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

102nd Session **Judgment No. 2576**

The Administrative Tribunal,

Considering the eighth complaint filed by Mr A. M. against the European Patent Organisation (EPO) on 21 October 2005, the Organisation's reply of 3 February 2006, the complainant's rejoinder of 15 April and the EPO's surrejoinder of 25 July 2006;

Considering Article II, paragraph 5, 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. Facts relevant to this case are given in Judgment 2425, delivered on 2 February 2005, concerning the complainant's seventh complaint. The complainant accused the EPO of supplying personal data about him and a copy of the Service Regulations for Permanent Employees of the European Patent Office, the EPO's secretariat, to the French national patent office, known as the INPI (*Institut national de la propriété industrielle*), which the complainant was suing because it had refused to take him back after he had been detached to the EPO. In that judgment, the Tribunal dismissed the complaint on the grounds that internal remedies had not been exhausted in view of the fact that the complainant had not waited for the completion of the appeal procedure he had initiated.

In its opinion of 31 May 2005, the Appeals Committee concluded firstly that the Office should have supplied the complainant's counsel with a copy of the Service Regulations as soon as the internal appeal was lodged and secondly that, although the Office had acted lawfully in supplying the INPI with details concerning payment of the severance grant, it had wrongly omitted to inform the complainant of that fact. It recommended that the President of the Office should grant the complainant the sum of 1,000 euros in compensation for moral injury. By a letter dated 21 July 2005, which constitutes the impugned decision, the Director of Personnel Management and Systems informed him that the President of the Office had decided to follow the recommendation of the Committee whilst indicating that the reasons for his decision included only those set out in that letter.

B. The complainant accuses the EPO of disregarding principle 10.1 of the International Labour Office (ILO) publication entitled "Protection of workers' personal data", which stipulates the conditions to be fulfilled before such data may be communicated. He points out that in 1992 the INPI had already made a request for information similar to the one it made in November 2002, and that at the time the EPO had asked for his consent. When the complainant refused, the Organisation did not supply any documents. He concludes that the defendant's action in 2002 was contrary to a wish he had already clearly expressed. He also complains of unfair treatment, because the EPO provided the INPI with extracts of the Service Regulations which he had long been denied on the grounds that they constituted an internal document that was not available to third parties. He accuses the EPO of having deliberately tried to hide the fact that the version of the "Codex" (the compendium of rules applicable to staff) which he was sent after a considerable delay contained "Guidelines for the protection of personal data in the European Patent Office" applicable to his case, in order to prevent him from defending his rights. In addition to substantial moral injury, the complainant alleges that he suffered material injury based on the fact that the INPI is arguing before the French administrative court that the amount he received from the EPO should be deducted from the compensation the INPI owes him. This amount, however, was paid in compensation for the fact that he had not accrued pension rights during his period of employment at the EPO.

The complainant asks the Tribunal to award him 25,000 euros in compensation for moral and material injury; to order the EPO to urge the INPI to withdraw from the pending proceedings all wrongly disclosed personal data and all arguments and claims based on those data or, failing that, to pay him 113,664.12 euros (equivalent to the amount the INPI intends to deduct from the compensation it owes him). He also claims 4,000 euros in costs.

C. In its reply the EPO submits that for a claim for damages for injury to succeed, the claimant must provide

evidence of an unlawful act, actual injury and a causal link between act and injury. It argues that the ILO publication cited by the complainant does not apply to the Office and adds that the EPO guidelines to which he refers are a "*lex specialis*" concerning only automated files and data processing. It states that the Office is bound by "general duty of administrative cooperation" with the INPI, which is not a third party since it represents France within the EPO's Administrative Council. It adds that it regularly provides the competent national administrations with personal data concerning its serving or former permanent employees and that the INPI was in any case already in possession of sufficient data to calculate how much the complainant had received at the time of his departure. In its view, moreover, rules intended for the protection of permanent employees "should not be used for personal advantage", which it alleges is what the complainant is seeking.

With regard to the relief claimed, the EPO points out that the complainant has already received 1,000 euros for moral injury and asks him to specify the precise amounts he is claiming for moral injury and for material injury. In its view, the material injury is not certain since the French courts have not yet delivered a final judgment. It therefore asks the Tribunal to reject the request for payment of 113,664.12 euros in view of the lack of any existing established claim or, failing that, to stay its judgment on that point until the proceedings before the French courts have been completed.

D. In his rejoinder the complainant accuses the Organisation of adopting an "alarmingly casual attitude" and of committing two serious faults: failing to inform him of its intention to supply the INPI with personal and potentially harmful data concerning him, and actually communicating those data, despite his explicit refusal and in breach of current regulations. He considers that, unless that course of action was due to serious incompetence, it reflects an intention to harm. As for the duty of cooperation referred to by the EPO, this is limited, according to the complainant, to the areas of patent law and taxation, because the fact that the Director of the INPI is a member of the EPO's Administrative Council does not allow him free access to personal data concerning the EPO's staff. He adds that the INPI had no means of calculating the sums he had received. Moreover, the rules governing the protection of personal data which apply to electronic files should also be applicable to paper files.

Noting that the French courts might be negatively influenced by the sums paid to him and as a result reduce the amount they award him in the proceedings, the complainant states that he is claiming 10,000 euros for material injury and 15,000 euros for moral injury.

E. In its surrejoinder the EPO maintains its position. It points out that when the INPI submitted its request in 2002, the Personnel Department no longer had copies of the correspondence exchanged in 1992 between the INPI, the Office and the complainant. This is because it opted for a "minimalist" approach to the handling of personal files: these contain only documents related to, affecting or having affected the careers of permanent employees, and not all data concerning them, as would be the case according to the "total" approach advocated by the complainant.

CONSIDERATIONS

1. The facts of this case are mostly set out in Judgment 2425, in which the Tribunal rejected as irreceivable, for failure to exhaust internal remedies, the seventh complaint filed by the complainant, a former permanent employee of the EPO, who accused the Organisation of failing to supply him with a copy of the Service Regulations and of having disclosed to the INPI details concerning the sums paid to him at the time of his departure from the Office.

2. Since the delivery of that judgment, the internal appeal procedure has been completed and the complainant is now impugning the decision taken by the President of the Office on 21 July 2005, which followed the recommendation of the Appeals Committee of 31 May 2005 but only partially allowed his appeal.

3. In his internal appeal, the complainant asked for a complete, up-to-date copy of the EPO's Service Regulations and claimed compensation for moral injury resulting from the transmission of those Service Regulations and personal data concerning him to the INPI. He also requested that the INPI be urged to withdraw the disputed personal data, and all pleadings based on those data or on extracts of the Service Regulations, from the proceedings he had initiated against it before the French administrative court. Failing such withdrawal, he claimed compensation of 113,664.12 euros.

4. In its unanimous opinion of 31 May 2005 the Appeals Committee examined in turn the arguments relating

to the initial refusal to supply the complainant with a copy of the Service Regulations and those concerning the disclosure of personal data to the INPI without the complainant's consent.

5. On the first issue, the Committee considered that the Office had an obligation to supply its former permanent employee with the up-to-date copy of the Service Regulations he had requested and that, even though it had given him a copy of that document in mid-2004, it had been wrong to deny "a legitimate request by the complainant for over a year [...] thereby unduly preventing him from defending his rights".

6. On the second issue, the Committee considered that by informing the INPI of the amounts received by the complainant on his departure, the Office was responding to a request for administrative cooperation and had breached neither any rule concerning the confidentiality of the personal files of permanent employees, nor any rule concerning the protection of personal data. The Committee found, however, that the Office had been wrong not to inform the complainant regarding the disclosure of the data in question to the INPI.

7. Although the complainant did not give details of the circumstances giving rise to moral injury, the Committee considered that the fact that the complainant was kept waiting for a copy of the Service Regulations and that he was not informed of the disclosure of data concerning him had the effect of weakening his legal position in his pending court action. It therefore recommended paying him 1,000 euros in compensation for moral injury.

8. In the impugned decision, the President of the Office followed the recommendation of the Appeals Committee, while pointing out that the "Guidelines for the protection of personal data in the European Patent Office" were not directly relevant to the present case, and agreed to pay the complainant compensation of 1,000 euros.

