

**SEVENTY-THIRD SESSION**

***In re* GEORGIADIS, KAZINETZ,  
McCALLUM and POLYCARPOU**

**(Interlocutory order)**

**Judgment 1186**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr. Argyris George Georgiadis, Mrs. Nadia Kazinetz, Mr. Alexander McCallum and Mr. Andreas Polycarpou against the Food and Agriculture Organization of the United Nations (FAO) on 12 March 1991 and corrected on 30 May, the FAO's single reply of 6 September 1991, the complainants' rejoinder of 9 January 1992 and the Organization's surrejoinder of 16 April 1992;

Considering the applications to intervene filed by:

I. Abu-Sharr

H.A. Al-Jibouri

P.E. Allen Peter

L. Almagia

R.M. Arbuckle

M-P. Archaimbault

T.S. Aribisala

W.A. Armstrong

R.M. Arnold

R.L. Arnolda

E. Atkinson

R.E. Atkinson

O.V. de Azevedo

P.G. Bagshaw

S.K. Barat

N.L. Barnouw

J.L. Belien

F. Bellon

M. Bellver-Gallent

C. Beringer  
B.M. Beritault Scopa  
M.A. Berrier  
S. Bhattacharya  
M. Bogue  
G. Boldrini  
C.H. Bonte-Friedheim  
V.W. Bruce  
C.L. Bryce  
P. Byrne  
J. Cairncross  
R. Capitaine  
J.C. Castiaux  
J. Chambron  
D. Charbonnier  
A. Chatterjie  
L. Chevalier  
M. Cimino Balzarro  
J.J. Claessens  
J.J. Cohen de Govia  
R. Contessini-Savio  
E.N. Cooling  
C.N. Coombes  
P.H. Coulter  
P.H. Crane  
I.M. Craven  
E.M. de Benedictis  
J. de Geus  
S. de Gunzburg  
E.J. Delaney  
V. de Man

R.L. de Poerck  
P.D. de Silva  
R. Devred  
W. Donner  
P. Durand  
H. El Kashef  
H. Engeler  
R. Fanfant  
A.N. Ferreira  
L. Ferro  
R. Forster  
A. Fortunato  
A.C. Frith  
M. Gabison  
G.M. Gandini  
M. Ganzin  
P.E. George  
M.J. Giudicelli  
N. Givelet  
B.G. Goodier  
E.C. Green  
S.K. Green-Guglielmi  
A-M. Grossman  
A. Guijarro  
L.J. Haling  
L. Halter  
A. Hamersley  
E.H. Hartmans  
L. Hasenfratz  
P. Haugaard

B. Hoare  
P.M. Hollyer  
H.M. Horning  
J.P. Hrabovszky  
H. Hüni  
H.G. Hutchison  
P. Iacoacci Barrera  
J.K. Jackson  
I.N. Janelid  
B.C. John  
W.B. Johnston  
P.H. Jolivet  
Z. Kanaan  
S.H. Khamis  
G. Krutze  
A.R. Larsen  
A. Longhi  
E. Louwes  
E.N. Lunan  
A.H. Mansour  
F. Mappi  
B.B. Marcheggiano  
V. Marchionneschi  
K. McLean  
A. Medini  
F.M. Mifsud  
M. Mistakidis  
S. Mizzi  
A. Nardone-Dezi  
J. Naylor  
H.W. Newlands

N. Newiger  
I.D. Newsam  
F. Oddone  
J.R. Olds  
V.E. Orebi  
B. Ortolò  
E. Ozbilen  
R.A. Pacheco  
Y.M. Pagès  
P.O. Park  
D.K. Paul  
E. Pelinck  
P.F. Percy  
J.M. Philippe  
J.C. Phillips  
R.J. Pichel  
T.V. Pillay  
F. Pronk  
N. Proposito  
P. Pyrathon  
J. Pyrathon  
E. Quartey-Papafio  
D. Quaye  
R.E. Ré  
M.L. Reeves  
G. Rieusset  
S-C. Sar  
B. Saraceni  
J.L. Scalabre  
H.F. Schels

C. Scramoncin  
G. Segerström  
K.V. Singh  
J.K. Smart  
K.E. Snelson  
I. Stansby  
B.K. Steenberg  
L. Stenström  
P.D. Stobie  
G. Stolp Nobile  
I. Strange  
M. Strauss-Rahal  
R.M. Sturgeon  
A. Sykes  
E. Syts  
E.F. Szczepanik  
W.M. Tahir  
R.J. Tatchell  
B. Tavazzi  
D.H. Taylor  
J.M. Tenney-Cooling  
H.J. Teunissen  
P. Thomforde  
J-O. Traung  
H.W. Underhill  
G. Upson-Ghergo  
L. Uribe  
P. Valmaure  
N. Velche Monti  
D.D. Venables  
T. Vivekananthan

A. Voisin

H. Warde-Jones

L. West

F. Westerduin

N. Winand Gavage

K.C. Wright

N. Zein

E.M. Zeiser

Considering Article II, paragraphs 5 and 6, of the Statute of the Tribunal and FAO Manual paragraph 331.311;

Having examined the written evidence and decided not to order oral proceedings, which none of the parties has applied for;

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

A. Serving FAO staff have had medical insurance coverage since 1951. From 1959 they were entitled, on certain conditions and at their own expense, to keep such coverage after leaving the Organization. Three schemes later became available to them: a compulsory Italian national insurance scheme known as ENPDEP based on an agreement with the National Insurance Organization for Employees of Public Non-Governmental Administrations; a private optional plan known as FAMIP (Family Medical Insurance Plan); and MMBP (Major Medical Benefits Plan) a private scheme that was compulsory for the Professional and higher categories and for staff in the General Service category who were not covered by ENPDEP.

After an inquiry by a joint health committee the Council of the FAO decided in 1969 to make some reforms in the arrangements for coverage. Reckoning that pensioners would be unable to afford the cost of health insurance it offered them and their dependants subsidised coverage. It determined the premiums they paid to FAMIP and ENPDEP according to the same graduated scales as for serving staff, the Organization thereby subsidising more heavily the more highly-paid staff. As for pensioners covered by the MMBP, the Council decided that premiums would be split evenly between the Organization and the insured.

In 1971 the Organization announced that it would give free coverage to pensioners insured with ENPDEP by paying their premiums in full.

There were further changes in 1972. The Organization concluded an agreement with van Breda, an insurance broker, establishing a new compulsory general health scheme, BMIP (Basic Medical Insurance Plan), to supersede FAMIP and others. ENPDEP remained as an alternative to BMIP, and MMBP for optional additional coverage. Pensioners who met certain conditions were granted free coverage "for the duration of the contract with Van Breda". The FAO and serving staff contributed equally to BMIP, save that the staff's contributions were capped at 5 per cent of gross salary. But serving staff with MMBP had to meet the costs in full. These arrangements held good until 1986, when further amendments were made.

By letters of 1 June 1989 the Director of the Personnel Division told all pensioners with BMIP and MMBP that their free coverage had to end. He explained the nature of the problem, the reasons for the decision and the new arrangements for coverage. In particular, he said, staff members who had retired or were about to retire and who qualified for free coverage - by having contributed for not less than ten years and reached the age of 55 on or before 30 September 1989 - would have a "grace period" in which to decide whether to join other national or private health schemes. The letter also said that retired staff members' BMIP premiums would not exceed 4 per cent of either their full pension from the United Nations Joint Staff Pension Fund or two-fifths of the last figure of their pay.

Many pensioners, including the complainants, challenged the decision to do away with free after-service coverage. The Assistant Director-General in charge of Administration and Finance replied, in accordance with the procedure in Manual paragraph 331.311, that the Director-General had rejected their claims. They and other pensioners put the matter to the Appeals Committee in January and February 1990.

In reports dated 22 August 1990 the Committee held that free after-service medical coverage was not an acquired right and unanimously recommended rejecting the appeals. The Director-General informed the complainants by letters he sent in December 1990 that he endorsed the Committee's recommendation. Those are the decisions under challenge.

B. The complainants have four pleas.

They point out that for years they paid into a health insurance scheme that was intended to cover medical costs incurred both by serving and former officials. Because of an increase in the premiums of serving staff former officials were relieved of payment altogether as from 1972. So throughout the period when the complainants were contributing their entitlements were accruing, at least to after-service coverage. But by the time of retirement their entitlements had actually accrued, and so it was unlawful to alter the terms of such coverage to their detriment.

Their second plea, and it is a subsidiary one, is that the impugned decisions are in breach of their acquired rights. In their submission free after-service coverage was one of the essential terms of appointment and, unlike other such terms, continues to form part of their legal relations with the FAO after retirement. Since the FAO has 8 million United States dollars in reserve, and insofar as the funds were available, the FAO had no objective grounds, save a financial crisis, for its decision.

Their third plea is that the FAO caused them unnecessary and undue injury by leaving them no choice but to stay with the reformed scheme. In their view it ought to have warned them when they left.

Lastly, they allege breach of good faith. For years while they were serving on the staff they were not only making contributions to pay for coverage at the time but also additional premiums towards after-service coverage. Since serving staff were never expressly warned that their additional premiums were supposed to finance free coverage for those who had already retired they had reason to assume that those premiums were intended to relieve them of payment for coverage after they themselves had left.

