

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

F. (No. 2)

v.

EPO

140th Session

Judgment No. 5083

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr R. F. against the European Patent Organisation (EPO) on 27 February 2015, the EPO's reply of 22 June 2015 and corrected on 11 August 2015, the complainant's rejoinder of 4 October 2015 and the EPO's surrejoinder of 11 December 2015;

Considering the 60 applications to intervene (listed in the annex to this judgment) and the EPO's comments thereon dated 11 September 2015 and 19 November 2015;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the calculation of the partial compensation for the national taxation of his pension.

The complainant, a German national and former permanent employee of the European Patent Office, the EPO's secretariat, entered into service on 1 September 1985 and retired on 1 January 2011.

Before the complainant's retirement, in October 2008, the Administrative Council adopted decision CA/D 14/08 – subsequently amended by decision CA/D 15/09 – introducing a “Regulation on lump-sum payments as partial compensation for national taxation of pensions” (the Regulation on tax partial compensation or the Regulation). The Regulation provided that pensioners who had commenced their duties with the EPO before 1 January 2009 would be entitled to lump-sum payments as partial compensation for the national tax levied on their pensions in the Member States of the EPO under national tax legislation in force. Pursuant to Article 1(2) of the Regulation, the partial compensation, after deduction of internal tax, would equal “50 [per cent] of the amount by which the recipient's pension would theoretically need to be increased, were the balance remaining after deduction of the amount of national income tax or taxes on the total to correspond to the amount of the pension calculated in accordance with the Pension Scheme Regulations”. For the purpose of such calculation, tables of equivalence were established specifying, for each Member State, the compensatory amount to be added for each pension level. In practice, these tables were provided by the International Service for Remunerations and Pensions (ISRP). This entity, administratively attached to the Organisation for Economic Co-operation and Development (OECD), provides services to various international organisations, including the EPO, regarding their pension schemes and remuneration policies. The ISRP table of equivalence applicable for pensioners resident in Germany, such as the complainant, specified two deductions to be made from the pensions in question for calculating the partial compensation. These deductions corresponded to “deduction 1”, which was determined by “the year the pension was first paid”, and “deduction 2”, which was based on “pension plus taxable allowances” and amounted to 12 per cent of the pension or 1,900 euros for a single pensioner, and 12 per cent of the pension or 3,000 euros for a married pensioner, the lower of the two amounts being deducted in each case. Moreover, Article 1(3) of the Regulation notably indicated that, in calculating the theoretical amount of taxes levied on the pensions, only the provisions of tax legislation and regulations affecting the basis of liability and the amount of income tax or taxes for all pensioner-

taxpayers in the country concerned were taken into account. For the purposes of this calculation, no account would be taken of individual factors related to the personal circumstances or private means of a pensioner.

In December 2011, the complainant received a pension slip showing the total amount of the partial compensation paid to him in respect of the national taxation of his pension for the tax year 2011. On 7 March 2012, he challenged this amount, claiming that the EPO had erroneously deducted 3,000 euros from his “pension payments”. He requested a recalculation of his partial compensation without this deduction and indicated that, if his request was not granted, his letter should be considered as an internal appeal.

By a letter of 19 April 2012, Mr W., Head of the Pensions Department, explained to the complainant that the amount of the partial compensation and the deduction he sought to challenge were calculated based on the tables established by the ISRP for Germany and approved by the competent German financial authorities. Mr W. informed the complainant that, in light of his arguments, he had requested the ISRP to engage with the German authorities to clarify the matter concerning the 3,000 euros deduction. However, the German authorities had not yet responded. Mr W. indicated to the complainant that a final decision on his request would be made once the comments from the German authorities were received.

By a letter dated 8 May 2012, the Director of the Employment Law Directorate informed the complainant that the deduction made for the calculation of his theoretical national taxation and determination of the partial compensation had been confirmed by the ISRP and the German authorities. Therefore, his request for the recalculation of his partial compensation could not be granted and his appeal was transmitted to the Internal Appeals Committee (IAC).

In its opinion of 9 October 2014, the majority of the IAC recommended rejecting the complainant’s appeal as unfounded. It found that the deduction applied by the EPO in the calculation of the partial compensation for the national taxation of the complainant’s

pension was in line with Article 1(2) and (3) of the Regulation on tax partial compensation.

By a letter dated 8 December 2014, the Vice-President of Directorate-General 4, acting by delegation of power from the President of the Office, informed the complainant that he had decided, in accordance with the majority opinion, to reject his appeal as unfounded. This is the impugned decision.

The complainant requests the Tribunal to quash the impugned decision. He asks the Tribunal to order the Organisation to recalculate the “partial tax compensation” without deducting the amount corresponding to “deduction 2” of the ISRP table from his pension as from 2011 and to pay him “the resulting arrears in partial tax compensation amounts” as from that date plus interest of 5 per cent “from the respective due dates”. He also seeks costs in the amount of 2,000 euros.

The EPO requests the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS

1. The complainant impugns the 8 December 2014 decision by which, endorsing the 9 October 2014 opinion of the IAC, expressed by a majority, the Vice-President of Directorate-General 4, by delegation of power from the President of the Office, dismissed the complainant’s internal appeal contesting the calculation of the partial compensation for the national taxation of his pension, to the extent that the amount of the said partial compensation was calculated after applying a deduction of 3,000 euros to the taxable amount corresponding to the amount of his annual pension.

2. The complainant is a former employee of the EPO, residing in Germany. He retired in 2011. He contests the amount paid to him by the EPO as tax partial compensation for national income taxation levied on his pension by Germany, pursuant to Article 1 of the Regulation on tax partial compensation. He contends that, as from the tax year 2011, the EPO unlawfully applies the so-called “deduction 2”, amounting to

3,000 euros, to the yearly amount of his pension, and, thus, it unlawfully calculated the partial compensation on his pension net of the said 3,000 euros deduction (i.e. by reducing the base for the partial compensation by 3,000 euros). He requests that the partial compensation be calculated on his pension without prior application of this deduction.

He submits that:

- in light of the applicable rules (Article 1(2) and (3) of the Regulation on tax partial compensation) the partial compensation is based on the “theoretical amount” of income tax applicable to the pensioners residing in countries which levy income tax on EPO pensioners, and not on the actual income tax paid by each pensioner;
- the personal circumstances concerning each pensioner must not be taken into account and, as a result, the deductions from the income for social contributions granted by Germany to the taxpayers should not be considered by the EPO in establishing the partial compensation;
- “deduction 2” in the amount of 3,000 euros applied by the EPO corresponds to the maximum amount of the German “Vorsorgepauschale”, a lump-sum deduction from the basis of the wage tax liability, which is granted to all wage recipients in Germany in compensation of certain social security contributions, since the tax year 2010 in the amount of 12 per cent of the basis of the wage tax liability with a ceiling of 3,000/1,900 euros for married/single wage recipients; this lump-sum deduction under German tax legislation is to be applied exclusively in the wage tax procedure (“Lohnsteuerverfahren”), i.e. for taxpayers earning a wage; and
- the EPO pensioners are not wage recipients and are not granted the deduction of a lump sum in the maximum amount of 3,000 euros by the German tax legislation; they are allowed to deduct the actual amount of certain expenses for, inter alia, social security expenditure (“Vorsorgeaufwendungen”), and, amongst them, contributions like those to be paid by EPO pensioners to the EPO

health and long-term care insurance; however, these deductions are to be considered as “personal circumstances” which are irrelevant for the purpose of the EPO tax partial compensation.

The complainant also challenges the unequal treatment and discrimination, as “deduction 2” is allegedly applied only to EPO pensioners residing in Germany irrespective of the level of the individual pension they receive and of the level of their contribution to the social security system, and it was not applied before the tax year 2011.

He contests the arguments of the majority of the IAC, who held “deduction 2” “not objectionable” in view of the fact that, under German tax law, expenditure for health and long-term care insurance (which all EPO pensioners are obliged to pay in accordance with the EPO social security system) is deductible in the income tax procedure, albeit not as a lump sum, but in the actual amount. “Deduction 2” in the amount of 3,000/1,900 euros was found by the IAC to be merely the appropriate adoption of the average amount for this kind of deductible expenditure, as calculated by the German tax authorities. In addition, according to the majority opinion, the contested deduction of 3,000 euros was advantageous for the complainant, who was able to deduct a larger sum for sickness and insurance contributions in the tax year 2011. In the complainant’s view, this reasoning lacks a legal basis, as the 3,000 euros lump-sum deduction is not applicable to pensioners according to German tax legislation.

3. It is appropriate to recall the applicable rules.

Article 1 of the Regulation on tax partial compensation, in the relevant part, read as follows:

- “1. Recipients of pensions under the Pension Scheme Regulations of the European Patent Office (hereinafter referred to as ‘the Pension Scheme Regulations’) shall be entitled to lump-sum payments as partial compensation for the national tax levied on such pensions in the Member States of the European Patent Organisation under national tax legislation in force there. This shall apply only to former employees who took up their duties with the European Patent Office before 1 January 2009 and to those entitled under them.

2. The compensation, after deduction of internal tax, shall equal 50% of the amount by which the recipient's pension would theoretically need to be increased, were the balance remaining after deduction of the amount of national income tax or taxes on the total to correspond to the amount of the pension calculated in accordance with the Pension Scheme Regulations.

For such purpose, there shall be drawn up, for each Member State, the tables of equivalence referred to in Article 3 specifying, for each amount of pension, the compensatory amount to be added thereto. The said tables shall determine the rights of the recipients.

3. In calculating the theoretical amount of income tax or taxes referred to in paragraph 2 of this Article, account shall be taken only of the provisions of tax legislation and regulations affecting the basis of liability and the amount of income tax or taxes for all pensioner-taxpayers in the country concerned.

[...]

No account shall be taken:

- of individual factors related to the personal circumstances or private means of a particular pensioner,

[...]

4. [...] recipient shall at the request of the Office produce evidence of his pension having been declared or taxed; should he fail to comply with this obligation, he shall be deprived of the right to the partial compensation payment and shall refund any amounts unduly received in this respect.”

Article 2(2) of the said Regulation, in the relevant part, read:

- “2. The partial compensation payment referred to in Article 1 shall be determined on the basis of the legal provisions relating to taxes on income in force in the Member State in which the pensioner is legally subject to such taxation.”

Pursuant to Article 3(1) and (2) of the Regulation:

- “1. Tables of equivalence for the partial compensation payment shall be established for each tax year by the Inter-Organisations Section of the Co-ordinated Organisations (hereinafter referred to as ‘the Section’).
2. The tax authorities of Member States shall provide the Section, at its request, with the details of legislation and regulations necessary for establishing the tables.”

4. The above-quoted rules granted EPO pensioners who were subject to national income taxation a partial compensation in the amount of 50 per cent of the national income tax applicable to their pensions. The compensation was a lump sum, which was calculated in light of the applicable national tax law, based on tables of equivalence. In the tables of equivalence, a theoretical amount of the national income taxes was established, based only on the provisions of tax legislation and regulations affecting the basis of liability and the amount of income tax for all pensioner-taxpayers in the country concerned.

The import of the submissions of the parties appears to be that German tax law grants the taxpayers residing in Germany a deduction from their income in respect of their expenses for social contributions. This deduction is to be applied to the basis of liability (that is the taxable amount of the income) before calculating the income tax rate and before levying the resulting income tax. However, the amount of this kind of deduction is different for taxpayers who are recipients of wages and for those who are recipients of pensions. For the wage recipients, the deduction has a maximum amount, i.e. 3,000/1,900 euros, respectively for married and single taxpayers. For the pension recipients, there is no ceiling, and thus, they are allowed to deduct from their income, which serves as a basis of liability, the actual amount they pay for social contributions and health insurance.

The question raised in the Tribunal is whether the deduction from the income in respect of the expenses for social contributions, granted by Germany for determining the taxable amount on which income tax is levied, should be taken into account for calculating the tax partial compensation paid by the EPO to its pensioners. Notwithstanding the fact that the regimen of the said deduction differs for wage recipients and pension recipients, in both cases the deduction is established by the German tax legislation. Thus, for the purpose of the EPO Regulation on tax partial compensation, at the relevant time, there existed in Germany, a provision “of tax legislation and regulations affecting the basis of liability and the amount of income tax or taxes for all pensioner-taxpayers” (Article 1(3) of the Regulation). Indeed, the deduction granted for social contributions and health insurance is applicable to all

pensioner-taxpayers. This type of deduction has a legal basis and, in consequence, it can be taken into account by the EPO in calculating the theoretical amount of the income tax and the tax partial compensation amount (Article 2(2) of the Regulation). Contrary to the complainant's contention, as this kind of deduction in Germany is applicable to all pensioner-taxpayers, it cannot be characterized as a "personal circumstance".

The fact that there is no ceiling in Germany on the deduction for pensioners, which thus varies on a case-by-case basis, and that it is not always equivalent to 3,000 euros or 1,900 euros, is irrelevant. Indeed, as also acknowledged by the complainant, the tax partial compensation is calculated on the basis of the theoretical amount of the income tax levied by Member States, and this option for a theoretical calculation renders it appropriate for the EPO to establish the deduction for social contributions in a fixed and pre-established amount for its pensioners residing in Germany. It must be noted that Article 1(2) of the Regulation establishes that the tables of equivalence "shall determine the rights of the recipients", and, thus, the tables of equivalence have the same legal effect as the Regulation itself and can define and limit the right to the partial compensation.

Moreover, in the present case, as the EPO has demonstrated to the Tribunal's satisfaction, the deduction of 3,000 euros or of 1,900 euros is lower than that to which the EPO pensioners are most likely entitled according to the German tax legislation. This means that the German income tax levied on EPO pensioners is calculated on a taxable amount (income basis) that is lower than what it would be if the deduction were applied in the maximum amount of 3,000 euros or 1,900 euros, and is, obviously, less onerous. Nonetheless, for the purpose of the EPO tax partial compensation, the theoretical German income tax calculated with the application of the 3,000 euros or 1,900 euros deduction is taken into account, rather than the actual income tax calculated with the application of the actual deduction, and this results in a higher amount of the tax partial compensation paid by the EPO.

In turn, the complainant has failed to demonstrate that, for the purpose of the German income tax, he is entitled to a deduction less than 3,000 euros. This supports the conclusion that, for pensioners residing in Germany, the EPO took into account the local tax legislation applicable to all pensioners, and applied it, as to the deduction for social contributions and health insurance, to their advantage and not to their detriment.

5. As to the complainant's arguments of unequal treatment and discrimination, they are too vague to be entertained. In any event, the complainant has not provided the Tribunal with evidence supporting his contention. Specifically, he has not demonstrated in which Member States other than Germany deductions for social contributions are granted and that, nonetheless, the EPO does not take them into account in calculating the basis for the tax partial compensation.

6. As to the complainant's argument that "deduction 2" had not been applied before the tax year 2011, neither unequal treatment nor discrimination to his detriment can be established, as he was not a pensioner in 2010.

7. In conclusion, the complainant's pleas are unfounded and the complaint will be dismissed, as well as all the applications to intervene.

DECISION

For the above reasons,

The complaint is dismissed, as are the applications to intervene.

In witness of this judgment, adopted on 6 May 2025, Mr Michael F. Moore, Vice-President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.

Annex

Sixty interveners (in alphabetical order): names removed.