Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

P. (No. 4)

v.

EPO

139th Session **Judgment No. 4995**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr L. M. A. P. against the European Patent Organisation (EPO) on 26 May 2021 and corrected on 24 June, the EPO's reply of 2 November 2021, the complainant's rejoinder of 14 February 2022 and the EPO's surrejoinder of 16 May 2022;

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 may be summed up as follows:

The complainant challenges the terms on which he was reimbursed for his disabled child's educational costs.

Since 1 June 2010 the complainant – a permanent employee of the European Patent Office, the EPO's secretariat – whose son, born on 2 May 2000, suffers from a mental condition which requires certain adaptations to be made to his schooling, has received a handicapped children's allowance under Section II of Article 69 of the Service Regulations. Until July 2015 his son attended the British School in the Netherlands, located in The Hague, and the Office paid for all his school fees, including fees for specialised support, under Article 120a of the Service Regulations. From September to December 2015, following a deterioration in his condition, the child was educated in the

United Kingdom at St Lawrence College, and then, from January 2016 to July 2018, at Kingsley School.

On 20 January 2016 the complainant filed a request for review of the decision, taken by the Office on 21 October 2015, to reimburse his son's educational costs for the year 2015-2016 on the basis of Article 71, rather than Articles 69 or 120a, of the Service Regulations. On 13 May 2016 the parties reached an amicable arrangement, and the Organisation decided that 47 per cent of the school fees would be reimbursed under the education allowance provided for in Article 71 and the remaining 53 per cent, which related to special didactic necessities, under the dependent handicapped children's allowance provided for by Section II of Article 69.

In August and September 2016 the complainant asked for the explanation of the sums that appeared on his payslip for the reimbursement of his son's educational expenses for the school year 2015-2016. On 6 September 2016 he received detailed explanations from Directorate 4.3.2 which he disputed on 31 October, asserting that, since his son was eligible for the dependent handicapped children's allowance, the ceiling on reimbursable expenses had not been properly calculated and that, accordingly, he was entitled to reimbursement of the full amount of the educational expenses he had claimed under Article 71 of the Service Regulations. On 3 November Directorate 4.3.2 responded by saying that the ceiling had been correctly applied in this case in accordance with subparagraph (6)(a) of Section III of the aforementioned Article 71. In an email of the same date, the complainant continued to dispute the calculation of this ceiling, by reference to the provisions of Section II of Article 69. On 11 November 2016 Directorate 4.3.2 confirmed to him that it regarded the correct ceiling to have been applied to the reimbursements made.

The complainant filed a request for review of this last decision on 9 February 2017, asking for the communication of a detailed calculation of the amounts reimbursed, for the correction of the calculation of the ceiling on reimbursements, for the consideration of the fact that 53 per cent of his son's educational expenses corresponded to specific costs for his disability-related needs, and for the

reimbursement of a sum of 13,676.36 euros. On 10 April 2017 he was informed by the Director of Directorate 4.3.2, Mr B., that his request was rejected as irreceivable on the grounds that the letter of 11 November 2016 was merely confirmatory and therefore did not constitute a challengeable administrative decision and that, in any event, his request had been submitted out of time. Subsidiarily, he was informed that his request was considered to be unfounded.

On 24 April 2017 the complainant filed a new request for review of the decisions, as reflected in his payslips for January and February 2017, on the reimbursement of his son's educational expenses at Kingsley School for the spring trimester 2016-2017. On 5 May he was informed that such a request could be dealt by means of an internal appeal against the decision of 10 April 2017.

The complainant then lodged an appeal with the Appeals Committee on 7 July 2017 against the decision of 10 April 2017 and the reimbursement decisions reflected in his payslips for January and February 2017. He asked the Committee, in particular, to recommend that he receive reimbursement of 100 per cent of the school fees of St Lawrence College and Kingsley School for the school years 2015-2016 and 2016-2017 or, in the alternative, reimbursement of these fees under Section II of Article 69 of the Service Regulations. He also sought damages for the moral injury he considered he had suffered as a result of the contested decisions and the lack of professionalism on the part of Directorate 4.3.2 as evidenced by those decisions.

In its opinion of 20 January 2021, the Appeals Committee unanimously recommended that the appeal be dismissed as irreceivable insofar as it concerned the request for review of 9 February 2017 and as unfounded in respect of the remaining claims. However, finding the length of the appeal procedure to be excessive, the Committee recommended payment to the complainant of compensation of 300 euros on this account. By a letter of 26 February 2021, the Vice-President of Directorate-General 4 informed the complainant of her decision to follow these recommendations. That is the impugned decision.

The complainant asks the Tribunal to hold that the opinion of the Appeals Committee and the impugned decision are unlawful or, alternatively, to refer his case to a new committee whose functioning would comply with the Service Regulations. He also seeks reimbursement of 100 per cent of his son's school fees under Article 120a of the Service Regulations or, alternatively, reimbursement of 53 per cent of those fees for the entirety of the child's time at St Lawrence College and Kingsley School pursuant to Section II of Article 69 of the Service Regulations. Lastly, he claims interest at a rate of 8 per cent per annum on the sums due and payment of compensation of at least 50,000 euros for the moral injury he considers he has suffered.

The EPO considers the complaint to be irreceivable insofar as it concerns the request for review of 9 February 2017, which, in its view, was submitted out of time and relates to a confirmatory decision and to expenses incurred for the third trimester of 2016-2017 and for the year 2017-2018, in respect of which the complainant has failed to exhaust internal means of redress. Accordingly, it asks the Tribunal to dismiss the complaint as irreceivable in part and unfounded in its entirety.

CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of 26 February 2021 by which the Vice-President of Directorate-General 4, in accordance with the unanimous recommendation of the Appeals Committee, rejected his internal appeal against the terms on which he was reimbursed for fees relating to the education of his disabled child.

2. The complainant requested an oral hearing, at which he wished two witnesses to be called. However, in view of the ample and sufficiently clear written submissions and evidence provided by the parties, the Tribunal considers that it is fully informed about the case and does not therefore deem it necessary to grant this request.

3. In support of his claims, the complainant submits first of all that the impugned decision is unlawful because the Appeals Committee's opinion was delivered under irregular conditions.

4. In this regard, the complainant – who, at the material time, was himself a member of the Appeals Committee in his capacity as staff representative – firstly makes a general criticism of the way in which the Committee functioned. He claims that this did not comply with certain fundamental requirements, such as the guarantees of independence and impartiality of the Committee, provided for by Article 111(8) and Article 112(1) of the Service Regulations.

However, other than a brief assertion that "[he] [had been] able to observe", in his time as a staff representative, "undue interference by the Office's Human Resources department in the functioning of the secretariat of the [Appeals Committee] and therefore of the [Committee] itself", the complainant's only reference to this matter in his complaint is to a letter, annexed to the complaint, that he had sent to the President of the Office on 1 June 2019 to complain about this supposed interference. It should be borne in mind that this practice of referring to the arguments that appear in a document annexed to the complaint, rather than setting them out in the complaint itself as required by Article 6(1)(b) of the Rules of the Tribunal, is not admissible (see, for example, Judgments 4051, consideration 3, 3692, consideration 4, or 3434, consideration 5).

In addition, the Tribunal considers, in view of the aforementioned letter of 1 June 2019, that the observations made therein – which essentially related to the selection procedure for a new director of the secretariat of the Appeals Committee, which was at the time underway – are completely insufficient to establish that the way in which that body functioned infringed the aforementioned requirements.

5. The complainant submits, secondly, that, due to a conflict of interests, the President of the chamber of the Appeals Committee which had examined his internal appeal, Mr v.H., was likely to be biased against him.

However, the complainant's arguments in this regard essentially revolve around the fact that, in his capacity as staff representative, he had previously approached the President of the Office to "unfreeze the payments" due to Mr v.H. for his work on the Committee. Apart from the fact that the Organisation denies any connection between the resolution of this issue and the complainant's actions, the Tribunal does not, in any event, see how this intervention in favour of Mr v.H. could have caused the latter to be biased against the complainant.

It is true that, in his rejoinder, the complainant elaborates on these arguments, submitting, in particular, that, in the course of his duties, he had had disagreements with Mr v.H. about the way in which the Committee functioned and differences of opinion over the handling of certain appeals submitted to the Committee, which could have given rise to such a bias. However, it must be noted that these new assertions are not accompanied by any evidence, which is contrary to the requirements of the Tribunal's case law on allegations of bias. They cannot, therefore, be accepted in any event (see, in particular, Judgments 4553, consideration 7, 4422, consideration 17, or 4097, consideration 14).

6. Lastly, the complainant submits that his appeal was not examined in accordance with the applicable procedural rules.

However, on the one hand, although he alleges that the Appeals Committee treated the parties unequally in the exchange of their submissions, there is no evidence on file of this actually happening.

On the other hand, although the complainant complains that the examination of his appeal did not give rise to a hearing of the parties, under Article 8 of the Implementing Rules for Articles 106 to 113 of the Service Regulations the organisation of such a hearing is at the discretion of the Committee and, according to the Tribunal's case law, it is permissible for the procedure before an internal appeals body to be entirely in writing (see, for example, Judgments 4398, consideration 4, or 3447, consideration 8).

7. The complainant's line of argument based on the alleged irregularity of the conditions of examination of his internal appeal must therefore be rejected in its entirety.

8. On the merits, the complainant's claims concerning the reimbursement of his disabled child's educational expenses hinge on Articles 69, 71 and 120a of the Service Regulations, the relevant provisions of which must now be examined.

9. Article 69 of the Service Regulations provides that the permanent employees of the Office may, depending on their family situation, be entitled to a dependants' allowance governed by Section I of that Article, or an allowance for dependent disabled children, governed by Section II.

In the version applicable to this case, Section II relevantly provided as follows:

"**II. Dependent handicapped children**

(7) A permanent employee with a dependent child medically certified as suffering from a handicap necessitating either special care, supervision or special education or training, not provided free of charge, may claim a dependent handicapped children's allowance and reimbursement of educational or training expenses for said child under the conditions laid down in the following paragraphs, whatever the age of the child.

(8) The decision to pay this allowance and this reimbursement shall be taken by the President of the Office following a medical opinion on the nature and degree of the handicap. This decision shall determine the period for which the permanent employee shall be granted these benefits; it shall be subject to periodical review.

(9) The criterion for assessing entitlement to these benefits shall be the serious and continuing impairment of the physical or mental activities.

[...]

(10) A claim for reimbursement shall be made solely in relation to expenses incurred in order to provide the handicapped child with education or training specially adapted to his or her needs and designed to obtain the highest possible level of functional capability and which are not of the same kind as those taken into account for the purposes of the education allowance.

The President of the Office shall satisfy himself as to whether the expenses for which reimbursement is claimed are reasonable.

(11) The amount of the dependent handicapped children's allowance shall be as set out in Annex III; it shall not be paid concurrently with the dependent children's allowance.

(12) Reimbursement of educational or training expenses above shall be at the rate of 90 per cent of the expenses defined in paragraph 10."

10. Article 71 of the Service Regulations establishes an education allowance designed to cover some of the costs incurred by permanent employees for the education of their dependent children.

In its version applicable to this case, that Article relevantly provided as follows:

"**I. Conditions of award**

(1) Permanent employees [...] may request payment of the education allowance, under the terms set out below, in respect of each dependent child, within the meaning of Article 69, regularly attending an educational establishment on a full-time basis.

[...]

(4) The education allowance shall not be awarded [...] where the education costs are covered under Article 120a.

II. Expenditure for educational purposes

(5) Within the limits prescribed in Section III, the education allowance shall cover the following:

(a) direct education costs, namely registration and examination fees, and general fees for schooling and education charged and invoiced by the educational establishment;

(b) miscellaneous education costs, namely all other expenses connected with education, such as expenses for board and lodging, books, private tuition and daily travel.

(c) travel expenses between the educational establishment and the place of employment.

III. Amount of the education allowance

(6) The amount of the education allowance shall be made up of:

(a) reimbursement of the total (pre-school, primary and secondary education) [...] of direct education costs up to a limit of 2.5 times the annual dependent child allowance applying in the country where the studies are pursued.

> This limit shall be raised [...] to 3.5 times the dependent child allowance where the direct education costs submitted for reimbursement include expenses for board and lodging.
>
> (b) a lump sum intended to cover miscellaneous education costs and expressed as a percentage of the dependent child allowance applying in the country where the studies are pursued [...]
>
> **IV. Payment of the allowance**
>
> (10) The reimbursement of direct costs shall be made on production of supporting documents. [...]"

11. Lastly, Article 120a of the Service Regulations in force at the time, in relation to the "[p]ayment of school fees", relevantly provided as follows:

> "Where an employee is unable to have his child educated at a European School for reasons beyond his control, the Office shall on request pay the fees charged by an international school for educating the child.
>
> The Office shall pay the fees only in the case of schools whose level of education corresponds to that of a European School and which are in the immediate district of a branch of the Office and are not run on a profit-making basis.
>
> [...]
>
> Where the Office pays the fees, the right to the education allowance under [Article] 71 [...] of the Service Regulations shall lapse."

