EIGHTY-FIFTH SESSION

In re Chvojka

Judgment 1769

The Administrative Tribunal,

Considering the complaint filed by Mr. Adolf Chvojka against the International Atomic Energy Agency (IAEA) on 25 April 1997 and corrected on 30 June, the Agency's reply of 8 October, the complainant's rejoinder of 18 December 1997 and the IAEA's surrejoinder of 6 March 1998;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant is an Austrian citizen who was born in 1952. He joined the IAEA's staff in October 1980 under a fixed-term appointment as a computer operator at grade G.6. In April 1988 the Agency granted him promotion to G.7, the equivalent of G.6 under the present grading system.

Article 21(a) of the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF) reads as follows:

"Every full-time member of the staff of each member organization shall ... become a participant in the Fund:

(i) Upon commencing employment under an appointment for six months or longer or upon accepting such an appointment while in employment; or,

(ii) Upon completing, in the same or more than one member organization, six months of service without an interruption of more than 30 days,

whichever is earlier, provided that participation is not expressly excluded by the terms of his appointment."

At the time of the complainant's recruitment IAEA Staff Rule 8.01.3 read as follows:

"The following staff at Headquarters shall participate in the Austrian Pension Insurance Scheme:

(A) Staff members who are Austrian nationals or stateless persons permanently resident in Austria in:

(1) The Maintenance and Operatives Service category;

(2) The General Service category, upon their request, if they had before joining the Agency's service participated in the Austrian Pension Insurance Scheme and had accumulated less than 15 insurance years (contributory plus substitutional periods) in that Scheme; they shall participate in the United Nations Joint Staff Pension Fund after having accumulated 15 such years in the Austrian Pension Insurance Scheme. ..."

In a letter of 13 August 1981, the Deputy Director of the Division of Personnel asked the complainant to make a "one-time choice between entering the United Nations Joint Staff Pension Fund ... or remaining in the Austrian Pension Insurance Scheme" (APIS) and explained that if he decided to stay in the Austrian scheme he would be transferred to the United Nations Pension Fund as soon as he had accumulated the 180 insurance months required to qualify for a pension from APIS. Upon recruitment in October 1980 the complainant had already accumulated 123 months of insurance cover under the Austrian scheme, 52 of them through employment and 71 by way of so-called "substitutional" cover for secondary and university studies. By a memorandum dated 25 August 1981 he told the Deputy Director that he wanted to stay in the Austrian pension scheme.

By document SEC/NOT/911 of 24 March 1983 the Administration gave the staff notice of an amendment to the Staff Rules that made participation in the Pension Fund compulsory as from 1 January 1983 for anyone who

qualified under Article 21(a) of the Regulations. Under transitional arrangements the complainant was able to remain in the Austrian scheme until he completed the 180 months. On 1 August 1985, having done so he became a member of the United Nations Pension Fund.

By SEC/NOT/1627 of 29 April 1996 the Administration told staff members who had "up till now" qualified for a pension under Austrian law that as from 1 July 1996 qualifying periods of schooling and study "will only be recognized to the extent that they have been bought back". Since the cost of buying them back depended on several factors, including the date of application for purchase, it advised staff to apply by 30 June 1996. In a memorandum of 30 May the President of the Staff Council asked the Director of Personnel to give urgent attention to the plight of several staff members who, being unable to buy back the months needed to qualify for an Austrian pension, were in danger of losing all of their entitlements under the scheme. The Director of Personnel answered in a memorandum of 10 June that further consultations were necessary before the Agency could decide what position to take on the matter, but he promised to bear in mind "the need for urgency".

By a letter of 12 June the complainant submitted his application to APIS and by a letter of 26 September 1996 its General Manager told him that the purchase price for the next three months was 264,537 Austrian schillings; there might then be a "substantial increase".

By a memorandum of 1 October 1996 the president of the Staff Council reminded the Director of Personnel of the need for urgent action. On 19 November 1996 the Director of Personnel replied that the change in Austrian law was "outside the Agency's prerogative" and he advised staff to challenge the law themselves. By a letter of 26 November 1996 the complainant asked the Director of Personnel to approach the Austrian authorities as a matter of urgency to find an "acceptable solution", such as transfer of his contributions from the Austrian scheme to the Pension Fund.

