

C. (No. 10)

v.

EPO

141st Session

Judgment No. 5192

THE ADMINISTRATIVE TRIBUNAL,

Considering the tenth complaint filed by Mr P. C. against the European Patent Organisation (EPO) on 26 May 2017 and corrected on 21 July 2017, the EPO's reply of 6 December 2017, the complainant's rejoinder of 6 March 2018 and the EPO's surrejoinder of 15 June 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 an investigation of his complaint of institutional harassment.

Additional facts regarding the context of this case may be found in Judgments 3958, 3959, 3960, 3961, 4632, 4633 and 4634 on the complainant's third, fourth, fifth, sixth, seventh and eighth, thirteenth, and fifteenth 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 (disciplinary case D1/15) 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. In mid-October 2015, the Administrative Council requested the Enlarged Board of Appeal (EBA) to make a proposal for the removal from office of the complainant. The suspension decision was extended, with half of the complainant's basic salary being withheld until a final decision was taken. Criminal proceedings were initiated against the complainant in national courts.

On 24 November 2016, the complainant lodged a formal complaint of institutional harassment involving the "long series of improper acts and omissions to which [he] ha[d] been subjected to from December 2014 onwards". Additionally, he filed a request for an individual decision, pursuant to Article 107 of the Service Regulations for permanent employees of the Office, in which he requested that his complaint be investigated promptly and thoroughly in accordance with Circular No. 341, Policy on the prevention of harassment and the resolution of conflicts at the EPO, and that appropriate corrective actions be taken. The complainant further asked that the matter be addressed at the 150th meeting of the Administrative Council, which took place on 14 and 15 December 2016.

On 22 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.

The Administrative Council held its 151st meeting between 15 and 16 March 2017. The summary of decisions of the meeting, issued as CA/34/17 on 30 March 2017, contained the following statement:

“Disciplinary case D1/15

Meeting in closed session, the Council noted various requests of the person in question, notably of 24 and 28 November 2016, 12 December 2016 and 8, 20, 21, 22, 23 and 27 February 2017. The Council decided that no decision would be taken on these requests until a final decision had been taken in the pending disciplinary proceedings. This would depend on the establishment of all relevant facts.”

On 27 April 2017, the Administrative Council’s Chairman wrote the following to the complainant:

“Let me confirm again that the Council is duly processing all your requests. I can only reiterate what is stated in CA/34/17.

I further would like to point out that, according to the applicable legal framework of the Office, the conclusion of the pending criminal proceedings is a mandatory prerequisite for the final decision of the Council on this matter.

The procedural authorities of those criminal proceedings are the competent courts. The Council has no reason to doubt that those Courts are independent and that the principles of fair trial are respected. This includes also the principle that all information relevant for those criminal proceedings will certainly be provided in those proceedings and that any objection can be raised accordingly.

I trust this clarifies your requests.”

On 26 May 2017, the complainant filed his tenth complaint with the Tribunal challenging the implied rejection of his 22 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.

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. In decision CA/D 23/17, the Council further stated the following:

“As concerns [...] [the complainant]’s claims and complaints [...] that the present investigative and disciplinary proceedings, and the actions taken by the Council and various actors inside the Organisation in connection with these proceedings, constitute harassment against him, the Council finds that they are unfounded and without basis. [...] [T]he allegations [of misconduct] against [the complainant] were found to be largely substantiated. The investigative and disciplinary proceedings were carried out in accordance with the applicable provisions. They were aimed at determining the facts related to possible misconduct, and as such did not in any way impact on [the complainant]’s dignity.

In summary, the Council does not consider credible [the complainant]’s objections [...].”

Also on 13 December 2017, the Administrative Council issued decision CA/D 24/17, in which it said the following about the complainant’s complaint of institutional harassment, his 24 November 2016 request for an investigation and his 22 February 2017 request for review:

“(i) Complaint of institutional harassment

The request dated 24 November 2016, and the request for review dated 22 February 2017 are irreceivable and unfounded.

The review of the disciplinary procedure has found no indication of harassment against [the complainant]. The conduct of a disciplinary procedure as such does not constitute harassment. Even if, for the pure sake of argument, it were assumed that any of the actions during or related to the disciplinary procedure complained of were not in compliance with [the] applicable rules, this would not qualify as harassment according to jurisprudence of the [Tribunal] (Judgments 2370 and 2745). Such qualification would require other acts against [the complainant], which he has not substantiated or provided evidence of.

As concerns the facts, they have been sufficiently established during the disciplinary proceedings. These have determined that [the complainant] has engaged in serious misconduct. A further investigation into the matter is not required.

[...]

The requests under [...] (i), are rejected as unfounded.”

The complainant asks the Tribunal to set aside the implied rejection of his 22 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 initiate an independent investigation into his complaint of institutional harassment and to issue a substantive response to his allegations. He claims moral and exemplary damages totalling two and a half years 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 complainant's tenth complaint as irreceivable and 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.

CONSIDERATIONS

1. The complainant impugns what he characterises as the implied rejection, by the Administrative Council, of his request for review dated 22 February 2017, lodged against what he asserts to be the implied rejection, by the Administrative Council, of his request for an investigation of his complaint of institutional harassment, lodged on 24 November 2016.

It is appropriate to recall that the Administrative Council mentioned the complainant's request for review at its 151st meeting, held between 15 and 16 March 2017. The summary of decisions from that meeting, issued as CA/34/17 on 30 March 2017, contained the following statement:

“Disciplinary case D1/15

Meeting in closed session, the Council noted various requests of the person in question, notably of 24 and 28 November 2016, 12 December 2016 and 8, 20, 21, 22, 23 and 27 February 2017. The Council decided that no decision would be taken on these requests until a final decision had been taken in the pending disciplinary proceedings. This would depend on the establishment of all relevant facts.”

The complainant contends that there was no decision on his request for review and this would amount to an implied rejection.

2. The complaint is irreceivable and is, in any event, moot.

It is appropriate to quote the relevant provisions of the Service Regulations applicable at the material time.

Article 107, in its relevant part, read:

“Request to take an individual decision

- (1) An employee, a former employee, or rightful claimant on his behalf may submit a written request that an individual decision relating to him be taken by the appointing authority which is competent to take such decision.
- (2) The competent appointing authority shall take a decision within two months. [...] Where the competent authority is the Administrative Council, this period shall begin on the date on which the request was submitted to the first meeting of the Council after its receipt [...]
- (3) If at the end of this period the request has not been replied to, this shall be deemed to constitute an implied decision rejecting it.”

Article 109, in its relevant part, read:

“Review procedure

- (1) A request for review shall be compulsory prior to lodging an internal appeal [...]
- (2) It shall be submitted within a period of three months to the appointing authority which took the decision challenged. This period shall start to run on the date of publication, display or notification of the decision challenged. Where the request for review is against an implied decision of rejection within the meaning of Article 107, paragraph 3, it shall start to run on the date of expiry of the period for reply.
[...]
- (4) The competent appointing authority shall take a reasoned decision on the outcome of the review which shall be communicated to the person concerned in writing, indicating the means of redress available to challenge it.
[...]
- (6) Where the competent authority is the Administrative Council, the decision on the outcome of the review shall be taken within two months as from the date on which the request was submitted to the first meeting of the Council after its receipt [...] Such decision shall be final within the meaning of Article 113, unless:

(a) it relates to a dispute concerning appointment by the Administrative Council, in which case it may be challenged through an internal appeal under the conditions laid down in Article 110;

(b) the Administrative Council exceptionally decides otherwise following a request by the person concerned.

(7) If at the end of the period of two months no decision has been taken on the request for review, this shall be deemed to constitute an implied decision rejecting it.”

Article 110 read:

“Internal appeal procedure

(1) An internal appeal shall be lodged within a period of three months, through the Appeals Committee, with the appointing authority which took the decision challenged. The period of three months shall start to run on the date of publication, display or notification of the decision challenged. Where the internal appeal is against an implied decision of rejection within the meaning of Article 107, paragraph 3, or Article 109, paragraph 7, it shall start to run on the date of expiry of the period for reply.

(2) The following decisions are excluded from the internal appeal procedure:

(a) decisions taken on the basis of medical opinions as laid down in Articles 89 and 90 or in accordance with the arbitration procedure laid down in Article 91;

(b) decisions taken on requests to carry on working after reaching the age of sixty five under Article 54, paragraph 1;

(c) decisions taken after consultation of the Disciplinary Committee in accordance with Article 102, paragraph 3;

(d) decisions taken on requests to perform duties at a location other than the Office’s premises pursuant to Article 55a and any implementing instructions thereto;

(e) appraisal reports referred to in Article 47a.

(3) The Appeals Committee shall register the appeal and deliver a reasoned opinion upon it.

(4) The competent appointing authority shall take a final decision on the appeal, having due regard to the opinion of the Appeals Committee, of which the appellant shall receive a copy.”

Article 113 read:

**“Complaints to the Administrative Tribunal
of the International Labour Organization**

A complaint may be filed with the Administrative Tribunal of the International Labour Organization in accordance with its Statute once a decision is final, when internal procedures are either excluded or otherwise exhausted.”

3. The complainant characterizes his complaint as a challenge to an implied decision by virtue of Article VII, paragraph 3, of the Tribunal’s Statute. Indeed, in section 3(b) of the complaint form, the complainant indicates that the impugned decision is an implied rejection, by virtue of Article VII, paragraph 3, of the Statute of the Tribunal, of a claim he allegedly notified on 15 March 2017. However, in light of the evidence on record, it appears that no claim was notified by the complainant on that date, which coincides only with the beginning of the 151st meeting of the Administrative Council. For the purpose of Article VII, paragraph 3, the Tribunal will, therefore, take into account only the complainant’s request for review of 22 February 2017, already mentioned in the facts. This request was addressed expressly at the 151st meeting of the Administrative Council, as can be inferred by the decision of 30 March 2017 and the response of 27 April 2017, confirming such decision. Given this sequence of events, the complainant’s reliance on Article VII, paragraph 3, is misplaced. As the Tribunal recalled, for example, in Judgments 4975, consideration 4, 4271, consideration 3, 4174, consideration 4, and 3975, consideration 5, it is clearly established in the case law that where the Administration takes any action to deal with a claim, this step in itself constitutes a decision upon the claim within the meaning of Article VII, paragraph 3, of the Tribunal’s Statute, which forestalls an implied rejection that could be referred to the Tribunal. It is clear from the file that two responses were received from the EPO, specifically on 30 March 2017 and on 27 April 2017, the first one was adopted within the sixty-day period following the notification of his claim dated 22 February 2017, and the second one confirmed the earlier decision. Whilst neither of those responses conveyed a final decision, they demonstrate that the

EPO had taken action to deal with the complainant's claim. Thus, they were sufficient to forestall an implied rejection that could be impugned under Article VII, paragraph 3, of the Statute of the Tribunal (see, for example, Judgments 4911, consideration 4, 4621, consideration 2, 4620, consideration 2, 4494, consideration 4, and 3975, consideration 5).

4. In any event, the complaint is moot. The Administrative Council later adopted an express decision on the complainant's harassment complaint and on his request for review. It did so on 13 December 2017. The complainant cannot derive any advantage from a decision by the Tribunal taken on the merits of the present complaint, as the new decision stands unless and until it is properly challenged and annulled.

It is true that in some instances where an express decision was adopted during the proceedings before the Tribunal, the Tribunal recharacterized a complaint initially directed against an implied decision of rejection, treating it as a complaint addressed against the express decision adopted in the interim. For example, the Tribunal noted in Judgment 4769, consideration 3:

“[T]he complainant raised the point that, after he had filed his complaint with the Tribunal, [...] the [internal appeal body] eventually issued its opinion on his internal complaint. This led to a decision explicitly rejecting that internal complaint, taken on 10 December 2021 [...]

[...]

Since the parties had the opportunity to comment fully in their submissions on the decision expressly rejecting the complainant's internal complaint, the Tribunal considers it appropriate to treat the complaint as if it were directed against that decision (for similar cases, see, in particular, Judgments 4660, consideration 6, 4065, consideration 3, and 2786, consideration 3).”

However, in the present case, the Tribunal considers that such a recharacterization is not feasible.

First, a recharacterization of the original complaint implies it is receivable, which is not the case here.

Second, the complainant has acknowledged the existence of the new express decision CA/D 24/17, issued on 13 December 2017, in his rejoinder. Nevertheless, he has insisted that this new decision is not an obstacle to the adjudication of his complaint against the impugned decision and has not specifically challenged the new decision, as he could have done. He does not submit specific pleas against the 13 December 2017 decision. Unlike the case decided, for example, in Judgment 4769 quoted above, in the present case, there is no challenge to the new decision. As a result, the Tribunal cannot determine the case on the merits.

5. In conclusion, the complaint is irreceivable, and, in any event, moot, and will be dismissed. In these circumstances, there is no need to address the complainant's request for disclosure of documents.

6. The EPO's counterclaim for costs must be rejected, as the complaint cannot be regarded as vexatious or frivolous.

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.