

The Administrative Tribunal,

Considering the twelfth complaint filed by Mr R. H. against the European Patent Organisation (EPO) on 15 December 2005 and corrected on 19 January 2006, the Organisation's reply of 2 May, the complainant's rejoinder dated 10 July and supplemented on 22 August, and the EPO's surrejoinder of 18 October 2006;

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. According to Article 42, paragraph 1, of the Pension Scheme Regulations of the European Patent Office, the EPO's secretariat, the recipient of a pension under the said Regulations is entitled to the adjustment applying to the EPO Member State in which "the pension and adjustment relating thereto are chargeable to income tax under the tax legislation in force in that State". Article 42, paragraph 5, second subparagraph, stipulates that the recipient of an adjustment "shall produce evidence of his pension and the relative adjustment having been declared or taxed; should he fail to comply with this obligation, he shall be deprived of the right to this adjustment and shall refund any amounts unduly received in this respect".

Tables of equivalence showing, for each amount of pension, the amount of the adjustment to be made are established for each tax year. According to Rule 42/2, paragraph 6, of the Implementing Rules to the Pension Scheme Regulations, these tables "shall be accompanied by all such information as is necessary for their use", in particular "the evidence to be supplied by persons entitled to the adjustment as proof of the declaration for tax purposes, or the taxation, of their pension and the adjustment relating thereto" (third indented subparagraph of the said paragraph 6).

Facts relevant to this dispute are given in Judgment 2381, delivered on 2 February 2005, relating to the complainant's eleventh complaint. In a letter dated 20 April 2005 and addressed to the President of the Office, the complainant, pointing out that under consideration 3 of that judgment the Tribunal had emphasised that "it is essential that both salaries and pensions be paid punctually and in full", reported that his pension for January 2005 had not been paid until 9 February and asked that steps be taken with a view to ending "this unbearable harassment". Moreover, he drew attention to the fact that, in order to show that his pension and the related adjustment had been declared or taxed, he was obliged to obtain the signing of a form drawn up in the Office's three official languages (German, English and French), in which the responsible controller of income taxes certifies that the sums paid by the Office as a pension and tax adjustment have been declared for taxation purposes. That obligation, he said, was underlined by a note in which the Office "threatened" to deprive him of his right to the adjustment if he did not return the certificate signed by the tax authorities. However, he had retired to a country where the official language is not one of those mentioned above – he lives in Tenerife (Canary Islands, Spain) – and the Spanish tax authorities were refusing to sign the said certificate. He therefore requested a "certificate drawn up in the official language of the country where tax is due". In addition he put forward several proposals concerning inter alia the Office's internal appeal procedure.

The complainant was informed in a letter of 25 May from the EPO that steps had been taken to draw up a Spanish version of the certificate in question. On 10 June a pensions officer apologised for the delay in paying the complainant's pension for January 2005 and added that the Office was prepared to reimburse any interest he might have incurred as a result of the late payment. On 22 June the Principal Director of Personnel responded in writing to some of the proposals contained in the complainant's letter of 20 April.

By a letter of 19 July 2005 the complainant asked the President of the Office to refer the matter to the Appeals Committee as, in his opinion, the requests he had made in his letter of 20 April had met only with refusals or

implied refusals. On 5 August the head of the Employment Law Directorate informed the complainant that the President considered that his requests had been refused with good reason because they were related to a dispute which had been “finally settled” by Judgment 2381, and that the matter had been referred to the Appeals Committee. After an exchange of correspondence between the Chairman of the Committee and the complainant, the latter’s request that priority be given to his appeal was rejected. The complainant, who lodged a complaint with the Tribunal on 15 December 2005, challenges the implicit rejection of the requests contained in his letter of 20 April 2005.

B. Relying in particular on Judgments 533, 587 and 2381, the complainant endeavours to show that his complaint is receivable.

On the merits, he states that the role of the Pension Administration Department must be confined to carrying out certain checks, calculating pensions and paying them on the due date and that any overstepping of these bounds constitutes the “offence of invasion of a pensioner’s privacy”. He therefore considers that Article 42, paragraph 5, second subparagraph, of the Pension Scheme Regulations and Rule 42/2, paragraph 6, third indented subparagraph, of the Implementing Rules to the Pension Scheme Regulations are unlawful. He contends that it is also unlawful to oblige a pensioner to obtain the signing of the trilingual form. In his view, threatening a pensioner with suspension of the payment of the tax adjustment if he does not return the certificate signed by the tax authorities and, at the same time, sending an unusable trilingual form amount to “villainy” on the part of the Organisation. He explains that, in order to circumvent the Spanish tax authorities’ refusal to sign, he is obliged to supply the EPO with a photocopy of his tax return. He objects to the fact that these photocopies are stored in his personal file, for they are confidential documents.

The complainant submits ten claims in which, in substance, he asks the Tribunal to:

- (1) find that Article 42, paragraph 5, second subparagraph, of the Pension Scheme Regulations and Rule 42/2, paragraph 6, third indented subparagraph, of the Implementing Rules to the Pension Scheme Regulations are unlawful;
- (2) condemn and prohibit the use of the trilingual forms which cannot be used by the pensioner in his country of residence;
- (3) condemn and prohibit the use of “notices threatening to deprive the pensioner of his pension and related tax adjustment”, and order the payment of a fine in the event that the EPO fails to comply;
- (4) condemn and prohibit “the demanding, acceptance and storage in the pensioner’s file of photocopies of his tax returns” and hold that “illegally stored documents” must be returned immediately, failing which a fine shall be payable;
- (5) order the EPO to pay a fine of 100 euros “for each further mistake or delay” in the payment of his pension, in compensation for moral and material damages;
- (6) award him 30,000 euros in compensation for “all the snubs, harassment and unlawful treatment” he has suffered during his retirement, but mainly between 2001 and 2005;
- (7) urge the Office’s Administration to end its “despotic policy of placing some pensioners under the authority of the Pension Administration Department”, and order it to pay a fine in the event that it does not comply;
- (8) instruct the Administration to conduct an inquiry in order to determine the causes and identify the perpetrators of the harassment of which he believes he has been the victim;
- (9) invite the Administration to show “a little more modesty and, above all, more rigour in its correspondence during the processing of complaints”; and
- (10) ensure that his wife “benefits from the decision should he die prematurely”.

C. In its reply the EPO submits that the complaint is irreceivable on the grounds that “it falls outside the Tribunal’s jurisdiction”, which extends only to disputes pertaining to individual decisions causing injury, that the complainant has not exhausted internal means of redress before filing a complaint with the Tribunal and that some

of his claims are new.

On the merits, and subsidiarily, the Organisation replies to each of the claims made by the complainant, which, in its opinion, are devoid of substance and/or without foundation. It states, with regard to the first claim, that the provisions in question ensure that the fiscal adjustment mechanism is applied correctly and that they in no way constitute “tools designed to inflict damage”. The defendant emphasises, with respect to the second claim, that it has now supplied the complainant with a specimen certificate in Spanish. As for the other claims, the EPO maintains that it has returned to the complainant the photocopies of the tax returns which it had asked him to provide, denies that he has been the victim of any harassment and states that, on the contrary, he is treated with care and respect.

D. In his rejoinder the complainant maintains his position and expands on his allegations of harassment. He asserts that the EPO has never returned the photocopies of his tax returns.

In the supplement to his rejoinder, however, he states that the Office’s Pension Administration Department returned the said photocopies with a letter of 7 August 2006.

E. In its surrejoinder the Organisation contends that the rejoinder and its supplement contain no new information which might lead it to alter its position. It emphasises that, of the ten retirees living in Spain, the complainant is the only one to experience difficulty in proving that he has paid tax on his pension and the adjustment relating thereto.

CONSIDERATIONS

1. The complainant’s twelfth complaint concerns the tax adjustment relating to pensions for which provision is made in Article 42 of the Pension Scheme Regulations of the European Patent Office. This article constitutes Chapter X – entitled “Provisions relating to adjustment of pensions” – of the said Regulations and *in parte qua* reads as follows:

“Pensions which are subject to national tax legislation

(1) The recipient of a pension under these Regulations shall be entitled to the adjustment applying to the Member State of the Organisation in which the pension and adjustment relating thereto are chargeable to income tax under the tax legislation in force in that State.

(2) [...]

[...] there shall be drawn up, for each MemberState, in accordance with the implementing provisions referred to in paragraph 6, tables of equivalence specifying, for each amount of pension, the amount of the adjustment to be added thereto. The said tables shall determine the rights of the recipients.

[...]

(5) The recipient of an adjustment as specified in this Article shall be required to inform the Office of his full address and of any subsequent change therein.

Such recipient shall produce evidence of his pension and the relative adjustment having being declared or taxed; should he fail to comply with this obligation, he shall be deprived of the right to this adjustment and shall refund any amounts unduly received in this respect.

[...]”

2. Article 42 is implemented in particular by Rules 42/1, 42/2 and 42/3 of the Implementing Rules to the Pension Scheme Regulations. Rule 42/2, paragraph 6, *in parte qua* reads as follows:

“The provisional and final tables of equivalence shall be accompanied by all such information as is necessary for their use. Such information shall include:

- [...]
- [...]
- the evidence to be supplied by persons entitled to the adjustment as proof of the declaration for tax purposes, or the taxation, of their pension and the adjustment relating thereto;
- [...].”

3. In his first claim, the complainant asks the Tribunal to declare that Article 42, paragraph 5, second subparagraph, of the Pension Scheme Regulations and Rule 42/2, paragraph 6, third indented subparagraph, are unlawful.

The provisions in question are regulatory texts applying to all retired employees of the Office. Since they entered into force long ago the complainant may challenge their lawfulness only by appealing against a decision applying those provisions which actually causes present damage to his personal interests (see in particular Judgments 1852, under 3, 2379, under 5, and 2459, under 7(b)). The complaint is therefore irreceivable insofar as it seeks to have these texts rescinded.

4. In the following three claims the complainant requests that the Tribunal condemn and prohibit three of the Office’s administrative practices. First, he criticises the fact that the form presented to the tax authorities of the country of residence in order that they might certify that the sums received as a pension and tax adjustment have indeed been declared for taxation purposes, is drawn up only in the Office’s three official languages. Then, he takes the Office to task for asking pensioners, if the said form is not returned to it, to provide it with a photocopy of their tax return and for keeping this document in its files. Lastly, he challenges the right the Office has appropriated for itself to threaten pensioners who do not comply with these formal requirements with the penalties provided for in Article 42, paragraph 5, second subparagraph, of the Pension Scheme Regulations.

These claims are in principle irreceivable insofar as their purpose is to elicit orders from the Tribunal concerning the manner in which services of an international organisation which has recognised its jurisdiction should function.

In any case, they are either manifestly ill-founded, or irreceivable on the grounds that the complainant has not shown that the three practices he criticises actually cause present damage to his personal interests.

The defendant is under no obligation to translate into the language of its retired employees’ country of residence the forms addressed to the tax authorities of that country and which are drawn up in the Office’s official languages. The latter has, however, sent the income tax inspection authorities of Tenerife a Spanish translation of the form in question to facilitate the work of that service, which has to certify that sums paid to the complainant as a pension and tax adjustment have been declared for tax purposes. In addition, the EPO has returned the photocopies of the tax returns which the complainant had sent to it, and the latter has not proved that he has been arbitrarily threatened with the application of Article 42, paragraph 5 *in fine*, of the Pension Scheme Regulations. Moreover, the penalties to which this provision refers are by no means contrary to the principle of proportionality, and the Office should not be denied the right in general to demand the reimbursement of amounts unduly received by serving or retired employees.

5. The complainant then asks the Tribunal to order the EPO to pay a fine of 100 euros “for each further mistake or delay in the payment of [his] pension [...] in compensation for moral and material damages”, to penalise “all the snubs, harassment and unlawful treatment he has [allegedly] suffered during his [...] retirement” and to urge the Administration generally to alter its conduct towards pensioners. Such claims, which are general in scope or which refer to acts that have not yet taken place, are irreceivable for they are not directed against a current, specific decision causing injury to the complainant.

6. The complainant’s other claims are likewise either manifestly ill-founded or irreceivable insofar as they are related to those which have been considered above.

7. The complaint must therefore be dismissed in its entirety without any need to rule on the question of whether, as the defendant contends, it is irreceivable for failure to exhaust internal means of redress.

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