By a letter of 4 December 1996 a professor at the Institute of European Law of the University of Vienna and the Dean of the University of Linz gave the president of the Staff Council their "expert opinion" that applying the new provisions to officials of the Agency would impair their acquired rights under its Social Security Agreement with the Austrian Government and that as a contracting party to that Agreement it had to safeguard those rights. By a "*note verbale*" of 16 December the Agency forwarded the text of the opinion to the Austrian Federal Ministry of Foreign Affairs for comment.

Failing a reply to his request of 26 November the complainant asked the Director General, by a letter of 19 December, to review the decision of 19 November 1996 by the Director of Personnel not to intercede on behalf of staff with the Austrian authorities; he suggested several possible forms of relief for the special difficulties he faced on account of the IAEA's Social Security Agreement and asked for leave to put his case directly to the Tribunal in the event of rejection.

By a letter of 27 January 1997 the Director General upheld the Director of Personnel's "recommendation" of 19 November 1996 that individual officials should pursue their grievances "under the Austrian law with the competent authorities". He also gave him leave to go to the Tribunal. That is the decision under challenge.

In a *note verbale* of 10 April 1997 the Federal Ministry of Foreign Affairs said that the disputed changes in Austrian pension insurance law were in line with the terms of its agreement with the Agency since they affected officials of the IAEA and other members of the scheme in the same way.

B. The complainant alleges breach of acquired rights. In 1980 the Agency allowed him to defer membership in the Pension Fund by just under five years so as to qualify for a pension from APIS and take advantage of the 123 months' cover he already had. Though aware that Austrian law was subject to amendment, he trusted in the "political process" to prevent any serious impairment of his rights.

He charges the IAEA with breach of its duty of care. Its lack of diligence betrayed its "indifference" to his plight. Yet it is the provisions of the Agency's Agreement with the Austrian Government that prevent rectifying the situation by withdrawing his contributions to the Austrian scheme or contributing to both schemes at once until he has the minimum period of coverage now required.

He asks the Tribunal to order the Agency to:

"make arrangements with the Austrian Government to provide one of the following types of relief:

(a) Exemption from the obligation in the *Sozialrechts-Änderungsgesezt* [legislative amendment of] 1996 to make payments now for previously free periods of coverage under the *Allgemeines Sozialversicherungsgesetz* (APIS); or

(b) Permission to withdraw, within a new time limit, the payments previously made to secure coverage under the *Allgemeines Sozialversicherungsgesetz* (APIS), such payments to be subject to reasonable interest from the time they were originally made; or

(c) An arrangement whereby the minimum period to secure an *Allgemeines Sozialversicherungsgesetz* (APIS) pension is reduced to the period already covered by contributions, on the understanding that the amount of such pension would then be proportionally reduced."

Failing (a), (b) or (c) he claims payment in an amount equal to his previous payments to APIS plus interest at 8 per cent a year as from 19 December 1996. He also claims 75,000 Austrian schillings in costs, including 30,000 for the expert opinion.

C. In its reply the Agency contends that the complaint is devoid of merit. It points out that, having put the matter to the Austrian Government, it is collecting information from staff which it plans to pass on to the Government with a request for relief. Since it is still seeking a settlement his claims (a), (b) and (c) "should be dismissed". So too should his subsidiary claim to the award of an amount equal to his previous payments to APIS insofar as the Agency is not liable. By keeping his rights under the Austrian scheme he submitted to Austrian jurisdiction and to the risk of amendment of the law. What is more, he knew full well that he could not change his mind later. Lastly, the defendant challenges his claim to costs on the grounds that the president of the Staff Council is acting for him.

D. In his rejoinder the complainant seeks to correct the IAEA's version of the facts and refute its reply. He observes that the "preliminary work" it has at last undertaken came 14 months after it acknowledged the need for "urgency" and 13 after he was to have paid out about half his yearly net salary to safeguard his rights under APIS. The Agency is, he submits, wrong to put the blame for his "unfortunate" choice on him when its offer of such a choice was in breach of the "letter and spirit" of the Regulations of the Pension Fund. As to costs, he promises to make over any award to the Staff Association.

E. In its surrejoinder the IAEA says that the dispute turns on whether its duty of care required it to pursue his interests with the Government of Austria and, if so, whether it properly discharged that duty. According to precedent, the duty of care does not require it to object to changes in Austrian law. In any event the terms of its agreement with the Austrian Government have been adhered to and the effects of the new law apply alike to all members of the scheme.

