

The Administrative Tribunal,

Considering the complaints filed by Ms F. B.-B. and Mr M. C against the European Organization for Nuclear Research (CERN) on 28 April 2006, the Organization's reply of 9 August, the complainants' rejoinder of 11 September and CERN's surrejoinder of 18 December 2006;

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

Having examined the written submissions and decided not to order hearings, for which none of the parties has applied;

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

A. The complainants, who are French nationals born in 1930 and 1927 respectively, both draw retirement pensions from the CERN Pension Fund.

Facts relevant to this dispute are given in Judgment 2615, delivered on 7 February 2007, in a case also involving CERN. Suffice it to recall that an actuarial review of the Fund as at 1 January 2004 had revealed that the Fund had an updated technical deficit of 254 million Swiss francs. On 17 December 2004 the CERN Council had decided to approve a zero per cent adjustment of pensions, fixed benefits and allowances in 2005 "on the understanding that the whole situation of the Pension Fund would be re-considered as early as possible in 2005 and a comprehensive package of measures submitted to [it] relating to all parties to the Pension Fund, namely the active staff, the beneficiaries and the Organization in order to improve the capacity of the Fund to meet its long-term liabilities". By a letter of the same date, the Administrator of the Pension Fund had informed beneficiaries of the decision thus adopted.

On 25 July 2005 the Governing Board of the Fund proposed a "package of stabilization and recovery measures" relying on "balanced efforts by all parties to the Pension Fund". These measures included confirmation of the zero per cent adjustment of pensions in 2005 and, as of 1 January 2006, an increase by 1 and 2 per cent respectively of the contributions of the active staff and of the Organization. In addition, the Governing Board proposed a pension indexation method, which was summarised as follows:

"as long as the Fund's funding ratio is below 100%, only a fraction of the observed inflation would be granted at coming pension adjustments, in such a way that, assuming a 2% inflation, the funding ratio would reach 100% by the end of 2033. The cumulated loss in purchasing power incurred by any beneficiary would be limited to 8% maximum [...]. For the next two pension adjustments, only 82.5% of the observed inflation will be granted. The parameters of this mechanism would be reviewed after each actuarial review, to take into account the actual evolution of the Fund's situation."

On 15 December 2005 the CERN Council confirmed the zero per cent adjustment of pensions for 2005 and approved the new indexation method. However, it approved only a "limited increase" in contributions to the Fund as of 1 January 2006, the Organization's contributions being raised by only 0.42 per cent and those of the active staff by 0.21 per cent. On 16 December 2005 the Council decided to adjust pensions, fixed benefits and allowances by 0.99 per cent as of 1 January 2006. The Administrator of the Pension Fund informed the Fund's beneficiaries, including the complainants, of this decision by letter of 19 December 2005.

On 8 February 2006 the complainants sent a letter to the Chairman of the Governing Board of the Pension Fund, in which they appealed against the decision to adjust their pensions by 0.99 per cent as of 1 January 2006. By a letter of 16 March 2006, which constitutes the impugned decision, the Chairman of the Governing Board informed the complainants that he authorised them to refer the matter directly to the Tribunal.

B. The complainants submit in a single brief that the Council's decision of 16 December 2005 is unfair in that, according to them, the effort demanded in order to equilibrate the Fund has been reduced by 79 per cent as far as CERN and the active staff are concerned, whereas the effort demanded of the "weakest" social partner – retirees – remains the same.

They ask the Tribunal to find that the effort demanded of them must also be reduced by 79 per cent and to determine any consequent redress. Thus, according to their calculations, the Organization should be ordered to increase their pensions by 1.52 per cent as of 1 January 2006, over and above the 0.99 per cent rise they have already received, to pay them "the sum of 1.34 per cent of the pension they received in 2005" and to pay them interest and costs.

C. In its reply CERN states that, since the complainants did not impugn the decisions of 17 December 2004 within the time limits, their complaints are irreceivable insofar as their purpose is implicitly to challenge the pension adjustment for 2005.

On the merits, the Organization asserts that the disputed decision complies with the applicable rules and procedures. The Council in its concern to preserve the purchasing power of retirees, but also to restore and maintain the Fund's equilibrium, decided to base the adjustment of pensions on the trend in the cost of living in Geneva, whilst taking into account the Fund's financial situation.

CERN adds that in exercising its discretion the Council complied with the general principles of the international civil service and responsibly shouldered its role as guarantor of the Fund's capacity to meet its long-term liabilities. In no way did it act arbitrarily in approving the new method of indexing pensions. According to the Organization, this new method is warranted by legitimate interests, namely that of retirees to be protected against a substantial erosion of their pension and that of the Organization and active staff to preserve the Fund's solvency in the future. It submits that the Council sought to limit retirees' participation in the equilibration of the Fund to the bare minimum. Lastly, CERN endeavours to show that the new method does not entail unequal treatment.

D. In their rejoinder the complainants reiterate their position and draw attention to the fact that their pension adjustment amounted to zero per cent in 2005 against an inflation rate of 1.7 per cent and to 0.99 per cent in 2006 against an inflation rate of 1.2 per cent. They point out that they have never relied on the principle of equal treatment, but only that of fairness.

E. In its surrejoinder CERN notes that the rejoinder has not furnished any new information and it fully maintains its position. It submits that it is not unfair that there was no reduction in the effort required of the complainants in view of the fact that their contribution to the financing of their pensions has been much smaller than that of future beneficiaries.

## CONSIDERATIONS

1. By a letter of 17 December 2004 the Administrator of the CERN Pension Fund informed the complainants – and all other beneficiaries of the Fund – that it had been decided that retirement pensions would be adjusted by zero per cent in the coming year, which implied that the annual rate of inflation observed in Geneva would not be offset. This decision had been taken by the CERN Council under Article II 1.15 of the Rules of the Pension Fund at its 131st Session held on 16 and 17 December 2004 and it constituted an initial protective measure to address the Fund's worsening financial situation. The Administrator stated that several studies were under way to define measures for restoring the actuarial balance of the Pension Fund. He explained that the measures to restore the Fund's health which were being contemplated would concern not only the active staff and the beneficiaries, but also CERN and the European Southern Observatory (ESO), which are linked by agreements on social cooperation.

This decision was the subject of Judgment 2615.

2. On 25 July 2005 the Governing Board of the Pension Fund presented a package of measures designed to stabilise and improve the Fund's financial situation. It proposed in particular that the contributions of CERN and ESO should be increased by 2 per cent and those of the active staff by 1 per cent on 1 January 2006, that the decision setting the adjustment of pensions for 2005 at zero per cent should be confirmed and that in 2006 and 2007 retired officials should be compensated only partially, at a rate of 82.5 per cent, for the inflation observed in

Geneva.

3. On 15 December 2005 the CERN Council adopted these measures in principle. Accordingly, it set the pension adjustment for 2006 at 0.99 per cent against an observed inflation rate in Geneva of 1.2 per cent during the reference period. However, in keeping with a joint proposal from the Finance Committee and the CERN Management, it raised the contributions of CERN and ESO by only 0.42 per cent as from 1 January 2006; indeed, the 2 per cent increase proposed by the Governing Board would have required additional contributions from the Member States. For the sake of equal treatment, it limited the corresponding increase in the active staff's contributions to 0.21 per cent as from the same date.

On 19 December 2005 the Administrator of the Pension Fund informed all the former officials who were drawing a retirement pension of the decision to set their pension adjustment at 0.99 per cent in 2006. Both complainants then lodged appeals with the Chairman of the Governing Board of the Pension Fund, who authorised them to bring the matter directly before the Tribunal.

4. Since the two complaints raise the same issues of fact and law and seek the same redress, they are joined to form the subject of a single ruling.

5. Insofar as their purpose is to challenge the decisions of 17 December 2004 in which the Administrator of the Pension Fund notified retirees of the CERN Council's decision to adjust pensions by zero per cent on 1 January 2005, the complaints are time-barred. All retirees were notified immediately of these decisions, and the complainants do not contend that they personally did not receive notification.

6. The complainants do not deny that former officials drawing a retirement pension must help to restore the health of the Pension Fund by accepting temporarily a smaller pension adjustment for inflation. Moreover, they emphasise that they do not in any way wish to complain of a breach of the principle of equal treatment.

They dispute the soundness of the Council's decision on the grounds that it unduly limits the additional effort required of the organisations and active staff, while not making a proportionate reduction in the effort demanded of retirees. In their opinion this decision is all the more objectionable for the fact that it diminishes the purchasing power of pensioners, who constitute the weakest social group among the partners expected to contribute to the Fund's equilibration. In addition, they argue that the decision violates the general principles of international civil service law, in particular the principle of fairness, which requires that "the costs and benefits of human activities be fairly distributed".

7. These arguments are devoid of merit.

The immediate purpose of the disputed recovery measures is to curb the erosion of pensioners' purchasing power, which is jeopardised by a situation whereby the Fund is no longer able fully to offset the rise in the cost of living for them. A further aim is to maintain the Fund's long-term solvency in order to guarantee the active staff's right to a pension.

According to CERN, these aims can be achieved only by increasing contributions to the Fund, which is financed for two-thirds by the organisations and for the remaining one third by the active staff.

The complainants do not dispute that there was justification for scaling back the initially projected rise in the organisations' contributions (from 2 per cent to 0.42 per cent); nor do they dispute that the principle of equal treatment required that a similar reduction be made in the initially projected increase in the active staff's contributions (from 1 per cent to 0.21 per cent). They therefore implicitly acknowledge that the Pension Fund will have fewer resources at its disposal than it would have had if the increase in funding initially proposed by the Governing Board had been accepted.

8. The complainants' request for a corresponding mitigation of the sacrifice demanded of them is tantamount to asking for greater partial compensation for inflation than they have been awarded, at the very time when the competent bodies of the Fund find that they cannot increase its funding ratio to the full extent originally proposed in order to permit optimal pension adjustment.

The complainants might on the contrary have anticipated that the fact that it was impossible to boost the Fund's resources to the extent originally planned would lead to a lowering of their pension adjustment, which was

nevertheless set at 82.5 per cent of the rate of inflation observed in Geneva.

9. Moreover, they fail to take into account the steps taken by CERN in order to ensure that the Fund's current inability fully to offset inflation will not have a serious impact on pensioners' purchasing power in the medium term. These steps are of consequence. They are aimed in particular at restricting the duration of the disputed measure, at setting a limit to the cumulated loss of purchasing power incurred by each pensioner as a result of this measure, at introducing – after further study – mechanisms designed ultimately to restore that purchasing power and at making it possible to adopt the most appropriate measures to restore the equilibrium of the Fund once the findings of the next triennial actuarial review are known.

10. The complaints must therefore be dismissed.

## DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 27 April 2007, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Vice-President, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 11 July 2007.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet