

The Administrative Tribunal,

Considering the application for review of Judgment 2099 filed by Mr J. I. on 18 April 2002;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

### CONSIDERATIONS

1. In Judgment 2099, delivered on 30 January 2002, the Tribunal dismissed a complaint filed by the complainant, a former employee of the European Patent Office (EPO), against a decision of the President of the Office dismissing him and requiring reimbursement of contributions made by the EPO on his behalf to the social security schemes set in place by the Collective Insurance Contract. In his application for review of that judgment, the complainant contends that the Tribunal overlooked evidence to the effect that the EPO's refusal to extend unpaid leave, which ultimately led to his dismissal, was discriminatory and arbitrary. He also presents what he says is new evidence to support his claim of discriminatory and arbitrary action in that regard. Additionally, he contends that the Tribunal overlooked the EPO's mistaken interpretation of a staff circular relating to unpaid leave.
2. As is clear from Judgment 442, a Tribunal judgment is *res judicata* and will only be reviewed in exceptional circumstances including, for example, omission to take account of a fact or the discovery of a "new" fact. Of course, even in such cases, review will not be granted if the fact in question does not bear on the judgment given. In other words, a fact must be a "material fact" before the Tribunal will review a judgment on the ground of discovery of a new fact or on the ground that a fact has been overlooked.
3. The Tribunal did not overlook the complainant's plea that the EPO's refusal to extend his unpaid leave was discriminatory and arbitrary. Rather, it considered the evidence upon which he based that plea and held that the plea was groundless. By his application for review, the complainant seeks to adduce further evidence in support of his plea. There is nothing to show that that further evidence is "new" in the sense that it was not discovered or could not, with diligence, have been discovered by the complainant well before his original complaint was lodged with the Tribunal in September 2000. Further, the material which he now wishes to present cannot, of itself, establish discriminatory or arbitrary conduct: there is nothing in the material to establish that the facts and circumstances which justified the granting of leave to other persons were comparable with those which led the Organisation to refuse the complainant's request for leave.
4. The complainant's argument that the Tribunal overlooked the EPO's misinterpretation of the staff circular is misplaced. The EPO's interpretation of the circular played no part in the Tribunal's judgment.
5. The matters raised by the complainant do not constitute admissible grounds for review of Judgment 2099. Accordingly, the Tribunal dismisses his application in accordance with the summary procedure provided for in Article 7 of its Rules.

### DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 16 May 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 16 July 2003.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet