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

EIGHTY-NINTH SESSION

***In re* Bousquet (No. 3), Criqui (No. 2), Gourier (No. 2), Skelly and Vollering (No. 16)**
(Applications for execution)

Judgment No. 1978

The Administrative Tribunal,

Considering the applications for execution of Judgment 1663 filed by Mr Karl Christian Bousquet, Mr Jean-Jacques Criqui, Mr Philippe André Gourier, Mrs Jacinta Skelly and Mr Johannes Petrus Geertruda Vollering on 16 June 1998 and corrected on 16 June 1999, the reply of 29 September from the European Patent Organisation (EPO), the rejoinder of 13 December from Mr Bousquet, Mr Criqui, Mr Gourier and Mrs Skelly plus the separate rejoinder of 23 December 1999 from Mr Vollering, the Organisation's surrejoinder of 25 February 2000, the further submissions from the complainants - Mr Vollering excepted - dated 11 April and the observations of the EPO of 27 April 2000;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Considering the applications to intervene filed on 17 December 1999 by:

F. Blondel

F. Chambonet

G. Cousins-Van Steen

J.P. De Can

H. Dockhorn

C. Fournier

C. Ginoux

B.D. Granger

M. Ludi

G.H.J. Mollet

D. Salvador

Having examined the written submissions;

CONSIDERATIONS

1. The facts on which the present case is based are set out in Judgment 1663 (*in re* Bousquet No. 2 and others), delivered on 10 July 1997, to which reference is made.

The case may be summarised as follows. The European Patent Office, the EPO's secretariat, adopted a method in 1988 for the adjustment of pay taking into account the cost of living and the remuneration of international officials, using as a reference the pay rates of the "coordinated organisations". But for the pay due as from 1 July 1992, the Administrative Council applied other criteria, without however changing the method that it had selected. The result was that pay was lower than it would have been under the method in question. This gave rise to unease and discontent among EPO staff. To bring an end to the dispute, staff representatives and the Administration agreed on the text of a compromise settlement which involved concessions on both sides. By decision CA/D 4/96 of 8 March 1996 the Administrative Council approved the settlement, part of which included the payment of a lump sum. The recipients of salaries or pensions had to agree individually to the payment in question by signing an individual declaration, which the great majority of them did. However, Mr Bousquet, Mr Gourier and Mr Vollering, joined by twenty interveners, challenged the amount of the pay adjustment for the period from 1 July 1992 to 30 June 1994. They pursued their action through to the Tribunal which, in Judgment 1663, upheld their complaint in substance and found that, until the method had been changed, the EPO was bound by it and had to apply it.

The decisions taken by the Office in pursuance of this judgment gave rise to new challenges. The President of the Office took the view that the parties to the case which resulted in Judgment 1663, including the interveners, should be the only ones to benefit from it. However he also extended its benefits to employees who, without having been a party in the case, had nevertheless not signed the individual declaration consenting to the compromise settlement, and who were therefore not bound by its terms.

The complainants in the present case were all parties or interveners in that case, with the exception of Mr Criqui, who also benefited from Judgment 1663 by decision of the Administration.

In their complaint they request the Tribunal "to order the full and complete execution of Judgment 1663, in accordance with the law, and all consequent redress".

2. In view of the clear claims set out in the complaint and the manner in which it is presented by the complainants, the Tribunal will treat the complaint solely as an application for execution, even though certain claims go beyond such an application. There is all the more reason to do so as other complaints have been filed in which these matters have been raised.

3. The EPO argues that the complaint is time-barred because it was not filed within ninety days of the date on which the complainants were informed of the Office's decision concerning the execution of Judgment 1663, despite the fact that the complainants had first lodged an internal appeal against the decision within the time limits.

The case law has it that the exhaustion of all internal remedies is not necessary before filing an application for execution. However, the possibility of direct recourse to the Tribunal does not exclude first lodging an internal appeal (see Judgment 1887, *in re* Argos No. 3 and others, under 5, and the case law cited therein).

The application for execution is not therefore time-barred.

4. An application for execution may only address issues covered by the initial judgment, which carries the authority of *res judicata* (see Judgment 1887 above, under 8).

(a) In Judgment 1663, which carries the authority of *res judicata* only for the parties to the dispute (see Judgment 1935, *in re* Fabiani No. 4, under 4 to 6), the Tribunal ruled on a dispute between the complainants in the present case, including the interveners and the EPO. The complaint filed by Mr Criqui, who was not a party to the above case, is therefore irreceivable.

(b) The challenge in that case only related to the adjustment of pay for the periods from 1 July 1992 to 30 June 1993 and from 1 July 1993 to 30 June 1994. Matters relating to salaries for the period following this latter date were not at issue before the Tribunal.

Similarly, the question of whether to incorporate the adjustment in a "salary scale" did not arise with regard to the above two periods (see also Judgment 1933, *in re* Ousset, under 6). The question of knowing on what figures to base the calculation or payment of any future adjustment could have subsequently become an issue. This issue could still be resolved, if necessary, through another challenge. The Tribunal had even less reason to order the determination of a new salary scale since the great majority of employees had signed the individual declaration,

which implied the fixing of a new salary scale for them.

5. The complainants allege procedural flaws in the execution by the EPO of Judgment 1663 under several heads:

(a) The Administrative Council, although competent to determine salary adjustments, was not consulted which is in violation of Article 33(2) b) of the European Patent Convention, Article 64(6) of the Service Regulations and Article 1 of the Implementing Rule for Article 64.

(b) The Administrative Council, although competent to determine new salary scales, was not invited to take a decision on this subject.

(c) Nor was the General Advisory Committee consulted (Article 38(3) of the Service Regulations).

The EPO refutes these allegations. It disproves the claim that the Administrative Council was not consulted: the Council decided on the matter at its 68th Session on 7 and 8 October 1997. The EPO did not consider it necessary to fix new salary scales given that a salary scale had already been established in accordance with the compromise settlement and that the determination of a further scale was not justified for a relatively low number of employees. The limited scope of Judgment 1663 was also the reason why the General Advisory Committee was not consulted again with regard to the adjustment to be paid to employees benefiting under that judgment.

6. (a) It is plain from the evidence that the Administrative Council was informed of the President's plans regarding the adjustments. The complainants do not deny this, but contend that the Administrative Council did not take a decision on this subject, as required by Article 64 of the Service Regulations.

There is no need to examine this issue further, since any absence of a decision by the Administrative Council does not prejudice the complainants. Indeed, the latter recognise that they "have never claimed to have suffered any prejudice for the period ... between 1 July 1992 and 30 December 1995".

(b) For the above reasons, any fixing of salary scales valid for the future would have gone beyond the strict execution of Judgment 1663. At that stage, the absence of a salary scale did not prejudice the complainants. Moreover, the EPO did not act unlawfully in not fixing a salary scale, as it would only have been applicable to the complainants (see Judgment 1933, under 6). The absence of a salary scale did not prevent those concerned from challenging the basis on which any future adjustment was determined.

(c) Nor did the execution of the judgment in the case of the complainants raise any problem of a general nature concerning the staff as a whole. It was therefore within the discretion of the Administration not to consult the General Advisory Committee (see Judgments 1398, *in re* Vollering No. 5, under 6; 1488, *in re* Schorsack, under 7 et seq.; 1618, *in re* Baillet No. 2 and others, under 8 et seq.; and 1897, *in re* Cervantes No. 4 and others, under 9).

The various allegations of procedural flaws are therefore unfounded.

7. On a pecuniary level, the complainants contend that the adjustments made by the EPO are unlawful.

(a) Without putting forward a specific claim for interest, they note that they were paid interest at the rate of 8 per cent, whereas previously a rate of 10 per cent applied. However, the decision to apply that rate is in conformity with current case law of the Tribunal which, since Judgment 1624 (*in re* Clements), generally applies a rate of 8 per cent to take into account trends in the financial market and the economic situation in the main countries concerned.

(b) The complainants are of the view that the benefits of Judgment 1663 should have been extended to the staff as a whole and that new salary scales applicable to all the staff should have been fixed.

However, for the reasons set out above, those issues were not dealt with by the judgment and the complainants have no *locus standi* to raise them here (see under 4(a) above).

(c) The complainants also allege that the health insurance contributions deducted by the EPO were too high. They explain that total health expenditure in a year does not vary as a function of the total wage bill. Indeed, if the total wage bill increases, the percentage of salary allocated to health expenditure diminishes. In the present case, they allege that the increase in the total wage bill resulting from the salary rises granted to the beneficiaries of

Judgment 1663 should therefore have resulted in a slight reduction in the rate of their health insurance contributions.

The EPO does not contest as such the effects of the increase in the total wage bill on the level of health insurance contributions. However, it indicates that "this adjustment was carried out in March 1998 and was recorded on a supplementary pay slip received by the complainants", which it produces in its reply.

In their rejoinder the complainants argue that the adjustment did not cover the years 1992 to 1995 and say that the document produced by the Office only concerns the year 1996.

In its surrejoinder the EPO rebuts the complainants' plea. It explains as follows:

"In practice, since the amounts to be refunded to each employee for each of the years 1992 to 1995 in pursuance of Judgment 1663 were between 1 and 2 DM, it was decided to add these amounts to the more significant sum (about 20 DM) due for the year 1996 (the year in which the sums resulting from the compromise settlement were paid). In 1998, the complainants therefore received all the amounts which were due to them for the period 1992-1996. The defendant provides ... details concerning the calculation of the percentage (0.0193 per cent) applied as indicated in the pay slip challenged by the complainants. It is clearly stated that this percentage is the aggregate of the percentages for the years 1992 to 1996. The complainants could have obtained these details directly from the Administration."

After they had received the surrejoinder, the complainants filed further submissions, but did not contest the EPO's statements on this point. Therefore, these facts are not now under challenge.

So the plea is devoid of merit and cannot succeed.

8. It follows that the applications for execution must fail in their entirety.

DECISION

For the above reasons,

The applications are dismissed.

In witness of this judgment, adopted on 19 May 2000, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2000.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 25 July 2000.