

## **EIGHTY-EIGHTH SESSION**

### ***In re Sokolov***

#### **Judgment 1940**

**The Administrative Tribunal,**

**Considering the complaint filed by Mr Dmitri Konstantinovich Sokolov against the World Health Organization (WHO) on 25 June 1998 and corrected on 30 October 1998, the WHO's reply of 15 February 1999, the complainant's rejoinder of 4 March and the Organization's surrejoinder of 7 June 1999;**

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

**Having examined the written submissions;**

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

**A. The complainant is of Russian nationality and was born in 1929. He was employed at the WHO's Regional Office for Europe in Copenhagen from 23 November 1974 to 30 November 1980 when he resigned. At that time he was the Director of Comprehensive Health Services.**

**In October 1980 the United Nations Joint Staff Pension Fund entered into an agreement with the then Union of Soviet Socialist Republics regarding the transfer of pension rights. The agreement came into effect on 1 January 1981. Under its terms a staff member who was working in one of the Fund's member organisations, who was a participant in the Fund and was on secondment from the public service of the Soviet Union, could elect to have a lump sum payment transferred to the Social Security Fund of the Soviet Union.**

**Before he left the Organization the complainant requested the deferral of his retirement benefit and filled out a "payment instructions" form, which he signed on 3 November 1980. More details were needed from him and an exchange of correspondence ensued between the WHO Staff Pension Committee and the complainant. In a letter of 28 October 1981 the Secretary of the Committee mentioned the new pension transfer system to the complainant, but when the complainant replied on 22 November 1981, asking for further deferral of his retirement benefit, he said he wanted his payment instructions of 3 November 1980 to be applied in his case and wanted no part in the transfer arrangement.**

**In March 1982 the Pension Fund paid a lump sum to the Social Security Fund of the Soviet Union on the complainant's behalf. In so doing it had relied on an application for transfer dated 22 November 1981 and signed "D. Sokolov".**

**The complainant challenged the transfer in a letter of 15 October 1989, which was received by the Pension Fund on 18 January 1990. The Secretary of the Fund replied on 19 January 1990: he sent the complainant a copy of the application form dated 22 November 1981 requesting the transfer of his pension and said "this choice cannot be reversed". The complainant took the matter up in the Russian courts, which led to a negative decision dated 10 June 1998 from the Supreme Court of the Russian Federation. On the same day the complainant says he appealed to the Director-General of the WHO. Having received no reply he retyped the letter and sent it to the Director-General on 2 August 1998.**

**B. The complainant asserts that his complaint is receivable as he filed it with the Tribunal against the implied rejection of his appeal of 10 June 1998 and in accordance with Article VII(3) of its Statute.**

**He pleads that the transfer of his pension rights was unlawful, and that he was "dispossessed" of his "pension accumulation".**

**When he finished his contract in November 1980 he filled out payment instruction forms. It is clear from**

these forms that he had asked the WHO to pay his pension to him "personally". The WHO also ignored similar forms that he had sent the Secretary of the Staff Pension Committee with his letter of 22 November 1981. In that letter he had stated that he was against the transfer of his pension and again said he wanted to receive the amount due himself.

In its letter of 28 October 1981 the WHO asked him to "renounce [his] pension rights", but he did not wish to sign the form requesting the transfer. Nonetheless, on 22 November 1981, somebody else at the WHO signed it for him, imitating his signature. On the basis of that forged document his pension entitlement was transferred to a non-existent address, as the Social Security Fund of the Soviet Union had "never existed".

The WHO breached the terms of the transfer agreement, which was approved by the United Nations General Assembly on 17 December 1980 at its Thirty-fifth Session, and did not respect the rules implementing it. The aim of the agreement was not to "bereave" participants of their pension rights: under its terms transfer was optional. The WHO exceeded its authority and betrayed his trust. The secretariat of the Staff Pension Committee had kept secret that his pension entitlement was to be transferred "to the budget of the State" and failed to respond to his letters.

He wants the Tribunal to order the WHO to "put [his] pension papers in order" in accordance with the payment instruction forms he gave it. He seeks: an award of material damages, in an amount to be determined by the Tribunal, taking into account the sum of 54,618 United States dollars which he based on "actuarial values" and interest; and 19,506 dollars in moral damages representing 30 per cent of his "pension accumulation".

C. In its reply the Organization points out that all original records concerning the complainant's pensions rights are held by the Fund and cannot be made available to the Organization. Moreover it does not have copies of all the correspondence produced by the complainant.

To be receivable his appeal should have been filed with an internal appeals board within sixty days of his receiving a decision or "final action". Any appeal in relation to any "administrative action or decision affecting his appointment status" under Staff Rule 1230.1 was time-barred long ago. The complainant took his case to the United Nations Administrative Tribunal, which considered it irreceivable at that stage because the Standing Committee had yet to review it. The Committee subsequently confirmed the decision not to reopen the matter of the transfer and the complainant appealed against that decision to the United Nations Administrative Tribunal. Those proceedings have not yet been completed and it is up to that Tribunal alone to decide on his case.

On 6 January 1982 the Pension Fund received the complainant's separation papers from the WHO, and they included the complainant's request for application of the transfer agreement, a document signed by "D. Sokolov"; so the transfer of a lump sum was made by the Pension Fund to the Social Security Fund of the Soviet Union in March 1982. Therefore, the complaint relates to a dispute between the complainant and the Pension Fund, which falls outside the jurisdiction of this Tribunal.

The complainant has adduced no proof that any WHO official exerted pressure on him to transfer his pension or forged his signature. With regard to the allegation that it failed to answer letters from him, it has no record of receiving any until August 1998 and he has submitted no proof that he sent any. In any event, if the WHO had received correspondence regarding the transfer, it would have referred the complainant to the Pension Fund.

D. In his rejoinder the complainant presses the receivability of his claim. The complaint lodged by him concerns the WHO, and he filed it with the appropriate Tribunal.

He argues that the transfer agreement came into effect after he had stopped contributing to the Fund. There was no legal basis for the transfer of his pension entitlements and he did not fulfil several of the conditions listed in the agreement. A single form activated his transfer. There was no covering letter to show it had really come from him and a graphology test proved that the signature on the document of 22 November 1981 was an imitation. The WHO did not even inform him that he would no longer be getting the lump sum.

He was discriminated against as other people he worked with have now received a pension from the Pension

Fund and, because he is Russian, he is the only one who has not.

E. In its surrejoinder the Organization says that the decision of the United Nations Tribunal was expected in October or November 1999. Should the Tribunal wish to consider documents put forward by the Pension Fund to the United Nations Tribunal, the submissions can be made available. Although the complainant now contends he did not fulfil the conditions for the transfer of his pension rights, the Fund decided in 1982 that the complainant was entitled to benefit from the transfer agreement.

According to information made available to the Standing Committee of the Joint Staff Pension Board the transfer system was perceived as being favourable to former participants, and it was the complainant who requested the transfer. No other participants from the Soviet Union claimed that the agreement was not applied as intended or that the Social Security Fund did not exist. In addition the complainant has not provided the results of the graphology test he mentions.

With its surrejoinder the Organization produces the payment forms the complainant purportedly attached to his letter of 22 November 1981 asking to have his pension paid to him personally, and comments that those particular forms came into being only in 1988.

It also notes that the Fund's Secretary had written to the Soviet Union's Mission to the United Nations in New York on 20 March 1984 stating the amount it was transferring to the Soviet Union on behalf of the complainant. The letter mentioned the form of 22 November 1981 applying for the transfer, but although the complainant received a copy of that letter he did not contest it at the time.

## CONSIDERATIONS

1. The complainant, who was a national of the then Union of Soviet Socialist Republics, was employed at the WHO's Regional Office for Europe from 23 November 1974 to 30 November 1980, when he resigned. He was fifty-one years old at the time of his resignation and requested a deferred retirement benefit. The Organization exchanged correspondence with him to complete his file so that it could be transmitted to the United Nations Joint Staff Pension Fund, the competent body for the payment of his pension entitlements. But in October 1980, the Soviet Union and the Pension Fund had entered into an agreement under which staff members on secondment from a public service of the Soviet Union and who had contributed to the United Nations pension scheme could opt for a system whereby a lump sum would be transferred to the Social Security Fund of the Soviet Union. According to a document dated 22 November 1981, which has been produced by the WHO in its reply, the complainant requested the application of the agreement in his case and, in March 1982, the lump sum to which he was entitled was transferred to the Social Security Fund of the Soviet Union. At the end of 1989, the complainant challenged the validity of this payment and requested the Secretary of the Pension Fund to cancel the transfer made in 1982. This request was rejected on 19 January 1990 on the basis of the document signed in the complainant's name on 22 November 1981. The Standing Committee of the Joint Staff Pension Board confirmed this decision which, it appears, he then referred to the United Nations Administrative Tribunal. According to the WHO, the latter Tribunal has not yet ruled on the case.

2. The complainant alleges before this Tribunal that the WHO unlawfully imposed upon him the transfer of his pension rights to the Social Security Fund of the Soviet Union. He requests the Tribunal to order the WHO to "put [his] pension papers in order" in accordance with his initial instructions and to grant him various sums in compensation for the material and moral damages which he claims to have suffered.

3. Insofar as the complainant is seeking to obtain a judgment from the Tribunal on the extent of his pension rights, it is clear that the decisions taken by the Pension Fund lie exclusively within the jurisdiction of the United Nations Administrative Tribunal and cannot be reviewed by this Tribunal. The WHO's responsibility could only be impugned if it were to emerge that the decisions taken by the Organization or pressure exerted by it induced the complainant into error or contributed to the loss of his pension rights.

4. However, on these points, the complainant's arguments must be dismissed. Admittedly, in support of his claims he produces a letter of 22 November 1981 to the Secretary of the WHO Staff Pension Committee, in which he explicitly rejected the system envisaged in the agreement between the Pension Fund and the Soviet Government. This letter has the same date and, apparently, the same signature as the one by which he

accepted the application of the agreement in his case. The complainant refers to pressures exerted upon him and asserts that the signature of the letter of acceptance was forged. But there is no proof of the authenticity of the letter which he produces rejecting the transfer and there is no evidence to support his allegations that pressure was exerted upon him. The Tribunal notes in this respect that he had been aware, at least since 19 January 1990, when the Secretary of the Pension Fund informed him by letter, that the decision to transfer his pension rights had been taken on the basis of the letter of acceptance of 22 November 1981 bearing his signature. Yet it was only in 1998 that he complained to the Director-General of the WHO concerning the alleged forgery.

5. There is no evidence of any flaw in the manner in which the WHO discharged its obligations in 1981. Furthermore, it is not within the Tribunal's jurisdiction to examine the dispute between the complainant and the United Nations Joint Staff Pension Fund. Therefore, without it being necessary to order hearings or to rule on the WHO's plea that the complaint is out of time and therefore irreceivable, all of the complainant's claims must fail.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 November 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

*(Signed)*

Michel Gentot  
Mella Carroll  
James K. Hugessen

Catherine Comtet