

**P. (No. 18)**

**v.**

**EPO**

**140th Session**

**Judgment No. 5061**

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighteenth complaint filed by Mr L. P. against the European Patent Organisation (EPO) on 6 January 2015 and the EPO's reply of 14 August 2015, no rejoinder having been submitted by the complainant;

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, acting in his capacity as a staff representative at the material time, challenges the decision to transfer Mr L. to the post of Director (Advisor on Conflict Resolution Matters).

In April 2012, the EPO published a vacancy notice for the post of Director (Advisor on Conflict Resolution Matters) at grade A5 and invited staff members to submit their applications by 13 May 2012. The complainant did not apply for this position, but applications were received from Mr L., and another staff member. On 16 May 2012, the Selection Board rendered its report, recommending that Mr L. be appointed to the post. The Board noted that the other candidate was not suitable for the post since the vacancy notice "ha[d] been published for transfer within the same group of grade (A5)" and the other candidate

did not fulfil this requirement. By letter dated 31 May 2012, the Director of Human Resources Line Management Support informed Mr L. of the decision to transfer him to the post of “Director Conflict Resolution Matters”. On 6 June 2012, staff members were informed of this decision by the Vice-President of Directorate-General 1 (DG1).

In the meantime, Mr L., who was due to reach the normal retirement age in December 2012, had applied on 1 February 2012 for a prolongation of service beyond the age of 65. This request was granted on 31 May 2012.

On 5 September 2012, the complainant, along with nine other staff members, all acting in their capacity as staff representatives, challenged the decision to transfer Mr L. to the post of Director (Advisor on Conflict Resolution Matters) and requested the Organisation, inter alia, to hold an open selection competition with the nomination of a staff representative to the Selection Board. The appellants argued, in their separate appeals, that the Organisation did not adhere to the recruitment procedures outlined in the Service Regulations for permanent employees of the European Patent Office, the EPO’s secretariat, and that Mr L. neither requested nor received authorization to be employed beyond the age of 65, which he would soon attain, within the deadlines foreseen in Circular No. 302. On 14 September 2012, the Vice-President of DG1 provided the complainant – and all other appellants – with clarifications pertaining to the transfer decision. He informed the complainant that his request to quash the transfer decision “[could] not be met” and requested confirmation as to whether he intended to continue with his internal appeal, which the complainant did on 3 October 2012. By separate letters dated 2 November 2012, the appellants were informed of the President of the Office’s decision to reject the appeal and to refer it to the Internal Appeals Committee (IAC).

In its report dated 27 August 2014, the majority of the IAC found that the appeal was unfounded on the merits, considering that there was no proof that the transfer decision at issue was “pre-determined” to unlawfully favour Mr L.’s appointment, as argued by the appellants, and therefore flawed, and recommended rejecting the appeal. By a letter dated 8 October 2014, the Vice-President of Directorate-General 4

(DG4) informed the complainant of his decision to endorse the recommendation of the majority of the IAC and to reject his appeal as unfounded in its entirety. The Vice-President also noted that, in any event, the receivability of the appeal “appear[ed] doubtful”, since neither the staff representatives nor the staff in general had been directly and immediately affected by the transfer decision. This is the impugned decision.

The complainant requests the Tribunal to quash the impugned decision and claims moral damages as well as costs incurred during the internal proceedings and before the Tribunal.

The EPO requests the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, as unfounded.

### CONSIDERATIONS

1. The complainant challenges the decision to transfer Mr L. to the contested post (which was advertised as a temporary position), and, purportedly, the decision to extend Mr L.’s employment beyond the normal retirement age. He instituted and has maintained the challenge in his capacity as an elected staff representative and not in his individual capacity. He had not himself applied to fill the contested post.

2. The complainant submits, in the first place, that the contested post should have been filled by competition “as was originally foreseen” in accordance with Article 7(1) of the Service Regulations, which stipulated that recruitment or appointment shall generally be made by way of competition in accordance with the procedures laid down in Annex II. He states that had this been done, Mr L.’s appointment to the post would also have met the requirements of Articles 4(3) and 5(1) of the Service Regulations. He also states that a staff representative should have been involved in the Selection Board to assess whether the statutory criteria were respected and the best interests of the Office, including the staff, were met. The complainant submits, in the second place, that Mr L.’s appointment to the post was made in breach of section I(2) of Circular No. 302, particularly because he had attained

the normal retirement age in December 2012 and had not submitted a request to continue to work beyond that age at the latest nine months prior to that date. The record however shows that Mr L. had submitted such request on 1 February 2012. The complainant's second submission is therefore unfounded. This case is accordingly centrally concerned with the complainant's challenge to Mr L.'s transfer to the contested post.

3. In his internal appeal, the complainant had requested that the decision to appoint Mr L. to the contested post be quashed and that the EPO be ordered to conduct an open selection competition for the post, with a staff representative as a member of the Selection Board. He also sought moral damages and costs. However, the complainant noted, in his complaint, that given Mr L.'s retirement and the abolishment of the contested post, a claim to "re-establish the status quo ante" was pointless. Therefore, he restricted his original claims and requested that the impugned decision be quashed, that he be paid compensation, and that he be awarded out-of-pocket expenses for the internal appeal, and costs.

4. The IAC unanimously determined that the appeal was "admissible". The minority however further stated that "staff representation has a right to raise all cases where procedures foreseen by the Service Regulations have been breached" and that "[t]he Service Regulations safeguard the respect of certain standards both for the good functioning of the Office as well as the rights of staff to a good administration".

5. Whilst, in the impugned decision, the Vice-President of DG4 endorsed the majority's recommendation to dismiss the internal appeal, in effect, as unfounded, he noted, in any event, "that the receivability of the present appeal appears doubtful, since there has been no direct and immediate effect to the staff representatives or staff in general". He cited Judgment 3291. Referring to consideration 8 of that judgment, in its reply, the EPO raises the receivability of the complaint as a threshold issue. This, in effect, invites the Tribunal to first determine whether it has jurisdiction to entertain the complaint at all. The EPO cites the

Tribunal's statement therein that "a complainant can impugn a decision only if it directly affects her/him, and cannot impugn a general decision unless and until it is applied in a manner prejudicial to her/him, but she/he is not prevented from challenging the lawfulness of the general decision when impugning the implementing decision which has generated their cause of action". This statement is not however fully applicable in the present case which does not involve a challenge to a general decision. The EPO centrally argues that the complaint is not receivable in the Tribunal as the decision to transfer Mr L. to the contested post did not directly or immediately affect the complainant, staff representatives or staff in general. It notes that only two candidates applied for the post, Mr L. and another candidate who did not meet the requirements for the post. Thus, the transfer decision "[was] not likely to have directly affected any other staff member". In his brief, the complainant refutes this statement as "an ill-founded legal judgement which is part of the President's current policy of emasculating to the maximum the functions of Staff Representation" and, in effect, adopts the minority's statement on this issue, which is referred to in consideration 4 of this judgment.

6. The issue of receivability as it relates in the present case is informed by the following explanation the Tribunal relevantly provided in considerations 11 to 14 of Judgment 3642:

"11. [...] [U]ltimately, the Tribunal's jurisdiction and the related question of a person's right to invoke that jurisdiction should be determined by reference to the Tribunal's Statute. Article II addresses both questions. The Tribunal is conferred with jurisdiction to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office and other organisations which have submitted to the Tribunal's jurisdiction, as well as complaints alleging non-observance of such provisions of the relevant Staff Regulations as are applicable to the case. Having identified and defined the jurisdiction, Article II identifies in paragraph 6, the class or classes of people who can invoke that jurisdiction. That paragraph provides that '[t]he Tribunal shall be open [...] to the official' and to any person to whom the 'official's rights have devolved' on death together with any other person entitled to some right of a deceased official. A legal normative document conferring jurisdiction on a court should not be narrowly construed. However there is little room to doubt that the expression 'shall be open to the official' is a

reference to the official whose terms of appointment have allegedly not been observed or, in relation to whose circumstances (in ‘a case’), applicable provisions of the Staff Regulations have allegedly not been observed. This is reinforced by the reference to ‘the official’s rights’, in the singular, in relation to rights that have devolved on death. That is to say, standing is directed to the vindication or enforcement of the rights of an individual officer. The clause does not cast the net any wider in relation to who can invoke the jurisdiction of the Tribunal.

12. Similarly in Article VIII, dealing with remedies, the focus of the Article is the provision of relief or a remedy to an individual complainant on the assumption that the relief or remedy will overcome the effect or consequences on that complainant of the non-observance by either undoing the effect of the defendant organisation’s conduct (by rescission) or the payment of compensation to the complainant.

13. Accordingly, in the present case, the question is whether any of the complainants is an official with some or all of these characteristics. [...]

14. [...] Consistent with the entire focus of the Statute, the right of an elected representative to enforce the Staff Regulations for the benefit of all staff is limited to circumstances where the provision (which has allegedly not been observed) confers a right on the elected representative as a member of staff. It might be a right limited to the staff representative (such as the right to be consulted) or it might be a right enjoyed by all staff (such as the right to freedom of association).”

7. At relevant times, no provision in the Service Regulations foresaw the involvement of staff representatives in internal transfer processes (see, for example, Judgments 2921, considerations 4 to 6, 2920, considerations 4 to 6, and 2792, considerations 8 to 10). Therefore, contrary to the case law relevantly stated in consideration 14 of Judgment 3642, the applicable provisions did not confer on the complainant, as an elected representative, a right which the Tribunal is called upon to protect under the terms of its Statute (see Judgments 4322, consideration 8, 4317, considerations 3 and 4, and 3775, consideration 6). The result is that the complainant has no standing to bring this complaint and the Tribunal has no jurisdiction to entertain it. The complaint is accordingly irreceivable and will be dismissed.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 12 May 2025, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, 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

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.