

## FORTY-SECOND ORDINARY SESSION

### ***In re* GUYON (No. 2)**

#### **Judgment No. 372**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the European Patent Organisation (EPO) by Mr. Roger Guyon on 1 March 1978, the EPO's reply of 5 April, the complainant's rejoinder of 8 May and the EPO's statement of 3 August 1978 that it did not wish to file a surrejoinder;

Considering the applications to intervene filed by

J.G. Beernaert,  
H. Berghmans,  
C.G.F. Biggio,  
A.O.M. Coucke,  
P.A. Desmont  
Y.M.Ch. Hamers,  
W.J.R. Hellemans,  
D.I.J. Iverus,  
R.C. Labeeuw,  
P. Lapeyronnie,  
A.E.S. Mertens,  
R.A.M.G.G. Meulemans,  
P. Michiels,  
A.J. Nuss,  
J.C.J.J. Peeters,  
L.J. Peeters,  
R. Schmal,  
N.F.G. Schuermans,  
F. Thibo,  
H.P. Van Breemen,  
A.M.J. Van Moer,  
J.M. Verschelden,  
B. Zaegel,  
R.E.M. Hakin;

Considering Article II, paragraph 5, of the Statute of the Tribunal, the Staff Regulations of the former International patent Institute, particularly articles 11 and 15, and the Staff Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the documents in the dossier, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. The complainant joined the staff of the International Patent Institute on 1 September 1971. He enjoyed the status of an international official, like other Institute staff members, and the privileges and immunities granted to officials of comparable rank in diplomatic missions in The Hague. On 1 January 1978 he became an official of the European Patent Office in accordance with the integration agreement signed on 19 October 1977 between the Institute and the European Patent Organisation. As an Institute official he had benefited under the headquarters agreement between the Netherlands and the Institute. Since the integration agreement was to come into force and the Institute to be dissolved on 1 January 1978, on 31 December 1977 the Netherlands Government denounced the

headquarters agreement with the Institute. As an EPO official the complainant benefits under the Protocol on privileges and immunities as supplemented by the headquarters agreement between the Netherlands and the EPO. Although EPO officials are thereby exempt from national income tax on their remuneration, they do not enjoy certain other forms of exemption which the Netherlands Government granted to non-Dutch officials of the Institute. On 30 November 1977 the complainant submitted an internal appeal against the decision by the Administrative Council of the Institute to accept the integration agreement, on the grounds that the provisions of the agreement constituted a serious breach of the essential terms of his appointment. The Administrative Council dismissed his appeal on 9 December 1977 by a decision which was notified to him on 14 December. It is the decision of 9 December which he now impugns.

B. The complainant maintains that according to his contract of appointment he was recruited "subject to the general conditions laid down in the Staff Rules, of which he declares he has taken note".<sup>(1)</sup> According to those rules, members of the Institute staff were international officials. Furthermore, a recruitment prospectus gave the following information on annual remuneration: \* "There are also several important benefits which much enhance the purchasing power of remuneration, such as exemption from direct (salary) and indirect (on tobacco, motor cars and petrol and various duties) taxation". The complainant believes that in attracting him with such information the Institute raised a reasonable expectation at the time of his appointment "that he would continue to enjoy those benefits for as long as he was with the Institute" and that therefore "the Institute or its full successor, the EPO, may not evade the obligations which the complainant may expect it to fulfil and which were of decisive importance to him in accepting appointment with the Institute".

C. The complainant contends that there has been a grave breach of the basic terms of his appointment and that the Institute or its full successor, the EPO, is bound to respect the reasonable expectation which it gave him. He therefore asks the Tribunal: "(a) to rule that the EPO is bound to respect the reasonable expectation which the Institute gave the complainant; (b) to appoint an expert to assess the actual damage suffered by the complainant by reason of the loss of his privileges and immunities; (c) to order the EPO to pay the complainant a monthly allowance to be determined by the expert; (d) subsidiarily, to order the EPO to pay the complainant damages, which the Tribunal shall determine, for the wrong caused to him by the fraudulent attitude adopted by the Institute at the time of his appointment".

D. The EPO refers to Article II, paragraph 5, of the Statute of the Tribunal and points out that the purpose of the complaint is to claim damages for the wrong suffered by the complainant by reason of the loss of certain privileges which he enjoyed as an Institute official. He cannot base such a claim on the non-observance of the terms of his appointment or of the provisions of the staff regulations. It is quite clear that the relevant texts confer privileges for the benefit of the organisation alone and not for the personal advantage of its staff. Although the officials benefit from those privileges, they do not do so by virtue of any personal right but in accordance with international agreements each of which, in so far as the officials are concerned, is *res inter alios acta*. The relevant texts which refer to the privileges and immunities of Institute or EPO officials do not make the international agreements part of the contract of employment between the organisation and its officials. "Hence the Tribunal is not competent to hear the complainant's contention that the Organisation is liable for the complainant's loss of certain privileges and immunities. If the Tribunal took a different view it would be interfering in relations between an international organisation and one of its member States and such relations are a matter which falls outside the Tribunal's jurisdiction."

E. As to the merits, and subsidiarily, the Organisation points out that the Institute officials who on 1 January 1978 became EPO officials had no personal right to continue to enjoy privileges which, although it was they who benefited, were granted by the Netherlands Government solely in the interests of the now defunct Institute. "In the circumstances the Tribunal can only dismiss a claim which falls outside the relationship between the Organisation and its employee and in support of which he may adduce no personal right." As regards his contention that the Institute raised a "reasonable expectation" and that at the time of his appointment its "attitude" was "fraudulent", the EPO points out that the complainant ought to have realised that the privileges and immunities were essentially precarious since their continuance was not something over which the Organisation had any control.

F. The EPO asks the Tribunal to dismiss the complaint in its entirety.

#### CONSIDERATIONS:

As to the privileges and immunities granted to staff of the International Patent Institute and the European Patent

Office:

1. When the International Patent Institute was established in the Netherlands the Government of that country concluded a headquarters agreement with it conferring on its staff the privileges and immunities granted to diplomatic staff of comparable rank. Thus the first paragraph of article 11 of the Institute Staff Regulations conferred on the staff the "status of international officials". A notice of vacancy in the Institute set out the benefits and they were also mentioned in various offers of appointment in the following terms:\*

"The Government of the Netherlands grants to all Institute staff members other than Dutch citizens privileges and immunities similar to those enjoyed by diplomatic staff accredited to The Hague, namely:

- (a) immunity from jurisdiction in respect of any act committed in the performance of duties,
- (b) exemption from all direct taxes on remuneration paid by the Institute,
- (c) exemption from import duties on goods and effects intended for personal use such as cigarettes, alcohol, motor cars, photographic equipment, etc.,
- (d) refund of taxes on motor fuel,
- (e) grant of a special identity card similar to that granted to diplomatic staff accredited to The Hague, which also constitutes the residence and work permit."

By an agreement signed on 19 October 1977 the Institute was integrated into the European Patent Office with effect from 1 January 1978 and, although it is now a branch that Office the Institute still has its headquarters in the Netherlands. The Netherlands Government thereupon denounced the headquarters agreement with the Institute and concluded another with the EPO. The new text provides for the continuance of the immunities properly so called and of exemption from tax on remuneration paid by the EPO, but not of the other tax benefits enjoyed by non-Dutch staff members of the Institute.

The complainant contends that the changes have frustrated a legitimate expectation which the Institute raised and which the EPO should now satisfy. He asks that the prejudice due to the loss of privileges and immunities should be evaluated by an expert and compensated by the payment of a monthly indemnity or, subsidiarily, of a lump sum on account of the fraud committed by the Institute.

As to the Tribunal's competence:

2. The defendant organisation contests the Tribunal's competence on the grounds that the privileges and immunities enjoyed by Institute and EPO staff under the headquarters agreements are not granted for their personal advantage. Although they do benefit the staff, they have been granted in the interest of the organisations, and so the organisations alone may demand that they continue. That is expressly provided by article 15 of the Institute Staff Regulations, article XI of the first headquarters agreement and article 19 of the Protocol on the privileges and immunities of the EPO. Hence, if the Tribunal were to pass judgment on the survival of those benefits it would be interfering in the relationship between an international organisation and a State in which it has its headquarters, and that is a matter which falls outside its competence.

In fact the question is not one of competence. What has to be decided is whether or not the complainant is entitled to continue to enjoy certain privileges. That is a matter of substance and should be treated as such.

As to the alleged violation of acquired rights:

3. The complainant bases his argument on the privileges granted under the first headquarters agreement and Institute Staff Regulations, which referred to those privileges in connection with staff recruitment. In short, without saying it in so many words, he is alleging infringement of what he regards as acquired rights.

4. A right is acquired when he who has it may require that it be respected notwithstanding any amendment to the rules. It may be either a right which arises under an express or implied provision of an official's contract of appointment and which both parties intend should be inviolate, or a right which is laid down in a provision of the Staff Regulations or Staff Rules and which is of decisive importance to a candidate for appointment. The

conditions for the acquisition of a right are not met in this case.

5. The privileges which the complainant says that he has lost derive, first, from the headquarters agreement between the Netherlands Government and the Institute and, secondly, from the Institute Staff Regulations. Article XI of the agreement provided, however, that "the privileges, immunities and facilities are granted to the Institute and its officials solely in the interests of the Institute and not for their personal advantage". Similarly, the first paragraph of article 15 of the Institute Staff Regulations confirmed that "the privileges and immunities of the staff are granted in the interests of the Institute". Hence, according to the terms of the agreement and the Staff Regulations, the privileges granted thereunder and now claimed by the complainant were not a personal right, and so could not have been of decisive importance to him when he accepted appointment.

6. An acquired right might be established in the present case only if, either expressly or by implication, for example in the light of conclusive evidence, the complainant's contract of appointment had guaranteed the benefits he is claiming. But it did not. First, he cannot rely on any clause in his contract: there is no express guarantee. Secondly, although the Institute did mention the privileges in more or less explicit terms in its publicity material and in notices to future staff members, it explained that the benefits were granted by the Netherlands Government and it made no firm promise on which the complainant may rely. New staff members should indeed have realised that the benefits depended on the continuance of an agreement with a State which could at any time ask to have it amended, or even just amend it.

7. Besides, it is doubtful whether in general all the privileges granted by the host State to international officials are of such decisive importance to them when they accept appointment. Since it is clear from the foregoing that no rights were acquired, that question need not be decided here. Moreover, it is not contested that, notwithstanding the integration agreement, the complainant did continue to enjoy the main tax advantage, namely exemption from income tax.

8. Since there were no acquired rights, the claims for appointment of an expert and for payment of compensation must be dismissed.

DECISION:

For the above reasons,

The complaint and the applications to intervene are dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 June 1979.

(Signed)

M. Letourneur  
André Grisel  
Devlin

Bernard Spy

1. Registry translation.