They ask the Tribunal to set aside the impugned decisions, order the reinstatement of free after-service coverage as from 1 November 1989 and the refund to them of any sums since paid in contributions to the scheme. They also seek an award of 50,000 French francs each in costs.

C. In its reply the Organization gives an account of the financial problems of the health insurance scheme since the outset, explains the reasons for the impugned decisions and answers the complainants' pleas.

It submits that the complainants overlook some of the main issues. There was no foreseeing back in 1972 the turn that things were to take because of economic, political and population trends throughout the world from the mid-1970s. The FAO was not the only organisation in the United Nations system to have serious difficulties with its health insurance scheme. The complainants are wrong to assume that they were somehow "buying" free after-service coverage. There is nothing in the rules about payment of contributions against retirement. The FAO and its serving staff have always financed the scheme on the basis of a sharing of the costs. There is no direct link between contributions and entitlements because there has never been a separate component of a serving official's contributions corresponding to free after-service coverage. The Organization's reserve account has a balance of under \$2.6 million.

In answer to the complainants' first plea the FAO submits that they are mistaken in supposing that the scheme they contributed to was intended to cover the medical costs of both serving and former staff.

As for the alleged breach of acquired rights, there is no absolute right to observance of terms of appointment when they are embodied in Staff Regulations or Rules, as against the contract of service; what matters in such cases is the reasons for amendment and the effects of it. Contrary to what the complainants contend, the Organization's reasons for changing the scheme were genuine and sufficient. Both the scheme and the Organization itself were in such financial straits that the changes were amply warranted. Without them the scheme would have collapsed. The right of former officials to health insurance has never been under threat. Though coverage is no longer free the 4

per cent maximum limits the effects on pensioners' finances.

The FAO denies having caused the complainants unnecessary or undue injury. When they left it was unable to foresee the changes it would have to make later. In any event pensioners still have a first-rate group insurance plan. Though coverage is now subsidised, not free, the contributions from former staff are reasonable.

Lastly, there is no breach of good faith. Pensioners never paid contributions against retirement, and the complainants knew that free coverage was limited to the duration of the agreement with the broker, which was amended in 1986.

D. In their rejoinder the complainants point out that what they seek is a return to free coverage, not for all former officials, but just for those who were eligible for it before.

They see the FAO's plea as to the agreement with van Breda as obscure. Contrary to what it suggests, the Organization has consistently renewed the agreement and in any event free coverage was extended well beyond 1986, when the Organization says the agreement was amended. The scheme is not as badly off as the FAO makes out and, even though at one point costs began to mount steadily, it could very well have contemplated other sorts of action.

As for their alleged misunderstanding of the facts they contend that in 1972 it was possible to see the way things were going. Though the rules do not say that staff were paying in advance for after-service coverage, there is nothing in the rules either about a scheme based on sharing of costs.

They question the figure the FAO gives for the reserve and maintain that by their reckoning the amount is \$8 million.

They press their claims and further ask the Tribunal to order the FAO to disclose various items of evidence and information that they list in detail.

E. In its surrejoinder the FAO sums up the pleas in its reply and maintains that the complainants' rejoinder raises no new issue. It appends some of the items the complainants want to have disclosed.

#### CONSIDERATIONS:

1. The FAO recruited Mr. Georgiadis on 2 September 1962 and he retired at 31 July 1986 at grade D.2; Mrs. Kazinetz was on the staff from 13 March 1951 until March 1978, when she retired at P.4; Mr. McCallum joined on 28 August 1966 and resigned at 30 April 1986, when he held grade P.5; and Mr. Polycarpou joined the Organization in January 1972 and took early retirement at 30 November 1986 at grade D.1.

As from 1 January 1972 the Organization introduced a general scheme of coverage that for former staff was free of charge. By letters of 1 June 1989, however, the complainants were told that the scheme would cease to be free of charge.

They appealed to the Director-General against that decision and, when he rejected their appeals, to the Appeals Committee. In its reports dated 22 August 1990 the Committee recommended rejecting their appeals, the Director-General did so on 12 and 13 December 1990, and those are the decisions impugned.

2. Since the complaints make the same claims and raise the same issues they may be joined to form the subject of a single ruling.

3. Receivability is not at issue.

4. There are 170 applications to intervene from others in like case. The applications are receivable and their success will turn on that of the complainants themselves.

5. FAO staff have had medical insurance coverage since 1951, and have since 1959 kept it after leaving the Organization. At first they had to pay for it by continuing to contribute to one of the compulsory insurance schemes for serving staff - the National Insurance Organization for Employees of Public Non-Governmental Administrations (ENPDEP) for the General Service category and the Major Medical Benefits Plan (MMBP) for the

Professional and higher categories - or to the Family Medical Insurance Plan (FAMIP), an optional scheme.

By a circular of 20 January 1969 the FAO announced a scheme of after-service medical coverage. It enabled retired staff to stay with the same schemes as before but provided for payment by the FAO of part of the participants' contributions, according to arrangements that varied from one scheme to another.

The scheme was improved in 1971, but only for former staff who were participants in ENPDEP, the scheme for the General Service category.

On the strength of recommendations by an ad hoc Working Party on Medical Insurance and Compensation Coverage the Organization announced in a circular of 15 November 1971 the introduction on 1 January 1972 of "new medical insurance". MMBP and ENPDEP continued to function but a new scheme, BMIP (Basic Medical Insurance Plan), replaced FAMIP in providing general compulsory medical insurance for all staff. A new insurance agreement was concluded with a Belgian broker, van Breda. For retired staff medical coverage was thenceforth to be free of charge for as long as the agreement held with van Breda.

A circular of 8 May 1986 required that to qualify for after-service coverage free of charge the official should have been a participant in an insurance scheme for not less than ten years.

In 1987 the staff were told that an actuarial review had shown the need for further reform to keep the rising costs of free after-service coverage within reasonable bounds. A joint ad hoc working group studied the findings of that review. Among other things, it recommended an end to free after-service coverage as from 1 July 1987 for some groups of serving staff, provisional increases in rates of contribution as from 1 January 1988, and restrictions on rates of refund of the costs of some forms of treatment.

But the working group's main recommendation was for doing away with free medical coverage for all retired staff. The FAO endorsed the recommendation and so informed the retired staff by letters of 1 June 1989. Some groups of retired staff and of serving staff members just about to retire were to be allowed "grace periods" before the change took effect. A maximum of 4 per cent of total pension was set on the amounts that might be levied in insurance premiums from some retired staff and those on low pensions - of 1,200 dollars or less a year - were relieved of paying premiums altogether.

6. The complainants' case is that it was unlawful to abolish free after-service coverage and they plead breach of (a) the rules on the accrual of rights, (b) acquired rights, (c) the FAO's duty to avoid causing them undue or excessive injury and (d) good faith.

The alleged breach of the rules on the accrual of rights

7. As to (a), they observe that while serving on the staff they were contributing to a scheme to meet the costs of medical treatment not just for themselves but for former staff as well. Their own entitlement to after-service coverage was then accruing. On retirement their entitlement had accrued. So it ceased to be lawful to make any change to their detriment in the arrangements for their coverage. They cite Judgment 357 (in re Asp) of 13 November 1978.

The FAO answers that there is nothing in Judgment 357 or, for that matter, in any other about rules on the accrual of rights. Judgment 357 is really about the rule against retroactivity, which "removes from the ambit of new law facts and events which were completed by the time that law came into force". In the FAO's submission the complainants' argument rests on the view that while serving on the staff they were making contributions to pay not just for coverage at the time but for after-service coverage as well. The Organization's answer is that they never contributed to a scheme that was intended to cover the costs of treatment both during and after service.

Its objection is sound, there being no evidence to cast doubt on what it contends. The complainants are mistaken: as to medical insurance coverage their position before retirement was distinct from their position after it and amendments in the terms of their coverage after they had left had no retroactive effect on their earlier coverage.

Their first plea therefore fails.

The complainants' other pleas

8. The complainants' other three pleas are set out above under B and the FAO's replies thereto under C. In their rejoinder the complainants say that they find it difficult to develop their case for want of the texts of the insurance contracts with van Breda and details of the cost of coverage. They put forward new claims, mainly to disclosure by the Organization with its surrejoinder of further items of evidence and information they set out at length. They apply for leave to file comments on the surrejoinder and on the further items of which they claim disclosure.

In its surrejoinder the Organization merely confirms the pleas in its reply but, from an avowed wish to "ensure the greatest possible openness in the proceedings", appends most of the items the complainants have asked for, together with an explanatory note.

9. The Tribunal is not satisfied that the further information and items sought would be material, the less so since some apparently relate to a period starting in the spring of 1991, long after the time - 1986 - when the FAO says its own finances took a turn for the worse and the insurance scheme ran into trouble.

The conclusion is that the complainants have the material they need to make a final presentation of their other pleas. There shall be the following further submissions:

(a) The complainants shall submit within thirty days of the date of notification of this judgment any observations they wish to make on the FAO's surrejoinder;

(b) the Organization may file a final brief within thirty days of the date of notification of those observations.

10. All other issues, including costs, are reserved.

#### DECISION:

For the above reasons,

1. The Tribunal orders further submissions as set out in 9 above.

2. The applications to intervene are receivable.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 15 July 1992.

(Signed)

Jacques Ducoux  
Mohamed Suffian  
E. Razafindralambo  
A.B. Gardner