**C.**

***v.***

**EPO**

**140th Session** **Judgment No. 5064**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr G. C. against the European Patent Organisation (EPO) on 8 June 2020, the EPO's reply of 21 October 2020, the complainant's rejoinder of 3 December 2020 and the EPO's surrejoinder of 4 March 2021;

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 decision not to grant him an expatriation allowance.

The complainant, who holds Italian nationality, joined the European Patent Office – the EPO's secretariat – on 1 January 2017 to work as a patent examiner in Munich, Germany. Upon taking up his duties, he applied for an expatriation allowance on the basis of Article 72(1) of the Service Regulations for permanent employees of the Office, which provides for the payment of an expatriation allowance to permanent employees who, at the time they take up their duties, hold the nationality of a country other than that in which they will be serving and were not permanently resident in the latter country for at least three years. On the application form (the "Declaration concerning expatriation

allowance"), the complainant indicated that he had resided in Italy from the time of his birth (in 1982) until 20 January 2016 and in Germany since 21 January 2016. However, in light of the supporting documents he provided, the Office concluded that he had been "permanently resident" – within the meaning of Article 72(1) – in Germany during the three years prior to taking up his duties, because he had lived and worked in Munich on a continuous basis since November 2010, and that he was therefore not entitled to receive an expatriation allowance. This decision was conveyed to him by an email of 28 June 2017.

On 21 September 2017 the complainant submitted a request for review of the decision of 28 June 2017. He pointed out that, in support of his application, he had provided, amongst other things, an official certificate of residence issued by the local authorities of the town where he had resided in Italy. In this regard, he explained that, because he had worked for German employers from 1 November 2010 onwards, he had been obliged, under German law, to register in a German town, because without such registration he would not have been able to sign a German employment contract, or to obtain a tax number and a social security number, but the Italian authorities regarded this merely as a change of domicile, not a change of residence. The complainant also emphasised that, during the three years preceding his appointment at the EPO, he had frequently spent extended periods of time in Italy in order to provide assistance to his father, who suffered from serious health problems, and that he had provided regular financial support to his parents. It was not until 2016, when he had found a person to take care of his father, that he registered with the Italian local authorities as an "Italian citizen resident abroad".

The Director, Human Resources Operations, responded to the complainant's request for review on 24 October 2017, informing him that the decision not to grant him an expatriation allowance was maintained. The Director noted that the work experience gained by the complainant since November 2010 with two employers in Munich had been taken into account as "reckonable experience" when determining his grade and step on appointment, and that he had been living at the same address in Germany since November 2010. As he had been

permanently resident in Germany for more than three years at the time of his appointment, one of the conditions for entitlement to an expatriation allowance under Article 72(1) was not met. The Director explained that the maintenance of a residence and family ties in the country of his nationality was not relevant to this assessment.

On 21 January 2018 the complainant lodged an internal appeal against the decision of 24 October 2017, seeking payment of the expatriation allowance as from the date when he took up his duties at the EPO. In the event that the arrears were not paid to him within one year from the date of his appeal, he asked to be paid interest on the sums in question at the rate of 5 per cent per annum.

The Appeals Committee issued its opinion on 15 January 2020, unanimously recommending that the appeal be dismissed as unfounded. Having recalled the Tribunal's analysis in Judgment 4191 concerning the meaning of the expression "permanently resident" in Article 72(1) of the Service Regulations, the Committee found that in this case the evidence showed that the complainant had resided permanently in Germany during the relevant three-year period.

By a letter of 9 March 2020, the Chief Corporate Policies Officer informed the complainant that she had decided, by delegation of power from the President of the Office, to reject his appeal as entirely unfounded in accordance with the opinion of the Appeals Committee. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to grant him an expatriation allowance under Article 72(1) of the Service Regulations as from 1 January 2017, with interest at the rate of 5 per cent per annum. He also claims costs, for both the internal appeal proceedings and the present proceedings, calculated in accordance with the rules of German law governing lawyers' fees.

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

## CONSIDERATIONS

1. The complainant is an Italian national and became a member of the staff of the EPO. The factual background is sufficiently set out earlier in this judgment. One thing should, however, be noted. The complainant has resided in Germany since he took up employment on 1 November 2010 with a German company and was residing in Germany when he took up duties with the EPO on 1 January 2017.

2. The issue raised by the complainant is what is comprehended by the expression "permanently resident" in Article 72(1)(b) of the Service Regulations. That Article relevantly provides:

"**Article 72**

**Expatriation allowance**

(1) An expatriation allowance shall be payable to permanent employees who, at the time they take up their duties or are transferred:

a) hold the nationality of a country other than the country in which they will be serving, and

b) were not permanently resident in the latter country for at least three years, no account being taken of previous service in the administration of the country conferring the said nationality or with international organisations.

(2) An expatriation allowance shall also be payable to permanent employees not referred to in paragraph 1 a) above and who at the time of taking up their duties have been permanently resident for at least ten years in a country other than the country in which they will be serving, no account being taken of previous service in the administration of the latter country or with international organisations.

[...]"

3. Thus, the provision would only have been engaged and conferred a benefit on the complainant if he was an Italian national (as he was) and had not been permanently resident in Germany for at least three years immediately before 1 January 2017.

4. The purpose of Article 72 was discussed by the Tribunal in Judgment 2925 delivered in public in July 2010. In consideration 3, after referring to several earlier cases also discussing the purpose of the provision, the Tribunal said: "[...] it is, perhaps, more appropriate to identify its purpose in terms of persons who have left their permanent home in one country to take up employment in another".

5. There are numerous cases decided by the Tribunal which discuss what is meant by permanent residence generally and "permanently resident" for the purposes of Article 72. A comparatively recent example of the latter is Judgment 4191, in which the Tribunal said in consideration 4:

> "The Tribunal's case law has it that a permanent employee is 'permanently resident in the [duty] country' if she or he had simply resided or lived there during the relevant period. The test is one of simple residence (see Judgments 1099, under 8, and 2596, under 3). [...] The fact that during the employee's residence in the duty country she or he did not pay taxes there is also irrelevant (see, for example, Judgment 1099, under 8). Neither is it relevant that the employee travelled a lot due to the nature of her or his work (see, for example, Judgment 2596, under 5) so long as the employee has not interrupted her or his residence in the duty country in the sense stated in Judgment 2865, under 4(b). Neither is the status of the employee's residence relevant in the sense stated, for example, in Judgment 2214, under 3."

6. Moreover, the Appeals Committee, in a thoughtful and balanced opinion, concluded that on the evidence in this case, the appellant resided permanently in Germany. It did so after recounting the complainant's links to Germany, namely working in Germany, having two German bank accounts, being registered as a resident in Germany and having had the same postal address in Germany since 2010. It analysed the flights the complainant had taken to Italy which did not, in its opinion, sustain a conclusion the complainant was still permanently residing in Italy. This opinion should be given considerable weight by the Tribunal (see, for example, Judgments 4644, consideration 5, and 4384, consideration 8).

7. The EPO was correct in concluding that the complainant was permanently resident in Germany at the time he took up his duties with the Organisation and during the preceding three years. He was not entitled to the expatriation allowance. His claim that he was is unfounded. Accordingly, his complaint should be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 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.