

**C. (No. 9)**

**v.**

**EPO**

**141st Session**

**Judgment No. 5191**

THE ADMINISTRATIVE TRIBUNAL,

Considering the ninth complaint filed by Mr P. C. against the European Patent Organisation (EPO) on 26 May 2017 and corrected on 28 July 2017, the EPO's reply of 15 November 2017, the complainant's rejoinder of 14 February 2018 and the EPO's surrejoinder of 28 May 2018;

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 contests the implied rejection of his request for reimbursement of the costs he incurred in the proceedings before the Enlarged Board of Appeal (EBA).

Additional facts regarding the context of this case may be found in Judgments 3958, 3959, 3960, 3961, 4632 and 4633 on the complainant's third, fourth, fifth, sixth, seventh and eighth, and thirteenth complaints, respectively.

On 3 December 2014, the complainant, a member of an EPO Board of Appeal, was informed that he was accused of systematically and repeatedly disseminating defamatory information to the detriment of the EPO and of the personal reputation of members of the Administrative

Council, of the President of the European Patent Office, the EPO's secretariat, and other staff.

By decision CA/D 12/14 of 11 December 2014, the Administrative Council, which was the complainant's appointing authority, suspended him from service with immediate effect pending the investigation into the alleged misconduct.

In March 2015, the Administrative Council informed the complainant that it had decided to initiate disciplinary proceedings against him and to continue his suspension until the end of the disciplinary proceedings.

On 23 June 2015, the Disciplinary Committee issued its opinion, in which it concluded that the complainant had engaged in misconduct. The suspension decision was extended, with half of the complainant's basic salary being withheld until a final decision was taken. Criminal proceedings were also initiated against the complainant in national courts.

Pursuant to Article 23 of the European Patent Convention, on 25 June 2015, the Administrative Council requested the EBA to initiate proceedings and make a proposal for the removal from office of the complainant. On 17 September 2015, and without discussing the merits of the case, the EBA declined to make a proposal on the removal and proposed that the complainant be reimbursed for his costs in the proceedings before it.

In mid-October 2015, the Administrative Council made a second request for a proposal to remove the complainant from office, which it withdrew following notification, on 16 November 2015, of the EBA's reasoned opinion on the first request.

On 11 January 2016, the Administrative Council submitted a third request to the EBA, which it clarified and confirmed on 27 January 2016.

The EBA confirmed its opinion not to make a proposal for the complainant's removal from office on 14 June 2016, claiming that its judicial independence had been threatened due to what it perceived as undue pressure from the President of the Office. Nonetheless, the EBA proposed reimbursement of costs to the complainant.

On 2 August 2016, the complainant's counsel submitted a request to the Administrative Council's Chairman for the reimbursement of his client's legal costs in accordance with the EBA's proposals. The request remained unanswered.

On 24 November 2016, the complainant filed a request for several decisions with the Administrative Council pursuant to Article 107(1) of the Service Regulations for permanent employees of the Office. Relying on the EBA's opinions, he sought, among other things, a decision ordering reimbursement of all costs he had incurred in connection with the EBA's proceedings. According to former Article 95(5) of the Service Regulations – which stated that, if an employee is subject to criminal proceedings for conduct giving rise to a suspension, a final decision in a disciplinary procedure shall be taken only after a verdict of the court hearing the case has become final – no decision was taken in respect of the pending disciplinary proceedings against the complainant.

On 20 February 2017, the complainant filed a request for review against what he considered to be an implied decision rejecting his request of 24 November 2016. He asked that his request for review be dealt with during the 151st meeting of the Administrative Council.

On 26 May 2017, the complainant filed his ninth complaint with the Tribunal challenging the implied rejection of his 20 February 2017 request for review. On the complaint form, the complainant indicates 15 March 2017 as the date on which he notified the EPO of his unanswered claim.

At its 152nd meeting held on 27 and 28 June 2017, the Administrative Council decided not to reappoint the complainant as a member of the Board of Appeal. Notification of this decision was made to the complainant on 14 July 2017.

By decision CA/D 19/17 of 10 October 2017, the Administrative Council maintained the decision to suspend the complainant from duties given the ongoing national criminal proceedings against him “within the meaning of Article 105” of the Service Regulations (formerly Article 95(5)).

On 13 December 2017, the Administrative Council issued decision CA/D 23/17 in which it found that the complainant had engaged in misconduct and decided to impose on him the sanction of demotion to the lowest grade and step in his job group. Also on 13 December 2017, the Council took decision CA/D 24/17 in which it rejected, among other things, the complainant's request for decisions of 24 November 2016 and his request for review of 20 February 2017 on the ground that those requests were covered by final decision CA/D 23/17.

In his ninth complaint, the complainant asks the Tribunal to set aside the implied rejection of his 20 February 2017 request for review and the implied rejection of his 24 November 2016 request for an individual decision. He requests that the EPO be instructed to take a reasoned decision on the matter of the requested reimbursement of legal costs in the EBA's proceedings and communicate its response to him promptly and diligently, taking due and proper account of the decisions of the EBA in this regard, and to duly reimburse him for all costs incurred in those proceedings. He claims moral and exemplary damages totalling at least half a year of his gross salary. Additionally, he seeks the reimbursement of his legal fees, including for the internal appeal procedure. Lastly, he asks to be paid interest and any other relief as the Tribunal determines to be just, necessary, appropriate and equitable.

The EPO asks the Tribunal to dismiss the complaint as irreceivable and, on a subsidiary basis, as unfounded. In its surrejoinder, it argues that the complaint has become moot in view of the issuance of decision CA/D 24/17 on 13 December 2017. It further asks the Tribunal to order the complainant to pay a portion of its legal costs in the amount of 25,000 euros.

#### CONSIDERATIONS

1. It is unnecessary to descend into more detail about the events leading up to and following the filing of the complaint to which this judgment relates. Suffice it to note that the Administrative Council initiated disciplinary proceedings against the complainant in March 2015. In June of that year, the Disciplinary Committee determined that

the allegations against the complainant were proved. This led to attempts by the Administrative Council to secure from the EBA, by way of request, a proposal to remove the complainant from office. This was viewed by the EPO as a condition precedent to remove him having regard to Article 23 of the European Patent Convention. Three such requests were made between June 2015 and January 2016, though ultimately no proposal of removal was forthcoming from the EBA. However, the EBA proposed that the complainant be reimbursed for his costs in the proceedings before it.

2. In November 2016, the complainant requested several decisions under Article 107(1) of the Service Regulations. The import of that provision is that it enables an employee of the EPO to submit a written request that an individual decision relating to her or him be taken by the competent appointing authority. Article 107(2) requires the appointing authority, as a generalisation, to take a decision within two months of the request, though there are qualifications to this generalisation. According to Article 107(3), if, within two months, the request has not been replied to, there is deemed to be an implied decision rejecting the request.

3. The complainant's request for decisions in this matter was dated 24 November 2016. It was made to the Administrative Council. There were four decisions requested. Three were procedural. The fourth, and substantive decision requested, was that the Council "take a decision to order the reimbursement of all legal costs incurred by the [complainant]" in relation to the three requests which were made to the EBA for a proposal for the complainant's removal from office referred to in consideration 1 above. There was no reply within two months, and the complainant thereafter acted on the basis that there had been an implied decision rejecting his 24 November 2016 request. This led the complainant to file a request for review of the implied decision on 20 February 2017, and, ultimately, to file a complaint with the Tribunal on 26 May 2017.

4. The EPO raises a number of preliminary issues concerning the complaint. It is only necessary to address one, namely that the principal issue raised in the complaint is now moot. The basis of this argument, as raised by the EPO in its surrejoinder, is that, on 13 December 2017, the Administrative Council expressly rejected the complainant's claim for reimbursement of costs in relation to the disciplinary proceedings against him embracing his other claim in relation to the costs incurred in the proceedings before the EBA referred to in consideration 3.

5. The Tribunal accepts the contention concerning mootness. It has long been the case that when a proceeding initially concerns an implied decision but subsequently an express decision is made, the Tribunal will treat the express decision as the operative decision – provided that the complaint is receivable *ab initio* – and it will consider that it is appropriate to treat the complaint as being directed against the latter decision, which, in this case, is dated 13 December 2017 (see, for example, Judgments 4820, consideration 6, 4819, consideration 3, and the case law cited therein). While in this case the express decision is wider in scope than the substantive implied decision rejecting the complainant's request for reimbursement of the costs he incurred in the EBA's proceedings, it nonetheless encompasses the subject matter of the substantive implied decision and resolves the question of costs as claimed. Thus, there is a decision rejecting the complainant's claim for reimbursement of costs in relation to the three requests made to the EBA for a removal proposal referred to in consideration 1. No attempt was made, in these proceedings, by the complainant to reopen the pleas to seek to impeach the 13 December 2017 decision, to argue that it was irrelevant or to argue that the issue initially raised was not moot. However, the complainant, in his rejoinder, did address the applicable 13 December 2017 decision arguing, amongst other things, that it was not properly reasoned and was arbitrary. But these are not bases for ignoring the decision when considering whether the instant proceedings are moot.

6. It is true that the relief sought in the complaint includes a claim for material and moral damages. The Tribunal has accepted that such a claim can endure notwithstanding that the principal claim has become moot. Cases can arise where this residual issue means that the entire matter cannot be said to be moot (see, for example, Judgments 4886, considerations 3 to 6, and 4879, considerations 4 to 7).

7. However, in the present case, no pleas of substance are raised in support of the claim for damages allegedly caused by the implied decision rejecting the complainant's request for reimbursement of the costs he incurred in the EBA's proceedings as opposed to the damages allegedly arising from the treatment of the complainant overall and the failure of the Organisation to respond, in a timely way or at all, to his 24 November 2016 initial request and to his 20 February 2017 request for review. But it was those very failures which the complainant exploited to prosecute his grievance. No causal connection between the alleged injury founding the claim for damages and the implied decision not to award him the costs he sought has been demonstrated. This claim is therefore unfounded and will be rejected.

8. It is lastly necessary to deal with a counterclaim made by the EPO seeking a cost order against the complainant. The Organisation seeks the payment of 25,000 euros. It does so principally on the footing, as it argues in its reply, that the complainant has "tried to create and then exploit procedural flaws, attack the disciplinary procedure prematurely, and needlessly duplicate proceedings, all in an effort to draw attention away from the serious misconduct established as proven by the [Disciplinary Committee]". The Tribunal doubts such an inference can be drawn as to what has motivated the complainant. At base, the EPO's grievance is about the complainant's use of Article 107 of the Service Regulations. But his use of Article 107 was open to him having regard to its terms. In its surrejoinder, the EPO supports its counterclaim by reference to the fact that the matter was now moot. The Organisation's argument fails because the event relied upon, namely the issuance of Administrative Council's decision CA/D 24/17 of 13 December 2017, occurred well after the complaint was filed and when the substantial

work of the EPO in defending the case had already been done. The counterclaim is therefore unfounded.

9. In the result, the complaint should be dismissed, as should the counterclaim for costs made by the EPO.

#### DECISION

For the above reasons,

The complaint is dismissed, as is the counterclaim for costs.

In witness of this judgment, adopted on 17 October 2025, Mr Michael F. Moore, 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 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.