CONSIDERATIONS

1. The principal question raised by this complaint is not whether the complainant has suffered a serious loss of his vested pension rights, for he clearly has. Rather it is whether the responsibility for that loss can be laid at the door of the complainant's employer, the International Atomic Energy Agency, whose actions in relation to the terms of employment of its staff are subject to the Tribunal's jurisdiction, or whether it is due solely to the actions of the Government of Austria.

2. The essential facts may be stated as follows. The complainant joined the staff of the Agency in October 1980. At that time he was a member of the Austrian Pension Insurance Scheme (APIS), also known by its German abbreviation ASVG. Under the rules of APIS then in effect, a person's entitlement to a pension on retirement depended on the length of coverage or participation in the scheme, with a minimum qualifying period of 180 months (15 years). Coverage included both "contributory" coverage, i.e. periods during which contributions to the scheme were made by both employer and employee, and "substitute" coverage, corresponding to periods of secondary or university education during which no contributions were made. By the time the complainant joined the staff of the Agency, he had accumulated a total of 123 months of coverage under APIS, made up of 71 months of "substitute" coverage and 52 months of "contributory" coverage.

3. At the time the complainant joined the Agency, Staff Rule 8.01.3(A)(2) provided that persons in his position could participate in APIS if they "had accumulated less than 15 insurance years (contributory plus substitutional periods) in that Scheme; they shall participate in the United Nations Joint Staff Pension Fund after having accumulated 15 years in the Austrian Pension Insurance Scheme".

4. Rule 8.01.3(A)(2) (which was repealed in 1983) was consistent with the general provisions of the Headquarters Agreement entered into between the Agency and the Austrian Government and a more specific agreement concerning social security which had come into effect on 1 July 1974. Article 2(1) of the latter agreement provided that "Officials who, on taking up their appointment with the IAEA, do not participate in the Pension Fund shall participate in the ... pension insurance provided for in the ASVG ...". Article 1(7) of the same agreement defines the abbreviation ASVG by reference to the applicable Austrian legislation "as amended from time to time".

5. The combined effect of the agreement and Rule 8.01.3(A)(2) was to allow the complainant to choose to remain in APIS until he had accumulated the minimum requirements for the vesting of pension rights under that scheme, at which time he would be obliged to join the Pension Fund and to cease contributing to APIS. The repeal of 8.01.3(A)(2) in 1983 was accompanied by the adoption of transitional provisions allowing the complainant to continue his contributions to APIS as before until he met the minimum qualifications. He did so in July 1985, at which time he was obliged to switch from APIS to the Pension Fund. As of the latter date he had a clear vested right to receive a pension from APIS upon his eventual retirement but would not, at least for so long as he remained a member of the Agency's staff, be in a position to make any further contributions to APIS. All future pension contributions in respect of the complainant, both the employer's and the employee's, were to go to the Pension Fund and upon retirement from the Agency he would of course be entitled to a pension from that source as well.

6. Eleven years later, in July 1996, the provisions of APIS were substantially changed. The scheme appears to have been so severely underfunded as to require retroactive amendment by what has been referred to as a "savings" package. By the amending legislation APIS was changed so that education (i.e. "substitute" coverage) would no longer be taken into account in calculating the minimum qualification periods, even where those periods had already been long since acquired.

7. Although the 1996 amendment adversely affected all Austrians who had been relying in part on their education periods to qualify for an APIS pension, the vast majority of them would still receive a pension, albeit a reduced one, on retirement because they had continued or would continue to work in Austria and to contribute to the scheme. The removal of "substitute" coverage would not have a drastic impact on anyone who already had the necessary 15 years of contributory coverage or who, being still a contributor, would in due course acquire them. Transitional provisions in the legislation stated that those who, as a result of the amendments, would no longer qualify for a full pension could either "buy back" their education years or continue to work until they did qualify. A special clause provided for those who had retired or who could no longer work and contribute to the scheme; there was, however, no provision for those who were working and who for reasons other than retirement were unable to continue to contribute to APIS.

8. The Austrian savings package therefore left the complainant (and some other Agency staff members) with a very limited and unattractive set of choices. Because he no longer met the minimum requirements for APIS, he no longer qualified for any APIS pension. Because he was a staff member of the Agency, he was obliged to contribute to the Pension Fund and could not resume contributions to APIS. His contributions to APIS and those of his employer were effectively lost. The "buy-back" option offered by the 1996 Austrian legislation was most unattractive since it would have required the complainant to make a payment into APIS equal to approximately 6 months' salary.

9. The complainant protested to the Agency seeking its intervention with the Austrian Government. He asked the Agency, if it was unwilling or unable to obtain relief from the Government, to provide relief to him in the form of return of his contributions to APIS. By a letter of 27 January 1997, the Director General refused all the relief sought and also indicated that he had no objection to waiving the jurisdiction of the Joint Appeals Board so that the complainant could have recourse directly to the Tribunal. That is the impugned decision.

10. The complainant seeks the following relief:

"(1) That the IAEA be required to make arrangements with the Austrian Government to provide one of the following types of relief:

(a) Exemption from the obligation in the *Sozialrechts-Änderungsgesetz* [legislative amendment of] 1996 to make payments now for previously free periods of coverage under the *Allgemeines Sozialversicherungsgesetz* (APIS); or

(b) Permission to withdraw, within a new time limit, the payments previously made to secure coverage under the Allgemeines Sozialversicherungsgesetz (APIS), such payments to be subject to reasonable interest from the time they were originally made; or

(c) An arrangement whereby the minimum period to secure an *Allgemeines Sozialversicherungsgesetz* (APIS) pension is reduced to the period already covered by contributions, on the understanding that the amount of such pension would then be proportionately reduced.

(2) That if the IAEA is unable to make any of the arrangements specified in paragraph 1, then it be required to pay to the Complainant the amount referred to in paragraph 1(b) above, with interest from 19 December 1996 until the date of payment, at a rate of 8%.

(3) Pay Complainant's costs in connection with the present appeal, in an amount of ATS 75,000 (including ATS 30,000 for [an expert opinion on international law submitted on his behalf])."

11. In any consideration of this complaint the limits of the Tribunal's jurisdiction must be kept clearly in mind. The Tribunal has no jurisdiction over the Austrian Government. The 1996 legislation, which of course is valid in Austrian law, will not be the subject of any comment by the Tribunal as to its validity in international law. In this respect, the "expert opinion" on international law which has been obtained and submitted on the complainant's behalf is of no assistance to the Tribunal and will not be considered.

12. Furthermore, the Tribunal does not have jurisdiction to grant any part of the remedy set out in 10 above under (1). It may neither order an international organisation to negotiate with a member State nor set the objectives of any such negotiation: see Judgment 1456 (*in re* Belser and others) under 31. The Tribunal's jurisdiction is limited to granting relief for breach of the terms of employment of international civil servants as such terms may be determined from the contract of employment, the applicable Staff Regulations and Rules and other relevant documents.

13. On the other hand, as was said in 1 above, there can simply be no doubt that the complainant has lost a vested right to receive a pension from APIS. That loss amounts to breach of an acquired right within the meaning that has been assigned to that term by the case law: see in particular Judgments 832 (*in re* Ayoub and others) and 986 (*in re* Ayoub No. 2 and others). The test established by those and other judgments requires an appreciation of the balance between the nature and importance of the term of employment which has been altered, the reasons for the change, and the consequences of allowing a claim to an acquired right. On any reading, the entire loss of the complainant's right to obtain a pension from APIS upon retirement in respect of his first five years with the Agency constitutes a very important breach. As matters now stand, he has lost not only the benefit of participation in a pension plan during the first five years of his employment (a fundamental term of employment of any international civil servant) but also the entire contribution made on his behalf to APIS.

14. Yet former Staff Rule 8.0l.3(A)(2), as in force at the time the complainant became a member of the Agency staff, constituted one of the terms of his employment. There can be no question that, when the staff rule is read in context, the purpose and intent of that term of employment was to provide him with a pension from APIS. That purpose and intent have been frustrated; the term has been altered.

15. The staff rule, however, obliged the complainant to cease contributing to APIS and to become a member of the Pension Fund when he had completed fifteen years of membership in that scheme. He did so in July 1985. From that time forward the Agency's obligation to give the complainant access to a pension plan has been fulfilled through the Pension Fund.

