

## SEVENTY-EIGHTH SESSION

***In re* DAMOND, DERQUE,  
DI PALMA, HANSSON (No. 2)  
HOEBRECK, ILARDI, MAKADI,  
MOSSAZ, PAUTASSO, ROYLES,  
SCHWARZ, SEINET, YOSSIFOV  
and ZOTIN**

(Interlocutory order)

### Judgment 1417

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mrs. Andrée Damond, Mr. Marco Pautasso and Mr. Malcolm Royles against the World Intellectual Property Organization (WIPO) on 17 December 1993 and corrected on 10 January 1994, WIPO's reply of 14 April, the complainants' rejoinder of 10 May, the Organization's letter of 27 May informing the Registrar of the Tribunal that it did not wish to add further comments, the letter and observations which the International Civil Service Commission (ICSC) sent to WIPO on 13 May and the Organization filed on 13 June, the further submissions filed by the complainants on 14 July, WIPO's letter of 17 August telling the Registrar that it had no additional comments to enter, and the Commission's further observations of 14 October filed by WIPO on 18 October 1994;

Considering the complaints filed by Mr. Salvatore Di Palma, Mr. Bernard Mossaz and Mr. Sergei Zotin against WIPO on 17 December 1993 and corrected on 10 January 1994, the Organization's reply of 14 April, the complainants' rejoinder of 10 May, the Organization's letter of 27 May informing the Registrar that it did not wish to add further comments, the letter and observations which the ICSC sent to WIPO on 13 May and the Organization filed on 13 June, the further submissions filed by the complainants on 14 July, WIPO's letter of 17 August telling the Registrar that it had no additional comments to enter, and the Commission's further observations of 14 October filed by WIPO on 18 October 1994;

Considering the complaints filed by Mr. Jean-Paul Hoebreck, Miss Linda Schwarz and Mr. Vladimir Yossifov against the Organization on 24 February 1994, WIPO's reply of 14 April, the complainants' rejoinder of 10 May, the Organization's letter of 27 May informing the Registrar that it did not wish to add further comments, the letter and observations which the Commission sent to WIPO on 13 May and the Organization filed on 13 June, the further submissions filed by the complainants on 14 July, WIPO's letter of 17 August telling the Registrar that it had no additional comments to enter, and the Commission's further observations of 14 October filed by WIPO on 18 October 1994;

Considering the complaints filed by Mrs. Raymonde Derqué, Mr. Alfredo Ilardi, Mr. Andrés Makádi, Mrs. Eliane Seinet and the second complaint filed by Mr. Bo Alfred Hansson on 31 March 1994 against WIPO, the Organization's reply of 7 July, the complainants' rejoinder of 4 August, WIPO's letter of 7 September telling the Registrar that it did not wish to comment further, and the Commission's observations of 14 October filed by WIPO on 18 October 1994;

Considering Article II, paragraph 5, of the Statute and Articles 9, paragraph 6, 11, paragraph 1, and 13, paragraph 3, of the Rules of the Tribunal;

### CONSIDERATIONS:

1. The General Assembly of the United Nations approved the Statute of the International Civil Service Commission (ICSC) by resolution 3357 of 18 December 1974. The resolution empowers the Commission to make recommendations to the General Assembly on, among other things, the scales of "post adjustment" allowance for staff in the Professional and higher categories of staff in organisations that belong to the common system of the United Nations. The World Intellectual Property Organization (WIPO) is one of those organisations. Post

adjustment is an allowance which depends on what is known as a "multiplier"(\*) and is applied to the net base salary of the staff so as to ensure that their earnings have purchasing power equivalent to that of United Nations staff stationed in the city of New York. According to Articles 10 and 11 of its Statute the Commission itself establishes the methods of determining post adjustment. Those methods are commonly known as the "methodology".

(\*WIPO Staff Regulation 3.5(a) reads: "The base salaries of staff members in the Professional and higher categories shall be adjusted by the application of non-pensionable post adjustments, the amount of which shall be determined by multiplying one per cent of the corresponding base salary at the dependency or single rate by a multiplier reflecting the post adjustment classification of the duty station.")

2. Between December 1993 and February 1994 three groups of three officials in the Professional category of staff of the defendant Organization each filed a common complaint alleging defects in the reckoning of post adjustment applied by the Organization to their base salary. The common complaint filed by Mrs. Damond, Mr. Pautasso and Mr. Royles pleads flaws in the reckoning of the "rental/housing component" of the post adjustment index since July 1991. The complaint from Mr. Di Palma, Mr. Mossaz and Mr. Zotin challenges the results of a "place-to-place survey" which the Commission carried out in May 1990. And the third common complaint, lodged by Mr. Hoebreck, Miss Schwarz and Mr. Yossifov, objects to the rate of exchange applied since July 1992 for determining what is called the "out-of-area component" and also to the housing component as applied from that same date.

3. On 31 March 1994 a further group of Professional category officials, Mrs. Derqué, Mr. Hansson, Mr. Ilardi, Mr. Makádi and Mrs. Seinet filed a fourth common complaint against the WIPO, again about post adjustment. They are objecting to the Organization's failure to take account of the differences between Geneva and New York in the length of the average working week of staff in the common system. They submit that the working week is 11.8 per cent longer in Geneva than in New York and in consequence they are pleading breach of the principle of equal pay for work of equal value.

4. In its replies of 14 April 1994 to the first three common complaints - the ones referred to in 2 above - the defendant does not contest the merits of the complainants' pleas but merely says that it applied the relevant provision of its Staff Regulations in determining the "multiplier" and in setting the scales of post adjustment for its Professional staff. The complainants entered rejoinders on 10 May in the three cases.

