

**F. (No. 10)**

**v.**

**EPO**

**140th Session**

**Judgment No. 5085**

THE ADMINISTRATIVE TRIBUNAL,

Considering the tenth complaint filed by Mr T. F. against the European Patent Organisation (EPO) on 14 April 2020, the EPO's reply of 29 September 2020, the complainant's rejoinder of 11 January 2021 and the EPO's surrejoinder of 13 April 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 to reject his claim for moral damages following the quashing of an administrative decision by the Tribunal.

The complainant is an employee of the European Patent Office, the secretariat of the EPO, since 1 September 2006. At the material time, he was a member of the Central Staff Committee (CSC).

On 28 March 2014, the Administrative Council adopted decision CA/D 2/14, which amended several provisions of the Service Regulations for permanent employees of the Office, in particular Article 36 of the Service Regulations governing the competence of the CSC and Article 5 of the Implementing Rules for Articles 106 to 113

of the Service Regulations governing the composition of the Appeals Committee.

As a result of the CSC's failure to appoint, before 1 October 2014 as required by Article 17 of decision CA/D 2/14, two full members and two alternate members of the Appeals Committee, as required by Article 36(2) of the Service Regulations and Article 5(3) of the Implementing Rules for Articles 106 to 113 of the Service Regulations, the President of the Office called upon elected staff representatives to volunteer as members of the Appeals Committee.

On 17 December 2014, the President published the list of the Appeals Committee's members for 2015. The list included the names of those appointed by the President and those appointed by the Central and Local Staff Committees, who were the volunteers.

On 13 March 2015, the complainant, acting in his capacity as staff representative, filed a request for review of the 17 December 2014 decision. On 30 April 2015, the President rejected the request for review as irreceivable and in any event unfounded in its entirety.

On 30 June 2015, the complainant, together with other employees, lodged an appeal with the Appeals Committee, requesting the annulment of the appointments to the Appeals Committee in 2015 and of its opinions issued in that composition. He also sought, in his individual capacity, to be awarded moral damages in the amount of 1,000 euros and costs.

In the meantime, the 17 December 2014 decision of the President led to Judgments 3694, consideration 6, and 3785, consideration 7, delivered in public respectively on 6 July 2016 and 30 November 2016, in which it was found that the Appeals Committee was not composed in accordance with the applicable rules. On 2 December 2016, the President decided to withdraw numerous decisions that had been taken after internal appeal proceedings tainted with the same flaw. Hence, the complainant's appeal was referred to a newly composed Appeals Committee.

In its opinion of 23 October 2019, the Appeals Committee recommended rejecting the complainant's appeal of 30 June 2015. The Committee deemed that the appeal was irreceivable as the claim for the annulment of the composition of the Appeals Committee became moot following the two above-mentioned judgments and the ensuing decision of the President. It also deemed the request to annul the recommendations issued by the improperly composed Appeals Committee irreceivable *ratione personae* as the recommendations did not affect the complainant directly. Moreover, the Appeals Committee determined that the claim for moral damages resulting from the illegal decision of 17 December 2014 was not valid for the other appellants, as appellants are not entitled to moral damages when they appeal in their capacity as staff representatives. However, the Appeals Committee recommended, by a majority decision, to award 1,000 euros to the complainant to compensate for the moral injury he suffered due to the measures leading to the illegal decision. The Appeals Committee rejected his request for compensation on behalf of other staff members, as he did not have the authority to represent them. The Appeals Committee also recommended awarding the complainant 300 euros in moral damages for the length of the appeal proceedings. Lastly, the Appeals Committee deemed the appeal unfounded in the remainder.

By a letter of 16 January 2020, the Vice-President of Directorate-General 4 (DG4), acting by delegation of authority from the President of the Office, notified the complainant that she endorsed the Appeals Committee's recommendation to dismiss the appeal as moot, partly irreceivable on other grounds and unfounded for the remainder. The Vice-President explained that she departed from the Appeals Committee's recommendations regarding cause of action and the award of moral damages. In her view, the complainant had a cause of action insofar as he was a member of the CSC at the relevant time and not as an elected staff representative as indicated by the Appeals Committee because his appeal concerned the alleged violation of the right of the CSC to proceed with the nominations of members of the Appeals Committee. The Vice-President also departed from the Appeals Committee's finding that the call for volunteers among staff representatives presumably caused significant stress or pressure on the

complainant. Indeed, she found that the complainant did not prove a link between the stress he alleged and the call for volunteers among staff representatives. Regarding the recommendation to award moral damages for undue delay, the Vice-President stated that the complainant was not entitled to moral damages individually because he was a CSC member at the relevant time and was acting in his capacity as staff representative. However, she decided to endorse the Appeals Committee's recommendation to award him moral damages for the length of the proceedings, but they would be credited to the staff representation as a whole, that is to say to the specific budgetary line of the staff committees related to training and duty travel. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision insofar as it rejected his claim for moral damages of 30,000 euros for the distress and anxiety suffered from the EPO's illegal actions as found by the Tribunal in Judgments 3694 and 3785, and the claim for moral damages of 9,500 euros for undue delay in the appeals procedure. He further seeks punitive damages in relation to the bad faith of the defendant.

The EPO asks the Tribunal to reject the complaint as partly irreceivable and entirely unfounded. In its surrejoinder, it asks the Tribunal to reject the claim for punitive damages as irreceivable.

#### CONSIDERATIONS

1. The complainant impugns the decision dated 16 January 2020, rendered by the Vice-President of DG4, acting by delegation of authority from the President of the Office, dismissing the appeal as moot, partly irreceivable on other grounds and unfounded for the remainder.

2. The complainant claims 30,000 euros in moral damages for distress and anxiety caused by the EPO's illegal actions. He relies on Judgment 2791, consideration 17, arguing that the EPO's infringement of freedom of association as a staff representative caused him personal

injury. He also relies on the case law of the European Court of Human Rights (ECHR).

3. The complainant's reliance on the case law of the ECHR to justify an individual award of moral damages is not persuasive. The Tribunal is not bound to apply the case law of the ECHR. The Tribunal recalls that moral damages are awarded only when the complainant proves both the injury suffered and the causal link with the unlawful conduct of the defendant organisation (see Judgments 4626, consideration 4, 4157, consideration 7, and 4156, consideration 5). The mere fact that a decision was initially flawed does not suffice to warrant awarding damages for moral injury. Instead, the complainant must demonstrate an injury more substantial than that which an improper decision ordinarily causes (see, for example, Judgments 4156, consideration 5, and 1380, consideration 11). Furthermore, in a recent plenary decision by seven judges, the Tribunal held that complainants acting as staff representatives are not entitled to an award of moral damages. Judgment 4575, consideration 9, states as follows:

“According to a recent precedent, decided by the seven judges of the Tribunal, a complainant, acting as a staff representative, is not entitled to an award of moral damages (see Judgment 4550, consideration 20). By their very nature, violations of the rights of staff representatives cannot, under any circumstances, give rise to any personal right to financial compensation.

Depending on the circumstances of the case, a moral injury, due to its nature, can be restored not only by means of a sum of money. While the Tribunal considers that it is beyond its power to order a public apology (see Judgment 2762, consideration 31), it determines that the annulment of the impugned decision can be considered by itself a form of redress of moral injury (see Judgments 1745, consideration 12, and 1481, consideration 8). In a case similar to the present, concerning censorship in violation of freedom of communication, the Tribunal affirmed that the EPO, by requiring prior authorization for the dispatching of mass emails, breached the complainants' freedom of communication. Nonetheless, in that case, the Tribunal, as to the redress for moral injury, held that the annulment of the impugned decision was in itself a sufficient remedy for any moral injury the complainants may have conceivably suffered (see Judgment 4551, consideration 16).

[...]”

4. The complainant further alleges that the EPO's actions violated the principle of freedom of association and amounted to intimidation and harassment toward staff representatives including himself. However, as the complainant did not raise the claim of harassment in his internal appeal, his claim for moral damages based on these allegations is irreceivable for failure to exhaust internal means of remedies and will not be considered.

5. In his rejoinder, the complainant asserts that he was denied due process. He contends that the Appeals Committee improperly rejected his request for the production of documents regarding an investigation in which he was interviewed as a witness. He also argues that the Appeals Committee wrongfully rejected his application for oral hearings and his submissions regarding his health impairment without requesting additional information. These allegations are not connected to his claim for moral damages. In any event, the complainant had ample opportunity to present his case, and there was no violation of his due process rights.

6. As regards moral damages for undue delay in the internal appeal proceedings, the Tribunal observes that the duration of those proceedings, which lasted almost five years, is indeed unreasonable. However, since the complainant lodged his internal appeal in his capacity as a CSC member, any injury from the excessive length of the internal appeal proceedings was suffered by the CSC and the staff representation as a whole, not by him individually. In Judgment 4550, consideration 20, the Tribunal has considered and upheld the lawfulness of the EPO's approach to pay a global sum of 10,000 euros credited to the staff committees' training and duty travels budgetary line (see, for example, Judgments 4575, consideration 12, and 4550, consideration 20). The complainant's claim for individual moral damages in this respect is therefore unfounded.

7. The complainant's claim for punitive damages, raised for the first time in the complainant's rejoinder, is irreceivable. The Tribunal has consistently held, a complainant may not, in her or his rejoinder,

raise new claims not contained in her or his original complaint (see, for example, Judgment 3034, consideration 16).

8. In the foregoing premises, the complaint should be dismissed in its entirety.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 7 May 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.