



Fourteenth session
Agenda item 63

PROPOSED AMENDMENTS TO CERTAIN PROVISIONS
OF THE PENSION SCHEME REGULATIONS OF THE
INTERNATIONAL COURT OF JUSTICE

Note by the Secretary-General

1. By a letter dated 22 June 1959, the Deputy-Registrar of the International Court of Justice, acting at the direction of the Court, has drawn the attention of the Secretary-General to two matters regarding the Pension Scheme applicable at present to members of the Court. Subsequently, a report on these matters was prepared by the Registry of the Court and transmitted to the Secretary-General.
2. The Secretary-General submits to the General Assembly the above-mentioned report for consideration and appropriate action. It will be recalled that under paragraph 7 of the Statute of the Court the conditions under which retirement pensions may be given to members of the Court are fixed by the General Assembly. The Pension Scheme Regulations for members of the Court now in effect were approved by resolution 86 (I) of 11 December 1946.
3. The first matter raised by the Court pertains to the position of judges who may find it necessary to resign from the Court prior to the expiration of the period for which they were elected. The report suggests that the two specific references to resignations be deleted from the Regulations. This change would entitle judges who have completed five years of service to pensions in accordance with the Regulations, without a special decision of the Court being necessary in each case. The Secretary-General agrees with the views expressed in the report and believes that the General Assembly may wish to give effect to the Court's suggestions at the current session.

4. The second matter raised in the report relates to the amount and the method of computing the pensions of judges who retire in the ordinary course. The Secretary-General has not yet been in a position to assemble comprehensive comparative data allowing a full appraisal of the proposals contained in the report. He suggests therefore that the consideration of the levels of pensions of judges of the International Court of Justice be deferred until the next session of the General Assembly, pending the completion of the study of the relevant part of the Court's report by such appropriate body as the Assembly may determine.

Report on the subject of the Pension Scheme
Regulations for Members of the International
Court of Justice, referred to in the letter
addressed, at the direction of the Court, by
the Deputy-Registrar to the Secretary-General
of the United Nations on 22 June 1959

The present report concerns two matters relating to certain provisions of the Pension Scheme Regulations for Members of the Court, as adopted by the General Assembly on 11 December 1946.^{1/}

The first matter pertains to the position of a judge who may find it necessary to resign from the Court prior to the expiration of the period for which he was elected; the second relates to the amount and the method of computing the pensions of judges who retire in the ordinary course, i.e., who are not re-elected for a further term.

As to the first matter, it will be observed from paragraph 1 of the Regulations that pensions are available to judges who have ceased to hold office only if they: (a) have not resigned; (b) have not been required to relinquish their appointment for reasons other than the state of their health; (c) have completed at least five years of service. Paragraph 4 lays down that: "If a member resigns after having completed at least five years of service, the Court may, by special decision, grant him such pension as seems equitable, but not exceeding an amount calculated as in regulation 6".

It results from these provisions that a member of the Court who resigns after five years of service is not entitled to a pension as a matter of right although the Court may grant him such pension as seems equitable.

That aspect of the existing scheme would appear to be open to objection on a variety of grounds. In particular, it may have the effect of discouraging a member of the Court from resigning although he may feel that, without being actually in a precarious state of health necessitating such action, he is no longer in a position to serve the Court to his satisfaction and in accordance with the best interests of the Court. It is also possible that a member of the Court may

^{1/} For the text of the Regulations, see General Assembly resolution 86 (I).

wish to resign for imperative family considerations such as the serious and prolonged illness of his wife or another member of his family. Yet he may hesitate to resign and to rely on the discretionary decision of the Court in respect of what otherwise would constitute a clearly established right to a pension. The provisions of the Regulations are so general that they could cover the case of a judge who, having served a full period of nine years, has been re-elected for a further period and resigns during the latter period. This would be inconsistent with the fact that he had already acquired a right to a pension on the basis of his first nine years of service.

It will thus be seen that the regulation may ill serve the purpose for which it was intended. It is not in keeping with the law of many countries which grant to judges who resign after a reasonable period of service a pension equivalent to a full salary or to a larger part thereof.

The existing regulation is, moreover, a departure from the system which obtained with respect to the members of the Permanent Court of International Justice Article 1 of the resolution adopted by the Assembly of the League of Nations in 1929 provided that "in the case of resignation, members of the Court will not be entitled to a pension unless they have completed a period of five years service". There is no indication in the report of the Secretary-General to the first session of the General Assembly, or in that of the Working Party set up by him in 1946, why a different rule was adopted in the new Regulations. In the memorandum submitted at that time to the Secretary-General by the Registrar of the Court it was merely stated that in the case of resignation no pension rights would be acquired until after five years of service.^{2/} The Working Party, in noting the passage in question, confined itself to stating that "this is the same arrangement as existed under the former Court and would be consistent with the proposal for the United Nations Pensions Plan".^{3/} As no reasons were given in support of the change thus adopted and as none appear to exist, it may be considered that for the reasons stated above the existing regulation should be altered. The amendment could be effected through an alteration of paragraph 1 of the Regulations by way of omitting from that paragraph the words "(a) have not resigned" and by deleting paragraph 4.

^{2/} Official Records of the General Assembly, second part of first session, Sixth Committee, pp. 294 et seq.

^{3/} Ibid., p. 299.

As to the second matter mentioned above, namely, that relating to the amount and the method of computing the pensions of judges, it will be observed that paragraph 6 of the Regulations provides that a member of the Court shall be entitled to the payment of a pension equivalent to one three hundred and sixtieth of his salary in respect of each complete month passed in the service of the Court. It is further provided in paragraph 7 that no pension shall exceed one-third of the annual salary of a judge.

Neither the basic scale of the pension - according to which a judge is entitled to a pension consisting of one-thirtieth of his salary for each year of service (this figure corresponding to that of one three hundred and sixtieth in respect of each month) - nor the maximum of the pension as fixed in the Regulations appears sufficiently to take into account the circumstances of the election of the members of the Court and the character and requirements of their office. In accepting office, members of the Court abandon an existing career and in some cases the concomitant - and often substantial - pension or insurance rights. On relinquishing office they may not easily be in a position to embark upon a new career or return to their previous career.

The amount of the pension which retiring members of the Court are entitled to receive according to the Regulations does not appear to be sufficient to secure the object which was contemplated when their salaries were fixed nor consistent with the nature of their office. It may also be borne in mind that in a large number of countries the pension granted to retiring judges exceeds substantially the amount of one-half of the salary.

In view of the foregoing, it is suggested that it would be desirable to alter the Regulations so as to secure to the retiring members of the Court the right to a pension amounting to one-twentieth of the salary of a judge for each year of service and that the maximum of pension now fixed at one-third should be altered to one-half of such salary.

In the event of favourable action by the General Assembly, the actual increase for 1960 in the amount of the pensions at present paid to former members of the Court would be approximately \$17,000. With regard to future annual budgets of the Court, the amount of pensions paid will, of course, depend upon possible changes

in the composition of the Court (periodical elections, or resignation), as well as upon the death of pensioned former members of the Court.

The proposal here advanced is identical with the Pension Scheme adopted in 1954 for the judges of the Court of Justice of the European Coal and Steel Community. Article 6 of that Pension Scheme provides as follows:

"The pension amounts for each complete year of service to 5 per cent of the final salary received and for each complete month to one-twelfth of that amount. The pension cannot exceed 50 per cent of the final salary received (maximum pension). 4/

Further details concerning that Court are mentioned in the attached note. Certain changes have since 1954 been made in the Court which is now the Court of Justice of the European Communities, but the Pension Scheme remains unaltered.

It may also be noted that, by a decision of the 42nd meeting of the International Labour Conference, adopted in Geneva in June 1958, the pension paid by the Pensions Fund to the judges of the former Permanent Court of International Justice were increased by 40 per cent. 5/

4/ Journal officiel de la Communauté européenne du Charbon et de l'Acier, 3rd year, 5 July 1954, p. 438.

5/ International Labour Office, Official Bulletin, vol. XLI, 1958, No. 2, p. 94.

Note on salaries, terms of office and other conditions of service of the President and Judges of the Court of Justice of the European Coal and Steel Community (now the Court of Justice of the European Communities)

1. Salaries: (Decisions dated 24 June 1954 of the Council of the European Coal and Steel Community, amended by the decision of 7 and 8 December 1954 of the same Council.)

