



Administrative Committee

Amendments to the Regulations Governing
the Conditions of Service of Judges, the
Registrar and the Deputy-Registrar of the
Unified Patent Court

24 April 2023

EXPLANATORY NOTE

The Regulations Governing the Conditions of Service of Judges, the Registrar and the Deputy-Registrar of the Unified Patent Court (hereafter: “Service Regulations”) were adopted by the Administrative Committee on its inaugural meeting of 22 February 2022 and were amended subsequently on 8 July 2022 and 8 February 2023.

In this document, a further amendment to the Service Regulations is proposed in relation to two topics: recruitments and the remuneration of case-by-case part-time judges.

I. Recruitments

The proposed amendments to Articles 20 and 23 intend to draw on the consequences from past recruitments, taking into account the feedback of the Advisory Committee, as well.

1) The Advisory Committee has signalled on several occasions that the application period for vacant judicial posts is unjustifiably long: 8 weeks according to Article 20(1) of the Service Regulations. Comparing the length of the application period with the one at other international institutions (e.g. the European Patent Office and the EU institutions), it can be concluded that the deadline for application is considerably shorter at those institutions, which justifies the shortening of the application period at the UPC. It is proposed to draw inspiration from the EU Staff Regulations, according to which the application period is 4 weeks for a vacant post, since it strikes a good balance between efficiency and the complexity of preparing an application. The same path is proposed to be taken regarding the application period for the posts of Registrar and Deputy-Registrar, thus shortening the application period from 6 to 4 weeks.

2) It is also a matter of concern that both in the cases of judges and the Registrar and his/her deputy, at least 8 weeks should elapse between the end date of applications and the fixed date for appointment, which is an obstacle to possible prompt appointments. The consideration behind this provision was to protect the interests of applicants, who may have even longer notice periods. Hence it is proposed to keep this provision, nonetheless introducing some flexibility by stating that in the interest of the Court, in agreement with the candidate, this 8-week period could be shortened.

II. Remuneration of case-by-case part-time judges

The Administrative Committee, at its meeting on 8 July 2022, adopted the Concept for the remuneration and the procedure for remunerating case-by-case part-time judges of the Unified Patent Court (AC/11/08072022). According to this document, the remuneration of case-by-case judges should be oriented by guidelines, prepared by the Presidium which outline a standard amount of time required to fulfill specific judicial tasks (“time-factor”). These guidelines were adopted by the Presidium on 20 December 2022. The amount of remuneration for each respective month should be determined by multiplying a time factor by a “money factor”, which represents the corresponding amount of gross-pay per time-unit (EUR/h), on the basis of the monthly remuneration for full-time judges. The money factor is to be adopted and updated by the Budget Committee.

The Budget Committee has already started to work on determining the remuneration of case-by-case part-time judges, and the corresponding document on the calculation of the money factor will be tabled for adoption during the next meeting of the Budget Committee. Taking into account the irregularity of the actual work of a case-by-case part-time judge, from a practical perspective, it would be impractical if not

impossible to calculate the allowances and the different types of leaves provided by the Court each month when such a judge is allocated to a case. Therefore, the Budget Committee is aiming to strike a fair balance and proposes to calculate the hourly rate and the remuneration of case-by-case judges in such a way, which reflects any entitlement to allowances and leaves. Proposed amendments to Articles 27, 34, 41, 42, 43 of the Service Regulations serve the goal of establishing the legal basis of such calculation.

Concerning birth leave (Article 42) and parental leave (Article 43), an addition is proposed in each of these Articles, in order to prevent double entitlement to similar benefit, which may be provided by another employer or authority. The wording of the proposed new paragraph 6 of Article 42 and new paragraph 5 of Article 43 are in line with the wording already used for family allowances under paragraph 2 of Article 34 of the Service Regulations

Regarding special leave, regulated in Article 45, a different approach is proposed. Taking into account the exceptional and often unforeseen circumstances, which could justify taking such a leave, not only on a pro rata basis, it is proposed to delete the provision which sets forth that part-time judges are entitled to such leave on a pro rata basis and leave it for the Implementing Instructions to elaborate on the detailed rules on when and under which circumstances part-time judges (both fixed percentage and case-by-case part-time judges) could take such leave.

The Administrative Committee is invited to adopt the proposed amendments to the Service Regulations.

**DECISION OF THE ADMINISTRATIVE COMMITTEE OF 24 APRIL 2023 ON AMENDING
THE REGULATIONS GOVERNING THE CONDITIONS OF SERVICE OF JUDGES,
THE REGISTRAR AND THE DEPUTY-REGISTRAR OF THE
UNIFIED PATENT COURT**

THE ADMINISTRATIVE COMMITTEE

HAVING REGARD to the Agreement on a Unified Patent Court and in particular Articles 15 – 17 thereof;

HAVING REGARD to the Statute of the Unified Patent Court and in particular Articles 2 – 4, 6 –7 and 9 – 12 thereof;

HAVING REGARD to the Statute of the Unified Patent Court and in particular Article 8 thereof, which together with the Protocol on the Privileges and Immunities of the Unified Patent Court and in particular Article 9 thereof defines the privileges and immunities of the judges, as well as of the Registrar and Deputy-Registrar of the Court;

RECALLING that the Regulations Governing the Conditions of Service of Judges, the Registrar and the Deputy-Registrar should be such as to secure for the Court the services of judges, Registrar and Deputy-Registrar of the highest standard of independence, integrity and ability;

HAS ADOPTED THIS DECISION:

Article 1

The Regulations Governing the Conditions of Service of Judges, the Registrar and the Deputy-Registrar of the Unified Patent Court are amended as follows:

1. Sentences 5 and 6 of paragraph 1 of Article 20 are replaced by the following:

“The vacancy notice shall be published at least 4 weeks before the deadline for applying for the post. The deadline for applying for the post shall be set no less than to 8 weeks before the date fixed for appointing the judge in the judicial post. The date of appointment may be brought forward in the interest of the Court and with the agreement of the candidate selected by the Administrative Committee to fill in the post.”

2. Paragraph 2 of Article 23 is replaced by the following:

“2. The vacancy notice for the post of Registrar shall be published on the website of the Court at least 4 weeks before the deadline for applying for the post. The deadline for applying for the post of Registrar shall be set to no less than 8 weeks before the date fixed for appointing the Registrar. The date of appointment may be brought forward in the interest of the Court and with the agreement of the candidate selected by the Presidium to fill in the post.”

3. Paragraph 3 of Article 27 is replaced by the following:

“3. Part-time judges appointed under option (a) of paragraph 2 shall receive the basic salary on a pro rata basis corresponding to the working hours spent on the cases attributed to them. Their entitlement to allowances shall be reflected in their remuneration. Part-time judges appointed under option (b) of paragraph 2 shall receive the basic salary and any applicable allowances both on a pro rata basis corresponding to the percentage as per their appointment to the Court.”

4. The last sentence of paragraph 1 of Article 34 is replaced by the following:

“Eligible part-time judges shall receive family allowances in accordance with Article 27(3) of these Regulations.”

5. Paragraph 8 of Article 41 is replaced by the following:

“8. Part-time judges appointed under option (b) of Article 27 (2) shall be entitled to annual leave on a pro rata basis. The pro rata entitlement to annual leave of part-time judges appointed under option (a) of Article 27 (2) is deemed to be reflected in their remuneration.”

6. Article 42 is supplemented with new paragraphs 5 and 6:

“5. Part-time judges appointed under option (b) of Article 27 (2) shall be entitled to paid birth leave on a pro rata basis. The entitlement to paid birth leave of part-time judges appointed under option (a) of Article 27 (2) is deemed reflected in their remuneration.

6. A judge, the Registrar or the Deputy-Registrar entitled to birth leave shall be required to report to the President of the Court of Appeal or, in the case of a judge of the Court of First Instance or of the Deputy-Registrar, to the President of the Court of First Instance any payments of the same nature or for similar purpose that are received from other sources. “

7. Paragraph 2 of Article 43 is replaced by the following:

“2. During parental leave, the judge, the Registrar or the Deputy-Registrar shall cease to be entitled to remuneration, but shall be paid a monthly allowance equal to 1.100 €. Part-time judges appointed under option (b) of Article 27 (2) shall be entitled to a monthly allowance on a pro rata basis. They shall continue to be entitled to the dependent child allowance and the education allowance, but shall not accrue annual leave. The entitlement to paid parental leave of part-time judges appointed under option (a) of Article 27 (2) is deemed reflected in their remuneration.”

8. Article 43 is supplemented with new paragraph 5:

“5. A judge, the Registrar or the Deputy-Registrar entitled to parental leave shall be required to report to the President of the Court of Appeal or, in the case of a judge of the Court of First Instance or of the Deputy-Registrar, to the President of the Court of First Instance any payments of the same nature or for similar purpose that are received from other sources.”

9. The last sentence of Article 45 is deleted.

Article 2

This decision shall enter into force on 24 April 2023.

Done on 24 April 2023 (online meeting)

For the Administrative Committee

signed Johannes Karcher

The Chairperson