

C. (No. 12)

v.

EPO

141st Session

Judgment No. 5194

THE ADMINISTRATIVE TRIBUNAL,

Considering the twelfth complaint filed by Mr P. C. against the European Patent Organisation (EPO) on 8 September 2017 and corrected on 19 December 2017, the EPO's reply of 7 May 2018, corrected on 9 May 2018, the complainant's rejoinder of 13 October 2018, corrected on 31 October 2018, and the EPO's surrejoinder of 11 February 2019;

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 national criminal proceedings.

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.

Between 24 June 2016 and 24 August 2016, criminal proceedings were initiated against the complainant in Germany and Croatia by the EPO, on behalf of the President, and by the Vice-President of Directorate-General 4 (DG4) in his personal capacity. These proceedings concerned the same conduct that gave rise to the complainant's suspension.

On 8 February 2017, the complainant filed a request for decision with the Administrative Council pursuant to Article 107(1) of the Service Regulations for permanent employees of the Office. He asked the Council to take a decision to reimburse him for the legal costs incurred in the German criminal proceedings, which were "detailed in the [...] invoice of 7th December 2016", which he provided, and which concerned the costs incurred up until 1 December 2016. On 27 April 2017, he was informed that, according to Article 105 of the Service Regulations (formerly Article 95(5)) – 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 him.

On 19 May 2017, the complainant filed a request for review against what he considered to be an implied decision rejecting his request of 8 February 2017. He asked that his request for review be dealt with during the 152nd meeting of the Administrative Council.

By decision CA/D 7/17 of 29 June 2017, the Administrative Council amended the provisions of the Service Regulations relating to the internal appeal procedure. These amendments entered into force on 1 July 2017. A transitional provision provided that until the new Appeals Committee was operational, the former Committee would continue to operate and apply the appeal procedure in place before decision CA/D 7/17. On 10 July 2017, the complainant asked the Administrative Council to clarify the procedural status of his request for review in light of the new amendment. On 14 July 2017, he was informed of the Council's decision not to reappoint him as a member of the Board of Appeal.

Invoking the provisions of Article VII, paragraph 3, of the Tribunal's Statute, on 8 September 2017, the complainant filed his twelfth complaint with the Tribunal challenging the implied rejection of his 19 May 2017 request for review.

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.

Following the delivery of Judgments 3958 and 3960 on 6 December 2017, the Council withdrew the suspension decision and decided that the complainant was reinstated under the authority of the President of the Boards of Appeal "until the end of his mandate on 31 December 2017". The complainant also received material and moral damages and costs.

On 13 December 2017, the Administrative Council issued decision CA/D 23/17 in which it noted that the national criminal proceedings had concluded and that, as a result, and pursuant to Article 105 of the Service Regulations, a final decision could be taken. 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. The complainant was notified of this decision on 14 December 2017.

Also on 13 December 2017, the Administrative Council took decision CA/D 24/17 in which it rejected, among other things, the complainant's request for decision of 8 February 2017 and his request for review of 19 May 2017 on the ground that those requests were covered by final decision CA/D 23/17. The Council considered moreover that it was neither competent nor responsible for legal costs incurred by the complainant in criminal proceedings under national law. It further noted that there was no legal basis supporting the complainant's requests.

In his twelfth complaint, the complainant asks the Tribunal to set aside the implied rejection of his 19 May 2017 request for review and the implied rejection of his 8 February 2017 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 national criminal proceedings and communicate its response to him promptly and diligently, taking due and proper account of the alleged manifestly inadmissible and vexatious character of the private indictments filed against him, and to duly reimburse him for all costs incurred in national 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 argues that the complaint has become moot in view of the issuance of decision CA/D 24/17 on 13 December 2017. On a subsidiary basis, it asks the Tribunal to dismiss the complaint as irreceivable and unfounded. It further asks the Tribunal to order the complainant to pay a portion of its legal costs in the amount of 15,000 euros.

CONSIDERATIONS

1. It is appropriate, at the outset, to deal with the question of joinder. This judgment concerns the twelfth complaint of the complainant. He has filed several other complaints, some of which have already been the subject of a judgment, but others have not. His ninth and eleventh complaints are unresolved and are also before the Tribunal at the present Session. The complainant seeks, in this complaint, the joinder of his ninth, eleventh and twelfth complaints so that one judgment can be rendered. This is opposed by the EPO.

2. Joinder of complaints and the proceedings arising from them is not done simply for administrative purposes either for the Tribunal or the parties. Joinder has legal effects. The question of whether complaints should be joined and the principles guiding a decision concerning joinder have been addressed in several recent judgments. An illustration is found in Judgment 4822, consideration 4, in which it was recalled that:

“The principles applied by the Tribunal on the general issue of joinder have developed over a period of more than 45 years. As discussed in Judgment 4753, consideration 3:

‘Plainly the Tribunal can, and often does, consider related complaints at the same session and by the same panel of judges. The joinder of two complaints is a legal device deployed by the Tribunal in order that one judgment can be rendered, and orders then made disposing of the joined complaints. When considering the scope and purpose of a joinder, it must be borne in mind that while such an order can be made in relation to multiple complaints by one complainant, they can also be made in relation to complaints by two or more individuals who, in substance, raise the same grievance. This latter situation illustrates the need for such orders to be made only in quite explicit circumstances and to be guided by focused principles and not loosely expressed generalities. This is particularly important given the *res judicata* effect of the Tribunal’s judgments. It would be wrong, in principle, to burden one individual with the legal outcome of proceedings where her or his complaint has been joined with the complaints of others in which legal issues have arisen and are resolved, but not legal issues raised by that individual.’

And later in consideration 6:

‘The question that arises is whether it is appropriate to join the two complaints. The touchstone for formal joinder has historically been that the complaints involve the same or, more recently, similar questions of fact and law, and it is not sufficient that they stem from the same continuum of events. [...]’

3. The gravamen of the EPO’s argument in opposition to joinder is that the ninth, eleventh and twelfth complaints raise different issues of law. While it has not been necessary to address, let alone resolve, the multiplicity of legal issues raised in each of the complaints, it is nonetheless true, as the EPO contends, that the complainant’s claim for costs raised in each complaint is in relation to different proceedings governed by different rules. While each of these complaints has been disposed of on one narrow ground, the touchstone for formal joinder has historically been that the complaints involve the same or, more recently, similar questions of fact and law, and it is not sufficient that they stem from the same continuum of events (see, for example, Judgments 4963, consideration 2, and 4753, consideration 6). In the present case, joinder is not appropriate and the application for joinder is therefore rejected.

4. 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, from June 2016 to August 2016, the President of the Office and the Vice-President of DG4 commenced a succession of criminal proceedings and associated appeals against the complainant in Germany and Croatia. Each was unsuccessful.

5. In February 2017, the complainant requested a decision 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.

6. The complainant's request for a decision in this matter was dated 8 February 2017. It was made to the Administrative Council. The substantive request was that the Council "[was] requested to order the reimbursement of the legal expenses detailed in the annexed invoice of 7th December 2016". The invoice concerned the legal expenses incurred in respect of proceedings filed against the complainant in Germany up until 1 December 2016. There was no reply within two months, and the complainant thereafter acted on the basis that there had been an implied decision, by operation of Article 107(3) of the Service Regulations, on 15 May 2017, rejecting his request of 8 February 2017. This led the complainant to file a request for review of the implied decision on 19 May 2017. He then filed a complaint with the Tribunal on 8 September 2017.

7. The EPO raises a number of preliminary issues concerning the complaint. It is only necessary to address one, namely the failure of the complainant to lodge an internal appeal under Article 110 of the Service Regulations. The relevance of this arises because of Article VII of the Tribunal's Statute. It is not in issue that no internal appeal was lodged. At least in the ordinary case, that failure would render irreceivable a subsequent complaint because the complainant had not exhausted the internal means of redress, as provided in Article VII, paragraph 1, of the Tribunal's Statute. However, the complainant seeks to avoid this consequence of his failure to lodge an internal appeal because of Article VII, paragraph 3, of the Tribunal's Statute. That provision operates in circumstances "[w]here the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it". The question that then arises is whether there was such a failure. It is important, in the analysis at this point, to avoid distraction by the provisions of the Service Regulations and, in particular, Article 107 referred to earlier.

8. As a matter of fact, on 27 April 2017, the complainant had been informed that, according to Article 105 of the Service Regulations (formerly Article 95(5)), the Administrative Council had decided that “no decision would be taken on [his] requests [for the reimbursement of costs, which included also other claims he had made in other proceedings] until a final decision had been taken in the pending disciplinary proceedings [against him]”. This decision was taken after the complainant had filed his initial request for a decision of 8 February 2017 and before he had filed his request for review of 19 May 2017. His requests can reasonably be taken to be claims for the reimbursement of some of the legal costs he incurred in defending the national criminal proceedings. Thus, it is necessary to assess whether the 27 April 2017 decision constitutes a “decision upon [those] claim[s]” 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 (see, for example, Judgments 3975, consideration 5, 3428, consideration 18, and 3146, consideration 12).

9. The Tribunal’s case law clearly establishes that the expression “decision upon any claim” in Article VII, paragraph 3, of its Statute comprehends “any action [taken by the Administration] to deal with a claim” (see, for example, Judgment 4820, consideration 6(a), and the case law cited therein). Plainly, in this case, the decision of the Administrative Council quoted in the preceding consideration to identify when a decision might be taken on, *inter alia*, the claim of 8 February 2017, which was reiterated on 19 May 2017, was action by the Administration to deal with the claim for reimbursement of costs. Obviously, this action applied in the same way, and even if it preceded it, to the subsequent claim of 19 May 2017, which had the same purpose as the 8 February 2017 claim. Accordingly, Article VII, paragraph 3, had no application and the complainant was not absolved from the requirement that he exhaust the internal means of redress arising from Article VII, paragraph 1, of the Tribunal’s Statute, which would have included lodging an internal appeal against the implied rejection of his request for review under Article 110 of the Service Regulations.

10. The scheme of Title VIII of the Service Regulations, including Articles 106 to 113, entitled “Settlement of disputes”, contemplates an aggrieved staff member initially seeking the review of a decision sought to be challenged and thereafter, if the review was unsuccessful, then lodging an internal appeal. These steps are to occur before any complaint is filed with the Tribunal. It is unnecessary to detail the language which makes it clear this is mandatory. It is also unnecessary to detail the language which makes it clear this is so of implied decisions of rejection arising from the operation of Article 109(2) and (7) of the Service Regulations. As the complainant failed to lodge an internal appeal, he has not exhausted the internal remedies available to him as required by Article VII, paragraph 1, of the Statute of the Tribunal. In the result, his complaint is irreceivable and should be dismissed.

11. The complainant seeks the disclosure of certain documents. They do not appear to the Tribunal to be relevant to the issue of receivability as just discussed, if relevant to the proceedings at all. No disclosure will be ordered.

12. 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 15,000 euros. It does so principally on the footing, as it argues in its reply, that there is evidence of the complainant’s “intention to abuse the defendant’s internal laws and the Tribunal’s procedure for no purpose other than to bring the defendant organization and its reputation into disrepute”. 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. The counterclaim is therefore unfounded.

13. The EPO also argues that only national courts have competence to issue cost awards in criminal proceedings and that happened in the present case. This, in turn, raises the question of the scope of Article 28 of the Service Regulations, which the complainant relies upon in support of his claim for the reimbursement of legal costs incurred in

national criminal proceedings. It is inappropriate to decide this issue simply to resolve a counterclaim for costs. It is sufficient to reject, as the Tribunal does, the central thesis of the EPO in support of its counterclaim, involving the complainant's use of Article 107 of the Service Regulations.

14. 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.