

C. (No. 7)

v.

EPO

141st Session

Judgment No. 5174

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mr B. S. C. against the European Patent Organisation (EPO) on 29 December 2015 and corrected on 19 February 2016, the EPO's reply of 3 August 2016, the complainant's rejoinder of 25 November 2016 and the EPO's surrejoinder of 28 February 2017;

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 rejection of his request for recusal of the chairperson of the Appeals Committee.

The complainant is a former staff member of the European Patent Office, the EPO's secretariat, in Munich, Germany.

On 30 June 2010, the EPO's Administrative Council adopted decision CA/D 7/10, modifying Article 83 of the Service Regulations for permanent employees of the European Patent Office and introducing an actuarially funded system to finance the healthcare insurance scheme with effect from 1 January 2011. The complainant and several other officials lodged separate internal appeals against this decision.

On 17 June 2014, the complainant was invited to a hearing with the Appeals Committee, which was set for 2 July 2014. A list of the Committee's members who would hear his appeal was provided to him.

On 26 June 2014, the complainant requested the recusal of the chairperson on the ground of alleged bias. His request was rejected on 27 January 2015. In its letter, the Appeals Committee indicated that if the complainant disagreed with this decision and wished the matter to be settled by an independent panel according to Article 6(4) of the Implementing Rules for Articles 106 to 113 of the Service Regulations, he had to inform the Committee accordingly before 27 February 2015. The complainant sent his comments on 24 February 2015, in which he criticized the Committee's presentation of the facts, its composition and the use of a summary procedure to deal with his internal appeal. He also objected to the independent panel, questioned whether it could act impartially and anticipated that the matter would have been settled by the Tribunal.

On 27 April 2015, the Appeals Committee notified the complainant that it had set a hearing for 19 May 2015 and provided him with the list of the members who would hear his case. The chairperson remained the same as the one identified in the 17 June 2014 list. On 7 May 2015, the complainant objected to the Committee's composition, alleging that he had a pending objection concerning the chairperson. He further questioned the impartiality of some members and criticized the independence of two staff representatives who had volunteered to serve on the Committee. He mainly requested that his internal appeal be heard by "a correctly constituted committee that can treat the issue objectively". His objection was rejected on 12 May 2015, and he was informed that his request for recusal of the chairperson was considered to have been settled in the previous letter of 27 January 2015.

On 15 May 2015, the complainant requested again the recusal of the chairperson and of the Appeals Committee's members who had issued opinions on other internal appeals against decision CA/D 7/10. On 18 May 2015, he was informed that the Committee's composition remained the same as communicated to him on 27 April 2015. In the hearing eventually held on 19 May 2015, the Appeals Committee

upheld its prior decisions and rejected the complainant's new request for recusal.

On 8 June 2015, while the internal proceedings were ongoing, the complainant asked the President of the Office "to ensure that [his] disagreement with the impartiality decision [was] treated by the independent panel, to declare the hearing of 19 May invalid and to have the [Appeals Committee] arrange a new hearing for [his] appeal without the participation of [the members and the chairperson for which he had requested recusal]". On 9 June 2015, he transmitted his comments of 24 February 2015 directly to the independent panel requesting among other things that it take a decision on the impartiality of the chairperson.

On 28 August 2015, the complainant submitted a request for review of the President's implied rejection of his request of 8 June 2015. On 21 September 2015, the Conflict Resolution Unit responded that, because the request for review was related to the ongoing internal appeal, and in order to avoid duplication of proceedings, it would be included in his pending internal appeal file.

By a letter dated 16 September 2015, the independent panel refused to deal with the complainant's request for the recusal of the Appeals Committee's chairperson, stating that his comments of 24 February 2015 could not be interpreted as "a reasoned request that the matter be settled by the [p]anel" and that the request he had made on 9 June 2015 was out of time. This is the impugned decision.

On 7 December 2015, the complainant was informed that his internal appeal had been rejected as manifestly irreceivable by the President, in accordance with the Appeals Committee's unanimous opinion, on the ground that decision CA/D 7/10 was a general decision that had not been applied to him in a prejudicial manner. The complainant impugned this decision in his eighth complaint, which was summarily dismissed in Judgment 3809, delivered on 8 February 2017.

In the present complaint, the complainant asks the Tribunal to set aside the independent panel's decision of 16 September 2015 and to award him costs. He further requests that the matter be returned to the EPO so that his requests be examined by "an alternate [i]ndependent [p]anel". In his rejoinder, he "refine[s]" this claim by requesting that

the independent panel be composed of members that are mutually agreeable to him and the President, either that it “exclude active members of staff at the EPO” or that it “have a balanced composition with the same number of members being nominated by the President and [...] the Pensioners’ Association”.

The EPO argues that the complaint is irreceivable for failure to exhaust the internal means of redress. It notes that a decision rendered by the independent panel is merely a step in the procedure and does not adversely affect the complainant’s legal status. Consequently, it asks the Tribunal to dismiss the complaint as irreceivable or, on a subsidiary basis, as unfounded and to order that the complainant bear his costs. In its surrejoinder, the EPO requests that the complainant’s claim in his rejoinder be rejected as it is an enlargement of his initial claim.

CONSIDERATIONS

1. The complainant impugns the decision, conveyed in the letter dated 16 September 2015, whereby the independent panel (which is an organ set up under Article 6(4) of the Implementing Rules for Articles 106 to 113 of the Service Regulations) declined to address his request for the recusal of the Appeals Committee’s chairperson. This request was submitted by the complainant in the course of the appeal proceedings initiated against general decision CA/D 7/10.

2. The EPO raises a receivability issue contending that the decision impugned by the complainant before the Tribunal is not a final decision within the meaning of Article VII, paragraph 1, of the Tribunal’s Statute, but is rather a mere step in the procedure leading to a final decision. As such, it does not adversely affect the complainant’s legal status.

The EPO’s objection to receivability is well founded.

Pursuant to Article VII, paragraph 1, of the Tribunal’s Statute, “[a] complaint shall not be receivable 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”.

Not every decision taken by an international organization constitutes a final decision within the meaning of Article VII, paragraph 1, of the Tribunal’s Statute. The Tribunal’s established case law has it that, ordinarily, the decision-making process involves a series of steps or findings that culminate in a final decision. Those intermediate steps or findings do not, in themselves, constitute a decision, much less a final one. While they may be contested as part of a challenge to the final decision, they cannot, on their own, form the subject of a complaint to the Tribunal (see Judgments 4914, consideration 10, 4404, consideration 3, 3961, consideration 4, 3876, consideration 5, and 3700, consideration 14).

More specifically, with regard to the opinions of internal appeal bodies, the Tribunal has consistently held that these are internal steps in the process leading to final decisions and cannot be challenged directly before the Tribunal (see Judgments 4978, consideration 9, 4791, consideration 3, 4721, consideration 7, 4637, consideration 5, 4392, consideration 5, and 2113, consideration 6). The rationale underlying this case law, which characterizes advisory opinions of internal appeal bodies as mere internal steps preceding the adoption of a final decision, applies all the more to decisions rendered during the course of an internal appeal process concerning specific procedural requests from the parties, such as those for hearings, recusal of panel members, or disclosure of documents. Concerning more particularly requests for recusal, the Tribunal has underlined that “a decision concerning the composition of an internal body is not a final administrative decision amenable to review by the Tribunal, but merely a step in the process leading to a final administrative decision. As such, it may be challenged before the Tribunal only in the context of a complaint impugning the decision to be taken at the end of the internal appeal procedure” (see Judgments 4570, consideration 3, 4297, consideration 7, and 4131, consideration 4). This principle squarely applies in the present case, where the complainant submitted a request for the recusal of the chairperson of the panel in charge of the internal

appeal. The complainant's request was addressed in compliance with Article 6 of the Implementing Rules for Articles 106 to 113 of the Service Regulations, which read as follows:

“(1) If for one of the reasons mentioned in Article 112(2) of the Service Regulations, or for any other reason which might prejudice the impartiality of their judgement, the chairman or any member of the Appeals Committee considers that he should not take part in a case, he shall inform the Committee accordingly.

(2) The chairman and any member of the Appeals Committee may be objected to by either party for one of the reasons mentioned in Article 112(2) of the Service Regulations, or if suspected of partiality.

(3) The Appeals Committee shall decide as to the action to be taken in the cases specified in paragraphs 1 and 2, without the participation of the chairman or member concerned. For the purposes of taking this decision the chairman or member concerned shall be replaced by an alternate.

(4) If a party disagrees with the decision of the Appeals Committee taken pursuant to paragraph 3, the matter shall be settled by an independent panel of three members to be appointed by the President of the Office for each calendar year. This panel shall be composed of the Vice-President [of Directorate-General 3], the Head of Internal Audit, and a former chairman or member of the Appeals Committee.”

The existence of a specific process under Article 6 for addressing partiality objections – comprising a first decision by the Appeals Committee and a second decision by an independent panel – does not elevate the independent panel's decision to a final decision within the meaning of Article VII, paragraph 1, of the Tribunal's Statute. It remains a mere step in the internal appeal process, leading to the opinion of the internal appeal body and, subsequently, to the final decision of the decision-making authority. Any issues concerning the independent panel's decision can and must be raised if and when the final decision is impugned. In the present case, the final decision was adopted on 7 December 2015, and it has already been challenged by the complainant in his eighth complaint, which was summarily dismissed by the Tribunal in Judgment 3809, delivered on 8 February 2017.

In light of the foregoing, the complaint is irreceivable and will be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 14 October 2025, Mr Michael F. Moore, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.