5. The Director General having meanwhile notified those three complaints to the Chairman of the International Civil Service Commission, the Chairman sent the Director General a letter dated 13 May 1994 on the subject. To his letter he appended a text that set out the Commission's views on the main issues that Mr. Hoebreck, Miss Schwarz and Mr. Yossifov had raised in a letter they had written to the Director General on 26 October 1992 seeking review of the relevant administrative decisions. In his letter of 13 May 1994 the Chairman observed that the same issues arose in the case of Mrs. Damond, Mr. Pautasso and Mr. Royles and he did not deal with them separately. Nor did he deal specifically with the arguments put forward by Mr. Di Palma, Mr. Mossaz and Mr. Zotin. On 13 June the Organization submitted to the Tribunal the Chairman's letter and the appendix thereto and they were admitted to the case records. On 14 July the complainants in the three cases filed a joint statement on the Chairman's letter and appendix.

6. On 7 July 1994 the Organization had filed its reply to the fourth common complaint, the one filed by Mrs. Derqué, Mr. Hansson, Mr. Ilardi, Mr. Makádi and Mrs. Seinet. In that reply it expressed agreement with the complainants' claims and stated that the remuneration of the Professional category of its staff should be adjusted accordingly. Again, the Director General had notified the complaint to the Chairman of the Commission, and this time there is appended to the Organization's own reply another letter, dated 1 July, from the Chairman. In this letter the Chairman does not argue the merits of the fourth complaint but refers to the Commission's deliberations at its 38th Session in July and August 1993, at which it examined the issue of working hours and decided to go on dealing with the matter as it had before. The Chairman refers to a resolution, No. 48/224, which the General Assembly adopted on 23 December 1993 and in which it endorsed, under section II.F, the Commission's intention "to maintain the current common system practice with regard to working hours".

7. The common rejoinder entered on 4 August 1994 by Mrs. Derqué, Mr. Hansson, Mr. Ilardi, Mr. Makádi and Mrs. Seinet includes comment on the Chairman's letter of 1 July.

8. WIPO has declined to file surrejoinders on any of the complaints. But on 18 October 1994 it submitted to the

Tribunal another letter, dated 14 October, from the Chairman of the Commission. This last entry in the case records deals minimally with the first three complaints but goes into the substance of the fourth in greater detail. Appended is the text of resolution 48/224. Under Section VI of the resolution the General Assembly notes the "administrative and financial implications for organizations of the United Nations common system" of Judgments 1265 (in re Berlioz and others) and 1266 (in re Cussac and others); regrets that the Commission "did not have an opportunity" to have its views presented to the Tribunal; requests the Secretary-General of the United Nations to examine the feasibility of introducing arrangements "to enable the Commission to intervene in appeals ... involving decisions or recommendations of the Commission"; and requests the executive heads of other organisations of the common system "to consult the Commission" on similar cases. The appendix to the Chairman's letter goes on to observe that inasmuch as the Director General, "as repeatedly pointed out in the Rejoinders", has come down on the complainants' side he is "evidently not in a position to offer an adequate defence in opposing them". In the Commission's view the proceedings are "not truly adversarial", a defect which it says cannot be "adequately cured by the opportunity afforded to [it] to submit the present comments".

9. As is plain from the foregoing, the state of the pleadings on the four cases is less than desirable, mostly on account of the failure of WIPO to play a truly adversarial role but partly also because of the piecemeal character of the Commission's comments,

10. The Tribunal has not so far invited the ICSC directly to make submissions. True, the Commission has received copies of all the pleadings from the defendant and already entered some submissions. But in view of the disquiet its Chairman expresses in his letter of 14 October 1994 the Tribunal will now address the Commission directly. Article 11(1) of the Tribunal's Rules as in force since 1 May 1994 reads:

"The Tribunal may, on its own motion or on the application of either party, order such measures of investigation as it deems fit, including the appearance of the parties before it, the hearing of expert and other witnesses, the consultation of any competent international authority, and expert inquiry."

In accordance with Article 11(1) the Tribunal will invite the Commission by the present order to make any further submissions in answer to the complainants' claims in all four cases that it considers necessary. It will allow the Commission thirty days in which to do so.

11. In accordance with Article 9(6) of the Rules the complainants may then enter "further written statements" on the Chairman's letter of 14 October 1994 and on any further submissions from the ICSC and shall do so within thirty days. The Organization will be invited, again under Article 9(6), to file final written statements within fifteen days. The pleadings will then close.

12. Article 13(3) of the Rules reads:

"The Tribunal or, between sessions, the President may instruct the Registrar to give notice of a complaint to any third party if it appears that such third party may want to make submissions."

The Commission henceforth may consider applying under that provision for leave to enter submissions on any case brought to its attention by a defendant organisation.

#### DECISION:

For the above reasons,

1. The International Civil Service Commission may file any further submissions in answer to the complainants' claims that it considers necessary and, if it files such submissions, it shall do so within a time limit of thirty days from the date of notification of the present order.

2. The complainants may submit further briefs both on the letter of 14 October 1994 from the Chairman of the Commission and on any further submissions by the Commission and, if they do so, shall file them within a time limit of thirty days.

3. The defendant Organization may then file final briefs within a time limit of fifteen days.

4. The pleadings shall then close.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1995.

William Douglas  
Mella Carroll  
Mark Fernando  
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.