

A. (No. 2) and others

v.

EPO

142nd Session

Judgment No. 5312

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr P. A. (his second), Mr S. F. Br. (his third), Mr L. C. B. (his second), Mr A. D. (his eighth), Mr C. H. (his second), Mr H. M. (his fifth) and Mr G. P. (his second) against the European Patent Organisation (EPO) on 17 January 2022 and corrected on 19 May 2022, the EPO's single reply of 2 December 2022, the complainants' rejoinder of 21 July 2023 and the EPO's surrejoinder of 30 October 2023;

Considering the applications to intervene filed between 26 May 2023 and 22 August 2023 by Mr D. B., Mr P. A. C., Mr B. C., Mr W. E., Mr G. P. F., Mr E. F., Ms K. G., Mr M. C. G., Ms R. H., Ms T. K., Mr W. M., Ms R. M., Ms F. J. N., Mr B. N., Mr S. P. H. O. d. C., Mr M. P., Mr M. P., Mr D. S. R., Mr F. P. L. R., Mr W. S., Mr M. S., Ms B. L. t. L., Mr F. A. N. v. d. V., Mr P. W., Mr J. P. W. and Mr G. Z., and the EPO's comments thereon dated 30 January 2024;

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

Having examined the written submissions;

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

The complainants, in their capacity as former chairmen – as described in the rules, hereafter chairpersons – or former or current

members of the Boards of Appeal, challenge the decision to transpose them to a new grade pursuant to the introduction of a new career system.

On 11 December 2014, the Administrative Council of the European Patent Office, the EPO's secretariat, adopted decision CA/D 10/14 introducing a new career system, as from 1 January 2015. The new career system substantially modified the way job categories were divided. Employees continued to enjoy horizontal step advancement and vertical promotion to higher grades, but the underlying principle of the new career system was that progression was based on sustained performance and demonstrated competencies rather than time spent within a step or grade.

On 25 June 2015, decision CA/D 4/15 introduced transitional measures for chairpersons and members of the Boards of Appeal, temporarily exempting them from the rules on performance assessment and promotion.

In the meantime, on 9 June 2015, the complainants – who were at that time chairpersons or members of the Boards of Appeal – were informed of the grade in which they were transposed as of 1 July 2015, and specifically: Mr A. from grade A5, step 12, to grade G15, step 2, Mr Br. from grade A5, step 10, to grade G14, step 3, Mr B. from grade A5, step 5, to grade G13, step 3, Mr D. from grade A5, step 11, to grade G14, step 4, Mr H. from grade A5, step 10, to grade G14, step 3, Mr M. from grade A6, step 10, to grade G16, step 4, and Mr P. from grade A6, step 8, to grade G15, step 4.

Mr A., Mr Br., Mr D., Mr H. and Mr P. were informed that the difference between their basic salary and the basic salary for the next immediate higher step in the new scale was greater than 50 euros. Consequently, their current grade and step would be transposed to the lower step in the new salary scale. However, pursuant to Article 56(4) of decision CA/D 10/14, their basic salary would remain at the same level.

Their grades at the date of the filing of the present complaints are indicated in the brief as follows: Mr A., grade G15, step 1, Mr Br., grade G15, step 1, Mr B., grade G15, step 1, Mr D., grade G14, step 1,

Mr H., grade G14, step 1, Mr M., grade G16, step 4, and Mr P., grade G16, step 1.

Between 12 May 2015 and 5 October 2015, the complainants filed requests for review of their March 2015 salary payslip and/or the transposition letters of 9 June 2015. These requests were rejected and each complainant lodged an internal appeal. They each asked that the career system in place on 31 December 2014 continue to apply to them and that the President of the Office propose without delay to amend the Service Regulations for permanent employees of the Office to provide the chairpersons and members of the Boards of Appeal with an appropriate career system. Their appeals were examined at the same time by the Appeals Committee and a single opinion was rendered.

In its opinion of 13 July 2021, the Appeals Committee examined several appeals lodged by chairpersons or members of the Boards of Appeal, including the complainants, against the new career system. Regarding Mr M., it unanimously found that his appeal was irreceivable insofar as he challenged the abolition of automatic step advancement and his transposition to the new career system because he was transposed to the exact corresponding step keeping the same basic salary. Hence, he suffered no prejudice in terms of salary and career progression as a consequence of the transposition as he continued to hold the highest step in his grade while maintaining the same basic salary. In addition, he was not adversely affected by the abolition of automatic step advancement as he could not advance further in steps in his grade. The Appeals Committee therefore considered that his appeal was receivable only to the extent that he alleged incompatibility of certain aspects of the new career system with his guaranteed independence as a member of the Boards of Appeal. Regarding the other complainants, the Appeals Committee unanimously concluded that the requests for the application of the former career system were irreceivable and that it was not competent to issue injunctions against the EPO. On the merits, the majority of the Appeals Committee recommended to dismiss the appeals as unfounded, on the grounds that general policy measures relating to personnel management were discretionary, that there was no acquired right to automatic step

advancement, and that the transitional measures introduced by decision CA/D 4/15 allowed chairpersons and members of the Boards of Appeal to benefit from an automatic salary increase and thus to retain career prospects. Furthermore, according to the majority, the allegation of breach of legitimate expectations should be rejected as there was no evidence that the Organisation had promised to maintain the previous career system. It further considered that some claims were moot following the adoption of decision CA/D 4/15 in June 2015 and decision CA/D 8/16 in 2016. Indeed, decision CA/D 4/15 expressly excluded the application of the new provisions regarding probationary periods and bonuses to the chairpersons and members of the Boards of Appeal, an exclusion confirmed by decision CA/D 8/16. The conditions applicable to promotion, step advancement and appraisal of chairpersons and members of the Boards of Appeal were defined by decision CA/D 8/16 to guarantee the independence of chairpersons and members of the Boards of Appeal. It unanimously recommended compensating the complainants for the unreasonable delay in the internal appeal proceedings.

By letters dated 20 October 2021, the Vice-President of Directorate-General 4 informed the complainants of the Office's decision to follow the recommendations of the majority of the Appeals Committee for the reasons stated in its opinion. Consequently, their appeals were dismissed as partly irreceivable and unfounded in the remainder. They were nevertheless awarded compensation for the length of the internal appeal proceedings, respectively in the amount of 800 euros for those who lodged their appeal in 2015, and of 600 euros for those who lodged their appeal in 2016. They were also awarded an additional 100 euros each for the delay in issuing the EPO's final decision. This is the decision impugned by each of the complainants.

The complainants ask the Tribunal to set aside the impugned decision, the review decision which was the basis for their internal appeals, decision CA/D 10/14, and declare that the Service Regulations in force on 31 December 2014 remain valid, order that the system of grades (A5 for members, A6 for chairpersons) and step advancement by seniority (as provided in Article 48 of the Service Regulations applicable in 2014) be continued “for the Complainant[s]”, set aside “for the Complainant[s]” all subsequent decisions, including decision CA/D 4/15, Circulars Nos. 364 and 365 and related notices and communiqués taken on the basis of decision CA/D 10/14 and order that the salary scales as established in the 2014 Service Regulations be maintained “for the Complainant[s]”. If the system applicable in December 2014 cannot be restored, they ask the Tribunal to order that the President propose without delay to the Administrative Council to adopt a “transparent system of yearly step advancement by seniority, without the need for promotion” for chairpersons and members of the Boards of Appeal, and that the complainants be “re-transposed” in the previous system. In addition, they ask the Tribunal to order their assignment, retroactive to 1 July 2015, to the step and grade to which they would have been transposed had the number of months and seniority accrued between the last step advancement and 30 June 2015 been considered. They further ask the Tribunal to order that a “transition period”, that was proportional to the duration of service they had already completed be guaranteed, and that the career system applicable in 2014 continued to apply during that time, that their salary and emoluments be recalculated in light of the progression they would have benefited from under the previous system, and that any “underpayment” since 1 January 2015 be reimbursed.

The complainants also ask the Tribunal to make various declarations regarding decisions the Administrative Council should have taken or the process that should have been followed in relation to the contested reform. In particular, they request the Tribunal to declare that the 11 December 2014 statement of the President of the Office before the Administrative Council prevented the application of the new career system to the chairpersons and members of the Boards of Appeal, and to “declare” that the complainants be compensated for the loss of the

number of months acquired until 1 July 2015 in the next incremental step in the grade applicable to them on 31 December 2014 in the event that the transposition date of 1 July 2015 was maintained. Lastly, the complainants seek moral damages for discrimination, for undue delay, and for having to file a complaint before the Tribunal which does not accept complaints in German together with interest on any compensation awarded, and costs.

The EPO asks the Tribunal to reject the complaints as partly irreceivable and otherwise unfounded.

