

The Administrative Tribunal,

Considering the twelfth complaint filed by Mr G. C. A. K. against the European Patent Organisation (EPO) on 27 January 2003 and corrected on 4 February, the EPO's reply of 16 May, the complainant's rejoinder of 24 July and the Organisation's surrejoinder of 29 September 2003;

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

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. Facts relevant to the present case are set out in Judgment 2101, delivered on 30 January 2002, on the complainant's eleventh case. As explained in that judgment, in September 1996 the complainant had sought the inward transfer of pension rights previously accrued within the German social security pension insurance scheme, administered by the *Bundesversicherungsanstalt für Angestellte* (BfA). The Tribunal held that only entitlements accrued under the pension scheme of the last employer could be transferred. Prior to joining the European Patent Office, the secretariat of the EPO, the complainant had been working for the Swiss Federal Institute of Intellectual Property and had been paying into the Swiss federal pension scheme (the *Eidgenössische Versicherungskasse*, or EVK). Upon taking up employment with the EPO the pension entitlements he had acquired with the EVK were transferred to the EPO's pension scheme. Those which had accrued earlier with the BfA, however, could not be transferred to the EPO's scheme, because they had not formerly been transferred to the EVK.

On 17 September 1996 the complainant drafted an application for the transfer of his BfA pension rights and sent it with a short covering letter dated 18 September to the then Head of the Remuneration Department at the EPO, wanting it to be forwarded to the BfA. By a handwritten note in German dated 19 September 1996 entered on the same letter, that official informed the complainant that his application and accompanying enclosures had been passed on to the BfA.

The complainant wrote two letters to the President of the European Patent Office on 16 February 2002, referring to Judgment 2101. In one, he wanted the President to "confirm in a judicially binding manner" the original decision contained in the note of 19 September 1996, whereby he says the EPO had "authorised and granted" his application dated 17 September 1996 for the transfer of his BfA pension entitlements. In the other, he claimed damages in an amount of at least 90,000 Swiss francs.

Writing on behalf of the President, by a letter of 6 March 2002 the Head of the Employment Law Department drew the complainant's attention to the Tribunal's reasoning in Judgment 2101 and denied his requests of 16 February. On 29 April 2002 the complainant filed an internal appeal against the decision of 6 March insofar as it concerned his right to the transfer of pension rights. He filed another on 17 May, directed against the 6 March decision insofar as it concerned his claim to damages.

By a letter of 14 June 2002, the Head of Employment Law informed the complainant that his new appeals were deemed to be an abuse of process, since the legality of the EPO's action in denying his transfer had been confirmed by the Tribunal in Judgment 2101; he said that the matter was being referred to the Appeals Committee. The complainant cites that letter as the decision he is challenging. The complainant received a letter dated 18 December 2002 from the Head of Employment Law to the effect that his appeal would be dealt with. On 20 December 2002 he approached the EPO's Language Service to obtain translations in case he filed a complaint with the Tribunal. The Organisation denied his request on the grounds that the disputed issues had already been settled by Judgment 2101. He subsequently filed this complaint with the Tribunal.

B. The complainant considers that he has done all he can to achieve a satisfactory conclusion to the internal appeal proceedings.

His main contentions are as follows. First, he perceives the note of 19 September 1996 from the EPO official to be evidence that the EPO had agreed to transfer his BfA pension rights into the EPO scheme. He refers to it as the "initial decision" to grant the transfer. He had no reason to doubt that the transfer had been authorised: the official concerned had been advising him on matters regarding the transfer and had carefully studied his application. The fact that documents concerning him were then transmitted to the BfA constitutes further evidence that the decision had been taken. He points out that this "decision to grant" has not been clearly acknowledged by the EPO, nor was it referred to in Judgment 2101; but having never been revoked, it must still hold.

Second, as in his eleventh case, the complainant objects to what he terms the "irregular inquiry at the BfA". He deduces from a communication sent to the EPO by the BfA on 12 December 1997 that the EPO had sought information from the BfA without his prior knowledge. He submits that the inquiry was "irregular, unauthorized and thus illegal", and was in breach of Articles 3 and 4 of the Office's Guidelines for the protection of personal data. He emphasises that he still has a pending lawsuit on this issue before the Social Security Tribunal in Munich, and responds to matters relating thereto that were mentioned by the Organisation in its surrejoinder on his eleventh complaint. He claims to be the "victim of official confusion" which started with the irregular inquiry at the BfA.

Thirdly, he criticises aspects of the internal appeal proceedings that led to his eleventh case. He also objects to the Organisation's refusal notified to him on 13 January 2003, denying him the "back-up support" he needed.

The complainant seeks a "formal conclusion" with regard to the "still pending" initial decision of 19 September 1996 granting his transfer application of 17 September 1996; he wants that decision "executed or rescinded". He seeks compensation for the "detained benefit" of that initial decision to grant the transfer, and/or compensation for moral and material damages as a result of the broken "official promise" and the BfA's actions. He also wants the "misconduct" of the EPO recognised in connection with the irregular inquiry at the BfA, its misuse of the reply dated 12 December 1997 that it received from the BfA, and the "aimless" decision of 15 May 1998 by which the Organisation rejected his request for the transfer. On the basis of that misconduct too he claims compensation for moral and material damages.

