

**F. (No. 28)**

**v.**

**EPO**

**141st Session**

**Judgment No. 5200**

THE ADMINISTRATIVE TRIBUNAL,

Considering the twenty-eighth complaint filed by Mr S. C. F. against the European Patent Organisation (EPO) on 11 June 2020, the EPO's reply of 17 November 2020, the complainant's rejoinder of 22 December 2020 and the EPO's surrejoinder of 31 March 2021;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decision not to select him for external tutoring activities.

The complainant is a former permanent employee of the European Patent Office – the EPO's secretariat – who served as an examiner at its sub-office in Berlin, Germany. He retired on 1 December 2018. Some of the background to this complaint can be found in Judgments 5198 and 5199, also delivered this day, on his sixteenth and seventeenth complaints, respectively.

The European Patent Office has cooperated for many years with the Centre for International Intellectual Property Studies (referred to by its French acronym "CEIPI") – an external entity founded by the Strasbourg faculty of law – in offering training courses for European patent attorneys. The tutors for these courses are drawn partly from the

EPO's staff and partly from external law firms. The complainant had been closely involved, not only in organising the CEIPI courses, but also as a tutor, from the outset.

In June 2012 a Memorandum of Understanding (MoU) was signed by the Office and the CEIPI which, amongst other things, introduced a new selection procedure for EPO staff wishing to serve as tutors for the CEIPI courses. In the past, the CEIPI had contacted EPO staff directly in order to request their participation as tutors. Under the new procedure, the Office would be responsible for selecting them from among the interested staff members.

On 27 September 2012 the complainant received an email from Department 5442 (Professional Representatives) informing him that he had not been selected to carry out tutoring activities at the CEIPI during the transitional period (until March 2013) that followed the signing of the MoU. On 11 December 2012 he sent a letter of appeal to the President of the Office directed against "the decision to exclude [him] from CEIPI activities, and ongoing attacks by [the EPO's] administration against [him]". He observed that no reason had been given for his exclusion, which he regarded as "a hidden disciplinary action [...], if not a personally targeted revenge", linked to the fact that he had recently denounced what he regarded as interference by the Administration in the functions vested in the examining divisions under the European Patent Convention, and had objected to the Office's practice of issuing automatic communications to patent applicants on behalf of the examiners. The complainant also stated that he had heard rumours that defamatory remarks had been made against him at PDMAC meetings (involving principal directors and members of the Management Committee) in September 2012. He requested the withdrawal of the decision of 27 September 2012, "protection against arbitrary treatment by members of [the] administration", moral damages and costs.

In a letter dated 24 January 2013, the Principal Director Berlin (PD 1.5) and the Head of the Human Resources Expert Services Department, referring to the complainant's letter of appeal, provided further explanations concerning the decision not to select him for CEIPI tutoring activities. After drawing his attention to the fact that the

selection of staff members for participation in these activities was at the discretion of the Office, they explained that in this case the Office had taken into account “certain incidents of the last months where [the complainant] not only expressed specific doubts and objections against the Office’s formal practices, but [...] also wished to officially communicate these doubts to patent applicants”. In these circumstances, the Office “considered that [his] participation [in] the CEIPI lecturing activities could pose a risk as regard[ed] the proper representation of the Office’s policies in the outside world and of its wider interests and image”.

The complainant’s appeal was forwarded to the Appeals Committee, which registered it on 15 February 2013. On 30 November 2016, while the appeal was pending before the Appeals Committee, the Tribunal delivered Judgment 3785, in which, ruling on another complaint also filed by the complainant, it held that the composition of the EPO’s Appeals Committee at the material time was unlawful. Following the delivery of that judgment, the Office reviewed all internal appeals that were affected by the same procedural flaw relating to the composition of the Appeals Committee and took steps to correct the flaw. In the present case, the internal appeal proceedings were resumed in 2019 before a properly composed Appeals Committee.

In an opinion dated 27 January 2020, the Appeals Committee unanimously recommended that the appeal be rejected as irreceivable in part and unfounded for the remainder. It considered that the complainant’s claim for protection from arbitrary treatment was entirely unsubstantiated and premature. Regarding the decision to exclude him from participation in CEIPI tutoring activities, the Committee considered that it was based on legitimate reasons of which the complainant had been duly informed and did not constitute an abuse of the Office’s discretionary power. The Appeals Committee nevertheless recommended that the complainant be awarded 750 euros in moral damages for the unreasonable length of the internal appeal procedure.

By a letter of 13 March 2020, the Chief Corporate Policies Officer informed the complainant that she had decided, by delegation of power from the President of the Office, to reject his appeal as partly irreceivable and otherwise unfounded, for the reasons given in the

opinion of the Appeals Committee, and to award him 750 euros in moral damages for delay in the internal appeal procedure. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, to rule on the merits of his requests for protection against arbitrary treatment and for withdrawal of the decision of 27 September 2012, and to award him moral damages, costs and interest at an annual rate of 8 per cent on all amounts due. Subsidiarily, he asks the Tribunal to declare the opinion of the Appeals Committee and the entire appeal procedure null and void, to refer the case back to a newly composed Appeals Committee, and to award him compensation for procedural delays and violations as well as costs.

The EPO asks the Tribunal to dismiss the complaint as partly irreceivable and, in any event, moot. Subsidiarily, it argues that the complaint should be dismissed as unfounded.

#### CONSIDERATIONS

1. The complainant is a former member of the staff of the EPO. He retired from service on 1 December 2018. His complaint in the Tribunal was filed on 11 June 2020.

2. It is against the background discussed earlier that the complainant seeks relief which may be summarised in the following way. The relief is identified in two parts which are further disaggregated. The first main part is headed “Main claims”. It is disaggregated into subparts (a) to (e). Subparts (a) to (c) are either mechanical, depending on the success of the complainant’s substantive claim, or procedural, relating to the full hearing of the substantive claim. Subpart (d) identifies the gravamen of the substantive claim, namely “protection against arbitrary treatment by members of the Defendant’s administration, more specifically, withdrawal of the email dated 27 September 2012”. The substance of that email was to inform the complainant he had not been selected to carry out tutoring activities at the CEIPI. Subpart (d) also includes a claim for moral damages in the

sum of 6,000 euros and for reimbursement of legal costs in the sum of 6,000 euros. Lastly in subpart (e) a claim is made for further compensation in the sum of 5,000 euros for the length of the internal appeals procedure and procedural violations.

3. The second main part is headed “[a]nd on a subsidiary basis, it is furthermore requested”. There then appear several orders directed towards setting aside the opinion of the Appeals Committee, remitting the matter to a newly composed Committee, seeking compensation in the sum of 5,000 euros for the length of the internal appeals procedure (this claim is repetitive) and seeking legal costs in the sum of 6,000 euros.

4. The EPO argues that his main claim (referred to earlier as his substantive claim) is moot. The Tribunal agrees. The EPO cites Judgment 4060, consideration 3, which states that “a claim is moot when there is no longer a live controversy”. The EPO points out, correctly, that as the complainant has retired from service, and was retired when the complaint was filed in the Tribunal, no question of ordering that the complainant be afforded protection from arbitrary treatment and that the email of 27 September 2012 concerning his non-selection for CEIPI tutoring activities be withdrawn can now arise because he is no longer a member of staff of the EPO. By extension, his claim to set aside the impugned decision is also moot.

5. As the complainant’s substantive claim is moot and need not be considered by the Tribunal, the ancillary claims, with one exception, under the list of “Main claims” and those raised on a subsidiary basis are equally moot to the extent that they concern the hearing and determination of the substantive claim or are unfounded.

6. The Tribunal awards costs in favour of a complainant in cases where a complainant is successful, but there is no basis for doing so in this case given that his complaint will be dismissed, as discussed shortly. This claim for costs is unfounded. As to the claim concerning the length of the internal appeals procedure, he was awarded 750 euros

which the Tribunal is satisfied is an adequate amount. Accordingly, this claim is unfounded.

7. Notwithstanding that his substantive claim is moot, the relief sought in the complaint includes a claim for moral damages. The Tribunal has accepted such a claim can endure notwithstanding that the principal claim is moot. Cases can arise where this residual issue means that the entire matter cannot be said to be moot (see, for example, Judgment 4886, considerations 3 to 6). The EPO argues in its reply that the complainant failed to provide any evidence of any moral injury. The Tribunal's case law establishes that moral damages flow from moral injury caused by the unlawful conduct of the defendant organisation (see, for example, Judgment 4642, consideration 9, and the case law cited therein). However, the complainant's response in his rejoinder, is merely to assert an "injury to the [c]omplainant's individual status as examiner and member of examining divisions as well as his personal dignity". He provides no direct evidence of these matters and to the extent that they might be based on inference, insufficient material is advanced to enable the inference to be drawn.

8. In the result, the complainant's claims are either moot or unfounded. Accordingly, the complaint should be dismissed.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 20 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.