The annual emoluments are fixed in accountancy units of the European Payments Union.

(a) Salaries:

President	15,000
Judges	12,000

- (b) Living allowances: 15 per cent of salary.

(c) Representation allowances:

President	20 per cent
Judges	10 per cent

(d) Allowances for special offices:

2,000 EPU accountancy units for Presidents of Chambers during their term of office.

2. Miscellaneous benefits:

- (a) Allowances to compensate the cost of installation: one-third of the annual salary at time of payment of this allowance.
- (b) Transitory allowance for three years of half the annual salary received at the time of the termination of service for ex-Members of the Court.^{6/} This allowance may not be received at the same time as the pension.
- (c) On termination of service, a life pension on reaching the age of sixty-five.

Amount: "The pension amounts for each complete year of service to five per cent of the final salary received and for each complete

^{6/} This allowance corresponds to the following prohibition: "They may not acquire or hold, directly or indirectly, any interest in any business related to coal or steel during their term of office and during a period of three years thereafter."

month to one-twelfth of that amount. The pension cannot exceed 50 per cent of the final salary received (maximum pension)."

(Article 6 of the decision of the Council dated 24 June 1954.)

(d) In the case of resignation or termination of office because of incapacity to discharge duties on grounds of infirmity, sickness, or in case of similar disablement on normal expiry of the term of office:

- At the end of the period of transitory allowance, a life pension (reckoned according to Article 6 above with a minimum of 25 per cent of final annual salary), if the incapacity is recognized to be permanent; if the incapacity was incurred while in service, the maximum pension will be paid.
- Annual payment, until recovery, of a sum equal to 50 per cent of final annual salary, if the infirmity or sickness was contracted in the course of service, and equal to 25 per cent in other cases, if the incapacity continues on termination of the period of transitory allowance, but without being permanent. This annual payment is replaced by a life pension, reckoned in the same way as in the preceding paragraph, if the incapacity still continued when the beneficiary has reached or exceeded the age of sixty-five, or after seven years from the commencement of the annual payment. This last pension is exclusive of the life pension received on termination of service.
- In case of an accident sustained or sickness contracted in the course of service, and if the person concerned is not in receipt of one of the life pensions mentioned above, the annual payment, starting on expiry of temporary allowance and ceasing on reaching the age of sixty-five. The maximum annual payment thus made is 50 per cent of the final annual salary. The percentage is fixed by medical experts and this annual payment may not be added to the annual payments provided for above. Only the larger sum due will be paid.
- Refund of medical expenses, etc. in case of accident or sickness occurring in the course of service.

(e) Rights of widows and orphans:

(a) In the event of death while in office, the monthly salary until the third month after death;

(b) Survivors' pensions, reckoned on the basis of the pension payable at the time of death. If the death occurred while in office, these survival pensions are reckoned on the basis of a pension amounting to 50 per cent of the salary received at the time of death.

(i) For the widow: 50 per cent

(ii) For each fatherless child: 10 per cent

(iii) For each child without father or mother: 20 per cent of the pension received by the deceased at the time of death or of a pension amounting to 50 per cent of salary at the time of death if this occurred while in office.

The total of these pensions may not exceed the basic sum upon which they are fixed. They are proportionately adjusted.

For the widow, the pension is reduced by one-half in the event of re-marriage.

For orphans, the pension ceases at the age of twenty-one or at the end of their professional training (maximum: twenty-four years completed).

3. Term of office: six years. The judges are eligible for reappointment. The judges designate their President from among members for a term of three years, which is renewable.

(Convention relating to certain Institutions common to the European Communities, 25 March 1957, Article 4, amending Article 32 of the Treaty establishing the European Coal and Steel Community, European Yearbook, vol. V, pp. 591, 593.)

4. Other conditions of service:

- The judges reside at the seat of the Court.
- The Court sits permanently. Recesses are fixed by the Court with due regard for its judicial obligations.
- The judges are subject to certain incompatibilities; they enjoy certain immunities.
- They may be removed from office only if, in the unanimous opinion of the other members of the Court, they no longer fulfil the required conditions.

(Protocol on the Statute of the Court of Justice - European Yearbook, vol. I, pp. 435 et seq.)
