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107th Session of the ILOAT

Summary

The 107th Session of the Administrative Tribunal of the International Labour Organisation (ILOAT) pronounced 48 judgments on 08.07.2009. The EPO was again the Tribunal's largest "customer", accounting for no less than 13 of the cases! In this session, the EPO judgments were all either clear "wins" or clear "losses". There were three of the former and ten of the latter. This paper discusses the EPO cases, in particular pointing out items of interest, and also highlights items of interest to EPO staff from the non-EPO cases.

Introduction

The ILOAT hears complaints relating to disputes between employees and organisations for 56 international organisations. The judgments are orally presented in open session twice a year in Geneva, at which time the judgments become legally binding. Following the presentation judgements are publicly available in paper form and are then sent to the parties via post. Online publication follows within a couple of weeks[1]. This report summarises observations from the 107th session of the ILOAT, and important developments in the case law.

For more general comments on the functioning of the Tribunal, we refer to the comments made in our report from the 106th session, available from
http://www.suepo.org/archive/su09019cp.pdf

You may be aware that a reform of the justice system within the UN is now being implemented. This is likely to have an impact on the justice systems of those organisations which use the ILOAT. On this line there was a meeting held between ILO Management, ILO Legal department, legal departments of other "client" organisations, and members of the ILOAT, on the 5th of May this year. A number of staff associations (including SUEPO and Staff Committee) formally requested attendance at this meeting but this was rejected. Issues were discussed which could have a serious impact on the functioning of the ILO, and to do so in the absence of staff representation is in our view not acceptable. This was a central theme in the discussions with other staff associations and a separate report will be provided on this matter.

In general SUEPO will continue to monitor closely the work of the Tribunal and to push for needed reform. More information can be found at the site http://rights.suepo.org

Summary of EPO cases

Death and Invalidity Insurance
With circular 283, issued on 13.12.2004, the Office greatly increased the contributions for death and invalidity insurance (DII), and "recovered" an amount from staff members equivalent to about 7.5% of a month's salary. A number of appeals, for example by GAC members nominated by the CSC, were filed against this decision. The Internal Appeals Committee (IAC) unanimously agreed that Circular 283 was introduced in an irregular manner. They recommended that the matter be re-submitted to a correctly constituted GAC,

[1] The Tribunal's website is http://www.ilo.org/trib this session's judgments have already appeared

with all information necessary for the GAC to be able to give an informed opinion. The proposal should then be presented to the Administrative Council for adoption. Should it turn out that the sums deducted from staff were wrong, then these sums should be refunded with interest. The President informed the complainants of her decision to follow the opinion of the IAC.

One GAC member appealed at this stage to the Tribunal claiming that the remedy suggested by the IAC and followed by the President was inadequate. Additionally, the calculation was wrong. This resulted in judgment 2858. In parallel, the topic was re-submitted to the GAC for opinion. After discussions in the GAC, the members nominated by the CSC (again) informed the President that the administration had not provided them with enough information for them to be able to give a reasoned opinion on the matter. Another GAC member appealed to the Tribunal on this point (complaint 2857) taking. the lack of adequate information submitted to the second GAC as de facto rejection of his appeal, despite the President's statement that the appeals would be allowed. Contrary to the Office's submissions, the Tribunal agreed with the complainant on this point that the complaint was indeed receivable.

In judgment 2857, the Tribunal agreed that the information sent to the GAC was not sufficient. In particular, the Tribunal found that "**it is not enough to show that the current numbers are mathematically correct ...; it is necessary to show how one arrives at those numbers**". This the Office failed to do. Accordingly, Circular 283 was set aside ab initio, the case was sent back to the EPO, with the order that the Office must reconsider the matter. For the reasons set out in judgment 2858, the Office was not required to refund to staff affected the sums of money deducted as a result of the circular. However, the Office was ordered to pay one euro in moral damages to each staff member represented by the complainant. Since the complainant is a GAC member nominated by the CSC, i.e. the **Central** Staff Committee, this means to each staff member Office wide who was in place at the relevant time.

More significantly, this judgment should prove important for GAC consultation in the future. SUEPO notes, from reading the reports written by the members of the GAC nominated by the CSC, that the quality and sufficiency of the information submitted to the GAC by the administration is frequently inadequate. This is particularly true when the topic under discussion relates to the Office's social security system e.g. the medical system or other insurance systems. If this judgment leads the Office to take seriously its obligation to provide the GAC with timely, correct, adequate information, then we welcome it.

Judgment 2858, on the other hand, was lost. The Tribunal decided that the President was correct to follow the remedy proposed by the IAC. Even though circular 283 had been introduced in an irregular manner, to have reimbursed the amounts recovered from staff would have imposed an unreasonable administrative burden on the Office, in particular since the sums deducted might have been correct. The Tribunal did not, however, even consider the question of whether the sums were actually correct! This was despite the detailed submissions on the part of both complainant and Office, which included the Office paying for and submitting two opinions by separate actuaries. The Tribunal considered this issue as not challenging a final decision!

Sickness and invalidity

One trend in recent years amongst EPO cases has been that the Office has repeatedly lost cases surrounding sickness and invalidity.

Despite such positive final outcomes, SUEPO has stated its concern over such cases. Complainants in these cases are vulnerable and weak. We have thus continuously stated that the Office should take particular care to treat these people with dignity, and their cases correctly, without forcing them to wait (usually years) for the Tribunal to correct the actions of the administration. We were thus pleased to note that in this session only two EPO cases involved invalids. Moreover, one of these concerned an application to review an earlier judgment, rather than a new dispute; and the other case didn't involve the question of the invalidity procedure in itself. If this means that the Office is now taking more care to ensure that decisions concerning invalidity are correctly motivated, then we welcome this.

Judgment 2846 involved a claim by an invalid for retroactive promotion to A4 under the "age-50 rule". The complainant went into invalidity as an A3, aged 53. After he left the Office, in judgment 2272 the Tribunal quashed the Office's scrapping of the age-50 rule. The rule

was thus re-instated retroactively, and was in force until the Office again revoked the rule (in 2007). Accordingly, he asked the Office to retroactively promote him to A4 with effect from the date at which he turned 50. This the Office refused to do. The reason given was that a requirement for promotion under this rule was a record of performance of at least "good". However, before his departure from the Office his performance had declined.

The Tribunal found that from 1992 - 1999 the complainant had indeed had a record of "good". Whilst it was true that the report for the reporting period in which he turned 50 was "less than good", this report was not correctly finalised (possibly, the Tribunal noted, due to his state of health). Thus the Tribunal found that refusing to promote him constituted an abuse of discretionary authority. The impugned decision was thus set aside and the Office was ordered to promote him with retroactive effect. This affected also the lump sum payment on invalidity and his invalidity pension. The Office was ordered to pay interest on the increased sums at a punitive rate.

Judgment 2816 concerned an application to review judgment 2580 by a former staff member who is now an invalid. According to the Tribunal's case law, "the Tribunal may therefore declare such an application receivable only in quite exceptional circumstances, for example when new facts of decisive importance have come to light since the date of the judgment". In the current case, however, the Tribunal decided that this was not the case. Rather, the complainant had "merely revisited and reargued the facts already considered by the Tribunal". Accordingly the complaint was summarily dismissed (under Art. 7 of the Tribunal's rules.)

Judgment 2843 concerned the case of a (former) staff member who slipped on the floor in the underground car park in Munich and fractured a leg. Whilst the Office reimbursed his outstanding medical expenses which resulted under Article 22 of the medical insurance contract, the Office refused to pay him moral damages, this despite the fact that the IAC recommended such a payment.

The Tribunal considered that the cleaning measures undertaken by the Office were appropriate for a garage. Accordingly, the Office was not negligent and the claim for moral damages was dismissed.

This judgment is interesting (and bad for staff) since it ties the liability of the Office to pay compensation to the ability to demonstrate negligence (or an intentional breach of a duty), which is difficult. This standard of proof is not consistent with that applied in member states and is not consistent with Health and Safety legislation which is supposed to apply to the EPO in accordance with the new health policy. Given this background, in our opinion the Office should introduce measures to compensate staff members in such situations. It is our understanding that such regimes exist at other international organisations.

Career issues

Judgments 2834 and 2835 both concern complaints by a staff member against his non appointment as a director in DG1. Judgment 2834 concerned an appeal against a decision not to invite the complainant to an assessment centre. Judgment 2835 concerned an appeal in a different selection procedure not to reject the complainant's application without having invited him to an interview.

It seems that the basic reasons for both decisions (not to invite the complainant to assessment centre or interview) is that the Office took into account the results of earlier applications for director posts which the complainant had made. From these earlier procedures the selection boards had concluded that the complainant "did not have the necessary managerial skills", had "little understanding of the tasks of a director" and "no experience or knowledge of [human resources] issues."

In both cases, the Tribunal recalled from its case law that "it is well established that an organisation has a wide discretion in relation to the appointment and promotion of staff. For this reason, these decisions are subject to limited review". In both cases, the Tribunal found that the complainant had failed to prove any error of law or fact or a breach of any rule. Additionally, the complainant had failed to demonstrate his managerial abilities. Rather, the complainant "relied on unsubstantiated allegations and speculation". For these reasons, the Tribunal dismissed both complaints.

Judgment 2859 concerned an appeal from a staff member unhappy with his grading when he was promoted from the top of the B6 scale to

grade A2. He claimed that he should have been promoted to A3 instead.

The facts are the same as in judgment 2624, discussed in our report of the 103rd session. What ever one may think of the correctness of that judgment, the Tribunal followed it (for the same reasons), and dismissed the appeal.

Interestingly, there was a minority concurring opinion from one of the judges. Whilst he agreed with dismissing the complaint, he thought that the solution applied by the Office in the current case and 2624 was ad hoc. He hoped that the Office would find a new approach in the future for similar cases (which, since filing of the complaint, the Office actually has; it has changed Article 49 ServRegs, in a manner detrimental to staff).

Judgment 2823 concerned two complaints by a staff member. One concerned his grading on entry into the Office, the other the date of his promotion to A3. These were joined, since they concerned the same question, namely the recognition of his reckonable experience. This experience had been recalculated several times by the Office in response to his queries to the HR department, as he successively presented more facts, evidence and arguments. At some point, the Office decided that the calculation was correct and refused to modify the calculation further. The core of the dispute was whether or not a time spent working freelance should be recognised at 100%. The Tribunal decided that since the complainant had not provided necessary documents to prove that this should be the case, the claim for increased reckonable experience was not substantiated. Accordingly, the complaints were dismissed.

The judgment was, however, interesting because of a discussion on receivability (which in the end was not important for the outcome). For receivability of one of the internal appeals, the complainant relied on salary slips. Whilst the Tribunal agreed (in line with judgment 1798) that "pay slips are individual decisions that may be challenged before the Tribunal", they found that they "cannot be challenged as new decisions if they merely confirm a decision that was taken at some earlier time and outside the time limits in which an appeal may be brought". This represents a change in how SUEPO generally understood the situation, which is why we highlight it here. Accordingly, staff should be aware of the dangers of relying on salary slips as appealable decisions.

Pensioners

Pensioners can also file appeals both before the IAC and, if that doesn't give satisfaction, before the Tribunal. Judgment 2832 concerned complaint number 9 of a former staff member. The complainant had previously appealed several times, with no success, against his non appointment to DG3 as a member of a board of appeal. This complaint concerned the appointment in 2007 of a number of A3 examiners as members of an appeal board. He sought to have his pension recalculated on the basis of grade A5, step 13 and moral damages.

Basically, the complaint was found to be irreceivable both internally and at the Tribunal. The Tribunal reasoned that, since he had already retired before the decisions being impugned, the decisions had "caused him no injury whatsoever".

Of note is that the Office requested that the complainant be ordered to pay damages, since the complaint constituted an abuse of process. This the Tribunal refused to do. Although they said that the complaint could be viewed as an abuse of procedure, since it was both "irreceivable for want of a cause of action and manifestly unfounded inasmuch as it is based on arguments that have already been dismissed by the Tribunal in previous judgments", they "hoped that the legal consequences that the Tribunal has drawn in this judgment from the complainant's retirement will prevent him from bringing new disputes in the future". More generally, the Tribunal noted that it was essential that the Tribunal should be open and accessible to international civil servants without the dissuasive effect of possible adverse awards.

Whilst we would discourage the filing of complaints which are abusive or manifestly unfounded; we note that in actual fact there is nothing in the Tribunal's rules which would allow it to make awards against complainants. On the contrary, the statutes state that costs are to be covered by the defendant organisations. The only case of which we are aware that an award has been made against an applicant is 2211 and this was for a modest amount. SUEPO maintains that the Tribunal has misapplied its own statute in this case, and we would point out

that whilst organisations have the right to challenge such breaches, staff do not.

Miscellaneous
Judgment 2819 concerned an appeal by a Principal Director (PD) who had effectively had his functions as a PD taken away from him and been given a "non-job", with no staff and with functions of a significantly lower level.

In the internal proceedings, the IAC was of the opinion that transferring the PD in question was justified in the interests of the Office. However, the majority was also of the opinion that his dignity had also been harmed and recommended that the Office pay him moral damages. The Office refused to pay him damages, but "as a sign of good will" offered to consider improving his "administrative support" i.e. to give him a secretary.

The Tribunal judged that not only had his dignity been harmed by the transfer, but that the transfer itself was illegal. They awarded him 25000 euros moral damages, and ordered the Office, within 28 days, to reassign him "to a grade A6 post that involves the running of a prominent organisational unit covering several specialised fields". The only sensible way to interpret this would seem to be that the Office must reassign him to a line-PD post.

Judgment 2827 concerned a complaint by three "staff representatives" in The Hague against the refusal of the Office to provide them with information concerning the cost (including travel, consultancy, printing etc) of the "Scenarios for the Future" project.

The Office had tried to argue that only staff committee members have "locus standi" in such cases. In the proceedings, the complainants had not described themselves as such. On this point, the Tribunal noted that since they were indeed elected staff committee members, the complaints were receivable on this count. However, they recalled from their case law that "a complaint is receivable only if it is about an individual official's status as an employee of the organisation [not about the collective interests of trade unionists]". They decided that provision of information as to the costs of specific projects does not fall under this and dismissed the complaint. This demonstrates that the lack of standing for staff associations is a problem, and that the "fix" that the Tribunal has introduced in which it permits staff representatives to file complaints, is no substitute for permitting staff associations to file cases in their own right.

Judgment 2825 concerned a complaint from a staff member concerning (non) reimbursement of crèche costs. After filing the appeal, the complainant received the usual formal letters from the Office that "the President of the Office considered that the relevant rules had been correctly applied and that his request could not be granted". Accordingly, the case was referred to the Internal Appeals Committee. Receipt of the appeal by the IAC was confirmed to the complainant by the IAC's chairman. The complainant seems to have misunderstood this exchange of letters, to mean that the appeal had been rejected. From the Judgment it appears that the administration tried to explain to him that internal remedies must be exhausted before filing a complaint at the Tribunal, and that since no final decision had been taken, internal remedies had not yet been exhausted. Despite this, the complainant filed at the Tribunal.

The Tribunal found that since the complainant did not challenge a final decision, the complaint was irreceivable and must proceed before the IAC.

Interesting non-EPO cases

Employment of spouses
Judgment 2839 concerned a case from the WHO of a staff member who married an official with a higher grade at the organisation. The EPO could learn from the WHO staff rules, which provide guidance as to how to proceed in such matters. In particular, they set out that a staff member who is related to another staff member "shall not be assigned to serve in a position in the same unit, or to a position that is superior or subordinate in the line of authority to the position occupied by the staff member to whom he or she is related".

Accordingly (but seemingly only after a request by the WHO staff association), the WHO investigated the matter. In particular, they engaged a consultant, who suggested three different courses of action (essentially reassigning one partner or the other). Matters essentially became moot when the complainant fell ill through stress and resigned. This led to two appeals. In judgment 2839, the Tribunal found that the investigation, which included canvassing 40 staff members of their opinion,

had not respected the complainant's dignity. This led to an award of damages.

The situation which underlies this judgement is unfortunately common. In judgment 2762, the Tribunal set aside the appointment by the previous EPO President of his wife. That whole affair made amply clear that the Office needs a Code of Conduct, including rules as to how to proceed with such cases (as demanded by staff representation for years - see e.g. CA/85/05). Office management has consistently obstructed implementation of any such rules or code at the EPO, which we condemn.

Withdrawal of suit

Attached to the paper judgments were 15 "withdrawals of suit". Of these, 12 concerned Eurocontrol. This happens when the complainant informs the Tribunal that he wishes to withdraw a complaint and the organisation in question has no objection. Then the Tribunal officially registers withdrawal.

We know neither the substance of these cases nor the reasons for withdrawal because these are not made public in these cases. However, it seems likely that the organisations in question (Interpol, WIPO and WHO were the others) probably attempted to settle the disputes. We note that the EPO has been making efforts in this direction also and that practice of reviewing cases prior to forwarding a case to the internal appeals committee has improved. We would encourage the EPO to try to do the same with pending ILOAT cases.

Admissibility issues

The Tribunal considers itself to be a final instance. That means (c.f. its rules, which may be found on the Tribunal's website) that internal remedies, for example internal appeal or review proceedings, must be exhausted before a complaint is filed with the Tribunal.

Also, the Tribunal takes a very strict view of formal matters. This includes the issue of time limits. For example in judgment 2821, they stated that "time limits are an objective matter of fact and it (i.e. the Tribunal) should not entertain a complaint filed out of time, because any other conclusion, even if founded on considerations of equity, would impair the necessary stability of the parties' legal relations, which is the very justification for a time bar".

There were in this session a number of cases (including 2818, 2820, 2821, 2822, 2826), all of them non-EPO, which were ruled inadmissible for one or the other of these reasons. Staff should be aware of these issues when considering filing with the Tribunal.

The Tribunal also takes a dim view of complainants trying to "reactivate" time limits (see the above mentioned EPO judgment 2823). In judgment 2818 the Tribunal also recalled that "a decision made in different terms, but with the same meaning and purport as a previous one, does not constitute a new decision giving rise to new time limits [...], nor does a reply to requests for reconsideration made after a final decision has been taken".

Given that it is often difficult to recognise a "final" decision at the EPO, since they are generally not marked as such, staff members need to be vigilant on this point.

That said, the Tribunal also takes a dim view of organisations taking inordinately long to process internal appeals, and (c.f. 2820, 2841, 2844, 2851) will award moral damages for this reason, even if the case if otherwise dismissed on its merits or as irreceivable.

The EPO currently takes up to three years to process an internal appeal. This is outside what the Tribunal generally considers acceptable. We thus recommend all appellants (before the IAC) / complainants (before the Tribunal) to claim for moral damages and costs for this reason alone. In this respect we note that the UNIDO paid a complainant 8000 euros moral damages for a five year delay in internal proceedings.

