
Assembly of States Parties

Distr.: General
31 October 2006

Original: English

Fifth session

The Hague

23 November to 1 December 2006

**Report of the Registrar on pension schemes applicable to judges in
other international tribunals***

Introduction

1. In paragraph 7 of resolution ICC-ASP/4/Res.9, of 3 December 2005, the Assembly of States Parties (“the Assembly”) requested the Committee on Budget and Finance (“the Committee”) to consider further the issue of whether existing pensions payable to individual judges who have served at other international tribunals and organizations should be taken into account in determining the pensions payable by the International Criminal Court. The Assembly further requested the Committee to examine the practice of such tribunals and organizations themselves in relation to this issue and to report its findings to States Parties in advance of the fifth session of the Assembly.

2. In paragraph 66 of its report ICC-ASP/5/1, the Committee requested the Registrar to include in his report information on the pension schemes applicable to judges in other international tribunals and to advise on the practicability of determining pensions payable by the Court to individual judges on the basis of their previous service with other international organizations.

Pension schemes applicable to judges in other international tribunals

3. The pension schemes for judges of both the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda are based on the prevailing conditions of the Pension Scheme for the members of the International Court of Justice, prorated to account for the differences in the length of terms of appointment (nine years for judges of the International Court of Justice versus four years for judges of the International Tribunals).¹ The Pension Scheme Regulations for the members of the International Court of Justice provide for a retirement pension for members of the Court. The following are some of the features of the scheme:

- The pension scheme is non-contributory;
- A retirement pension equal to half of the annual salary at the time of retirement is paid to a judge who has completed a full nine-year term, with a proportional

* Previously issued as ICC-ASP/5/CBF.2/1.

¹ Article 13 *bis*, paragraph 3, of the Statute of the International Criminal Tribunal for the Former Yugoslavia and article 12, paragraph 5, of the Statute of the International Criminal Tribunal for Rwanda.

reduction for a judge who has not completed a full nine-year term. A judge who is re-elected receives 1/300th of his pension benefit for each month of service up to a maximum pension of two thirds of annual salary;

- Disability pension benefit equal to the amount of the retirement pension which would have been payable at the time of leaving office or upon completion of term;
- Pension benefits payable to surviving spouse and unmarried children under the age of 21.

4. It will be recalled that, in accordance with annex VI to the budget for the first financial period of the International Criminal Court (ICC-ASP/1/3, Part III), judges of the International Criminal Court are entitled to a pension benefit similar to that applicable to the members of the International Court of Justice. It will also be recalled that the conditions of service and compensation of judges of the International Criminal Court shall be reviewed by the Assembly as soon as practicable following the review of the conditions of service of members of the International Court of Justice. The Pension Scheme Regulations for judges of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court thus appear to be designed to ensure parity and substantial equality among the judges.

Practice with regard to previous service

5. Prior to the establishment of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, the Pension Scheme Regulations for members of the International Court of Justice governed all issues relating to the pensions of judges. Under these Regulations, a retired member of the Court who is re-elected as a judge is disqualified from receiving pension benefits during the time that such member is still in service (i.e. during the time that he/she is still a member of the Court).² The pension payment is revived only after the judge ceases to be a member of the Court, the rationale being to prevent a sitting judge from receiving both a pension and a salary at the same time.

6. The establishment of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda opened up the possibility that a former judge of the International Court of Justice could be elected/appointed to either ad hoc Tribunal and, in the absence of any bar to so doing, such a judge would receive a pension from the International Court of Justice as well as a salary from either Tribunal. The reverse situation could also occur in that a former judge of the ad hoc Tribunals could subsequently become a judge of the International Court of Justice, in which case he/she would receive a pension from the ad hoc Tribunals and a salary from the International Court of Justice. Similarly, a former judge of the International Criminal Tribunal for the Former Yugoslavia could be appointed to the International Criminal Tribunal for Rwanda or vice versa and thus receive both a pension and a salary at the same time.

