

EIGHTY-THIRD SESSION

***In re* Alders-Meewis (No. 2)
and van der Peet (No. 20)**

Judgment 1623

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mrs. Adriana Alders-Meewis and the twentieth complaint filed by Mr. Hendricus van der Peet against the European Patent Organisation (EPO) on 2 May 1996, the EPO's single reply of 24 July 1996, the complainants' rejoinder of 3 January 1997 and the Organisation's surrejoinder of 7 February 1997;

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 complainants, who are Dutch and live in Germany, are permanent employees of the EPO's secretariat, the European Patent Office. According to Article 16 of the Protocol on Privileges and Immunities of the EPO the "salaries and emoluments" of its staff are exempt from national income tax. Both complainants pay German tax on income from other sources at a rate that takes account of their pay at the EPO.

On 10 November 1994 a tax tribunal in Munich dismissed an appeal from Mrs. Alders-Meewis against the application of that rate to her husband's income. Without going to court Mr. van der Peet has addressed a protest to the competent tax authority in Germany. By letters of 27 March 1995 the complainants asked the President of the Office under Article 28(1) of the Service Regulations for "technical and financial assistance" from the Organisation in challenging the German tax rates in court and, failing that, to treat their letters as internal appeals.

By letters of 11 May 1995 the Administration told them that the President had put their case to the Internal Appeals Committee. In its report of 11 December 1995 the Committee recommended rejection. By letters of 7 February 1996 the Director of Staff Policy told them that the President had endorsed the Committee's recommendation. Those are the impugned decisions.

B. The complainants submit that the Organisation had a duty under Article 28 to help them to counter a policy that offended against the provision on tax exemption in the Protocol on Privileges and Immunities. They plead breach of equal treatment and charge the Appeals Committee with partiality.

They seek awards of damages for "illegally levied" taxes and of costs, plus interest at the rate of 15 per cent a year. They claim technical and financial help in resisting in the competent courts further levies of tax reckoned in the same way.

C. In its reply the EPO contends that the complaints are irreceivable. The one from Mrs. Alders-Meewis is time-barred and neither hers nor Mr. van der Peet's indicates what "specific procedure" they might follow. But to forestall other complaints of this kind the Organisation wants the Tribunal to rule on the merits.

The complaints are devoid of merit. Even if Article 28 did apply, and it does not, there would be no reason to "assist" the complainants. Article 16(1) of the Protocol expressly allows tax authorities to "take into account the salaries and emoluments thus exempt when assessing the amount of tax to be applied to income from other sources". There was no breach of equal treatment and the charge of impartiality is groundless.

D. In their rejoinder the complainants argue that their complaints are receivable and well-founded. They claim awards of "punitive" damages in the amount of one German mark each for breach of the duty of care that the EPO owes them.

E. In its surrejoinder the Organisation maintains its pleas in the reply and comments on several points raised in the rejoinder.

CONSIDERATIONS

1. The complainants, who are officials of the European Patent Office in Munich, object to the reckoning by the German Government of rates of tax on income they have from sources other than the EPO. Although their pay at the EPO is exempt from income tax under Article 16(1) of the Protocol on Privileges and Immunities of the European Patent Organisation, such income is taken into account in determining the rate at which outside income is taxed. Because tax is determined according to a graduated scale the amount they must pay is the greater.

2. The tax authorities and courts of the host country having rejected their objections, they submitted claims to the President of the Office on 27 March 1995. They asked him for technical and financial help from the Organisation in getting the competent courts to recognise their right to have their taxes reckoned in keeping with their privileges and immunities under the Protocol. They also claimed awards of damages for the taxes they alleged had been unlawfully levied and for the fees they had paid to their tax advisers. The President referred their appeals to the Internal Appeals Committee. On 11 December 1995 the Committee unanimously recommended rejecting them. On 7 February 1996 the complainants were sent notice of the President's acceptance of the Committee's recommendation. Those are the decisions they want the Tribunal to quash and the two complaints may be joined to form the subject of a single judgment.

3. Though the EPO regards them as irreceivable, it does not press the plea, being anxious to avert further pointless litigation. Since they are in any event devoid of merit there is no need to rule on receivability.

4. Before taking up the pleas on the merits the Tribunal will dispose of several procedural issues. One is the complainants' application for the hearing of an expert witness on international tax law and of the chairman of the Appeals Committee. The Tribunal sees no need to hear those witnesses. Nor does it allow the complainants' challenge to the impartiality of the chairman and other members of the Committee. Neither the Committee's membership nor the proceedings before it bear out in any way the complainants' charges. The EPO expresses "surprise", too, at the complainants' getting hold of an internal memorandum that ought to have been kept confidential and of personal information about other officials. The Tribunal will not, however, order the complainants to give any explanation, and there is no reason under the circumstances to strike the memorandum from the record.

5. The complainants' first plea on the merits is that the Organisation should "assist" them in their dispute with the German tax authorities. They rely on Article 28(1) of the Office's Service Regulations, which reads:

"If, by reason of his office or duties, any permanent employee, or former permanent employee, or any member of his family living in his household is subject to any insult, threat, defamation or attack to his person or property, the Organisation shall assist the employee, in particular in proceedings against the author of any such act."

The duty of care that that provision lays on the Organisation does not cover a case like that of the complainants, who are challenging municipal law that is neither a "threat" nor an "attack" on their "person or property" and which in any event does not affect them "by reason of [their] office or duties". Even if, as the words "in particular" suggest, the terms of the provision are not exhaustive, it would be a travesty of the duty of protection to extend it to staff grievances about the application of municipal law.

6. An international organisation must of course see to it that the contracting parties observe the privileges and immunities that the conventions they adhere to bestow on its staff. But here the complainants are mistaken: Article 16 of the Protocol on Privileges and Immunities is quite explicit about the duties of contracting States. It declares salaries and emoluments exempt from national income tax and goes on to say that the "Contracting States may, however, take into account the salaries and emoluments thus exempt when assessing the amount of tax to be applied to income from other sources". So the Protocol offers a choice and the German Government commits no breach of 16(1) in taking account of pay at the EPO for the purpose of

reckoning rates of tax owed by EPO staff, provided it does not actually levy tax on that pay. That the Austrian Government has not used the option and has signed an agreement that takes a more benign view of the tax exemption of the EPO staff in Vienna is neither here nor there: the German Government is still free to exercise the option that Article 16 offers it.

7. The conclusion is that the complainants' claims to the quashing of the impugned decisions and to compensation cannot but fail, and so do their claims in their rejoinder to awards of "punitive" damages.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 July 1997.

(Signed)

William Douglas
Michel Gentot
Mark Fernando
A.B. Gardner