



ADMINISTRATIVE TRIBUNAL

Judgement No. 1311

Case No. 1366

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Dayendra Sena Wijewardane, Vice-President, presiding; Mr. Julio Barboza;
Ms. Brigitte Stern;

Whereas at the request of a number of staff members and former staff members of the United Nations, the President of the Tribunal successively extended until 31 March and 26 June 2004 the time-limit for the filing of an application with the Tribunal;

Whereas, on 23 June 2004, the Applicants filed an Application containing pleas which read, in part, as follows:

“II. PLEAS

11. On the merits, the Applicants respectfully request the Tribunal *to find* that:

- (a) The Applicants were *de facto* staff members working full-time within the common system prior to the regularization of their status on 1 January 1984;
- (b) The Administration, therefore, acted improperly from 1969 to 1983 in continually using special service agreements (SSAs) for a period of fourteen years to employ the Applicants in a core and continuous function of the Organization;
- (c) The Applicants' contractual situation had been permanent and ongoing but there were irregular elements which necessitated the 1984 correction of their status;
- (d) The Applicants' services to the Organization prior to 1984 were not recognized as they should have been, and that is why their status was regularized;
- (e) The Administration, moreover, recognized that the contractual status of the Applicants prior to 1984, which denied them pension benefits, had been irregular and inequitable, and that, as a result, the Applicants' pension benefit would not be

commensurate with their years of service to the Organization;

(f) ... [N]ot to recognize the whole period of their service for their pension benefit is a violation of their rights.

12. Whereafter the Applicants most respectfully request the Administrative Tribunal to order:

(a) That the pension benefits of the Applicants should be computed taking into account the whole period that the Applicants worked for the Organization;

or failing that:

(b) That the issue of equity and fairness in this case is so compelling that they should be granted a lump sum payment ...

...

In addition:

(v) The Applicants [should] be granted punitive damages ...”

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent’s answer until 31 December 2004 and once thereafter until 28 February 2005;

Whereas the Respondent filed his Answer on 9 March 2005;

Whereas the Applicant filed Written Observations on 6 May 2005;

Whereas the statement of facts, including the employment record, contained in the report of the Joint Appeals Board (JAB) reads, in part, as follows:

“... The [Applicants] were employed by the Organization [as language teachers] under [SSAs, which, as from 1977, were called Language Teacher Employment Agreements], from 1969 to 31 December 1983 for periods varying from one term to an academic year.

Summary of the facts

... On 20 December 1983, the General Assembly, on the recommendation of the Secretary-General, granted the status of staff members to 48 full-time language teachers.

... On 6 March 1984, Administrative Instruction ST/AI/316 was issued on the ‘Granting of Status of Staff Members to Full-Time Language Teachers’. With effect from 1 January 1984, the status of language teachers was changed from hourly-paid employees to that of locally-recruited staff members under the 100 series of [the] Staff Rules.

... On 19 June 1984, the [Applicants] requested the United Nations Joint Staff Pension Fund (UNJSPF or the Fund) to validate [their service prior to 1 January 1984] ... On 5 December ..., the Secretary of the ... Fund denied this request on [the] grounds that ‘during this period [the Applicants] did not have the status ... of ... United Nations staff member[s]’.

... In June 1996, the language teachers' representatives requested the Administration to approve retroactive participation in the ... Fund.

... In a memorandum dated 6 August 1996, ... the then Assistant Secretary-General, ... Office of Human Resources Management (OHRM) denied the language teachers retroactive participation in the Pension Fund on [the] grounds that the teachers did not have staff member status prior to 1984.

... In June 1998, the teachers' representatives wrote to [the newly appointed] Assistant Secretary-General for OHRM, to reiterate the need for retroactive participation in the Fund.