Judgment 2840 (whose substance is related to that of 2839 discussed above) is interesting in that the organisation (WHO) questioned receivability of the complaint. They were given leave by the Tribunal only to discuss this point in their submissions. The matter concerned exhaustion of internal remedies. The Tribunal found that under WHO rules, a former staff member does not have recourse to the internal appeal process. Thus a complaint filed directly with the Tribunal was found to be receivable. The organisation was thus given 30 days to file a reply on the merits of the case. Whilst this might be efficient for the organisation, it clearly serves to delay justice in cases that prove to be receivable. An additional interesting point in this case is that the Tribunal arrived at its conclusion

after a review i.e. gathering of additional, necessary, evidence by the Tribunal. This is not the normal way that the Tribunal has functioned in the past and is in itself to be welcomed.

Fraud and corruption

In our report from the 105th session, we highlighted the case of Maria Veiga. She is the former Chief Internal Audit and Investigation Service at World Meteorological Organization (WMO) in Geneva which she joined in June 2003. Here she conducted a 3.5 million USD fraud and corruption investigation in which some top management officials and governing body members were allegedly involved. As a consequence of her refusal to follow instructions to exclude certain matters from her investigation she was harassed, sidelined and then finally summarily dismissed on 3 November 2006.

SUEPO invited her to give a presentation on hunting fraud and corruption, which was held in the (Munich) Isar building on 28.01.2008 . More details can be found at http://munich.suepo.org/archive/ex08011mp.pdf and http://munich.suepo.org/archive/ex08024mp.pdf

In case 2742, presented in the 105th session, she won substantial damages with respect to her "reassignment". The 107th session, in judgment 2861, dealt with a further six complaints resulting from her treatment at the WMO. These concerned harassment, non-renewal of contract, summary dismissal, statements made in an internal "house" publication "WMO Info" and statements made to Fox TV concerning the grounds for her dismissal. The judgment is 72 pages long!

Basically, the complainant won on all points. The Tribunal ordered the WMO to pay her (by Tribunal standards) substantial damages (190,000 CHF) and costs (25,000 CHF). Of added interest was a partial dissenting opinion by one judge. He basically agreed with the main conclusions of the other judges. However, he cited from his experience at other tribunals and noted that there seemed no consistent pattern or justification for awards of damages or costs at the Tribunal. This point is confirmed by a study which SUEPO has commissioned, which will be made available after completion. This judge suggested compensation in terms of base salary. Whilst we don't know precisely what this was, it seems that he would have awarded higher damages but lower costs.

An interesting twist in the judgement is that it refers to her misconduct as a justification for not overturning the WHO's decision not to renew her contract. Had the Tribunal done so it would have involved paying compensation for another 3 years salary. What is interesting is that the misconduct appears to be her failure to subordinate herself to an administration which was seeking to suppress information from the investigation. Also related was her refusal to co-operate with the measures taken against her following her being re-assigned. Given that if proven the allegations of fraud are serious and constitute criminal offences, it is odd that the Tribunal considers this to be misconduct. It is also odd that the Tribunal appear to ignore its case law which states that the organisation has an obligation to prove any misconduct and that disciplinary procedures must be followed, which in this case they were not. It is probably true that re-instatement would not have been possible in this case, but that does not mean that the WHO was correct not to renew her contract, and not to compensate her for the non-renewal.

Contracts

As in previous sessions, a number of complaints concerned non-renewal of contract. As we have previously commented, this area is a minefield. The organisations often lose, and have to pay substantial damages.

For example in case 2838, the complainant had received a series of short term contracts from the ILO, which went beyond the ILO's internal limit allowed for such contracts. When the ILO tried to terminate the complainant's employment, the Tribunal in effect agreed with the complainant that the duties were permanent in nature and there was thus an obligation on the organisation to have offered her a different type of contract.

Even where the organisation "wins" on the merits of a case, e.g. because the Tribunal considers that "a decision not to renew a fixed-term contract lies within the discretion of the organisation concerned", as in judgment 2850, the way that such a decision was reached may cause the complainant injury leading to a payment of damages (10,000 euros plus costs in the above case).

Given the troubles that other organisations have in this area, we have repeatedly stated that it is ill advised for the EPO to be pressing ahead

with increased use of non-permanent (including contract) employment in key areas of the Office. Moreover, in other organisations the number of disputes that arise in this area would seem to indicate that non-permanent employment leads to increased social unrest. We hope that the EPO administration will take this into account and review their current policies.

Organisational discretion

The Tribunal grants organisations wide discretion, in particular in areas such as promotions, transfers, confirmation of probation, renewal of fixed term contracts and even job classification. That said, the organisations may not abuse this discretion.

Most complaints challenging exercise of discretionary authority are dismissed by the Tribunal (see EPO judgments 2834 and 2835 cited above, but also 2824, 2844, 2852, etc.).

A case where the Tribunal did find for the complainant is set out in judgment 2837 concerning promotion. The Tribunal set aside the impugned decision since the organisation (the ILO) had failed to publish the promotions in a statutory "Staff Movement" list. The Tribunal found that this non-publication "deprived the complainant of information that she might have found useful in filing a request for review".

Given the suppression of staff changes from the EPO Gazette (and the time window where **no** staff changes at all were published), it will be interesting to see if there are any similar complaints in the future concerning the EPO!

Another discretionary decision was set aside by the Tribunal in judgment 2845. The case concerned a staff member at the UPU who reached the normal statutory retirement age. He asked for an extension of service. The Tribunal found that even though this was a discretionary decision, it must be clear that the decision was taken solely with the interests of the organisation in mind. It may not be arbitrary. If it is, it constitutes an abuse of authority. The Tribunal satisfied itself that, for the above reasons, in this case the organisation's decision should be set aside.

Given the recent changes that make it possible, at the discretion of the organisation, for staff members to work beyond the age of 65, we hope that the Office takes note of this judgment.

Whilst the Tribunal generally grants wide discretion to organisations in reorganisations (including post reductions), provided that they are in the interests of the organisation, the Tribunal does set limits. For example, it constitutes an abuse of authority to abolish a post merely to remove staff regarded as unwanted. The Tribunal always holds that the dignity of staff being transferred must be taken into account. Also, especially if posts are being suppressed, the organisation must make every effort to find posts matching staff members' qualifications. In case 2830 the Tribunal found that the organisation (WIPO) had failed to meet the above criteria; in judgment 2856, the Tribunal found that the ILO had also failed. Given the continuous reorganisations going on within the Office, we hope that the Office will take special care to treat staff affected with the required dignity.

Res judicata

The Tribunal's judgments are "final and without appeal" as stated in Article VI of its Statute, and carry the authority of *res judicata*. They may be reviewed "only in quite exceptional circumstances and on strictly limited grounds: failure to take account of some material facts, a material error that involves no exercise of judgment, an omission to rule on a claim, or the discovery of some new essential fact that the complainant was unable to rely on in the original proceedings. Moreover, the plea must be such as to affect the original ruling. Pleas of a mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea, on the other hand, afford no grounds for review". Put in other words, this is the principle of infallibility of the judiciary. The Tribunal does not make mistakes.

Thus judgment 2815 was summarily dismissed for not meeting the requirements as set out above. **However**, in judgment 2829 the Tribunal found that "the *res judicata* rule applies to decisions of judicial bodies, but not to opinions or recommendations issued by administrative bodies". The logical conclusion is that it doesn't apply to opinions of the EPO's IAC either! It would consequently be a procedural violation for the EPO (or the President) to insist that it does. It is, however, unclear that this would help complainants much in practice.

The Executive Committee