16. While the Austrian legislation of 1996 may have provided the occasion for the complainant to lose his vested right to a pension from APIS the Tribunal holds that the actual cause of that loss, and thus of the alteration of the term of the complainant's employment, was the way in which the former staff rule itself was applied through the agreement between the Agency and the Austrian Government. The staff rule obliged the complainant to withdraw in 1985 after attaining what was then the necessary minimum qualification. The agreement did nothing, however, to ensure that such minimum would not be changed and that vested rights would be protected. If the complainant had remained in APIS, he could have continued to contribute to APIS and would in fact by 1996 have achieved substantially more than the minimum fifteen years of contributions he required to qualify for a pension. As it was, however, he was bound to cease contributing, but the Agency did not protect the contributions made on his behalf.

17. By former Staff Rule 8.01.3(A)(2) the Agency recognised its obligation to provide a pension for the complainant. As one of the possible sources of such pension, it made APIS available but limited the complainant's participation therein to the fifteen-year minimum qualifiying period then in effect. However, through its agreement with the Austrian Government, the Agency acknowledged that the scope of APIS would be "as amended from time to time" without its even being consulted. It thus chose an inherently defective vehicle to fulfil its pension obligation to the complainant, since the pension itself was subject to factors (other than ordinary economic constraints such as inflation, currency variations, and the like) which were entirely outside the Agency's control. In fact, as events turned out, the 1996 amendments to APIS resulted in the application of the former staff rule in a way which effectively deprived the complainant of any right at all to an APIS pension. To put the matter another way, the reason for the alteration of the term of his employment was the Agency's reliance upon factors in which it had no say for the fulfilment of its obligation to make a pension available to him.

18. The Tribunal concludes that the application of former Staff Rule 8.01.3(A)(2) to the complainant has resulted in the loss to him of an acquired right. While the rule has now been repealed, and the Tribunal could not in any event set it aside, it will declare the rule to be inapplicable to his case.

19. Since the source of the complainant's loss is the defective application of the staff rule, the Tribunal holds that he is entitled to succeed and to recover damages. The measure of those damages should be what is required to place him in the position in which he would have been if the Agency had not both allowed him to participate temporarily in APIS and then obliged him to withdraw therefrom. On the information made available by the parties the only means of approximating this result (a means which the Tribunal recognises as imperfect) is to oblige the Agency to pay to APIS on the complainant's behalf a sum sufficient to "buy back" his substitute coverage in that scheme. The Tribunal notes however that, notwithstanding the rejection of the complainant's request to that effect by the decision under attack, the Agency in its reply indicates that it is engaged in continuing exchanges with the appropriate Austrian authorities. If those exchanges "result" or "were to result" in an agreement along the lines suggested in claim (1) set out in 10 above or in any similar agreement which would allow the complainant to qualify for an APIS pension in respect of his period of contributory coverage in APIS, such an agreement would more accurately compensate the true measure of his loss. Accordingly the Tribunal, while ordering the Agency to pay the amount necessary to buy back his period of substitute coverage in APIS, will allow the Agency a further period of six months from the date of this judgment to reach a satisfactory alternative arrangement with the Austrian Government if it so chooses.

20. The complainant is entitled to costs in the amount of 45,000 schillings.

DECISION

For the above reasons,

1. The impugned decision is set aside.

2. The Agency shall pay to APIS on the complainant's behalf a sum sufficient to buy back his period of substitute coverage in APIS unless it is able within six months of the date of this judgment to conclude other arrangements with the appropriate Austrian authorities whereby the complainant will receive on retirement a pension in respect of his period of contributory coverage in APIS.

3. The Agency shall pay the complainant 45,000 Austrian schillings in costs.

4. All his other claims are dismissed.

DISSENTING OPINION BY MISS MELLA CARROLL

1. I am sorry that I cannot concur with the opinion of my colleagues as set out in the judgment in 13 and following. The relevant facts of the case are set out under A and in the considerations.

2. An acquired right is a right which a staff member may expect to survive any amendment of the rules: Judgment 832 (*in re* Ayoub and others). Put another way, where there has been an amendment, there will be a breach of an acquired right that warrants setting the decision aside if the altered term of appointment is "fundamental and essential": Judgment 986 (*in re* Ayoub No. 2 and others).

3. By virtue of Staff Rule 8.01.3(A)(2) the complainant had the options at the time of his appointment of completing the minimum 15 years' membership required under APIS or becoming an immediate contributor to the Pension Fund. By that time he had accumulated 5 years and 11 months' non-contributory membership and 4 years and 4 months' contributory membership; so he lacked 4 years and 9 months' further contributory membership. He was asked to choose once and for all, which he did on 25 August 1981 by opting to complete his APIS membership.

4. When the rule was repealed in 1983 every new staff member was required as from 1 January 1983 to become a member of the Fund immediately. The right of the complainant to complete his 15 years' APIS membership was left untouched by virtue of transitional arrangements. In my view, this is an example of the Agency's respecting his "acquired right" to complete the minimum period. On 1 August 1985, having completed this period, he became a member of the Fund.

5. The change to the APIS rules in 1996 was made by the Austrian Government. There was no change made by the Agency to its rules or to the terms of the complainant's appointment. The choice offered to him in 1981 was made in good faith so that he would not lose the benefit of his contributory and non-contributory years of membership of APIS. In my opinion, good faith works in two directions. Since the option was offered in good faith, there is a corresponding requirement of good faith on the part of the complainant, which means not trying to place the blame on the Agency.

6. In his own pleadings the complainant says that he was aware that the pension coverage under APIS was subject to Austrian law and could be amended and he could rely on the political process in the normal course to prevent any serious impairment of his right. He was disappointed in his expectations. But that does not entitle him to expect the Agency to recompense him. He made his choice and, in my opinion, must bear the consequences. The Agency played no part in altering his rights under APIS and should not be obliged to pay damages.

7. That is not to say that the Agency was free to abandon him entirely. It has not done so. It is currently taking steps to compile information to be put to the competent Austrian authorities with an appropriate request for relief for the staff concerned. The extent to which the Agency is obliged to go in its assistance does not need to be determined here.

8. To construe 8.01.3(A)(2) as conferring on the complainant the right to a *pension* from APIS as distinct from conferring a right to *contribute* to a pension until the 15 years' minimum is accumulated is, in my opinion, unjustified. The Agency fulfilled its obligations as an employer by having membership of the Fund immediately available. The APIS concession was exactly that: a concession. The Agency did not choose to fulfil its pension obligations through an "inherently defective vehicle". It was the complainant who chose to contribute for a limited period towards the state pension in preference to one from the Fund.

9. I cannot agree that the application of 8.01.3(A)(2) to the complainant resulted in the loss of an acquired right. Instead it actually gave him an acquired right to complete his 15 years' membership, a right that could not be taken from him when the rule was repealed.

10. To declare the rule inapplicable to the complainant's case - as my colleagues do in 18 above - is to say that he should have started contributing immediately to the Fund, in which case his loss is limited to the difference between the United Nations pension he will receive and the pension he could have had if he had joined the Fund in 1981.

11. In Judgment 986 the Tribunal held that it could not set the amounts of the complainants' entitlements but that their rights to redress should be determined when each of them left the service of the organisation.

12. It seems to me that similar considerations apply here. There is no way in which the complainant can at this stage quantify the loss of four years and nine months of contributions to the Fund. There is also the possibility that he may not stay with the Agency until retirement age, so that he may yet be able to complete 15 years' contributory membership of APIS. A further possibility is that the Austrian authorities may grant relief to the staff affected by the changes to APIS after this judgment has been executed. If 8.01.3(A)(2) is not to apply to the complainant, there is no justification for requiring the Agency to buy back the years for which no contribution was made (which was not even claimed as relief) so that the complainant may enjoy the benefits of a state pension based on 15 years' contributions. This discriminates against all those staff members who joined the Agency when the rule was in force

and started to contribute immediately to the Fund.

13. If the complainant is entitled to succeed on the merits - which is contrary to my view - the most he is entitled to is a declaration that when his Fund pension is calculated on retirement he will be entitled to compensation for the difference between that pension (plus any APIS pension which may ultimately turn out to be payable) and a pension calculated to include the "lost" 4 years and 9 months at the commencement of his service.

14. For the above reasons, I am unable to concur with the judgment and the relief granted in this case.

In witness of this judgment, adopted on 8 May 1998, Mr. Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 9 July 1998.

Michel Gentot
Mella carroll
James K. Hugessen

A.B. Gardner

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