... On 4 March 1999, [the Assistant Secretary-General for OHRM] denied the request again on [the] grounds that the language teachers were not staff members prior to 1984. However, [she] added,

'in consideration of the request of the full-time teachers to ameliorate their pensionable remuneration, while still staying within the Regulations and Rules of the Pension Fund, [OHRM] agreed to consider the extension to age 62 of the teachers who were converted to full-time language teacher status on 1 January 1984, who have remained in the language teacher category, and who at age 60 will have less than twenty-five years of contributory service in the Pension Fund, subject to satisfactory performance'."

On 25 July 1999 and on 13 December 2000, the Applicants lodged an appeal with the JAB in New York. The JAB adopted its report on 15 July 2003. Its considerations, conclusion and recommendations read, in part, as follows:

“Considerations

16. The Panel reviewed first the ... contention that ‘the administrative decision of 4 March 1999 not to grant retroactive pension benefits is incongruent with Article 3 of General Assembly resolution 248 (III) of 7 December 1948’ ... The Panel noted from the outset that it is not correct to assume or presume that it is within the Administration’s prerogative to ‘grant retroactive pension benefits’. Such prerogative belongs to the General Assembly in consultation with the United Nations Joint Staff Pension Board [(UNJSPB)] and [the] Fund. ... The Panel was of the view that the contested administrative decision of 4 March 1999 is a factual statement quite consonant with standing resolutions of the General Assembly, including resolution 248 (III) of 7 December 1948, the Regulations and Rules of the UNJSPF, and the Language Teacher Employment Agreement, which was freely entered into by language teachers and, alone, defines their legal status and concomitant benefits and obligations through 31 December 1983.

17. The Panel recalled that Article 23 of [the Regulations and Rules of the UNJSPF] states:

‘(a) A participant may elect, within one year of the commencement of the participation, to validate prior service during which he or she was not eligible under these Regulations for participation, provided that ... (iii) participation had not, during such service, been expressly excluded by the terms of appointment ...’

18. The Panel noted furthermore that, [under] the terms of paragraph 8 of the Language Teacher Employment Agreement, ‘[t]he teacher shall not be entitled to any rights or privileges except those specifically stated in this Agreement ... [and] the teacher shall not be accorded the status of a United Nations staff member or any privileges or immunities as such’. As participation in the Pension Fund is only open (a) to staff members of the United Nations or specialized agencies and other member organizations of the UNJSPF and (b) to officials who are not staff members but are covered by the Conventions on the Privileges and Immunities under

Supplementary article B of the UNJSPF Regulations, it became clear to the Panel that retroactive validation of the Appellants' service prior to 1984 was not possible *ipso facto* under the standing General Assembly resolutions, the Regulations and Rules of the UNJSPF and the Language Teacher Employment Agreement ... It should be pointed out that the conversion of the legal status of 48 full-time teachers from hourly-paid employees to locally-recruited staff members under the 100 series of [the] Staff Regulations, which was adopted by the General Assembly with prospective effect and implemented in ST/AI/316 as of 1 January 1984, cannot be applied *retroactively* by the Administration on its own volition.

19. The Panel considered then the issue of the Administration's use of (a) [SSAs] from the early 1970s to 1977 for the language teachers; and (b) Language Teacher Employment Agreements, a variant of the SSA, from 1977 to 1983. The Panel felt that it was appropriate for the Administration to enter into such agreements and that, as the functions of the language teachers came to take on more of a core and continuous nature, it was appropriate for the Secretary-General to recommend the establishment of regular posts within the context of the programme budget for the Secretariat. The Panel noted that these SSA[s] and Language Teacher [Employment] Agreements were freely entered into by the Appellant[s]. They carried no staff assessment or pension fund contribution while affording the contractor the ability to work independently anywhere outside the purview of the United Nations. ...

Conclusion and recommendations

20. In the light of the foregoing, the Panel *agrees unanimously* that there is no legal basis for the Appellants' pleas.

21. The Panel *agrees unanimously* to make no recommendation in respect of the present appeal."

On 20 August 2003, the Under-Secretary-General for Management transmitted a copy of the report to the Applicants and informed them that the Secretary-General agreed with the JAB's findings and conclusions and had decided to accept its unanimous recommendation and to take no further action on their appeal.

On 23 June 2004, the Applicants filed the above-referenced Application with the Tribunal.

Whereas the Applicants' principal contentions are:

1. They were *de facto* staff members prior to 1984.
2. The Administration improperly used SSAs - a contract intended for temporary or short-term assignments - to employ the Applicants in a permanent programme which had been mandated by the General Assembly in order to promote linguistic balance within the Organization. Thus, the Administration should correct its error and compute the Applicants' pension benefits taking into account the whole period of service with the Organization, including service as *de facto* staff members prior to 1984.

Whereas the Respondent's principal contentions are:

1. The Applicants were not staff members prior to 1984.

2. Given that the General Assembly regularized the Applicants' employment status as of 1 January 1984 with *prospective effect*, the Respondent cannot grant them pension benefits prior to that date.

3. The Applicants' rights were not violated by the decision not to grant them pension benefits for service prior to 1984.

The Tribunal having deliberated from 28 June to 28 July 2006 in Geneva and from 30 October to 22 November in New York, now pronounces the following Judgement:

I. This case is being submitted to the Tribunal by nine Applicants who - after having worked for the United Nations as language teachers between 1969 and the end of 1983 under special service agreements - became United Nations staff members on 1 January 1984, following a decision of the General Assembly adopted in resolution 38/234 of 20 December 1983. This case arises from the fact that, at the time, regrettably from the Applicants' point of view, they were not granted retroactive entitlements to pension benefits.

In 1984, the Applicants approached the UNJSPF with a view to validating their periods of service prior to 1984. The Fund rejected their request and they were informed of this decision on 5 December. The Applicants did not challenge this decision before either the Fund or, *a fortiori*, the Tribunal.

In June 1996, the issue was raised again by the language teachers' representatives, not with the Fund this time, but with the Administration itself, which was presented with a request for retroactive participation in the Fund, that was also denied. The Applicants did not challenge this decision before either the JAB or, *a fortiori*, the Tribunal. Representatives of the language teachers re-submitted their request for retroactive participation in the Fund to the Administration in June 1998, but the request was again rejected in a letter of 4 March 1999. It was this rejection of 4 March that the Applicants viewed as the injurious decision, in response to which they initiated an administrative proceeding before the JAB.

Given the long history of this matter, it is important to determine what it is exactly that the Applicants are claiming in the present case.

II. According to the Respondent, what the Applicants are asking for is precisely what the Tribunal refused to do in Judgement No. 1129, 2003, that is, to retroactively reconstruct the situation that existed prior to 1984, more than 20 years after the fact. This is borne out by some of the language in their own Application: "[t]he contractual status of the language teachers was irregular prior to 1984 because of the Administration's improper use of special service agreements"; "[t]he Administration's unwillingness to recognize the language teachers' whole period of service is illogical and arbitrary"; "[t]he language teachers' service prior to 1984 was not recognized as it should have been"; and, "[n]ot to recognize the language teachers' whole period of service within the common system is contrary to the aim of the regularization of their status". The Tribunal notes that in its Judgement No. 1129 (*ibid.*), it explained its rationale in the following words,

“The Tribunal must examine the Administration’s argument that the decisions in 1984 on integrating language teachers into the category of staff members of the Organization cannot be considered as retroactive texts conferring the status of staff members on language teachers from the date of their recruitment to 1 January 1984: ‘... the grant of staff member status in 1984 had no retroactive effect’. The Tribunal agrees with that analysis. But it is one thing to make a text retroactive and another to take certain past facts into consideration in implementing a text prospectively. ...”

