

The Administrative Tribunal,

Considering the complaint filed by Mr G. T. against the European Patent Organisation (EPO) on 29 April 2005 and corrected on 17 June, the Organisation's reply of 23 September, the complainant's rejoinder of 2 December 2005, the EPO's surrejoinder of 8 March 2006, the complainant's further submissions of 19 April and the Organisation's comments thereon of 2 May 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. The complainant, an Italian national born in 1956, joined the European Patent Office – the secretariat of the EPO – on 1 October 1990, as an examiner at grade A2. He was promoted to grade A3 on 1 August 1993.

In a letter of 24 September 2002 to the President of the Office, the complainant and five Italian colleagues drew his attention to the fact that the provisions of Article 12(1) of the EPO's Pension Scheme Regulations, concerning inward transfer of pension rights, applied only to nationals of Germany and a few other countries. They contended that the resulting "disparity of treatment" was contrary to basic principles of justice, and wanted the President to take the necessary measures to ensure that that Article would also apply to them.

By a letter of 6 November 2002 the Vice-President in charge of Administration replied on behalf of the President of the Office that Article 12(1) of the Pension Scheme Regulations applied to all permanent employees, but that the transfer of the complainant's pension entitlements from the Italian state pension scheme (the *Istituto Nazionale della Previdenza Sociale*, or INPS) to the EPO was not possible since that scheme did not allow such transfers. He added that, in order to facilitate the transfer of previously acquired pension rights, a modification of Article 12 was under discussion.

On 2 December 2002 the complainant wrote to the President, lodging an internal appeal against the decision of 6 November 2002. He pointed out that the INPS had already concluded transfer agreements with other international organisations. He accordingly requested that the President review his decision and that a transfer agreement be concluded with the INPS on the same terms as for his German colleagues. On 10 January 2003 the complainant was informed that the President could not grant his request, since the Italian authorities did not allow the transfer of accrued pension rights to the EPO pension scheme, and that his appeal had been referred to the Appeals Committee. The EPO submitted its position paper to the Committee on 2 April 2004. In his observations on the said position paper, the complainant narrowed the scope of his claims, seeking only the "immediate transfer" of his pension rights.

Circular No. 282 of 30 June 2004 informed staff that Article 12(1) of the Pension Scheme Regulations had been amended to provide that all pension rights acquired prior to entry into the service of the Office could henceforth be transferred into the EPO's pension scheme, regardless of whether or not they were acquired under the last pension scheme prior to joining the Office, provided that the schemes under which they were acquired permit such transfers and that the amounts concerned are actually transferred to the Office.

In its opinion of 7 February 2005, the Appeals Committee recommended that the appeal be dismissed. It considered that insofar as the appeal was directed against the Office's refusal to transfer the complainant's previously acquired pension rights, it was receivable but devoid of merit: a transfer could not happen before an agreement had been concluded with the INPS, and the complainant had not shown that the Office had hindered the conclusion of such an agreement with the Italian authorities. With regard to the complainant's request that the President "conclude a transfer agreement with the INPS", the Committee found that the appeal was irreceivable. By a letter of 23

February 2005, which is the impugned decision, the Director in charge of Personnel Management and Systems informed the complainant that in accordance with the unanimous opinion of the Committee, and for the reasons put forward by the Office during the internal proceedings, the President had decided to reject his appeal.

B. The complainant contends that the EPO “committed an abuse” in deciding not to allow the transfer of his previously acquired pension rights. He points out that the INPS has already concluded transfer agreements with the Commission of the European Communities, the European University Institute and the European Investment Bank, and that it is prepared to conclude an agreement with the EPO. Accordingly, it is unlikely that the INPS itself would block the conclusion of an agreement with the Organisation. He also submits that the inward transfer of his previously acquired pension rights would have no “detrimental effect” on the EPO’s pension scheme. Referring to the Appeals Committee’s findings, the complainant adds that the Organisation would contravene the principle of equal treatment if it refused to negotiate with the Italian authorities and thus impeded the transfer of pension rights by Italian nationals.

He asks the Tribunal to censure “the lack of action of the European Patent Office in the implementation of Article 12, paragraph 1 of the EPO Pension [Scheme] Regulations, concerning the transfer of [his] acquired Pension Rights [...] from the Italian *Istituto Nazionale della Previdenza Sociale* to the EPO Pension System”.

C. In its reply the EPO contends that the complaint is irreceivable because the complainant’s current claim differs substantially from those put forward in his internal appeal. It points out that by his initial request the complainant wanted to have the provisions of Article 12 of the Pension Scheme Regulations extended to Italian staff members. That was later revised and became a request for the “immediate transfer” of his pension rights “at the same conditions concerning the EPO German Staff”. It explains that the complainant is now asking the Tribunal to order the EPO to conclude an agreement with the Italian authorities so as to allow the transfer of his pension entitlements. The Organisation further indicates that in its position paper on the complainant’s internal appeal, it took the view that his appeal was receivable because he was appealing against a decision, which implicitly rejected his request for the transfer of his previously acquired pension rights. Referring to the case law, it contends that the Tribunal has no jurisdiction to order the Organisation to negotiate with a member State, or to set the objectives of any such negotiation.

The Organisation replies subsidiarily on the merits. It submits that the complaint is ill-founded and denies obstructing the conclusion of a transfer agreement with the Italian authorities. On the contrary, it points out that on three occasions it has formally invited the Italian authorities to begin discussions with a view to concluding an agreement on this matter but such negotiations are a lengthy process.

D. In his rejoinder the complainant presses his pleas and maintains his claim. Regarding the receivability of his complaint, he asserts that the President’s decision to reject his appeal concerning the inward transfer of pension rights was a final decision. He denies that he is seeking an order by the Tribunal obliging the EPO “to conclude a transfer agreement with the Italian authorities, so as to allow a transfer of his pension entitlements”. He submits that his claim before the Tribunal is based on the claim he put forward in his internal appeal.

In addition he indicates that, according to an explanatory note issued by the INPS, negotiations were under way between the INPS and the EPO up to March 2000; however, he did not become aware of that document until after his internal appeal had been dismissed. He asserts that the Organisation has produced no evidence that negotiations took place beyond March 2000; but he acknowledges that, following a request he had made, the INPS informed him on 17 October 2005 that negotiations were ongoing between the EPO and the Italian Ministry of Labour.

E. In its surrejoinder the Organisation maintains its position. It reiterates that it only deemed the internal appeal to be receivable because the complainant was seemingly challenging a refusal to grant an application for transfer. But that interpretation can no longer stand, as the complainant is unambiguously seeking an injunction by the Tribunal to oblige the EPO to conclude a transfer agreement with the Italian authorities. Recalling that in its submissions to the Appeals Committee it clearly objected to the possibility of any such injunction, it maintains that the complaint is irreceivable. In addition, the Organisation produces letters which, in its view, prove that it is actively seeking the conclusion of a transfer agreement with the Italian authorities.

F. In his further submissions the complainant reiterates that the complaint is receivable and well founded.

G. In its comments on the complainant’s further submissions, the Organisation observes that he introduces no

new arguments.

CONSIDERATIONS

1. The complainant, an Italian national, joined the European Patent Office as an examiner in October 1990. Having acquired pension entitlements with the Italian state pension scheme (the *Istituto Nazionale della Previdenza Sociale*, or INPS), he together with five Italian colleagues asked the President of the Office, in a jointly signed letter of 24 September 2002, to apply the provisions of Article 12(1) of the EPO's Pension Scheme Regulations to his case. At the material time, Article 12(1) stipulated that an employee who entered the service of the Office after leaving the service of a government department could "arrange for payment to the Organisation in accordance with the Implementing Rules [of the aforementioned Regulations], of any amounts corresponding to the retirement pension rights accrued under his previous pension scheme, provided that that scheme allow[ed] such transfers to be made". In that letter the complainant and his five colleagues complained that the above provisions applied only to nationals of Germany and a few other countries, and, considering such "disparity of treatment" unacceptable, asked the President to "extend" the provisions in question to them as well.