12. As the Tribunal has already explained in Judgment 3310, consideration 9, the aforementioned provisions of Article 69 of the Service Regulations, insofar as they deal with the reimbursement of educational expenses for a disabled child, are intended to supplement the provisions of Article 71 which relate more generally to the payment of an education allowance for any child – whether disabled or not. These two articles must therefore be understood to cover expenses of different kinds: ordinary education costs are covered by Article 71, whereas expenses specifically incurred in order to provide the disabled child with an education adapted to her or his needs – and only those expenses falling into the latter category, as is made explicit by Article 69(10) – may give rise to an additional reimbursement on the basis of the latter Article.

Meanwhile, Article 120a provides for a specific situation in which, if precise conditions are met, the Office will pay for the entirety of a child's school fees – including, in the case of a disabled child, any expenses linked to the provision of education adapted to the child's needs.

13. In the present case, the complainant, whose son was, until July 2015, educated at the British School in the Netherlands, located in The Hague, was, during that time, entitled to have the entirety of his school fees paid for under this head. However, this situation changed when, as a result of his disability becoming more severe, the child was enrolled at establishments in the United Kingdom, first at St Lawrence College from September to December 2015 and then at Kingsley School from January 2016 to July 2018. The terms on which the fees pertaining to his education at these establishments are reimbursed, as determined by the combined provisions of Articles 69 and 71, are what gave rise to the present dispute.

14. It should be pointed out in this regard that, contrary to what the complainant asserted to the administration in the initial phase of the case, the Office correctly calculated the ceiling on the reimbursement of direct education costs under Article 71(6)(a) and the lump sum for miscellaneous education costs under Article 71(6)(b) on the basis of the amount of the dependent child allowance, and not the dependent handicapped children's allowance – which is twice as much. The Tribunal, which has already had cause to interpret the provisions in question in Judgment 3310, considerations 7 to 10, specified in that judgment that the reference made in the said provisions to the "dependent child allowance" must, even in the case of a permanent employee in receipt of the dependent handicapped child allowance provided for by Section II of Article 69, be taken as a reference to the dependent child allowance within the meaning of Section I of that Article.

Indeed, it seems that the complainant has now taken note of that judicial interpretation as he has not repeated the claim in question before the Tribunal and appears to have abandoned it by the time of the internal appeal procedure.

15. In his complaint, the complainant primarily seeks recognition of his entitlement to be reimbursed for 100 per cent of his son's education costs, on the grounds that, under the principle of equal treatment, he should benefit from the same regime as that laid down by Article 120a of the Service Regulations.

This claim is unfounded.

It is clear that once the child left the British School in the Netherlands, the complainant's situation no longer met the conditions laid down by Article 120a, if only because, unlike the British School in the Netherlands, St Lawrence College and Kingsley School were plainly not "in the immediate district of a branch of the Office", as stipulated by that Article (see, for an example of the application of this requirement, Judgment 3434, considerations 18 and 19).

The principle of equal treatment cannot, in itself, be successfully invoked by the complainant to justify his entitlement to a benefit the award of which is subject to conditions that he no longer meets. At most, his reliance on this principle could be regarded as a plea of unlawfulness of the aforementioned provisions of the Service Regulations, to the extent that they do not provide for full cover of the education costs for a permanent employee in his position. This plea of unlawfulness cannot be accepted.

16. According to the Tribunal's case law, the principle of equal treatment requires, on the one hand, that officials in identical or similar situations be subject to the same rules and, on the other, that officials in dissimilar situations be governed by different rules defined so as to take account of this dissimilarity (see, for example, Judgments 4681, consideration 9, 4277, consideration 21, or 3900, consideration 12). The Tribunal has also specified that an organisation which is required to adopt rules that take dissimilar situations into account has a broad

discretion in defining those rules (see, in particular, Judgments 2194, consideration 6(a), and 1990, consideration 7).

In the present case, the rules on allowances for education costs, governed, on the one hand, by Article 120a and, on the other hand, by the combined provisions of Articles 71 and 69, relate to dissimilar situations and the differences involved do not seem immaterial in view of their object. It is clearly inevitable, in a case where different legal provisions coexist, that these will be more or less beneficial to officials according to their individual situations. However, that circumstance does not, in itself, constitute a breach of the principle of equal treatment.

17. In the same vein, the complainant, who emphasises that the reason his son had to leave the British School in the Netherlands was that his condition had worsened, submits that the loss of his right to have the entirety of the child's education costs paid for under Article 120a constitutes disability discrimination.