7. Further developments in tribunals saw the establishment of ad litem judges for both the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. This opened further possibilities for former judges of either ad hoc Tribunal to become ad litem judges and thus to receive a pension and a salary at the same time.³

² Article 1 (5) of the Pension Scheme Regulations for members of the International Court of Justice.

³ Ad litem judges do not receive pension benefits. Periods of service as an ad litem judge cannot be counted towards or added to the years of qualifying service that a retired judge may have with the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda or the International Court of Justice.

8. The various reports of the United Nations Secretary-General to the General Assembly highlighted the above possibilities and recommended that former judges of the International Court of Justice and of the International Criminal Tribunal for the Former Yugoslavia and judges of the International Criminal Tribunal for Rwanda should be barred from receiving pensions to which they would otherwise be entitled if they were subsequently appointed/elected to serve as judges or as ad litem judges in any of the institutions. The bar would last for the duration of their term of office and would be lifted after they had ceased to serve as judges.

9. Following its consideration of the issue, the Advisory Committee endorsed the Secretary-General's recommendations and the United Nations General Assembly has since accepted them. Consequently, the Pension Scheme Regulations for members of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda specifically bar former judges from receiving payment of a retirement pension to which they would otherwise be entitled under the applicable pension scheme regulations during their period of service as judges in any of the institutions.⁴

10. Article 1 (7) of the Pension Scheme Regulations for members of the International Court of Justice provides as follows:

“No retirement pension shall be payable to a former member who has been elected or appointed a permanent judge of the International Criminal Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda or who has been appointed to serve in the International Criminal Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda as an ad litem judge until he or she ceases to hold that office or appointment.”

11. Similarly, article 1(5) of the Pension Scheme Regulations for the judges of the International Criminal Tribunal for the Former Yugoslavia provides that:

“No retirement pension shall be payable to a former judge who has been elected a member of the International Court of Justice or who has been elected or appointed a permanent judge of the International Criminal Tribunal for Rwanda or who has been appointed to serve on the International Criminal Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda as an ad litem judge until he or she ceases to hold that office or appointment.”

12. Under Article 1 (5) of the Pension Scheme Regulations for the judges of the International Criminal Tribunal for Rwanda:

“No retirement pension shall be payable to a former judge who has been elected a member of the International Court of Justice or who has been elected or appointed a permanent judge of the International Criminal Tribunal for the Former Yugoslavia or who has been appointed to serve in the International Criminal Tribunal

⁴ See, inter alia, paragraph 21 of the report of the Secretary-General on conditions of service of the ad litem judges of the International Criminal Tribunal for the Former Yugoslavia (A/55/756); paragraph 13 of the related report of Advisory Committee on Administrative and Budgetary Questions (A/55/806); General Assembly resolution 55/249; paragraph 29 of the report of the Secretary General on conditions of service for the ad litem judges of the International Criminal Tribunal for Rwanda (A/57/587); paragraph 23 of the report of the Advisory Committee on Administrative and Budgetary Questions on the financing of the International Criminal Tribunal for Rwanda (A/57/593); and paragraph 1 of General Assembly resolution 57/289.

for the Former Yugoslavia or the International Criminal Tribunal for Rwanda as an ad litem judge until he or she ceases to hold that office or appointment.”

13. No such bar exists with regard to judges of the International Criminal Court. During the fifty-seventh session of the General Assembly, in March 2003, the Secretary-General of the United Nations, in paragraph 13 of his report on conditions of service and compensation for officials other than Secretariat officials,⁵ sought to bring the issue of judges of the International Criminal Court to the attention of the United Nations General Assembly in view of the election of former judges of the International Criminal Tribunal for the Former Yugoslavia and of the International Criminal Tribunal for Rwanda as judges of the International Criminal Court. The Secretary-General noted that nothing barred former judges of the International Court of Justice and of the Tribunals from continuing to receive their pensions while engaged by the International Criminal Court. He urged the General Assembly to consider whether it would be appropriate to introduce any such bar and, if so, the circumstances in which it should apply. The United Nations General Assembly does not seem to have taken any action to date.

14. Experience shows that former judges of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda as well as ad litem judges are likely to be subsequently elected to serve as judges of the International Criminal Court. Similarly, former judges of the International Criminal Court can subsequently be elected as judges of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and /or as ad litem judges. In the absence of a similar bar against receipt of a salary and pension as applies in the case of judges of the International Court of Justice and of the Tribunals, former judges of the International Criminal Court will receive a pension from the International Criminal Court as well as a salary if they subsequently join the International Court of Justice or any of the Tribunals or if they serve as ad litem judges. Similarly, former members of the International Court of Justice and other Tribunal judges can receive their pensions as former judges as well as a salary if they subsequently join the International Criminal Court.

15. As regards the practicability of determining pensions payable by the International Criminal Court to individual judges on the basis of their previous service with other international organizations, it will be recalled that judges of the International Criminal Court are entitled to pension benefits similar to those applicable to members of the International Court of Justice. In this regard, the Committee on Budget and Finance may wish to recommend and the Assembly of States Parties may wish to decide on reciprocal arrangements between the International Criminal Court and the United Nations under which a person who was formerly a judge of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda should cease to receive payment of his or her retirement pension under the applicable pension scheme regulations during such time as he or she may subsequently serve as a judge of the International Criminal Court. Similarly, former judges of the International Criminal Court would also be barred from receiving a retirement pension under the International Criminal Court pension scheme during the time that such a judge serves at the International Court of Justice or other United Nations tribunal. Such an approach would be consistent with the provisions of annex VI to the budget for the first financial period of the International Criminal Court (ICC-ASP/1/3, Part III) and would ensure the intended equality of treatment between judges of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court.

⁵ *Official Records of the General Assembly, Fifty-seventh Session (A/C.5/57/36).*

16. Should the Assembly of States Parties decide that a person who was formerly a judge of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda or the International Criminal Court should cease to receive payment of his or her retirement pension during such time as he or she might subsequently serve as a judge of another of these institutions, consultations would have to be initiated with the United Nations for the simultaneous amendment of the respective pension scheme regulations of these institutions in order to implement the decision. References to the International Criminal Court would have to be included in article 1(7) of the Pension Scheme Regulations for the members of the International Court of Justice as well as in the corresponding article 1(5) of the Pension Scheme Regulations for the judges of both the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. The following provision would have to be introduced in the Pension Scheme Regulations for the judges of the International Criminal Court:

“No retirement pension shall be payable to a former judge who has been elected a member of the International Court of Justice or who has been elected or appointed a permanent judge of the International Criminal Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda or who has been appointed to serve in the International Criminal Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda as an ad litem judge until he or she ceases to hold that office or appointment.”

17. The Committee may also wish to recommend and the Assembly may wish to decide on the effective date for the implementation of the decision.

18. Judges accrue pension benefits during the period of their service with the respective institutions in accordance with the pension scheme regulations of such institution. A judge may thus accrue two pensions if he/she completes service with any two institutions. The possibility of payment of two pensions to a judge by the International Court of Justice and one of the Tribunals after a judge has completed his or her terms with both the International Court of Justice and the Tribunal is not regulated by the Pension Scheme Regulations for the judges of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda, neither does it appear to have been raised as an issue for review by the United Nations General Assembly.

19. In view of the fact that, as matters stand, there is no provision in the Pension Scheme Regulations for members of the International Court of Justice and for the judges of the two Tribunals that might operate to prevent payment of two pensions to a judge who has completed two periods of service with any of these institutions, and bearing in mind that the determination of the conditions of service and pension benefits of judges of the International Criminal Court is the sole prerogative of the Assembly of States Parties, the Committee may wish to bring the issue of possible payment of two pension benefits to former judges by the International Criminal Court and the International Court of Justice and/or the International Criminal Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda to the attention of the Assembly for its consideration.