

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

## **Bams and others and Zuurmond (No. 2) and others**

**v.**

### **Eurocontrol**

**101st Session**

**Judgment No. 2559**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr Daniel Aelvoet (his seventh), Mr Francis Apers, Mr Benoît Bams, Mr Hans-Werner Becker, Mr Richard Beurms, Mr Jean Bodar (his third), Mr John Buley (his third), Mrs Marianne Carpentiers (her third), Mr Léon Cassart, Mr Gazi Charara, Mr Maurice Combes, Ms Christine Creola, Mr Gérard Daussoigne, Mr Jean-Marie Debouny, Mr Filip De Meulemeester, Mr Robert de Roo, Mr Jørgen De Vlam, Mr Rudi Dewit, Mr Saïd Dridi, Mr Omer Durand, Mr G. F. J. (his seventh), Mr Peter Flick (his second), Mrs Cristina Galeazzi, Mrs Grazia Giordano (her second), Mr Luc Goossens, Mrs Françoise Goovaerts (her third), Mr Jacques Guillot, Mr Rapha Hakem, Mr Ulrich Heger, Mrs Monique Hervot, Mr Rüdiger Hess, Mrs Manuela Iacobelli (her third), Mr Julio Ibañez Amate (his second), Mr Gaston Klein, Mrs Linda Lang (her third), Mr Joël Leclere, Mr Pascal Lenardon, Mr Samuel Letêcheur, Mr Pierre Loubières, Mr Philip Maes, Mr Michel Mahy, Mr Ioannis Mansolas, Mr Stephen Marshall, Mr Michel Mathieu, Mr Antonio Maya Bravo, Mr Adnan Ocakoglu, Mr Nish Pandya, Mr Rudy Peiffer, Mr Eric Phillips, Mr Michel Platteau (his second), Mr Claus Pohl, Mr Philippe Quataert, Mrs Monique Quinchon, Mr Thomas Reidy (his second), Mrs Luigia Ruggieri, Mrs Vanna Santi, Mr Nico Schintgen, Mr Mark Sing, Mrs

Irène Stronck, Mr Pierre Taillard (his second), Mr Georges Tsolos (his fourth), Mr Alfons Van den Broeck (his third), Mrs Véronique Van Poppel, Mr Willem Viertelhauzen, Mr Emmanuel Voet, Mr Johan Weckx and Mrs Corinne Wies against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 9 September 2004 and corrected on 24 March 2005, the Agency's single reply of 8 July, the complainants' rejoinder of 3 October and Eurocontrol's surrejoinder of 22 December 2005;

Considering also the complaints filed by Mr Frederik de Jonge (his second), Mrs Annick De Bast, Mrs Desislava Kouzmanova, Mrs Maria Lenne-van Wegberg (her second), Mr Philippe Lenne (his second), Mr Thierry Peeterbroek, Mr Dirk Ramsak (his second), Mr Claude Schobyn, Mrs Alladina Sellin (her second), Mr Johannes van den Assem, Mr Fabrice Vanliefferinge and Mrs Joyce Zuurmond (her second) against the Eurocontrol Agency on 27 September 2004 and corrected on 28 March 2005, the Agency's single reply of 1 July, the complainants' rejoinder of 28 September and Eurocontrol's surrejoinder of 22 December 2005;

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 cases and the pleadings may be summed up as follows:

A. According to Article 65 of the Staff Regulations governing officials of the Eurocontrol Agency,<sup>\*</sup> the Agency must, regarding salaries and allowances of staff, periodically examine the adjustments which it deems necessary. In September 1992 Eurocontrol's Permanent Commission approved an adjustment methodology, applicable as from 31 December 1991, modelled on that which had just been adopted by the institutions of the European Community. This methodology was to apply until 30 June 2001, but its application was extended by two years

---

<sup>\*</sup> Article 65 of the General Conditions of Employment Governing Servants at the Eurocontrol Maastricht Centre has the same wording.

pending the adoption by the European Union of a new salary adjustment methodology resulting from a major administrative reform process that was then under way. This new methodology took effect on 1 July 2004.

