement situation, the Tribunal noted that while the entitlement to reimbursement of the national income tax was a fundamental and essential condition of employment, the method by which the reimbursable amount was computed was non-fundamental and non-essential. The Tribunal observed that the application of the new amended system still ensured full reimbursement of the national income tax paid by the staff, and maintained the equality of net pay among all staff regardless of nationality. The previous method of computation had resulted in reimbursement in excess of taxes paid. Additional amounts thus received were represented by the Applicants as constituting an integral part of their gross remuneration, to the reduction of which they were now objecting. The Tribunal did not go along with this contention. It observed that, under the new method, all taxes which a staff member was required to pay, were reimbursed by the Bank and that in no case did any US staff member receive a net salary lower than that which he would have received had he not been subject to US taxation. Thus the fundamental and essential element of the conditions of employment was observed and the Applicants' challenge to the decision amending the method of computation was not justified. In so ruling, the Tribunal noted that the change of the tax reimbursement method had no retroactive effect and that the objective of the Bank was not to reduce the income of staff members of a certain nationality but

to ensure a better functioning of the institution by a more equitable personnel policy. There was therefore no abuse of discretion and no misuse of power on the part of the Bank.

With regard to salary adjustment, the Tribunal noted that the conditions of employment contain no provision for periodic salary adjustments and still less for an automatic adjustment to meet the cost of living. In considering the facts of the case, the Tribunal concluded that contrary to the Applicants' contention, there was no decision taken in 1968 to adjust salaries automatically in proportion to the increase in the CPI. What happened was that the President of the Bank made certain recommendations in 1968 which were not followed upon and had never become part of the conditions of employment of the Applicants.

The Tribunal was of the opinion that, under certain conditions, the practice of an international organization may be an independent source of rights and duties in the legal relationship between the organization and its staff. In reviewing the practice of the Bank with regard to periodic salary adjustments, the Tribunal observed that several factors besides the cost of living were taken into account in formulating one or another of the past *ad hoc* salary adjustments. Such other factors included comparison with salaries offered by rival potential employers and the need to recruit staff from various countries who possessed the highest standards of efficiency and integrity.

Going over past salary adjustments, the Tribunal observed that they did not represent systematic increases equal to those of the CPI. Only in two of the eleven adjustments considered was there an exact coincidence between the rise of the CPI and the salary increases. The Tribunal further rejected the Applicants' contention that as a minimum, the increases resulting from salary adjustments should meet the rise in the cost of living so that the real value of Bank remuneration was maintained. This argument was inconsistent with the fact that in four different years staff at higher levels received increases below the CPI through the application of a "tapering" system. The existence of such a system was by itself a sufficient basis for discarding the Applicants' thesis that increases should not be lower than the increase in the CPI.

On the basis of the above considerations, the Tribunal reached the conclusion that there did not exist any decision or practice to automatically increase salaries in order to at least meet the rise in the cost of living.

For the above reasons, the Tribunal unanimously decided to reject the applications.

## 2. Decision No. 2 (5 June 1981): Rudolph Skandera *v.* the World Bank

*Termination of Fixed-term Appointment — Incorrect reason stated in the Notice of Termination — Delay in communicating correct reason — Compensation for Staff Member*

The applicant was granted a two-year fixed-term appointment as an advisor with a technical assistance project in Lesotho. His contract provided that the appointment was for two years "subject to termination by the World Bank for any cause or if circumstances necessitated a substantial shortening of the assignment." The applicant's performance was considered quantitatively and qualitatively unsatisfactory and certain aspects of his personal behaviour were objected to by his supervisors. A notice of termination dated 21 February 1980 was addressed to him, stating that the termination was at the request of the Lesotho Government. The contractual four months' notice was taken into account in determining the effective date of separation.

The applicant challenged the decision to terminate his fixed-term appointment contending that there were no sound grounds for the action. He attributed bad faith and malice to the respondent, requesting rescission of termination of his appointment and compensation for damage to his professional reputation, as well as for loss of earnings under his contract. He also claimed compensation for alleged illness sustained while serving in Lesotho.

The Tribunal observed that after having mentioned the request of the Lesotho Government as the reason for termination when communicating its decision to the applicant, the Bank later conceded that the true reasons were those which related to the applicant's performance and behaviour. Nevertheless, the Tribunal found that in the circumstances of the case, there were in fact reasonable grounds on which the Bank could validly reach a decision to terminate the applicant's appointment.

The Bank's authority to terminate the appointment was explicity provided for in the Letter of Appointment. The Tribunal rejected the applicant's contention that the termination was based upon such motives as hatred, malice, prejudice and bad faith. It found that the termination was not improperly motivated.

The Tribunal ruled, however, that a notice of termination should communicate to the staff member concerned the true reason for the decision. By failing to state accurately the said reason in the notice of termination, the Bank impaired the applicant's ability to protect his interests. Although prompt and candid disclosure of the true reasons might well not have affected the Tribunal's decision regarding the propriety of the termination, the fact that the true reasons were communicated to the applicant four months later, resulted in the applicant's inability to deal in an informed manner with the Bank's decision. This was a prejudice which called for compensation.

With regard to the applicant's other claims, the Tribunal concluded that they were not substantiated by the facts of the case.

For the above reasons, the Tribunal awarded the applicant compensation in the amount of three months' net base salary and otherwise rejected the application.

3. DECISION NO. 3 (5 JUNE 1981): GEORGE KAVOUKAS ET AL. *v.* INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

*Article XVII of the Statute of the Tribunal — Time-limit for filing of applications under the said article — Non-receivability of tardy applications*

The Statute under which the World Bank Administrative Tribunal was established in 1980 contains a provision in Article XVII whereby the Tribunal is retroactively granted jurisdiction over disputes in which the cause of action arose prior to its establishment but not earlier than 1 January 1979. The action about which applicants were complaining was taken between the aforementioned two dates. Article XVII sets forth a time-limit for filing applications under its provision, namely 90 days after the entry into force of the Statute, that is to say, by 29 September 1980. Applicants having filed their applications on 4 December 1980, they have failed to observe the said time-limit. The Tribunal observed that applicants had not shown any exceptional circumstances which would justify tardiness of their applications, even assuming that Article II of the Statute which sets forth the regular procedure for cases arising after the establishment of the Tribunal were applicable in their case. Under article XVII, which alone governs the present case, the Tribunal was not empowered to consider these applications.

For the above reasons, the Tribunal declared the applications inadmissible.

4. DECISION NO. 4 (5 JUNE 1981): JACQUELINE SMITH SCOTT *v.* INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

*Article XVII of the Statute of the Tribunal — Conditions for filing of applications under the said article — Non-receivability of tardy applications and of those pertaining to causes of action anterior to 1 January 1979*

The Statute under which the World Bank Administrative Tribunal was established in 1980 contains a provision in Article XVII whereby the Tribunal is retroactively granted jurisdiction over disputes in which the cause of action arose prior to its establishment but not earlier than 1 January 1979. The administrative decisions about which Applicant was complaining were all taken before 1 January 1979. Moreover, Article XVII sets forth a time-limit for filing applications under its provision, namely 90 days after the entry into force of the Statute, that is to say, by 29 September 1980. Applicant had filed her applications only on 10 December 1980. She thus met neither of the two conditions of Article XVII.

For the above reasons, the Tribunal declared the application inadmissible.

## NOTES

[1] Under article 2 of its Statute, the Administrative Tribunal of the United Nations is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. Article 14 of the Statute states that the competence of the Tribunal may be extended to any specialized agency upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. By the end of 1981, two agreements of general scope, dealing with the non-observance of contracts of employment and of terms of appointment, had been concluded, pursuant to the above provision, with two specialized agencies: the International Civil Aviation Organization and the Inter-Governmental Maritime Consultative Organization. In addition, agreements limited to applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund had been concluded with the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the International Telecommunication Union, the International Civil Aviation Organization, the World Meteorological Organization and the International Atomic Energy Agency.

The Tribunal is open not only to any staff member, even after his employment has ceased, but also to any person who succeeded to the staff member's rights on his death or who can show that he is entitled to rights under any contracts or terms of appointment.

[2] Mme P. Bastid, President; Mr. Endre Ustor, Vice-President; Mr. Herbert Reis, member and Mr. Arnold Kean, alternate member.

[3] Mr. Francisco A. Forteza, Vice-President, presiding; Mr. Samar Sen and Mr. Arnold Kean, members.

[4] Mme P. Bastid, President; Mr. Endre Ustor, Vice-President; Mr. Francisco A. Forteza, Vice-President; Mr. Samar Sen, alternate member.

[5] Mme P. Bastid, President; Mr. Samar Sen; Mr. Arnold Kean, members.

[6] Mr. Endre Ustor, Vice-President, presiding; Mr. Arnold Kean and Mr. Herbert Reis, members.

[7] Mme P. Bastid, President; Mr. Endre Ustor, Vice-President; Mr. Francisco A. Forteza, Vice-President; Mr. Herbert Reis, alternate member (dissenting).

[8] Judgement No. 95, summarized in the *Juridical Yearbook* 1965, p. 207, and Judgement No. 42, summarized in the *Juridical Yearbook*, 1971, p. 152.

[9] On 20 July 1982, the International Court of Justice delivered its Advisory Opinion in the *Case Concerning an Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal*. The Court ruled that the Administrative Tribunal did not err on a question of law relating to the provisions of the Charter of the United Nations and did not commit any excess of the jurisdiction or competence vested in it, thus rejecting, in effect, the application for review of the above Judgement.

[10] Mr. Endre Ustor, Vice-President, presiding; Mr. Arnold Kean and Mr. Herbert Reis, members.

[11] Mr. Endre Ustor, Vice-President, presiding; Mr. Samar Sen and Mr. Arnold Kean, members.

[12] Judgement No. 155, summarized in the *Juridical Yearbook*, 1972, p. 124.

[13] Judgement No. 74. For the text of the judgement, see "*Judgements of the United Nations Administrative Tribunal*, Nos. 71 to 86 (United Nations publication, Sales No. 63.X.1).

[14] Mme P. Bastid, President; Mr. F. A. Forteza, Vice-President; Mr. T. Mutuale, member; Mr. Samar Sen, alternate member.

[15] For a summary of the Judgement, see *Juridical Yearbook*, 1973, p. 107.

[16] Mr. Francisco A. Forteza, Vice-President, presiding; Mr. Samar Sen and Mr. Arnold Kean, members; Mr. T. Mutuale, alternate member.

[17] Mme P. Bastid, President; Mr. Endre Ustor, Vice-President; Mr. Herbert Reis, member.

[18] Mme P. Bastid, President; Mr. Samar Sen and Mr. Herbert Reis, members.

[19] Mme P. Bastid, President; Mr. Francisco A. Forteza, Vice-President; Mr. Arnold Kean, member.

[20] The Administrative Tribunal of the International Labour Organisation is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment, and of such provisions of the Staff Regulations as are applicable to the case of officials of the International Labour Office and of officials of the international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1981, the World Health Organization (including the Pan American Health Organization (PAHO)), the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the Interim Commission for the International Trade Organization/General Agreement on Tariffs and Trade, the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organization for the Safety of Air Navigation, the Universal Postal Union, the International Patent Institute, the European Southern Observatory, the Intergovernmental Council of Copper Exporting Countries, the European Free Trade Association, the Inter-Parliamentary Union, the European Molecular Biology Laboratory and the World Tourism Organization. The Tribunal is also competent to hear disputes

with regard to the execution of certain contracts concluded by the International Labour Organisation and disputes relating to the application of the Regulations of the former Staff Pension Fund of the International Labour Organisation.

The Tribunal is open to any official of the International Labour Office and of the above-mentioned organizations, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely.

[21] Mr. M. Letourneur, President; Mr. A. Grisel, Vice-President; Lord Devlin, Judge.

[22] For a summary of this judgement, see *Juridical Yearbook*, 1980, p. 162.

[23] For a summary of this judgement see *Juridical Yearbook*, 1977, p. 184.

[24] For a summary of this judgement, see *Juridical Yearbook*, 1980, p. 178.

[25] For a summary of this judgement, see *Juridical Yearbook*, 1980, p. 171.

[26] The Tribunal is competent to hear and pass judgement upon any applications alleging non-observance of the contract of employment or terms of appointment, including all pertinent regulations and rules in force at the time of the alleged non-observance, of members of the staff of the International Bank for Reconstruction and Development, the International Development Association and the International Finance Corporation (referred to collectively in the Statute of the Tribunal as the "Bank Group").

The Tribunal is open to any current or former member of the staff of the Bank Group, any person who is entitled to claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

[27] E. Jimenez de Arechaga, President; T. O. Elias, P. Weil, Vice-Presidents; A. K. Abul-Magd, R. Gorman, N. Kumarayya and E. Lauterpacht, members.

[28] Terminology used by the United Nations Administrative Tribunal, see Judgements Nos. 19 to 25, 27 and 53.