C. In its reply the Organisation contends that the complaint is an abuse of process and is irreceivable. If the "decision" the complainant is challenging is that of 14 June 2002, his complaint has been filed outside the statutory time limit. He refers to the letter of 18 December 2002 from the Head of Employment Law as a "second reiterated decision", but that letter did not reopen any time limit, nor did it constitute an appealable decision. The Organisation made it known to the complainant that his internal appeal was considered to be irreceivable on the basis of the *res judicata* principle. It stemmed from claims put to the Organisation on 16 February 2002, but from the wording of the two letters in question it is clear that he was reiterating claims made in the context of his eleventh complaint that were ruled on by the Tribunal in Judgment 2101.

The EPO considers the complaint to be devoid of merit. The handwritten note by the then Head of Remuneration, in charge of handling transfers, was not a definitive decision granting the application for the transfer. It was normal procedure for him to pass the application to the BfA. The words he jotted down on 19 September 1996 did not correspond to a binding decision. That was particularly clear since in his comments he put a question to the complainant. The EPO considers that the complainant has manipulated the note by the addition of words in the English translation. It acknowledges that the complainant's argument concerning the note of 19 September 1996 was put forward in his submissions on his eleventh complaint, adding that it was not examined by the Tribunal because his case could not succeed.

Furthermore, the litigation between the complainant and the BfA cannot affect the legality of the EPO's refusal to grant the complainant's application for the transfer of his BfA pension entitlements.

The EPO submits that the complainant's criticisms of the internal appeal procedure are without foundation. It points out that in Judgment 2101 the Tribunal did not consider that the Organisation's handling of the complainant's case warranted payment of moral damages; in addition, the complainant's claim to material damages is unsubstantiated and has been raised for the first time in the present complaint.

D. In his rejoinder the complainant rebuts the EPO's pleas of irreceivability. He disagrees with the phrasing used by

the EPO in certain of its translations into English of annexes he submitted with his brief. He puts forward a further claim wanting the EPO to "refrain from any misleading action" and to supply all relevant information regarding his "legal situation".

E. In its surrejoinder the Organisation maintains that the complaint is irreceivable. The claim put forward by the complainant in his rejoinder is irreceivable too as it has been raised for the first time.

## CONSIDERATIONS

1. In Judgment 2101, the Tribunal dealt with a complaint whereby the complainant was seeking the transfer of certain pension rights from the BfA to the EPO pension scheme. The Tribunal dismissed that complaint, the essence of its decision being expressed in the following paragraphs:

"1. The complainant, who has Swiss and German nationality, retired from his employment with the EPO on 31 October 1998. Prior to that, he had made a formal application to have his pension rights that had accrued in the BfA scheme transferred to the Organisation's own pension scheme. Following the refusal of his request, he filed two internal appeals and now seeks the quashing of the final decision rejecting his claims.

2. The Organisation argues that only rights accrued in the pension scheme of the last employer before entry into service of the EPO can be transferred. Immediately before joining the EPO, the complainant was, from 1971 to 1981, in the employ of the Swiss Federal Institute of Intellectual Property and contributed on a compulsory basis to the Swiss federal pension scheme - the EVK - the pension scheme of that employer. Prior to joining the Institute he had for a number of years made both compulsory and voluntary contributions to the BfA scheme. While he continued to make some voluntary contributions to the BfA during his time with the Institute, his contributions to the BfA, both accumulated and ongoing, could not be transferred into the EVK. When he joined the EPO, his rights accumulated with the EVK were transferred into the EPO's pension scheme. His rights in the BfA could only have been credited if they had formerly been transferred into the EVK, which they were not. In fact, up until its amendment in 1995, applicable German legislation prevented the outward transfer of BfA contributions into another pension scheme.

3. Although the complainant makes a large number of allegations about the Organisation's conduct in relation to the manner in which it dealt with his claim to the transfer as well as his internal appeals, it is not necessary for the Tribunal to study them in any detail. The complainant's claim differs in only immaterial respects from the facts and the applicable legal provisions studied by the Tribunal in its recent Judgment 2012 [...] and that case establishes beyond argument that his claim is unfounded on the merits and that he had and has no right to obtain the requested transfer. That being so, it is of no consequence that he alleges defects and injustices in the internal appeal process; even if everything had been done perfectly, he could still not have succeeded."

2. In his complaint, the complainant is challenging the implied rejection of appeals he filed in the wake of Judgment 2101. He is claiming material and moral damages for what he perceives to be the legally unreasoned actions of the EPO in its treatment of his request for the transfer. First, he alleges that there was an "initial decision" made by the EPO on 19 September 1996 to allow the transfer of his pension rights but that its existence was not acknowledged by the EPO. He considers that the initial decision constituted an "official promise" and wants the Tribunal to confirm that it still holds, or otherwise rescind it. Secondly, he claims that the "inquiry" into his situation made by the BfA at the behest of the EPO was irregular and constituted misconduct on the part of the Organisation. Thirdly, he dwells on what he terms procedural grievances connected with the internal appeals lodged in the context of the complaint which led up to Judgment 2101.

3. Although the EPO raises serious questions relating to the receivability of the complaint, the Tribunal prefers to deal with the matter on its merits for it obviously has none. Judgment 2101 settled definitively that the complainant had and has no right to the transfer which he is still seeking. It also established conclusively that his alleged grievances relating to the manner in which his claims and internal appeals had been dealt with were irrelevant and of "no consequence" given the established absence of any underlying substantive right. His process-related claims cannot now breathe life into a case which never had any chance of success in the first place.

4. The Tribunal has found that the complainant has no right to the transfer which he is still seeking and that is the

end of the matter. The complaint is an abuse of process and must be dismissed as such.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet