

B. (No. 18) and D. (No. 2)

v.

EPO

140th Session

Judgment No. 5062

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr F. B. (his eighteenth) and Mr D. B. G. D. (his second) against the European Patent Organisation (EPO) on 13 August 2020, the EPO's single reply of 18 November 2020, the complainants' rejoinder of 22 January 2021 and the EPO's surrejoinder of 29 March 2021;

Considering the application to intervene filed by Mr D. B. G. D. on 13 August 2020 and the EPO's comments of 19 April 2022;

Considering the application to intervene filed by Mr R. F. on 14 August 2021 and the EPO's comments of 19 April 2022;

Considering the letter of 12 January 2023 by which the EPO informed the Registry of the Tribunal that it had paid 100 euros in moral damages to the complainants for the irregular composition of the Appeals Committee;

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 none of the parties has applied;

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

The complainants contest Circulars Nos. 355 and 356 concerning the elections of staff representatives and the resources and facilities granted to them, as well as decision CA/D 2/14, introducing the “social democracy” reform.

The complainants are permanent employees of the European Patent Office, the secretariat of the EPO. On 28 March 2014, the Administrative Council adopted decision CA/D 2/14, which implemented the social democracy reform. As part of the reform the President of the Office adopted, on 2 April 2014, the following two Circulars: Circular No. 355 regulating the elections of the Staff Committee – which includes the Central Staff Committee and the Local Staff Committees – and Circular No. 356 regulating the resources and facilities to be granted to the Staff Committee. At the time of the reform, Mr B. was an elected member of the Local Staff Committee in The Hague, the Netherlands.

In June 2014, Mr B. filed, in his capacity as a member of the Local Staff Committee and in his individual capacity, a request for review contesting each of the above-mentioned Circulars alleging in particular a violation of acquired rights and of the right to freedom of association. He also contested the lawfulness of the Circulars arguing that they had been adopted on the basis of decision CA/D 2/14 which was itself unlawful. His requests were rejected as manifestly irreceivable on the ground that the Circulars were general decisions having no individual, direct adverse effect on him or on staff.

In November 2014, he appealed the rejection of his requests for review. His first appeal was in respect of Circular No. 355, and the second in respect of Circular No. 356. Both appeals were joined and considered together.

The Enlarged Chamber of the Appeals Committee issued its opinion in early March 2020. The majority of the Appeals Committee considered that the appeal was irreceivable insofar as Mr B. contested Circular No. 356, which regulated the resources and facilities available to the entity representing staff. He lacked a cause of action because the potential effect the Circular may have on staff was too remote. In addition, the majority noted that the Circular provided for mechanisms

that required measures of implementation, such as time recording, budget for duty travel and time deductions. The majority considered that the appeal was receivable insofar as Mr B. challenged Circular No. 355 in his individual capacity. He had a cause of action in that respect because the Circular affected him, as a staff member, in the exercise of his right to vote (restriction of the vote to one individual instead of a few individuals) and his right to be elected (impossibility of a double mandate). However, on the merits, it recommended rejecting the appeal as unfounded on the ground that Circular No. 355 was lawful. The modifications it introduced did not constitute an unjustified interference in the affairs of the staff representation, and they did not aim nor had the effect of hindering the complainant from exercising his freedom of expression and of association. The majority added that the new voting system did not prevent staff from exercising their right to vote for their staff representatives. However, the Appeals Committee unanimously recommended granting Mr B. 600 euros in moral damages for undue delay in the internal appeal procedure.

By a letter of 18 May 2020, Mr B. was informed of the President's decision to endorse the recommendation of the majority of the Appeals Committee for the reasons it stated, and to reject his appeal as unfounded. In accordance with the Appeals Committee's unanimous recommendation, he awarded him 600 euros for the length of the internal proceedings insofar as he had lodged his appeal in his individual capacity. This is the decision Mr B. and Mr D. impugn before the Tribunal. Mr D. impugns it in his capacity as "successor in title" of Mr B. as an elected member of the Local Staff Committee in The Hague explaining that Mr B. was no longer a member of the Local Staff Committee at the time he filed the complaint. When Mr B. initiated the internal appeal proceedings, Mr D. was not a member of the Local Staff Committee.

The complainants ask the Tribunal to set aside the decision of 18 May 2020, to quash decision CA/D 2/14 as well as Circulars Nos. 355 and 356, and to declare the amendments made to the Service Regulations as well as the Implementing Rules to the Service Regulations, unlawful, and to restore the *status quo ante*. They seek an

award of moral damages for the injury caused to them as staff representatives in an amount of not less than 10 euros per EPO staff member as of 1 July 2014, together with an award of moral damages in their capacity as “ordinary” staff members for the violation of their rights regarding the determination of the electoral regulations for the Staff Committee. They claim reimbursement of their legal expenses in relation to the filing of their complaints, as well as interest at the rate of 5 per cent per annum on all amounts ordered by the Tribunal from the date of the original request for review to the date of the full and complete execution of the Tribunal’s decision. They further claim punitive damages for “each instance of injurious implementation of the circulars” adding that the situation was further “compounded by the egregious delay in treating [their] appeal”. Lastly, they claim costs in accordance with Judgment 2418, and any other relief as the Tribunal deems fair, just and equitable.

The EPO asks the Tribunal to dismiss the complaints as partly irreceivable for lack of a cause of action and otherwise unfounded. It also asks the Tribunal to dismiss the applications to intervene.

CONSIDERATIONS

1. The complainant, Mr B., is a permanent employee of the EPO and was at the relevant time an elected member of the Local Staff Committee in The Hague. He impugns the 18 May 2020 decision informing him that the President of the Office endorsed the majority recommendation of the Appeals Committee to dismiss his internal appeals against Circulars Nos. 355 and 356 as well as against decision CA/D 2/14. The President also awarded him 600 euros in moral damages due to the length of the internal appeal proceedings, following the unanimous recommendation from the Appeals Committee.

2. Mr D., as the “successor in title” to Mr B.’s elected position in the Local Staff Committee in The Hague, also contests this decision. He further filed an application on 13 August 2020 to intervene in

Mr B.'s complaint. Mr F. also filed an application to intervene in Mr B.'s complaint on 14 August 2021.

3. Both complaints challenge the lawfulness of Circulars Nos. 355 and 356, as well as decision CA/D 2/14, which introduced the "social democracy" reform. Given that the subject matter of both complaints is identical and supported by a single brief, the complaints are joined for a single judgment to be rendered.

4. The EPO contests the receivability of the complainants' claims against Circulars Nos. 355 and 356 as well as decision CA/D 2/14, mainly on the ground that they are general decisions that do not directly and adversely affect the complainants. As it will become clear, the Tribunal considers it unnecessary to address the other objections to receivability.

5. Circular No. 355 details procedures for staff committee elections, includes measures that directly affect individual rights of staff members, particularly regarding electoral candidacy rules and voting methods. The Tribunal acknowledges that modifications such as limiting candidacy to a single mandate, directly and immediately impacted Mr B. as he was actively serving as a staff representative at the relevant time. Accordingly, the Tribunal finds his claims concerning Circular No. 355's electoral provisions receivable. However, it should be noted that in Judgment 4482, delivered on 27 January 2022, the Tribunal set aside part of Article 6 of decision CA/D 2/14, on the ground of its violation of staff rights to freedom of association. Judgment 4482 also nullified Circular No. 355 – the applicable Implementing Rules for Article 6 of decision CA/D 2/14 – rendering the current complaints moot concerning the annulment of Circular No. 355.

6. Regarding Circular No. 356, the EPO correctly argues that the complainants have no cause of action to contest a general decision of this kind. It is well settled in the Tribunal's case law that a staff member cannot challenge a decision of general application unless and until an individual decision adversely affecting her or him has been taken (see,

for example, Judgments 4430, consideration 14, 2822, consideration 6, or 1852, consideration 3). An exception is made where the decision of general application does not require any implementing decision and immediately affects individual rights (see, for example, Judgments 4482, consideration 4, or 3761, consideration 14).

7. Circular No. 356, concerning the allocation of resources, including time allowances and facilities for staff representatives, clearly constitutes a general decision of a regulatory nature requiring specific implementation measures for any concrete harm to arise. The complainants have not provided evidence of immediate adverse effects arising directly from Circular No. 356 without further measures. Consequently, their claims regarding Circular No. 356 are irreceivable.

8. The complainants also challenge decision CA/D 2/14, alleging that procedural flaws in its adoption tainted Circulars No. 355 and No. 356, which were taken in the framework of the social democracy reform. Specifically, they argue that (1) the consultation before adopting Circulars Nos. 355 and 356 was fundamentally flawed due to the improper composition of the General Advisory Committee (GAC), notably the inclusion of Vice-Presidents; and (2) scheduling conflicts between the GAC meeting and staff General Assembly meeting impaired meaningful participation, invalidating the consultation process. The Tribunal recalls that it ruled in Judgment 4482 on a complaint directed against decision CA/D 2/14 and set aside part of that decision, thus the present complaints concerning decision CA/D 2/14 have become moot in that respect.

9. In light of the above and given that the complainants' primary claims are partly irreceivable and the remaining claims fail on the merits, related ancillary requests for costs, punitive and moral damages, and interest are rejected. It follows that the applications to intervene are to be dismissed as well.

DECISION

For the above reasons,

The complaints are dismissed, as are the applications to intervene.

In witness of this judgment, adopted on 30 April 2025, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, 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

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.