III. The Applicants dispute the Respondent’s interpretation of their present Application and reject the Respondent’s summary on the grounds that it does not address the substance of their claim. According to the Applicants,

“[t]he Respondent has misconstrued the essential issues as laid out in the Application. The Applicants are not requesting that they be granted retroactive staff membership, or retroactive Pension Fund participation, or retroactively all the rights of staff members, as asserted by the Respondent ... They are not seeking to turn the clock back. They are simply requesting reparation of an error committed by the Administration ... As *de facto* staff members before 1984, the Applicants were granted a range of staff member social benefits ... but were denied pension benefits. The reason for this irregularity constitutes the heart of this case. They were denied pension benefits, not because they did not merit them ... but because of an *administrative error*. The Administration improperly used [SSAs] to employ the Applicants in a permanent programme which had been mandated by the General Assembly in order to promote linguistic balance within the Organization.”

They are requesting the correction of this “administrative error”, mainly by means of a call for justice. Before the JAB, the Applicants appeared to be appealing for fairness when they affirmed that “[w]hile it is impossible to turn back the clock, remedial action can be taken by giving full or partial compensation for the injustice which has been suffered by the [Applicants]”. The same appeal for fairness is explicit in their submissions to the Tribunal, in which the Applicants express the view that “the Respondent cannot but agree that an administrative error has been made and that the Applicants merit an equitable remedy”. The Applicants are asking the Tribunal to correct what they consider to be an injustice, as they feel that they have actively collaborated in the work of the Organization. They stress that

“[i]t is public knowledge that the language teachers have taught the official languages of the United Nations to thousands of its employees and members of Permanent Missions to the United Nations. Such an activity has played a significant role in the feasibility of the United Nations as a multilingual organization.”

IV. The Tribunal will examine in succession the issue of time limits posed by the Application and the appeal for fairness. It is critical to determine what it is that the Applicants are asking for, in order to be able to evaluate correctly the admissibility of their requests. The Applicants should be understood as requesting the correction of what they consider to be errors in the handling of their case by the

Administration: errors committed prior to 1984 and at the time of their change in status in 1984.

In the view of the Tribunal, whether the complaint is seen as a request for the correction of an administrative error, according to what the Applicants themselves have written, or as an attempt to obtain the retroactive application to them of staff-member status, according to the interpretation of the complaint by the Respondent, this case requires the Tribunal to take a position on the temporal aspects of the case as raised by the complaint.

It is the view of the Tribunal that, in reality, as will be demonstrated, the Applicants' case runs up against an insurmountable obstacle. How can a status which ceased to exist in 1984 be called into question today? In the Tribunal's view, the Applicants took the right approach in 1984 when they requested that the Fund validate their years of service prior to 1984. However, they might have contested the 5 December 1984 rejection of their request before the UNJSPB and, if their action was unsuccessful, before the Tribunal. They did not do so. Moreover, if they chose to approach the Administration rather than the Fund, as they did in 1996 and 1998, then likewise, such action should have been taken in 1984. They did not do this either. The Tribunal considers that, if a staff member does not pursue the procedures available to staff for the protection of their rights within the stipulated time limits, he or she is not at liberty to resubmit the same request several times with a view to extending the deadline for contesting an adverse decision. To allow such a course of action would run counter to the necessary stability of institutional relations within the Organization.

V. It should thus be noted that, according to established case-law, the Tribunal, except in exceptional circumstances that may allow it to ease the rules of procedure, must abide by the procedural time limits. This obvious fact has been referred to on many occasions, including recently in Judgement No. 1279 (2006), paragraph III:

“The Tribunal is profoundly troubled by the Applicant's situation, and it notes that many members of the Administration, including the Respondent, expressed concern for, and possible solutions to, her predicament. However, it is bound to observe that the Applicant has demonstrated a flagrant failure to defend any of the rights to which she thinks she is entitled in accordance with the applicable statutory time limits.

...

The Tribunal has repeatedly expressed its concern about difficulties faced by staff members in retirement. That sympathy, however, must be balanced against the need for procedural order. In Judgement No. 1241 (2005), the Tribunal stated ‘[n]o matter what sympathy one might have for anyone who retires and then cannot enjoy the privileges of a life's work, the Tribunal notes that deadlines are in the public interest and must be respected at all times’.

In administrative justice, time limits for exercising a right of appeal are set in the public interest and sympathy alone cannot waive them.”

Agreeing to indefinitely extend the time limits within which a staff member may appeal against a decision of the Administration would introduce instability and inefficiency into the Administration's management. The Tribunal has already emphasized this point in Judgement No. 1046, *Diaz de Wessely* (2002), paragraph XVI:

“In the Tribunal's view, it is of the utmost importance that time limits should be respected because they have been established to protect the United Nations Administration from tardy, unforeseeable requests that would otherwise hang like the sword of Damocles over the efficient operation of international organizations. Any other approach would endanger the mission of the international organizations.”

In the present case, the Tribunal's view is that not only is it impossible, in view of the procedural factors relating to the case, to turn the clock back, but there is also no legal basis for rectifying what the Applicants consider to be an injustice.

It is not impossible that an injustice has been done, but the Tribunal will not rule on that question: even if an error was made, that error, said to be the cause of the injustice which the Applicants claim to have suffered, ceased to exist in 1984 following a decision by the General Assembly and it is not clear on the basis of what legal rule such an error could be contested only in 1998 by pursuing the procedures that are available to international civil servants for the protection of their rights. If the Applicants wished to establish that the Administration indeed committed the error they claim it committed, they should have pursued the request initiated in 1984.

VI. It is certainly difficult to accept that the question of the language teachers' pension rights was dealt with in a satisfactory manner. The Administration itself has recognized this on several occasions. It is not disputed that the Applicants' pensions are more or less equal to half or two thirds, as the case may be, of what they would have been if their years of service prior to 1984 had been taken into account for the calculation of their pension rights, and the Applicants' frustration is understandable.

VII. The Tribunal also wishes to stress that the Administration was perfectly aware of the problems posed by the status of language teachers, particularly with regard to retirement pensions prior to 1984, and the decision taken by the General Assembly in 1984 to grant them staff member status was based precisely on that awareness. A letter dated 28 August 1979 from the Division for Policy Coordination to the Division of Personnel Administration points out that there is a lack of consistency between the *de facto* situation and the *de jure* status of language teachers: “[t]he language training can no longer be viewed as a temporary undertaking ... [and] we need to find a way to ... open the possibility for their participation in the Pension Fund”. The same point is made in paragraph 16 of Section 28J of the Programme Budget for the Biennium 1982-1983, “Contractual status of language teachers” (document A/C.5/37/63 of 1 December

1982) which states:

“Considering the average age of the United Nations teachers (41) and the average length of their non-pensionable service of nearly 10 years, a limited pension plan ... does not do justice to the full-time teachers who have already spent a sizeable part of their working lives in the service of the Organization.”

VIII. The Administration was still aware of the existence of the problem when the question was raised again in 1996. Thus, in a letter dated 1 July, the Secretary of the Pension Fund, while rejecting the request for validation on the grounds that the Applicants were not staff members prior to 1984 - despite probably being aware that this difficult question had not been handled satisfactorily - suggested a number of possible solutions:

“Should the [United Nations] wish to assist the serving language teachers, it could consider providing for some lump-sum payment at the time of separation, either based on making all years of service count in determining their repatriation grant, or an *ex gratia* payment. In addition, language teachers might be permitted to remain in service until age 62 (or even beyond that age).”

It is known that the latter measure was adopted not “in addition” but, so to speak, “by subtraction”; that is, in full and final settlement.

Further, the Administration was still aware of the problem when the question was raised again in 1998, since the then Assistant Secretary-General, OHRM, while refusing retroactive consideration of years of service prior to 1984, nonetheless noted, in the letter of 4 March 1999 which gave rise to the present request, that

“in consideration of the request of the full-time teachers to ameliorate their pensionable remuneration, while still staying within the Regulations and Rules of the Pension Fund, [OHRM] agreed to consider the extension to age 62 of the teachers who were converted to full-time language teacher status on 1 January 1984, who have remained in the language teacher category, and who at age 60 will have less than twenty-five years of contributory service in the Pension Fund, subject to satisfactory performance”.

