

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Registry's translation,  
the French text alone  
being authoritative.*

**B. (No. 17)**

**v.**

**EPO**

**141st Session**

**Judgment No. 5195**

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventeenth complaint filed by Mr K. B. against the European Patent Organisation (EPO) on 2 February 2021, the EPO's reply of 21 June 2021, the complainant's rejoinder of 28 September 2021, the EPO's surrejoinder of 10 January 2022, the complainant's further submissions of 12 July 2023 and the EPO's additional reply of 11 September 2023;

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 rejection of his application to stand for election to the Staff Committee.

The complainant joined the European Patent Office, the EPO's secretariat, on 1 November 1985 on a probationary appointment and remained in post until his retirement, on 1 January 2018. He was a member of various staff representative bodies, in various capacities, from 1988 to 2014. He was, however, not re-elected as a member of the Local Staff Committee in Berlin following the Staff Committee elections of July 2014.

Under the framework of the “social democracy” reform undertaken within the Office pursuant to Administrative Council decision CA/D 2/14 of 28 March 2014, which entered into force on 1 April 2014:

- Article 35(5)(b) of the Service Regulations for permanent employees of the European Patent Office provided that all persons entitled to stand for election as a member of a Local Staff Committee must have a term of employment compatible with the Staff Committee’s term of office, which, under Article 35(7) of the Service Regulations, is three years;
- whereas, under Article 54(1)(b) of the Service Regulations, an employee may continue to work after the normal retirement age of 65 years at her or his request and on condition that the appointing authority considers it justified in the interest of the service, in which case she or he may be authorised to remain in post until the age of 68 years.

It should be noted that two circulars also had to be taken into consideration at the time of the disputed facts:

- on the one hand, Circular No. 355 of 2 April 2014, adopted by the President of the Office pursuant to Article 35(5)(c) of the Service Regulations and setting out the Regulations for the Staff Committee Elections, in the version applicable on 15 March 2017, specified, among other things, the conditions for the elections. In this regard, Article 3(3) and (5) of the Circular provided for an ad hoc Supervisory Committee to supervise the elections and oversee that they take place in conformity with the applicable provisions, whereas under Article 5(4) of the Circular, a panel composed of the Head of Internal Audit, a former chairman or member of the Appeals Committee and the Administrator of the Reserve Funds for Pensions and Social Security of the EPO (“the decision-making authority”) was charged with rejecting applications which did not meet the eligibility conditions, while having due regard to the proposal of the Supervisory Committee;
- on the other hand, Circular No. 302 of 20 December 2007 on the guidelines for applying Article 54 of the Service Regulations, again in the version applicable on 15 March 2017. Section I(2) and (8) of

this Circular stated that an employee's request to carry on working beyond the age of 65 years must, as a general rule, be submitted at the latest nine months prior to the date on which she or he reaches the age of 65 years, whereas under paragraphs 1 and 4 of the same section, the decision on prolongation of service lay with the President of the Office and must be made with due consideration of the interest of the service.

On 2 May 2017 the composition of the Supervisory Committee and that of the decision-making authority were published on the Office intranet and an invitation to stand was circulated with a view to the Local Staff Committee elections of 20 June 2017. The deadline for applications was 15 May 2017.

On 15 May 2017 the complainant submitted his application to stand for election to the Local Staff Committee of Berlin.

Following its meeting of 17 May 2017, the ad hoc Supervisory Committee, composed of a chairman and two employees designated by the President of the Office and two employees designated by the Central Staff Committee, unanimously issued an opinion recommending that the complainant's application be rejected on the basis of the incompatibility of the end of his period of employment, namely 31 December 2017, with the Local Staff Committee's term of office, until July 2020.

That same day, the decision-making authority decided to reject the complainant's application based on the Supervisory Committee's opinion.

Also on 17 May 2017 the complainant submitted, through the usual hierarchical channel, a request to continue working until 20 July 2020, with a view to a potential election to the Local Staff Committee of Berlin. He added that if he were not elected, he would maintain his retirement date of 31 December 2017.

In an email from the Supervisory Committee of 18 May 2017, the complainant was informed of the Committee's opinion concluding that his application should be rejected, as well as the basis for the Committee's opinion. The same day, the complainant challenged the Committee's "arbitrary" and "discriminatory" interpretation of Article 54

of the Service Regulations. He also invoked a precedent concerning the situation of another employee of Eurocontrol who was reportedly elected to a Local Staff Committee in the elections of 2014.

The same day, the complainant wrote to his superiors indicating that he had just become aware of aforementioned Circular No. 302 and that, as a result, he was requesting, in view of the exceptional situation of his application, a waiver of the nine-month time limit provided for in Section I(8) of the Circular.

By a letter of 23 May 2017, the relevant Directorate asked the complainant whether he wished to maintain his request for the prolongation of service beyond his 65th birthday, given the rejection of his application to stand for election to the Local Staff Committee of Berlin. In the absence of a response from the complainant, a reminder was sent to him on 1 June 2017.

Also on 1 June 2017 the complainant contested to the relevant Directorate the Supervisory Committee's opinion, arguing that it was for the President of the Office to rule on his request to continue working and recalling that the usual nine-month time limit for the submission of such a request may be waived in exceptional circumstances. He also indicated that he maintained his requests.

By an email of 9 June 2017, the relevant Directorate informed the complainant that his request for prolongation of service had been forwarded to the President of the Office and indicated that the decision to reject his application to stand in the Staff Committee elections constituted an individual decision taken by the decision-making authority within the meaning of Article 106 of the Service Regulations.

The results of the elections of members of the Local Staff Committee of Berlin were published on 21 June 2017 and the elected members of staff began their duties on 1 July 2017, while, by a letter of 22 June 2017, the complainant lodged an objection with the President of the Office, pursuant to article 9 of abovementioned Circular No. 355, against the decision to reject his application to stand in the Staff Committee elections.

On 28 June 2017 the complainant was informed of the decision of the President of the Office to reject his request for prolongation of service because it had not been submitted within the statutory time limit of nine months, provided for in Section I(2) of abovementioned Circular No. 302. The complainant did not contest this decision.

On 6 July 2017 the Supervisory Committee communicated its opinion on the objection submitted by the complainant. It recommended that the objection be rejected for the three following reasons: firstly, the Committee noted that the complainant did not invoke any irregularities in the vote or count procedure that were likely to have affected the results of the elections of members of the Local Staff Committee of Berlin; secondly, it recalled that the complainant's application to stand in this election had been rejected due to the incompatibility between the end of his term of office and the elective mandate sought; and thirdly, it noted that the complainant did not seek to have the elections declared null and void but simply to obtain compensation for the moral injury suffered.

By a letter of 17 July 2017, the complainant was informed of the decision, taken in accordance with the Committee's opinion, to reject his objection of 22 June 2017, since it did not meet the conditions set out in Article 9 of abovementioned Circular No. 355.

The complainant submitted a request on 4 August 2017 for review of the decision to reject his application to stand in the Staff Committee elections and in which he suggested, in particular, the revision of Circular No. 355. After the complainant had been heard by the Principal Director of Human Resources, this request was rejected by a decision of the President of the Office communicated on 4 October 2017, the President considering that the contested decision was in conformity with the applicable statutory provisions and that none of the arguments put forward by the complainant was well-founded.

On 4 January 2018 an internal appeal was lodged by the complainant, in which he requested the setting aside of Circular No. 355. As part of this appeal, the complainant also requested compensation of between 1,000 and 5,000 euros for each injury caused by the breaches of his passive and active electoral rights, his right to "proper administration"

and his right to be heard, as well as the discrimination linked to his age. He sought, in addition, the award of costs and reimbursement of the appeal registration fee.

Following the exchange of written submissions between the parties, the Internal Appeals Committee issued, on 10 September 2020, a unanimous opinion recommending the dismissal of the complainant's appeal as entirely unfounded. The Committee considered the appeal receivable, including the plea of unlawfulness concerning Circular No. 355, in particular concerning the complainant's interest in bringing proceedings despite his retirement. On the merits, it acknowledged the lawfulness of the rejection of that application based on Article 35(5)(b) of the Service Regulations and Article 5(3) of Circular No. 355, combined with Article 54 of the Service Regulations. In the Committee's view, the extension beyond the age of 65 years was an exceptional measure of a discretionary nature taken by the President of the Office pursuant to Circular No. 302 and subject to limited review. It rejected the allegations of age discrimination and unequal treatment, and considered that the active right to vote had not been affected and that eligibility was not absolute. The right to an effective appeal was, according to the Committee, ensured in the meaning of Articles 106 and 113 of the Service Regulations, as well as the right to be heard pursuant to Article 113(1) of the European Patent Convention. Lastly, the Committee recommended that the complainant be awarded compensation of 150 euros for the excessive length of the proceedings.

By a letter of 4 November 2020, the Director of the relevant Directorate, acting by delegation of power of the President of the Office, informed the complainant that he had decided to follow the opinion of the Appeals Committee, that he consequently rejected the internal appeal as unfounded and that he granted him the sum of 150 euros in compensation for the length of the internal appeal proceedings. That is the impugned decision.

In his complaint, the complainant asks the Tribunal to set aside Circular No. 355. He seeks the award of compensation for the moral injury he considers he has suffered. He also claims material compensation equivalent to the difference between the net pension he

received for two and a half years after the age of 65 and the net remuneration he would have received if he had been able to continue working during that period, plus interest for late payment.

The EPO asks the Tribunal to dismiss the complaint as irreceivable in part and unfounded in its entirety.

### CONSIDERATIONS

1. The complainant contests before the Tribunal the lawfulness of the decision of 4 November 2020 in which the Director of the relevant Directorate, acting by delegation of power of the President of the Office, informed him that he rejected the internal appeal he had lodged against the decision to reject his application to stand in the Staff Committee elections. In addition to the setting aside of the impugned decision and compensation for the material and moral injury allegedly suffered, the complainant requests the “repeal”<sup>\*</sup> of Circular No. 355 on the Regulations for the Staff Committee Elections.

2. It should be noted, however, that abovementioned Circular No. 355 was quashed by Judgment 4482 due, in particular, to its violation of the right of freedom of association. It follows that the complainant’s request for the quashing of the Circular has become moot (see, on this matter, Judgment 5062, consideration 5). Nevertheless, the Tribunal considers that a cause of action remains insofar as the complainant seeks compensation for the injury he considers he has suffered as a result of the individual application of the Circular in his case.

3. The complainant submits, in particular, that the rejection of his application to stand in the Staff Committee elections, decided both pursuant to Article 35(5)(b) of the Service Regulations and pursuant to the second sentence of Article 5(3) of Circular No. 355, and based on the fact that the complainant could not fulfil the mandate of three years due to his pending retirement, is unlawful. In his view, this requirement

---

<sup>\*</sup> Registry’s translation.

violates freedom of association, as well as his active right to vote and his right to be elected (passive right to vote).

Following Judgment 4482, in which Article 35(5) of the Service Regulations and Circular No. 355 were quashed by the Tribunal, it must be noted that both the decision of the Supervisory Committee of 17 June 2017, which rejected the complainant's application to stand in the Staff Committee elections on the sole basis of the provisions thus quashed, and that of the official delegated by the President of the Office of 4 November 2020, which rejected the complainant's internal appeal, no longer rest on a valid legal basis.

The decision of 4 November 2020 must, therefore, be set aside.

4. In respect of the material injury he allegedly suffered, the complainant claims the payment of a sum that would be "equal to the difference between the amount of pension net after tax [...], received during the two and a half years following his 65th birthday, and the remuneration net after tax he would have received [...] for two and a half years of additional active service due to the mandate, plus usual interest for late payment"\*.

The Tribunal notes, however, that the origin of the alleged injury lies, in reality, in the decision of the President of the Office of 28 June 2017 refusing the complainant's request to prolong his service beyond the retirement age – a decision that has become final for failure to exhaust internal means of redress – and not in the impugned decision.

In the absence of a causal link between the unlawfulness of the impugned decision and the material injury thus invoked, this claim must be rejected.

5. The complainant alleges that he suffered moral injury as a result of the unlawful decision to reject his application to stand in the Staff Committee elections. With regard to the argument put forward by the complainant on this subject, the Tribunal considers that he will be adequately compensated for this injury by the award of 5,000 euros.

---

\* Registry's translation.

DECISION

For the above reasons,

1. The impugned decision of 4 November 2020 is set aside.
2. The EPO shall pay the complainant 5,000 euros in moral damages.
3. All other claims are dismissed.

In witness of this judgment, adopted on 5 November 2025, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, 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.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLEMENT GASCON

RENÉ M. VARGAS M.