For the period from 1 July 2003 to 30 June 2004, the Council of Ministers of the European Union decided on 15 December 2003 to introduce an ad hoc measure: a salary scale was calculated on the basis of the salary adjustment methodology which had ceased to apply on 30 June 2003. It was decided, however, that there would be no retroactive adjustment for the period 1 July to 31 December 2003 and that the salaries paid from 1 January 2004 according to the new salary scale would be subject to a “special levy” of 2.5 per cent. In anticipation of that decision, the Director General of Eurocontrol had sent a report dated 21 November 2003 to the Provisional Council of the Organisation, in which he recommended, *mutatis mutandis*, adopting the measure to be taken by the Council of Ministers of the European Union, subject to linking the date of introduction of the special levy at Eurocontrol to the date of adoption of the report’s recommendations. This adoption by the Provisional Council, which was subject to the formal approval of the Permanent Commission, was requested according to the procedure of approval by correspondence. The member States had four weeks to vote, that is, until 19 December 2003, but not all had replied by that date. Meanwhile, an Administrative Reform Task Force (ARTF) had been set up in order to study the possibility of adapting at Eurocontrol, in whole or in part, the administrative reform undertaken by the institutions of the European Union.

Between 24 March and 16 April 2004, 208 internal complaints were lodged against payslips for January and/or February, March and April 2004. In its opinion of 25 May the Joint Committee for Disputes considered that these internal complaints were irreceivable for want of any action causing injury, but it recommended that the matter be dealt with expeditiously. By decision of 8 June 2004 the Director of Human Resources, acting on behalf of the Director General, rejected the internal complaints as irreceivable and unfounded.

On 8 July 2004 the Permanent Commission of Eurocontrol approved several measures concerning conditions of employment, including a salary adjustment of 3.4 per cent effective from 1 July 2004, the introduction of a special levy of 2.5 per cent starting 1 August 2004 and the application within Eurocontrol of the European Union's new salary adjustment methodology as from 1 July 2004. These measures were published in Office Notice No. 7/04 of 26 July 2004 and applied to September salaries (paid at the end of August). In August staff received an additional payslip showing that the said measures had been applied retroactively to their salaries for July and August 2004. The 79 complainants, all Eurocontrol officials or servants, filed their complaints to the Tribunal on 9 and 27 September 2004, challenging the Director General's decision of 8 June 2004 to reject their internal complaints.

B. The complainants contend that their internal complaints were receivable. They note that the member States had until 19 December to vote on the proposal put forward by the Director General in his report. According to the Rules of Procedure of the Provisional Council, failure to reply by the expiry date is considered as an abstention. The Joint Committee for Disputes noted that no member State had voted against the adjustment proposal. The complainants conclude that the proposal for the adjustment of salaries was adopted in accordance with the approval by correspondence procedure. Their payslips from January 2004 onwards therefore do cause them injury insofar as they do not take account of the decision taken by the Provisional Council.

On the merits, they contend for their main plea that the payslips for January to June 2004 are unlawful because they do not reflect the adjustment decision adopted by the Provisional Council of the Organisation. Subsidiarily, should the Tribunal consider that the decision taken by the Provisional Council constitutes a rejection of the Director General's proposal, they plead "unlawfulness" on the grounds that the decision gave no reasons.

The complainants ask the Tribunal to set aside the decision of 8 June 2004 rejecting their internal complaints, to cancel their payslips from January to June 2004 and to grant them 5,000 euros in costs.

C. In its reply the Agency contends that the internal complaints filed in March and April 2004 were premature failing a final decision on the Director General's proposal. The complaints challenging their rejection are therefore irreceivable. It explains that adjusting salaries and pensions is the responsibility of the Permanent Commission, which must take the final decision, as stipulated in Article 65 of the Staff Regulations. Once the decision had been taken by the Commission on 8 July 2004, the complaints no longer showed a cause of action; the complainants should then have filed internal complaints against the additional payslips received in August 2004, insofar as these did not cover the first six months of the year. It notes that this was the approach adopted by some of the complainants in the present cases (see Judgment 2560 also delivered this day).

On the merits, Eurocontrol argues that, since no decision had been taken at the time the internal complaints were filed, the complainants cannot accuse the Director General of failing to apply a decision. As for the complainants' subsidiary plea, it recalls that the staff were informed that the Organisation's collegiate bodies had not reached unanimous agreement to give their decision of July 2004 retroactive effect from 1 January and that there was no need to give further reasons for that decision, which lies within the "sovereign power" of those bodies.

D. In their rejoinder the complainants submit that their complaints are directed not against a general decision but against individual decisions – in the form of their payslips – constituting final decisions and hence acts causing injury which are open to appeal. They maintain that their complaints do show a cause of action, since, in their view, they have been "the victims of an unlawful and unjust situation (non-indexation of salaries during the transitional period), owing to the Director General's negligence". They consider that the argument whereby they should have filed internal complaints against the additional payslips

received in August 2004 is invalid since those payslips did not concern the first six months of the year.

On the merits, the complainants point out that according to the Tribunal's case law the Organisation had an obligation to take a decision regarding the "remuneration methodology" used for the transitional period. They recognise that the Provisional Council's decision still needed the formal approval of the Permanent Commission, but they accuse the Director General of never having submitted his proposal as approved by the Council to the Commission. The result of this "inertia" was to deprive the staff of Eurocontrol of a "stable, foreseeable and clearly understood" methodology for determining salaries, in breach of the "imperative obligation" recalled by the case law. There is therefore no doubt, in their view, that their payslips are unlawful, for which the Director General is to blame. Regarding their subsidiary plea, they contend that, even if the Provisional Council had taken a negative decision, which it did not, the "sovereign power of the collegiate bodies" does not afford grounds for omitting to provide a reason.

E. In its surrejoinder the Agency maintains its objection to receivability. Failing a decision of the Permanent Commission by July 2004, the payslips had to be drawn up on the basis of the existing scale. The complainants' internal complaints should have been directed against the additional payslips received in August 2004, since it was those payslips which reflected the adjustment decision taken by the Commission on 8 July, especially insofar as that decision was not retroactive to 1 January 2004.

The defendant points out that the Director General, contrary to what the complainants allege, reacted very rapidly, even anticipating the decision of the European bodies, and that he kept the staff informed of what was happening, particularly in the ARTF. It acknowledges that decisions are taken "de facto" by the Provisional Council, a body set up by the Permanent Commission on 9 December 1997 and which is responsible for preparing measures to be taken by the Commission. But it adds that it is always the Permanent Commission which gives

the decisions legal effect. In the case in hand, the Agency was no longer bound by the adjustment methodology applied up to 30 June 2003 but only by Articles 64 and 65 of the Staff Regulations, which allow the Council and the Commission considerable discretion in deciding on the desirability and scope of any adjustment. The Agency in its view logically followed what had been done in the European Union, so that salaries remained aligned with those of European Union officials.

### CONSIDERATIONS

1. The complainants, all officials or servants of the Eurocontrol Agency, ask the Tribunal to set aside the Director General's decision of 8 June 2004 rejecting their internal complaints filed against their payslips for the months of January and/or February, March and April 2004 and to cancel those payslips insofar as they "do not provide for an adjustment of salaries in accordance with the 'methodology of the European Union'". The complaints filed on 9 September 2004 shall be joined with those filed on 27 September to form the subject of a single ruling.

2. For their main plea, the complainants contend that the payslips are unlawful. They argue that the members of the Provisional Council had four weeks to vote on the Director General's proposal for the adjustment of salaries, that those four weeks expired on 19 December 2003 and that failure to reply was to be considered an abstention.

In the event, they point out, no member State voted against the adjustment proposal made by the Director General on 21 November 2003, as noted by the Joint Committee for Disputes in its opinion. This meant, according to them, that the proposal had well and truly been adopted by the Provisional Council. The payslips should therefore have been based on that decision by the Council. Yet the successive payslips "from January until June 2004 did not reflect the adjustment decision adopted by the Provisional Council". They therefore consider that

those payslips are unlawful insofar as they constitute a breach of “a general statutory rule”.

Subsidiarily the complainants plead “unlawfulness” on the grounds that, if the decision taken by the Provisional Council were to be considered as a decision rejecting the Director General’s proposal of 21 November 2003, the disputed payslips would be based on a decision which would be unlawful. The “unlawfulness of the Provisional Council’s decision, if it were negative (which it was not), would arise from the failure to provide reasons for the decision”.

3. The defendant mainly contends that the complaints are irreceivable. It argues that the internal complaints filed by the complainants were premature in the absence of any final decision on the salary adjustment proposal submitted on 21 November 2003 by the Director General to the Organisation’s collegiate bodies. It argues in substance that the final decision on the adjustment of salaries and pensions rests with the Permanent Commission and not with the Provisional Council. In its view, Article 65 of the Staff Regulations, cited by the complainants, stipulates that, while it is the Provisional Council which examines the Director General’s proposals, it is the Permanent Commission which decides. It adds that it is clearly indicated in the Director General’s document of 21 November 2003 that the Permanent Commission’s consent is required for the approval of the proposed statutory measures. It points out, moreover, that the Permanent Commission’s final decision was taken on 8 July 2004 and implemented by the Director General by means of the additional payslips received in August 2004.

4. Article 65 of the Staff Regulations reads as follows:

“On the instigation of the Director General, the Provisional Council shall periodically examine the adjustments to salaries and allowances which it deems necessary. It shall take particular account of any variations in public service salaries in the different member countries and of the recruitment needs of the Agency.

These adjustments shall be made by modifying the basic salaries as defined in Annex III or elements of the salaries and allowances as defined in Article 62.



They shall be submitted to the Commission for approval in accordance with the provisions of Article 12, paragraph 1, of the Statute of the Agency.”

According to Article 1 of Annex VI of the Staff Regulations (“Arrangements for the adjustment of the remuneration components provided for in Articles 64 and 65 of the Service Regulations”), as it stood at the material time:

“The Director General shall submit to the first Provisional Council session of each year a report on remuneration trends at 1 July of the year preceding that in which the review is carried out.

The reference period for the review of the components shall comprise the twelve months preceding the 1 July from which the adjustment takes effect.”

while according to Article 3 of that Annex:

“The Director General’s recommendations shall be examined and approved by the Organisation’s competent bodies in accordance with the provisions of Articles 64 and 65 of the Staff Regulations.”

5. The Tribunal deduces from the above provisions that measures related to the adjustment of salaries are adopted according to a procedure in several stages: initially, the Director General prepares a report comprising proposals which he submits for the consideration of the Provisional Council; once they have been examined and adopted by the Provisional Council, the proposals are then submitted for the approval of the Permanent Commission.

In the present case, the report prepared by the Director General was submitted to the Provisional Council on 21 November 2003, in accordance with the procedure for approval by correspondence, with a deadline of 19 December 2003.

As not all members of the Provisional Council had sent in their replies by that date, the complainants considered that non-replies should be treated as abstentions. In view of the fact that no member State, according to them, had voted against the Director General’s proposal, the complainants argued that the proposal had been adopted by the Provisional Council and that the payslips should therefore have taken due account of that Council’s decision.

The Tribunal disagrees. It considers that, even on the assumption that the Provisional Council had adopted the Director General's proposal, the fact remains that the procedure described above for the adoption of measures related to the adjustment of salaries had not yet been completed. There is no evidence in the file to show that a decision by the Provisional Council on the adjustment of salaries would have been approved by the Permanent Commission as required under Article 65 of the Staff Regulations. As the Joint Committee for Disputes quite rightly pointed out, the voting procedure was still under way at the time the internal complaints were filed and the Director General was keeping the staff regularly informed of how the procedure was progressing, "since the normal period for the adoption by the Agency's competent bodies of the annual adjustment of salaries [had] not expired".

As no final decision had been taken in accordance with the provisions of Article 65 of the Staff Regulations, the Director General could not, simply on the grounds that not all member States of the Provisional Council had voted on the proposal submitted for their consideration by the required deadline, proceed with the adjustment of salaries and incorporate that adjustment in the impugned payslips.

The plea that those payslips were unlawful therefore fails.

6. Since it is established that no final decision had yet been taken, the plea of unlawfulness for lack of reasons must also fail.

The complaints must therefore be dismissed.

## DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 17 May 2006, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2006.

*(Signed)*

MICHEL GENTOT

SEYDOU BA

CLAUDE ROUILLER

CATHERINE COMTET

In witness of this judgment, adopted on 17 May 2006, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2006.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet