*Registry's translation,
the French text alone
being authoritative.*

118th Session **Judgment No. 3335**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr L. T. against the European Patent Organisation (EPO) on 26 November 2010, and the EPO's reply dated 14 March 2011;

Considering the applications to intervene filed by Messrs A. K. and P. T. on 29 July 2011 and the EPO's comments of 26 September 2011 in which it informed the Registrar of the Tribunal that it considered those applications to be irreceivable because the applicants were not in a similar situation to that of the complainant;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

A. Facts concerning the complainant's career are to be found in Judgments 598 and 2843, delivered respectively on 12 April 1984 and 8 July 2009 on his first and second complaints. Suffice it to recall that the complainant is a former permanent employee of the European Patent Office – the EPO's secretariat – who retired on 1 February 2006.

On 5 February 2007 the administration sent him his personal particulars form for 2006, showing the total retirement pension, allowances and fiscal adjustment received for that year, and a statement of the total payments for the same year, which showed, among other things, the annual amount of basic pension and allowances paid to him, after deduction of his contributions to the various insurance schemes.

On 13 April 2007 the complainant sent two letters to the administration. In the first letter, he stated that he had noticed that his retirement pension was subject to an internal EPO tax, as well as the national tax in his place of residence. This double taxation was discriminatory, in his view, and he asked for it to be stopped. In his second letter, he requested a new version of his personal particulars form showing the amount of the internal tax which had apparently been levied on his pension. If these requests were not accepted, he asked the administration to treat the two letters as an internal appeal. On 6 June 2007 he received a reply stating that, according to Article 16(2) of the Protocol on Privileges and Immunities of the European Patent Organisation, retirement pensions were not subject to internal tax. On 14 June 2009 he was informed that since the President of the Office took the view that the rules had been correctly applied, his request could not be met. He was therefore advised that the matter had been referred to the Internal Appeals Committee (IAC). The two internal appeals were registered under the same reference number.

The complainant had a hearing before the IAC on 19 April 2010. On 14 May he requested its chairperson to transmit his appeal to the Appeals Committee of the Administrative Council, if the IAC considered that the Administrative Council was competent to take a decision on the problem of *de facto* double taxation of pensions.

In its opinion of 28 June 2010 the IAC recommended that the appeal be dismissed as unfounded. The complainant was notified in a letter of 25 August 2010 that in accordance with the IAC's recommendation, his appeal had been dismissed. That is the impugned decision.

B. The complainant alleges two procedural flaws. Firstly, he complains that the IAC did not transmit his internal appeal to the Appeals Committee of the Administrative Council, as he had requested. Secondly, he objects to the use of the German language at his hearing before the IAC. He states that according to Article 15(1) of the IAC's Rules of Procedure, that language should not have been used because his knowledge of it had become insufficient since his retirement. Moreover, the fact that the IAC's opinion was drawn up in German prevented him from studying it in detail. He was only able to "begin work properly" on preparing his defence on 16 September 2010, when he received a French version of the document.

Relying on Article 42 of the Office's Pension Scheme Regulations and on a number of documents submitted by successive Presidents of the Office to the Administrative Council, the complainant also argues that his retirement pension is subjected to "double taxation", both internal and national, and that this causes him "serious harm". Referring to Article 13 of the Protocol on the Privileges and Immunities of the European Communities, which, according to him, is "identical in wording" to Article 16(1) of the Protocol on Privileges and Immunities of the EPO, he states that retirement pensions should be subject only to internal taxation. The complainant requests cancellation of the impugned decision and the payment of damages, including for the expenses incurred to attend his hearing, which were never reimbursed in spite of his "repeated requests". He also requests that the EPO be ordered to take all appropriate steps to put an end to the double taxation which he states is being levied on his retirement pension, and to include in his personal particulars form the amount of internal tax levied on his pension. Lastly, he requests that the EPO be ordered to take all appropriate steps to put an end to what he sees as an inconsistency between "Article 3 taken together with Article 10" of the Pension Scheme Regulations, and Article 16 of the Protocol on Privileges and Immunities of the EPO.

C. In its reply, the EPO contends that the claims seeking an order against it are irreceivable because, according to its case law, the Tribunal has no jurisdiction to order the amendment of regulations or the adoption of new ones.

On the merits, it points out that the internal appeal procedure is governed by the applicable rules and not by "the complainant's pleas in support of his claims". In accordance with paragraph 1 of Articles 108 and 109 of the Service Regulations for permanent employees of the European Patent Office, the IAC examined the complainant's internal appeals and the President then adopted the impugned decision on the basis of its opinion. It also states, in reference to Article 15, paragraph 1, of the Rules of Procedure of the IAC, that staff members are not entitled to the use of a "particular language" during the internal appeal procedure. It explains that the IAC considered that the complainant's command of German was sufficient for him to understand the remarks by the chairperson of the IAC at his hearing. The defendant denies that the complainant was unable to defend himself, because the EPO's representative at the IAC hearing spoke to him entirely in French; moreover, even though he had not requested it, the complainant received a French version of the IAC's opinion "only fifteen days after receiving" the German-language original.

The EPO also argues that, according to Article 16 of the Protocol on Privileges and Immunities of the EPO and Articles 2 and 3 of the Regulation on Internal Tax for the Benefit of the EPO, retirement pensions are not subject to internal taxation and, accordingly, no internal tax can be shown on pensioners' personal particulars forms. Lastly, it explains that the expenses incurred by the complainant in attending his hearing have been reimbursed.

CONSIDERATIONS

1. The complainant is impugning the decision of 25 August 2010 informing him of the dismissal of his appeal challenging the supposed double taxation of his retirement pension. He argues, first,

that the internal appeal procedure was flawed by the refusal of the IAC to transmit his appeals "automatically" to the Appeals Committee of the Administrative Council, and by the use of the German language, imposed at his hearing by the chairperson of the IAC.

(a) The complainant had asked for his appeals to be transmitted to the Appeals Committee of the Administrative Council "if the Internal Appeals Committee concludes, in its final opinion, that the problem of abolishing double taxation is within the competence of the Administrative Council, rather than that of the President of the Office". In his view, only the Appeals Committee of the Administrative Council would be competent to find that the Council breached its duty of care towards the staff when drawing up rules for the taxation of their pensions. The transmission of the appeals should have been automatic, because he could not himself lodge an appeal with that Committee, having been appointed by the President of the Office and not by the Administrative Council.

The Organisation's appeal mechanisms are governed by the provisions of Title VIII of the Service Regulations (Articles 106 et seq.). According to these provisions, permanent employees, former permanent employees or rightful claimants on their behalf may initiate an internal appeal against an act adversely affecting them, or against an implied decision of rejection, through a request addressed to the appointing authority. Where the appointing authority, in this case the President of the Office, considers that a favourable reply cannot be given to the appeal, the Appeals Committee must be convened without delay, and the authority concerned must make a decision having regard to the Committee's opinion. Such a decision can only be appealed before the Tribunal, since the internal means of redress are then exhausted. The procedure which the complainant has requested to be put in train is nowhere provided for in the Service Regulations. This first allegation is therefore unfounded.

(b) During the hearing of the complainant's appeal the chairperson of the IAC spoke in German, and the Committee's original opinion was also initially drawn up only in German.

The use of languages in proceedings before the IAC is governed by Article 15 of its Rules of Procedure, which states as follows:

> "**Languages**
>
> (1) Participants in a hearing may use any one of the three official languages of the Office in accordance with Article 14 of the European Patent Convention. If the appellant's knowledge of one of the three official languages is insufficient for the purposes of the hearing, this language should not be used.
>
> (2) No simultaneous interpreting shall be provided for hearings.
>
> (3) The appellant shall receive free of charge a translation of the Position of the Administration and/or the Committee's opinion into an official language of his choice, if the Committee considers his request justified."

Contrary to the view of the complainant, this provision does not establish which language is to be used in the proceedings, as is the case in Article 14(3) of the European Patent Convention, which provides that patent applications must be dealt with in whichever of the three official languages (German, English and French) was the language in which they were filed. The only question that arises is therefore whether in this case the decision by the chairperson of the IAC to question the complainant in German, and the notification given to him in the same language of the Committee's opinion, violated the prohibition contained in the second sentence of Article 15, paragraph 1, of the Rules of Procedure, and whether the IAC abused its discretion under paragraph 3 of that Article.

This is manifestly not the case. The complainant admits that he acquired considerable mastery of the German language during the 26 years he spent in the defendant's service in Munich. Whilst there is no reason to doubt his assertion that he has not used the language since retiring, it is nevertheless clear from the pleadings that he has not lost his command of it to such an extent that he would be unable to follow readily the questions put to him during his hearing. As the defendant rightly points out, it is inconceivable that the chairperson, or indeed the three members of the IAC whose mother tongue was French, would have continued a hearing in a language of which the

complainant had only a command "insufficient for the purposes of the hearing", in the words of Article 15, paragraph 1, of the Rules of Procedure. Even if, as he claims, he had some difficulty in understanding a particular point made by the chairperson, this would not be enough to make the hearing unlawful.

As for the notification of the Committee's opinion in its original German version, it has to be pointed out that, even though he had not requested it, the complainant received the French version a fortnight after the German one. The arguments developed in his complaint show that the circumstances in which the notification was made did not in any way detract from his ability to defend himself before this Tribunal.

This second allegation of a procedural flaw is therefore equally irrelevant.

2. The complainant submits that his pension is subjected, *de facto*, to a form of taxation, since the salary payments on the basis of which the pension is calculated are taxed internally through deductions at source. This, he states, results in double taxation, because his pension is itself subject to national taxation at his place of residence. In his view, the EPO has breached its duty of care by adopting compensatory measures which are insufficient to correct this inequality.

3. Pursuant to Article 16, paragraph 1, of the Protocol on Privileges and Immunities of the EPO, the latter levies a tax on salaries paid to its employees. These salaries are therefore exempt from national income tax. The arrangements for levying the internal tax, and the persons liable to taxation, are defined in Articles 2 and 3 of the Regulation on Internal Tax for the Benefit of the EPO.

Articles 3 and 10 of the Pension Scheme Regulations set the rate of the retirement pension for employees by reference to the salary for the grade and step last held by an employee for at least one year before retirement, this being understood as the net salary, that is, after deduction at source of the internal tax.

These provisions also make it clear that it is only the gross salary of serving employees which is subject to internal tax, to the exclusion of retirement pensions, which may therefore be subject to national tax at the place of residence of the person concerned. Where this is the case and the person in question entered the service of the Office before 1 January 2009, she or he will be entitled to partial compensation (decision CA/D 14/08 of the Administrative Council of the EPO).

4. The provisions cited above, which are clearly worded, show that a retirement pension is not subject to internal taxation. This is a different regime from the one provided for in Article 13 of the Protocol on the Privileges and Immunities of the European Communities, to which the complainant refers as having interpretive although not binding force for the EPO. This latter provision draws no distinction between salaries and emoluments, on the one hand, and retirement pensions, on the other, all being subject to the same internal tax.

5. The complainant is therefore mistaken in contending that there is a contradiction and inconsistency between Article 16 of the Protocol on Privileges and Immunities of the EPO, and Articles 3 and 10 of the Pension Scheme Regulations, insofar as pensions are calculated on the basis of a salary reduced by the amount of the internal tax. This is merely a method of calculating pensions, and it is not for the Tribunal to decide whether it is appropriate. It will only be noted that the choice of net salary as a basis for calculating pensions is not a fiscal measure directly affecting the pensions, and is therefore in no way contrary to the provision for exemption in Article 16 of the Protocol on Privileges and Immunities.

6. In the light of the foregoing and in the absence of any provision to that effect, the complainant is wrong in arguing that the amount of the internal tax deducted from salary should be shown on the periodic statements of the amounts paid as retirement pension.

Moreover, it is not clear why it would be necessary to mention it in the statements in order to protect the rights of the recipient, and why it would therefore be required by the principles governing the actions of the administration. In fact, all information pertaining to the calculation of the retirement pension to which a retiree is entitled must be given to such a person at the time when the amount of his or her pension is fixed. The evidence on file shows that this was done in the instant case.

7. The remuneration of staff members and the arrangements for paying pensions to former staff are part of the general policy of international organizations. The question whether, in this case, the Administrative Council breached the duty of care that the Organisation owes to its future retirees by rejecting proposals for altering the basis of calculation of retirement pensions is beyond the scope of the Tribunal's power of review, particularly because it is tantamount to questioning – rightly or wrongly – the entire system set up by the EPO for establishing the amounts of pensions and retirement allowances.

8. The complaint must therefore be dismissed in its entirety, and there is no need for the Tribunal to rule on the defendant's objections to receivability.

9. The two applications to intervene are irreceivable because they were made by serving employees, who are not therefore in the same position in fact or in law as the complainant (see Judgments 2237, under 10, 2311, under 11, and 2636, under 13).

DECISION

For the above reasons,

The complaint is dismissed, as are the applications to intervene.

In witness of this judgment, adopted on 9 May 2014, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 9 July 2014.

CLAUDE ROUILLER
SEYDOU BA
PATRICK FRYDMAN

DRAŽEN PETROVIĆ