

The Administrative Tribunal,

Considering the thirteenth complaint filed by Mr W. E. B. against the European Patent Organisation (EPO) on 29 May 2006, the Organisation's reply of 6 September, the complainant's rejoinder of 5 November 2006, the EPO's surrejoinder of 15 February 2007, the complainant's additional comments of 25 February and the Organisation's observations thereon of 24 April 2007;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a German national born in 1938, joined the European Patent Office, the secretariat of the EPO, in November 1980 as an Examiner. He retired on 1 May 2003 and has since been in receipt of a retirement pension, in respect of which a tax adjustment was paid until 2005 (in this connection, see Judgment 2622, also delivered this day).

On 8 December 2005 the Administration section informed him by e-mail that with effect from 2005 persons receiving a household allowance or a dependant's allowance – as in his case – were to be treated as married persons for the purpose of determining their tax adjustment. It was no longer possible to use the table of equivalence for single persons as the basis for calculating the tax adjustment for divorced persons with dependants. He was therefore requested to reimburse the overpayment of 5,287 euros that he had received for 2005 by the end of the year. On 9 December the complainant replied that the fact that he had a dependant daughter did not mean that he was married. He pointed out that he was not treated as such by the German tax authorities. He asserted that he was entitled to the most advantageous tax adjustment and therefore refused to reimburse the sum requested. The Administration reiterated its request on 15 December and warned the complainant that, should he fail to comply, the sum would be recovered by withholding the monthly instalments of the provisional tax adjustment with effect from January 2006. The complainant restated his position in a letter dated 18 December 2005, and on 13 January 2006 he informed the Administration that he had moved to Austria.*

In a letter dated 10 March 2006 the complainant drew attention to the fact that he was resident in Austria. He requested clarification regarding his pension slips, specifically regarding the amount of tax adjustment he was being paid, the "miscellaneous deductions" of 818 euros applied in January and February and the fact that the Organisation had paid him 1,636 euros less in February than the amount to which he considered he was entitled. On 29 May he filed a complaint with the Tribunal.

B. The complainant asserts that the Organisation's actions have placed him in an extremely precarious financial situation. He accuses it of failing to provide any justification for its decision to suspend payment of part of his pension. He states that he is unable to afford months of proceedings before the Appeals Committee and requests that the Tribunal issue an "interim injunction" against the defendant to secure payment of what has been unlawfully withheld.

He asks the Tribunal to rule that "arbitrary deductions from pensions are inadmissible", and to order the EPO to pay him all sums withheld in respect of "miscellaneous deductions", i.e. 4,090 euros for the period from January to May 2006, plus interest of 10 per cent per annum, as well as "punitive" damages of at least 1,000 euros.

C. In its reply the Organisation, citing the case law, maintains that the complainant has failed to meet the requirements of Article VII, paragraph 1, of the Tribunal's Statute, since he did not exhaust internal means of redress before filing his complaint. The complaint is therefore irreceivable.

The EPO's reply on the merits is presented as subsidiary. Referring to the tax adjustment mechanism and the provisions of the Pension Scheme Regulations, it contends that the deductions made from the complainant's retirement pension are justified. It explains that a "provisional" tax adjustment is paid to retirees whose pensions are liable to tax, pending approval by the national tax authorities of the tables of equivalence for the current year. The complainant, who had been treated as single, received an adjustment for 2005 that proved to be too high in the light of the changed interpretation by the German tax authorities of the status of a divorced pensioner in receipt of a household or dependant's allowance. As the complainant refused to reimburse the overpayment, as required by the Pension Scheme Regulations, the Office had to withhold the amount in question from his monthly pension. Contrary to the complainant's contention, it claims that he was informed of the reasons for which the deductions were made. It notes that since the complainant has left Germany to settle in Austria, where no tax is levied on pensions paid by the Office, he is no longer entitled to the tax adjustment. It points out that the complainant is still receiving the allowances to which he is entitled for his daughter's maintenance.

D. In his rejoinder the complainant challenges the defendant's translation of some of the correspondence annexed to its reply. He claims to have been informed that the overpayment would be offset by non-payment of the provisional tax adjustment due as from January 2006 and contends that, since no tax adjustment was owed to him in 2006 because of his relocation to Austria, the overpayment should not have been recovered. The fact that the Organisation failed to "correct" its explanation for the deductions proves, in his view, that it considered the payment of the tax adjustment to be quite separate from the payment of the pension itself.

He points out that when, in 2004, he challenged the fact that he was treated as being married although he was not and asked for his request to be considered as an internal appeal if there was no prospect of a favourable outcome, the Administration had conceded the merits of his argument. Lastly, he accuses the Organisation of "pursuing" him and sanctioning him for having a dependant child.

E. In its surrejoinder the EPO maintains that the complaint is irreceivable and, subsidiarily, that it is unfounded. It submits that it correctly applied the rules by which it was bound.

F. In his additional comments, which seem to refer to the surrejoinder filed by the defendant in the case pertaining to his twelfth complaint (which led to Judgment 2622), the complainant criticises, on the one hand, the functioning of the Appeals Committee and, on the other, what he describes as manipulation, that is to say applying, from the first year of retirement, tables of equivalence drawn up by the Co-ordinated Organisations** for full years although the pension is paid for only part of the year.

G. In its final observations the Organisation states that it has no specific comment to make since the complainant has adduced no new argument in support of his case. It regrets "the complainant's conception of the procedure before the Tribunal" and some of his remarks.

CONSIDERATIONS

1. The complainant, a former Patent Examiner at the EPO who is now retired, was informed in December 2005 that the tax adjustment paid to him for 2005 exceeded by 5,287 euros the amount actually due and that he was to reimburse that sum. He protested, apparently to no avail, and noted with surprise, in a letter dated 10 March 2006, the entries showing deductions of 818 euros on his pension slips for January and February 2006. The Administration did not reply to his requests for explanations and in March and April continued to deduct the same sums from his pension. On 29 May 2006 the complainant filed a complaint directly with the Tribunal, requesting that the "arbitrary" deductions be declared inadmissible, that the improperly withheld sums be reimbursed with interest and that the EPO be ordered to pay him a sum of at least 1,000 euros to redress the damage he had suffered. He states that he cannot await the outcome of months or even years of tedious proceedings before the Appeal Committee and that his only hope lies in resorting to the Tribunal, which he asks to issue an "interim injunction" compelling the Office to reimburse the unlawfully withheld sums.

2. The defendant asserts that the complaint is irreceivable, an argument that the Tribunal must uphold. The complainant not only failed to await a decision on his request; he did not even file an internal appeal with the competent bodies. It follows that the complaint fails to meet the requirements laid down in Article VII, paragraph 1, of the Statute of the Tribunal, which stipulates that "[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to

him under the applicable Staff Regulations”. Furthermore, the Tribunal has no authority to issue interim injunctions against organisations that have accepted its jurisdiction.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 27 April 2007, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Vice-President, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 11 July 2007.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

* Pursuant to an agreement with the EPO, Austria does not levy tax on retirement pensions paid by the Organisation.

** The North Atlantic Treaty Organisation (NATO), the Organisation for Economic Co-operation and Development (OECD), the Council of Europe (CE), the European Space Agency (ESA), the Western European Union (WEU) and the European Centre for Medium-Range Weather Forecasts (ECMWF).