This supplemental line of argument is also unfounded.

Although the EPO does not agree that a change of school was an absolute necessity, based on a medical opinion it commissioned, the decision to enrol the child at St Lawrence College and then at Kingsley School was undoubtedly motivated by his family's perfectly reasonable desire for him to receive an education better suited to his needs. Those schools were accredited for the provision of education for children with learning difficulties and it is clear from the evidence on file that the British School in the Netherlands itself recommended, in view of the changes in the complainant's son medical condition, that he should be moved to an establishment of that kind.

However, a situation of unlawful discrimination would only arise if the complainant had been treated less favourably than another employee on account of the disability from which his son suffered. But that is not the case here. The complainant has not been treated less favourably than, for example, an employee benefiting from the provisions of Article 120a whose child had to change school because of particular family circumstances or relationship problems in the original school and who, equally, would lose her or his entitlement to have the

entirety of the education costs covered. Furthermore, having a disabled child may, in itself, lead to a full entitlement of this kind under Article 120a, which is a financial benefit specifically granted to employees meeting this condition, and from which, the Tribunal notes, the complainant himself previously benefited for several years. The changes to the complainant's entitlement in 2015, which are simply the result of an objective application of the relevant provisions to his situation, cannot be regarded as discrimination.

18. The complainant claims, subsidiarily, recognition of his entitlement, on top of the education allowance received under Article 71, to reimbursement of 53 per cent of his son's education costs at St Lawrence College and Kingsley School pursuant to Section II of Article 69.

In support of this claim, the complainant relies on the fact that, under an amicable arrangement reached following a challenge he made to the reimbursement of school fees for 2015-2016, the Office had, at a meeting on 13 May 2016, agreed that 47 per cent of those fees – corresponding to general tuition and boarding fees – would be reimbursed under Article 71 and the remaining 53 per cent – acknowledged to arise from the child's specific educational needs linked to his disability – under Section II of Article 69. According to the complainant, the Office could therefore not alter the reimbursement arrangements for subsequent periods.

The EPO does not dispute the existence of the decision taken on 13 May 2016, the evidence on file indicating that this was based, in particular, on the production of a declaration from Kingsley School of 25 April 2016 containing a breakdown of the fees in this way. However, the Organisation maintains that the decision was not binding for the future and that the invoices issued by the school in question for later trimesters contained different indications which led to the complainant's entitlement to reimbursement being partly altered.

19. As the decision of 13 May 2016 does not appear on the file and in fact seems never to have been recorded in writing, the Tribunal is not in a position to verify the period for which the agreed arrangements for reimbursement, referred to above, were supposed to last. However, any uncertainty on this point is not in fact important because, contrary to what the complainant appears to believe, such a decision could, in any event, be subsequently and lawfully amended in the event of new information coming to light that changed the basis on which it had been adopted. The right to be reimbursed for expenses incurred is, by its nature, subject to review in accordance with changes in those expenses or information which affect their eligibility for reimbursement in view of the conditions governing the entitlement. In addition, Article 69(8), cited above, expressly states that any decision granting benefits under Section II of that Article "shall be subject to periodical review" and, in the same vein, Article 71(10), also cited above, provides in relation to the payment of the education allowance that reimbursement of direct education costs shall be made "on production of supporting documents". Despite the complainant's arguments to the contrary, there was therefore nothing, in principle, to prevent the Office from revising its decision of 13 May 2016 in the light of information that subsequently came to its attention.

Furthermore, the complainant is wrong to submit, by reference to the discussions he had with the Office prior to the meeting leading to that decision, that any revision of the decision should have been preceded by a "new procedure under the Service Regulations". The evidence submitted indicates that these discussions did not fall under any specific procedure under the Service Regulations and, while it is true that Article 69(8) stipulates that the decision to pay the allowance provided for in Section II of that Article is to be taken following a medical opinion on the nature and degree of the handicap of the child, there was in the present case absolutely no need to obtain a new medical opinion since the change to the reimbursement arrangements agreed on 13 May 2016 had nothing to do with the medical matters that would be addressed therein.

Lastly, it is true, as the complainant submits, that the decision of 10 April 2017 rejecting one of his requests for review contained a factual error in that it referred to the decision of 13 May 2016 as relating to school fees for St Lawrence College, whereas it was actually based on fees invoiced by Kingsley School, as originally presented by that school. However, this was simply a clerical error which, although regrettable, was of no practical consequence, since it is clear from the evidence on file that the changes to the reimbursement arrangements agreed on 13 May 2016 were decided on by the Office in full knowledge of the facts, in the light of the new information it had received about the fees for Kingsley School.

20. Aside from the argument over the existence of the decision of 13 May 2016, which must therefore be rejected, the complainant submits that he was, in any event, entitled to reimbursement of 53 per cent of the educational expenses charged to him by Kingsley School, under Section II of Article 69.

It must be pointed out, in this regard, that the evidence shows that, in addition to the education allowance and the dependent handicapped children's allowance, the complainant also received reimbursement from the EPO for the costs of individual support provided to his son by a teaching assistant – which were invoiced separately by Kingsley School.

The dispute between the parties stems from the Office's refusal to reimburse, under Article 69, the costs of other disability-related services – namely the costs of specialised teaching that was delivered collectively – on the grounds that this did not give rise, as far as the complainant was concerned, to any charge by Kingsley School for educational costs specifically invoiced to him. This is because the policy adopted by the school – only a minority of whose pupils were disabled – was to charge the same fees for disabled and non-disabled pupils (other than individual support, which was invoiced as explained in the preceding paragraph), thus spreading the cost of the specialised teaching provided to those pupils requiring it. The Office concluded from this situation that, as no expense was specifically incurred by the

complainant under this head, his claim for reimbursement was not justified.

21. To demonstrate that its decision was well founded, the EPO produced to the Tribunal an email from an officer of Kingsley School dated 21 July 2017 which, in addition to confirming the school's practice that has just been described, indirectly shows that the 53 per cent share of the disputed costs for which the complainant seeks reimbursement under Article 69 did not relate to costs specifically invoiced for the specialised teaching his son received.

The complainant asks the Tribunal to disregard that email or, at least, not to recognise it as having full probative value. None of the various arguments he puts forward in this regard can be accepted, but the matter is in any case irrelevant since the key document submitted by the complainant in support of his case, namely a declaration from Kingsley School dated 25 May 2021, does not, in fact, fundamentally contradict the content of the aforementioned email. This declaration confirms that the costs invoiced to the complainant consisted of 47 per cent for boarding fees and 53 per cent for tuition, and that this was the same amount charged for non-disabled pupils. While, admittedly, the document states that the 53 per cent figure included the cost of specialised teaching from which the complainant's son benefited, that does not change the fact that – aside from the teaching assistant support invoiced separately and, as noted, duly reimbursed by the Office – that cost did not give rise to any specific invoicing charge.

22. The Tribunal considers that, in the circumstances, the EPO was right to refuse to reimburse the complainant under Section II of Article 69 for the expenses related to his son's education other than the costs of individual support referred to above. Given that, under the method used by Kingsley School for invoicing school fees, the cost of specialised teaching for disabled pupils was integrated into ordinary school fees, the provisions of Article 69(10) cited above precluded this reimbursement on dual grounds.

Firstly, even though the complainant's decision to enrol his son at Kingsley School was motivated by the fact that the school offered specialised teaching catering for his son's disability, it cannot be said that the cost of that teaching gave rise, strictly speaking, to "expenses incurred in order to provide the handicapped child with education [...] specially adapted to his or her needs", within the meaning of the paragraph in question, since that cost was invoiced in the same manner for all pupils attending the school and therefore did not give rise to the payment of any additional sums by the complainant. Moreover, although, by definition, there was certainly a cost to that teaching, it must be noted that the amount involved could not be identified due to the invoicing methods used by the school.

Secondly, the fact that the cost of that specialised teaching was, in this case, integrated into the invoices for school fees, meaning that it was taken into account by the Office when calculating the education allowance paid under Article 71, was itself a barrier to satisfying the requirement in Article 69(10) that reimbursement under Section II of Article 69 can be made solely in relation to expenses "which are not of the same kind as those taken into account for the purposes of the education allowance".

The Tribunal therefore considers that, as the Appeals Committee rightly found in its opinion, the complainant's arguments in this regard are unfounded.

23. Lastly, the complainant claims that, in the context of the internal appeal procedure and the proceedings before the Tribunal, the EPO unlawfully disclosed medical information about his son. However, the evidence on file does not support this claim which is, moreover, irrelevant given that it does not, in any event, concern the lawfulness of the impugned decision.

24. It follows from the foregoing that the complaint must be dismissed in its entirety, without there being any need to rule on the objections raised by the EPO to the receivability of some of the claims.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 8 November 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLEMENT GASCON

MIRKA DREGER