Whatever the positive or negative reasons for the way in which the Administration handled the problem of the language teachers' pension rights, there is nonetheless no legal basis for the Tribunal to reconsider a situation which is doubtless unsatisfactory for the Applicants, as the Administration has reiterated several times, by censuring the decision to refuse to remedy the situation, which was handed down to the Applicants in response to a request made 15 years after the situation ceased to exist.

However, one point to which the Tribunal wishes to draw the Administration's attention is that it should have raised the question of the inadmissibility of the request before the JAB. If it had, the case would probably have been declared inadmissible at the stage of consideration by the JAB, thereby preventing the submission to the Tribunal of a request that is so clearly time-barred.

IX. There remains a final point to address, which is whether the Tribunal could, on grounds of equity, remedy the situation of the Applicants, whose pensions do not correspond to the length of their service at the United Nations. The Administration considers that it has already taken a step in that direction, as shown by the comment made by the Respondent in his submissions, where he analyses the measure allowing the language teachers to postpone their retirement until the age of 62, instead of taking it at 60, so as to increase the amount of their retirement pensions, as a gesture of good will by the Administration:

“It should be noted, nevertheless, that the Respondent has demonstrated good faith by accommodating the Applicants, on an individual basis and where applicable, through its decision to extend their appointments exceptionally beyond their retirement age by two years ... By doing so, the Respondent has afforded the Applicants whatever assistance it was in his position to provide.”

The Tribunal takes due note of this limited corrective measure. It also notes, in its overall assessment of the Applicants' situation, that, during the years prior to 1984, no deductions were made from their salaries for contributions to the Fund, and that this factor must be taken into account in evaluating the damage they may have suffered as a result of the Administration's poor handling of their situation. However, the Tribunal can do no more to rectify this situation.

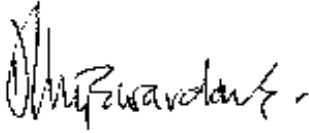
X. It is well established in the Tribunal's case law that the Tribunal may not act *ex aequo et bono*, as set out in Judgement No. 197, *Osman* (1975), paragraph XVI: “the Tribunal, as a judicial organ, is bound to apply existing law, including the provisions of its Statute. The Tribunal does not have the power to decide a case *ex aequo et bono*.”

Thus, it is not disputed that the Tribunal has no power to decide cases *ex aequo et bono*, its function being to implement the legal rules governing the status of international civil servants. This is all the more true with regard to a request which should have been submitted more than 20 years ago. Be that as it may, the Tribunal does not have the power to rectify this situation which the Administration handled unsatisfactorily: the Tribunal is neither a political organ that can take staff-management decisions, nor an adjudicating organ with the power to redress unsatisfactory situations on the basis of a sense of equity.

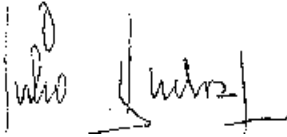
For these reasons, the Tribunal considers that the request to rectify errors that may have been committed by the Administration before 1984 in not granting the language teachers contracts that allowed them to participate in the Fund, and in 1984 in not remedying the situation retroactively, is inadmissible because it is time-barred.

XI. In view of the foregoing, the Application is rejected in its entirety.

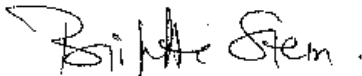
(Signatures)



Dayendra Sena **Wijewardane**
Vice-President

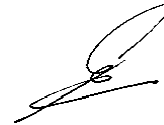


Julio **Barboza**
Member



Brigitte **Stern**
Member

New York, 22 November 2006



Maritza **Struyvenberg**
Executive Secretary

CONCURRING STATEMENT BY MS. BRIGITTE STERN

I. Whilst fully concurring with the Judgement rendered, I would like to add some remarks on recurring patterns of dysfunction in the Administration that result in very unfair situations for the staff members. The only purpose of these remarks is to make the Administration aware of these patterns, in order that it might improve the institutional functioning of the Organization for the benefit of the international civil servants.

II. One of the reasons for the unsatisfactory handling of this issue is undoubtedly the “ping-pong game” that has taken place between the Fund and the Organization’s political and administrative organs - which is too often used to hide inaction in international organizations. Financial considerations are indisputably an additional factor.

The Applicants had noted before the JAB that “[a] question that needs an answer is why the General Assembly did not correct the pension issue when they converted the teachers to staff members in 1984”. The answer is not self-evident, but what is clear is that the administrative bodies at least regarded pension issues as falling within the competence of the Fund:

“[i]n the Joint Advisory Committee (JAC) Working Group on the Contractual Status of Language Teachers, the Administration side, in answer to a question about validation of prior services for pension purposes, said: ‘[a]s decisions on the granting of such requests were entirely a matter for the Pension Fund, it would be inappropriate for the Working Group to make specific recommendations on this question’”. (Emphasis added.)

III. Financial considerations also seem to have played a role in the unsatisfactory handling of the question under consideration. For example, the Secretary of the Fund wrote in a letter of 1 July 1996 that other applicants, in various situations, had not been able to validate prior service because “it was not possible to arrange for recognition of their early years of service because, inter alia, of the high costs that would have been involved and the wish to avoid establishing a precedent with potentially significant financial implications for the Organization”. Similarly, a communication of 19 March 1997 from the Assistant Secretary-General, OHRM, to the President of the Staff Union concerning the situation of language teachers referred to “this time of organizational restructuring and budgetary constraints”. To be sure, a legitimate reason for action taken by any international organization is to ensure the smooth functioning of the organization. However, as a matter of principle, financial costs must not be used as an excuse for not granting staff members that to which they are legitimately entitled. This was also the approach taken by the International Labour Organization Administrative Tribunal (ILOAT) in a number of judgements raising problems of pension rights, in particular Judgement No. 990, *In re Cuvillier* (No. 3) (1991), paragraph 6, in which the ILOAT states that it cannot but reject “the Organisation’s solution, which is prompted merely by a desire to make savings”. The same approach was taken in a later judgement, where the ILOAT also reiterated the same idea when it said that “the mere desire to save money at the staff’s expense is not by itself a valid reason for departing from an established standard of reference” (see Judgement No. 1821, *In re Allaert and Warmels* (No. 3) (1999), paragraph 7). UNAT has also ruled in various Judgements concerning complaints by staff members of improper treatment that financial considerations are not an excuse for unsatisfactory management of the situation of staff. Financial considerations may not justify failure to consider a staff member for a permanent appointment (Judgement No. 1168, *Tankov* (2004)); refusal to convert an appointment (Judgement No. 1040, *Uspensky* (2001)); or, non-implementation of the classification of posts (see Judgements No. 857, *Daly & Opperman* (1997) and No. 1136, *Sabet & Skeldon* (2003)). In my opinion, financial considerations are not sufficient to excuse the fact that the Administration did not find a better way to resolve the unsatisfactory situation arising, eventually, from its failure to find even a partial solution to the problem posed by the non-consideration of the years prior to 1984, when the Applicants’ change of status occurred.

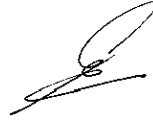
IV. Nonetheless, as is explained in the Judgement, whatever the positive or negative reasons for the way in which the Administration handled the problem of the language teachers’ pension rights, given the legal elements of this case, the Tribunal could not re-examine a situation which is extremely unsatisfactory for the Applicants.

(Signatures)

A handwritten signature in black ink that reads "Brigitte Stern". The letters are cursive and somewhat stylized.

Brigitte Stern
Member

New York, 22 November 2006

A handwritten signature in black ink that reads "Maritza Struyvenberg". The signature is more fluid and cursive than the one above.

Maritza Struyvenberg
Executive Secretary