9. In support of his request to have this decision, which he considers inadequate, set aside, the complainant reiterates the arguments he put forward in his internal appeal. In his complaint he evaluates the moral and material injury he has allegedly suffered at 25,000 euros and, as before, claims compensation of 113,664.12 euros in the event that the EPO fails to persuade the INPI to withdraw all personal data concerning him from the pending court proceedings. He contends that by disclosing details of the amounts paid to him at the time of his departure from the Office, the latter acted in breach of principle 10.1 of the ILO publication entitled "Protection of workers' personal data" and the "Guidelines for the protection of personal data in the European Patent Office" appearing in the "Codex", of which for a long time he was denied a copy. According to him, the Office also breached Article 32 of the Service Regulations concerning the confidentiality of permanent employees' personal files. The defendant maintains, on the contrary, that the aforementioned texts are not applicable and that by providing the INPI with the requested information it was fulfilling the duty of cooperation by which the Office and the authorities of its Member States are bound pursuant to Article 20 of the Protocol on Privileges and Immunities of the European Patent Organisation and Article 131, paragraph 1, of the European Patent Convention.

10. The Tribunal agrees with the defendant that neither principle 10.1 of the ILO publication entitled "Protection of workers' personal data" nor the "Guidelines for the protection of personal data in the European Patent Office" apply to the case in hand. The former document does not constitute a statutory text that is enforceable against an international organisation, and there is nothing to indicate that the EPO ever intended to adhere to it. As for the EPO's own guidelines, to which the complainant refers, their field of application is defined by Article 1, which states that they "apply to automated personal data files and automated processing of personal data" relating to permanent employees. In the present case, the defendant submits, without being seriously challenged, that the information supplied to the INPI was not taken from an automated data file.

11. The issue of whether Article 32 of the Service Regulations applies is less straightforward. According to paragraph 1 of that Article:

"The personal file of a permanent employee shall contain:

a) all documents relating to his administrative position and all reports relating to his ability, efficiency and conduct;

b) any comments by him on such documents and reports."

Paragraph 3 of that same Article stipulates that "[t]he communication of the documents or reports referred to in paragraph 1 to a permanent employee shall be evidenced by his signing it", while paragraph 7 adds that "[t]he

personal file shall be confidential and may be consulted only in the offices of the administration", except in the case of requests by the Administrative Tribunal.

12. According to the complainant, the information disclosed to the INPI must have been contained in his personal file and the EPO could not disregard the "confidentiality of the personal file that applies in this case". He points out that when the INPI had tried to obtain information and documents contained in his personal file in 1992, the EPO had informed him and had requested his consent, which he had denied. The Organisation may well have been right to follow that course of action in 1992, but that does not resolve the present issue. The Tribunal takes the view that the rules protecting documents and information contained in the personal file of permanent employees must be strictly applied but that they concern only documents actually stored in that file, which must be registered, numbered and filed in serial order, as specified in Article 32, paragraph 2, of the Service Regulations, in addition, of course, to all documents containing comments on the conduct or performance of permanent employees. Those rules, however, do not prevent the disclosure, within the framework of administrative cooperation, of objective information concerning permanent employees, provided that such disclosure is not intended to harm them and is made for legitimate reasons. In this case, the defendant notes that there is a degree of interdependence between the Office and the authorities of Member States and that, within the framework of a general duty of mutual assistance and cooperation with those authorities, it regularly has occasion to provide them with personal data concerning its serving or former permanent employees, including, on an automatic basis, the addresses of those in receipt of pensions and the amounts they receive.

13. In the Tribunal's view, the defendant Organisation did not fail in its duty to preserve the confidentiality of the data it holds concerning its permanent employees by disclosing the information requested by the INPI, within the framework of the administrative cooperation required as a result of the fact that the complainant had successively served a national authority and an international organisation. As the Appeals Committee rightly noted, however, and as the President of the Office admitted, the complainant should have been notified of the disclosure beforehand and, since he was not, he was indeed entitled to compensation for moral injury.

14. The complainant is convinced that the compensation he has been granted is in any case very inadequate, and that he has suffered substantial moral injury, as well as material injury arising from the fact that the French courts may be "fooled by the INPI" into deducting the amount of the severance grant paid to him by the EPO from the compensation owed to him by the INPI. However, no injury warranting compensation can arise from the use by a national court of correct information obtained, as in this case, without any intent to cause harm to the claimant. The complainant has not furnished the Tribunal with any specific evidence showing that the compensation of 1,000 euros he was granted was inadequate.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 November 2006, 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 7 February 2007.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2007.