2. On 6 November 2002 the Vice-President in charge of Administration replied that the provisions of Article 12(1) applied to all permanent employees of the Office but that "[t]he Italian state pension scheme [did] not for the time being allow transfers of its members' pension rights to the Office". He added that the Office was studying the possibility of amending Article 12 "in order to facilitate the transfer of pension rights".

3. The complainant, who was not satisfied with that reply, asked the President to reconsider his decision and to conclude a transfer agreement with the INPS, in view of the fact that the INPS had already signed agreements allowing the transfer of pension rights with the Commission of the European Communities in 1978 and the European Investment Bank in 2000. That request, dated 2 December 2002, was deemed to be an internal appeal and was referred to the Appeals Committee.

4. In its opinion of 7 February 2005, the Appeals Committee considered that insofar as it required the President to conclude a transfer agreement with the INPS, the appeal was irreceivable. The claim to set aside the Office's refusal to transfer pension rights previously acquired by the complainant with the INPS, and the claims based on inequality of treatment and, in particular, on the Office's refusal to remedy that inequality, were deemed to be receivable but were dismissed as being devoid of merit. The President decided to follow that recommendation and rejected the internal appeal by a decision notified to the complainant on 23 February 2005. That is the impugned decision.

5. The complainant has filed a complaint with the Tribunal requesting that it censure the Office's failure to take any action to render the provisions of Article 12(1) of the Pension Scheme Regulations applicable to his request for a transfer of his pension rights.

6. In its reply the Organisation contends that the complaint is irreceivable on two grounds: firstly, the complainant's claim differs from the one he submitted in his internal appeal; and secondly, the Tribunal is not competent to order the Organisation to negotiate and sign an agreement with the competent Italian authorities.

7. On this second point, the defendant is quite right: as it has ruled on several occasions (see, for instance, Judgment 1456), the Tribunal may not order an organisation to seek an agreement with any State or institution.

8. However, despite the fact that the complainant's claim is worded somewhat imprecisely, it cannot be said that he has altered the claim he submitted initially with his internal appeal. By impugning the decision of 23 February 2005 he is challenging both the rejection of his request to transfer his pension rights and the Office's failure to act diligently so as to remedy a situation which he considers discriminatory.

9. Although his arguments in this respect are receivable, the Tribunal considers them devoid of merit, as the Appeals Committee unanimously held. Article 12(1) of the Pension Regulations allowed the transfer of pension rights acquired by employees under a pension scheme prior to joining the Office only "provided that that scheme allow[ed] such transfers to be made". In the present case, it appears from the submissions that the INPS has not yet accepted the transfer to the EPO of pension rights acquired by employees who, like the complainant, were affiliated to the Italian state pension scheme. However regrettable it may be that employees of the Office in the position of

the complainant are left at a disadvantage, the Office cannot be blamed for not amending the provisions of Article 12 at the risk of having to bear the costs of the transfer: the consent of the Italian authorities is clearly necessary before any such transfer can take place.

10. Nevertheless, the Organisation must not have shown negligence or ill will in submitting the problem raised by the complainant to the Italian authorities. It emerges from the submissions, however, that the Italian authorities were approached unsuccessfully in 1992 and 1998 and that, in a letter of 5 October 2004, the President of the Office again raised the issue with the Italian Ministries of Foreign Affairs and Labour and the INPS, indicating that the Office “would like to offer its permanent employees who have worked in Italy the possibility of transferring the pension rights they acquired there to the Office’s pension scheme”. In its reply of 13 September 2005, the Ministry of Labour requested a number of details, duly supplied on 25 November 2005, and stated that the competent authorities would arrange for a draft agreement to be forwarded to the EPO with a view to subsequent negotiations. The Organisation cannot therefore be accused of having “blocked” the situation and the complainant is not justified in deeming its conduct to be unlawful.

11. It may be concluded from the above that the complaint fails.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 May 2006, 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 12 July 2006.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet