

T. (No. 28)

v.

EPO

140th Session

Judgment No. 5086

THE ADMINISTRATIVE TRIBUNAL,

Considering the twenty-eighth complaint filed by Mr I. H. T. against the European Patent Organisation (EPO) on 31 October 2014, the EPO's reply of 13 February 2015, the complainant's rejoinder of 3 March 2015, the EPO's surrejoinder of 5 June 2015, the complainant's further submissions of 1 December 2015 and the EPO's comments thereon of 3 February 2016;

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 his election as an alternate member, rather than as a full member, of the Central Staff Committee (CSC).

In March 2014, the Administrative Council adopted decision CA/D 2/14 thereby amending the legal framework for social dialogue and the internal appeals procedure at the European Patent Office, the secretariat of the EPO. In particular, it introduced a set of rules governing the composition and election of the Staff Committee, comprising the CSC, with ten full members and ten alternate members, and Local Staff Committees. The decision also modified the rules governing the appointment of the members of the internal appeals body.

Within the framework of this reform, the President of the Office adopted Circulars Nos. 355 and 356 on 2 April 2014, concerning, respectively, the regulations for Staff Committee elections and the provision of resources and facilities to be granted to the Staff Committee. Article 2 of Circular No. 355 provided, in particular, that four of the ten full members of the CSC were to represent staff from the EPO's site in Munich, Germany, and four were to represent staff from its site in The Hague, the Netherlands. Similarly, of the ten alternate members, four were to represent Munich and four were to represent The Hague. The remaining two full and two alternate members were to represent staff from the EPO sites in Vienna, Austria, and Berlin, Germany. Moreover, the full members of The Hague and Munich sites had to include at least one representative of "A" staff category and one representative of "B" or "C" staff category.

The first elections under decision CA/D 2/14 for the CSC and the Local Staff Committees took place on 18 June 2014. The complainant who, at relevant times, was an examiner at grade A4 at the Munich site of the EPO, stood as a candidate for the CSC. The election results were published via the intranet on that same date. A footnote in that publication noted that "[a]t least one staff member of category B/C ha[d] to be full member. The A category staff member with the fewest number of votes yield[ed] his place to the B/C category staff member." The complainant, a category A staff member, was placed in fourth position among the candidates from the Munich site, behind three other category A staff members, and was designated as an alternate member of the CSC. The candidates who were ranked fifth and sixth, who also belonged to category A, were likewise designated as alternate members while Mr A., a category B staff member who was in seventh position, was designated as a full member.

On 20 June 2014, acting both in his individual capacity and in his capacity as a member of the CSC, the complainant lodged a request for review, addressed to both the President and to the Administrative Council. He asked that "the Appointing Authority" recognize his election as a full member of the CSC and that the Administrative Council amend the provisions of the Service Regulations for permanent

employees of the Office that could unlawfully prevent him from serving in this role. The complainant also challenged the amendments introduced by decision CA/D 2/14 regarding the appointment of the members of the Internal Appeals Committee (IAC). Additionally, he requested that the IAC's functioning not be disrupted by the election results, and that its "properly nominated [...] members" be allowed to perform their duties.

On 28 August 2014, the President of the Office rejected the complainant's request for review as partly irreceivable and unfounded for the remainder. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, the Administrative Council's implied decision not to deal with his request for management review, the provisions adopted in decision CA/D 2/14 concerning the composition of the CSC and the General Consultative Committee (GCC), as well as Circular No. 355. He claims moral damages in the amount of 5,000 euros and costs in the amount of 1,000 euros.

The EPO asks the Tribunal to dismiss the complaint as irreceivable and, on a subsidiary basis, to dismiss it as unfounded in its entirety. The EPO also requests the Tribunal to award costs against the complainant on the grounds that his complaint is an abuse of procedure.

CONSIDERATIONS

1. In his request for review, dated 20 June 2014, which he addressed to the President of the Office, and to the Administrative Council, the complainant challenged the outcome of elections for the CSC, which were held on 18 June 2014 pursuant to Article 15 of the Administrative Council decision CA/D 2/14 and the governing amended provisions contained in Article 35 of the Service Regulations, and Circular No. 355. In the elections he was elected as an alternate rather than a full member of the CSC. He submitted, in effect, that he was adversely affected by the outcome of the election that was conducted under those provisions. He listed the decision he challenged as "[l]ack of recognition of [his] CSC membership as [an] elected full

member, the disruption of the proper [IAC] operation as a consequence of the election results of 18 June 2014 and the underlying provisions of the Service Regulations as amended by the related harmful general measure adopted by the Administrative Council [AC] in its AC/139 meeting, 27-28 March 2014. [...]"

The complainant requested that his election as a full member of the CSC be recognized by the "Appointing Authority" and that the Administrative Council "amends without delay those provisions of the Service Regulations which might unlawfully impede [his] proper function as [a] full CSC member". He also requested "both as [an] individual appellant having pending cases before the [IAC] and in [his] capacity as [a] member of the freshly elected (CSC) that the proper function of the IAC is not disrupted by the election result of 18 June 2014 and that properly nominated IAC members by the CSC [...] are not hindered from performing their current statutory duties [and] [i]f deemed necessary – the Administrative Council is asked to amend without delay those provisions of the Service Regulations which might cause disruption of the proper operation of the IAC".

2. In the decision of 28 August 2014, which the complainant impugns, the President dismissed the complainant's request for review as partly receivable but unfounded, stating that it was therefore rejected and that the election results were maintained. Under the caption "Means of redress", the President (pursuant to Article 109(5) of the Service Regulations) concluded as follows: "In case of disagreement with the outcome of the review, this decision may be challenged by way of an internal appeal to be sent to the [IAC] within three months as from the date of notification of this letter (see Article 110(1) [of the Service Regulations] and Article 4 of the Implementing Rules for Articles 106 to 113 of the [Service Regulations])."

3. Article 109(5) of the Service Regulations relevantly provided that the President's decision on a request for review may be challenged through an internal appeal under the conditions laid down in Article 110 of the Service Regulations. The latter provision in turn relevantly provides that such an appeal shall be lodged within a period of three

months through the IAC, to the authority which took the decision challenged. Notwithstanding these provisions, as well as the fact that the decision was not excluded from the internal appeal procedure pursuant to Article 110(2) of the Service Regulations, the complainant lodged his challenge against the President's decision rejecting his request for review directly to the Tribunal, rather than by filing an internal appeal. The EPO therefore submits that the complaint is irreceivable in the Tribunal, pursuant to Article VII, paragraph 1, of the Tribunal's Statute, because the complainant did not exhaust the internal means of redress that were available to him.

4. Article VII, paragraph 1, of the Tribunal's Statute relevantly states that a complaint will not be receivable by the Tribunal unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations. The Tribunal has established through its case law that exceptions to the requirement of Article VII, paragraph 1, will be made only in very limited circumstances, namely "where staff regulations provide that the decision in question is not such as to be subject to the internal appeal procedure; where for specific reasons connected with the personal status of the complainant she or he does not have access to the internal appeal body; where there is an inordinate and inexcusable delay in the internal appeal procedure; or, lastly, where the parties have mutually agreed to forgo this requirement that internal means of redress must have been exhausted" (see Judgments 3714, consideration 12, 3505, consideration 1, 3397, consideration 1, and 2912, consideration 6).

5. In seeking to justify bypassing the internal appeals procedure, the complainant states, in effect, that the IAC was not properly constituted as foreseen under Article 111(1) of the Service Regulations so as to be comprised of four members. At the material time, only three members sat on the IAC. This was because, as the complainant observes, the CSC had not nominated its IAC members from whom the fourth member was to be selected to complete the panel. As to the reason for this, the complainant states that the Chair of the CSC had

invited interest from potential candidates to be nominated for the IAC but that available candidates with the requisite credentials could not be found. According to him, the problem partly arose because from 1 October 2014, the CSC was only allowed to nominate members for the IAC from among elected staff representatives. He therefore argues that it should be assumed that all lawful internal means of redress were already exhausted since he no longer had access to any internal means of redress before a legitimately constituted body whose authority he challenged. The reasons put forward by the complainant to justify the fact that he has not filed an internal appeal do not constitute one of the limited exceptions to the requirement of Article VII, paragraph 1, of the Tribunal's Statute recalled in consideration 4 and are not acceptable. Moreover, the case law states that a staff member of an international organisation cannot of her or his own initiative evade the requirement that internal remedies must be exhausted prior to filing a complaint with the Tribunal (see Judgments 4929, consideration 4, 4909, consideration 6, 4813, consideration 3, and 4634, consideration 2).

6. The complainant further states that the Administrative Council "refused (either implicitly or explicitly) all request[s] for management review directed to it, whereby [decision CA/D 2/14] for which no internal remedy is possible and is deemed final ([...] Article 109(6) [of the] Service Regulations) is inextricably linked with the material issues addressed in the request for management review which [he had] filed with the President. Since the President [...] is bound by the Council's decision, [his referral of the case directly to the Tribunal seemed] appropriate and legitimate, not the least for reasons of procedural economy." This statement is however made without reference to the case law in considerations 11 and 12 of Judgment 3700, which explains that a staff member who is appointed by the President, as the complainant was, must lodge a request for administrative review with the President and not with the Administrative Council which did not appoint him.

7. It follows from the foregoing that there was no justification for the complainant to have filed his complaint directly with the Tribunal, thereby violating Article 110(1) of the Service Regulations.

Therefore, the Tribunal considers that the complaint is irreceivable in its entirety for failure to exhaust internal means of redress.

8. The Tribunal rejects the EPO's request that it orders the complainant to bear part of its costs if he pursued this complaint after the EPO's reply as he would be deliberately acting against the Tribunal's most recent case law thereby constituting an abuse of the Tribunal's procedure. The Tribunal is not satisfied that the complainant's pursuit of the case amounted to an abuse of procedure.

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.