CONSIDERATIONS

1. The complainants impugn the 20 October 2021 decision, conveyed by individual letters, whereby the Vice-President of Directorate-General 4 of the EPO, endorsing the recommendation of the majority of the Appeals Committee, rejected, as partially irreceivable and unfounded in the remainder, their appeals against the previous decisions adopted upon their requests for review which, in turn, they had lodged against the individual decisions whereby they were transposed into the new career system, against the underlying general decision CA/D 10/14, and against implementing decision CA/D 4/15.

However, the impugned decision awarded the complainants moral damages for the length of the procedure, in the sum of 800 euros for the appellants who had lodged their respective appeals in 2015, and of 600 euros for the appellants who had lodged their respective appeals in 2016. It also awarded each appellant an additional sum of 100 euros for the additional delay between the deliberation and the issuance of the decision.

2. The legal issues they raise are the same and they do so in the context of facts which are similar. Accordingly, the complaints should be joined and one judgment rendered.

3. The complainants' request for oral proceedings is rejected, as the Tribunal considers that it is sufficiently informed through the written submissions provided by both parties to issue a fair and balanced decision.

4. It is appropriate to establish the scope of the present complaints. The complainants challenged internally the individual decisions concerning their transposition into the new career system together with the underlying general decision CA/D 10/14 and implementing decision CA/D 4/15.

In the present complaints, they also express criticism towards decisions CA/D 5/16, CA/D 6/16, CA/D 7/16, CA/D 8/16, and Communiqué 2/18. However, these decisions have not been challenged internally before seizing the Tribunal with the present complaints, and they fall, therefore, outside the scope of the present complaints. Thus, the Tribunal will not address any arguments concerning them.

5. These complaints are among a large number of disputes brought before the Tribunal in relation to the European Patent Office's new career system, introduced by the Administrative Council's decision CA/D 10/14 of 11 December 2014, which entered into force on 1 January 2015. It should be recalled that this new system brought about extensive changes to the structure of employees' grades, by establishing new "career paths", and provided that horizontal step advancement was no longer based on seniority but on the assessment of performance and competencies. The implementation of certain elements of this new career system – in particular, the replacement of seniority-based step advancement, which had been in place up until then, by merit-based step advancement – raised particular difficulties for members of the Boards of Appeal (including therein chairpersons), connected with the need to safeguard the independence conferred on them by Article 23 of the European Patent Convention (EPC). It had therefore been decided, upon the adoption of decision CA/D 10/14, that the rules dealing with those particular elements would not apply to members of the Boards of Appeal and that a specific regime for them would be established at a later date. Transitional provisions governing

their situation were laid down in decision CA/D 4/15 of 25 June 2015, following which the regime was finally introduced by decision CA/D 8/16, which took effect on 1 January 2017.

Most of the issues raised in the present complaints have already been examined by the Tribunal in previous judgments (see Judgments 5186, 5072, 5071, 5070, 5069, 4990, 4889, 4712, 4711, and 4710) to which extensive reference will therefore be made in the considerations below.

6. By a first group of arguments, the complainants allege that the President of the Office was not competent to take the transposition decisions, the review decisions, and the impugned decision. They observe the following:

- since the Administrative Council was the appointing authority for the members of the Boards of Appeal, the decisions concerning their careers should have been taken by the Administrative Council;
- as the President of the Office took the contested decisions (transposition), rather than the Administrative Council, this also implied an unlawful composition of the panel of the Appeals Committee that examined their appeals. Indeed, at the relevant time, the composition of the Appeals Committee varied depending on whether the appeal was against an individual decision taken by the President or by the Administrative Council (Article 111 of the Service Regulations).

The complainants acknowledge that the issue of the competence of the Administrative Council and of the President of the Office has already been addressed by the Tribunal in Judgments 4255, 3796, and 3700, but they contest the reasoning contained therein.

These pleas are unfounded.

The Tribunal has already held that the EPO has two appointing authorities pursuant to Articles 10 and 11 of the EPC: the President, who appoints the vast majority of the staff, and the Administrative Council, which appoints the President, the Vice-Presidents and other

employees who are members of the Boards of Appeal and whose independence is guaranteed by the fact that they are appointed by the Administrative Council. In reality, most decisions affecting staff members appointed by the Administrative Council are taken by the President, because these staff members are also subject to most of the provisions of the Service Regulations and are referred to under the generic expression “employees”. The only individual administrative decisions concerning these staff members that are taken by the Administrative Council are those relating to appointment and disciplinary matters. Decisions on all other matters are taken by the President (see Judgments 4255, consideration 2, 3796, consideration 2, and 3700, consideration 11).

The complainants contend that this reasoning is incorrect to the extent it overlooks that the Service Regulations make reference to the “appointing authority” for a number of decisions, not only those concerning appointment and discipline, and, thus, for staff appointed by the Administrative Council, all decisions must be taken by the Administrative Council, as it is the “appointing authority”.

The Tribunal holds that these arguments are not sufficient to overturn the principle expressed in its precedents cited above. In light of a combined interpretation of Articles 11(3), 11(4), and 23 of the EPC and Article 1(4) of the Service Regulations, the Administrative Council adopts the sole decisions concerning appointment (Article 11(3) of the EPC) and disciplinary matters (Article 11(4) of the EPC) with respect to members of the Boards of Appeal.

Article 1(4) of the Service Regulations read:

“These Service Regulations shall apply to members of the Boards of Appeal and the Enlarged Board of Appeal (hereinafter referred to as ‘members of the Boards’) in so far as they are not prejudicial to their independence.”

For the purpose of the Service Regulations, the appointing authority which has competence for all staff, including members of the Boards of Appeal, is the President of the Office, with the only exception of appointment and disciplinary decisions.

In the present case, the Administrative Council also adopted general decision CA/D 10/14 and implementing decision CA/D 4/15. Therefore, the individual transposition decisions, which are based on the general and the implementing decisions, and which are neither appointment nor disciplinary decisions, could lawfully be adopted by the President of the Office or his deputies. As a result, the review decisions and the impugned decision fell within the competence of the President of the Office or his deputies. Accordingly, the composition of the Appeals Committee was in keeping with Article 111 of the Service Regulations, considering that the individual decisions challenged before the Appeals Committee were not adopted by the Administrative Council, and that the composition of the panel did not have to be modified when general decisions of the Administrative Council were challenged.

The Tribunal adds that it cannot rely on its Judgment 5190, where it stated, in consideration 4, in similar litigation, that “the Administrative Council – which is the appointing authority for members of the Boards of Appeal and therefore competent to deal with them – had decided to rule on the various requests for review submitted by the employees concerned, and then on the internal appeals lodged by some of them, by means of joint decisions”. In the case decided in Judgment 5190 the issue of the competent authority had not been raised and, as a result, the Tribunal did not state a principle of law, but merely considered which body actually adopted the contested decisions.

7. The complainants contend that when the transposition decisions were taken on 9 June 2015, with effect as of 1 July 2015, the “declaration” of the President of the Office, rendered on 11 December 2014, was still in effect. This declaration relevantly stated that “the provisions governing appraisal, performance, step advancement, bonuses, promotions and any other aspect relevant for their careers would not apply to these Council appointees until specific provisions were set out in the documents on the organisation and functioning of [Directorate-General] 3 which would be submitted to the [Administrative] Council for approval at its next meeting, in March 2015”. Thus, in their view,

the transposition decisions were taken *ultra vires*, or at least against the commitment of the Administrative Council.

This argument is unfounded.

It is uncontroverted that, as the complainants note, the reform adopted by decision CA/D 10/14:

- (i) integrated members and chairpersons of the Boards of Appeal into the general career path of the Office;
- (ii) introduced a probationary period without explicitly exempting the members of the Boards of Appeal from the probationary period;
- (iii) did not specify the conditions applicable to Boards of Appeal members for advancement in steps, promotion, and performance appraisals, and allowed advancement in steps, promotions, and reappointment to be linked to such appraisals;
- (iv) allowed the President of the Office to control the procedure for advancement in steps, promotion, and performance appraisals; and
- (v) provided for a bonus system.

However, the following decision CA/D 4/15 established that:

- (i) Article 13 of the Service Regulations, with respect to a probationary period, and Article 48a of the Service Regulations, with respect to bonuses, shall not apply to an employee appointed, in accordance with Article 11(3) of the EPC, as a chairperson or a member of the Boards of Appeal (Article 1 of decision CA/D 4/15);
- (ii) as a transitional provision for 2015 or until any further decision on this matter, the provisions of Articles 47a, 48, and 49 of the Service Regulations with respect to appraisal, step advancement and promotion shall not apply to an employee appointed, in accordance with Article 11(3) of the EPC, as a chairperson or a member of the Boards of Appeal (Article 3 of decision CA/D 4/15).

Furthermore, decision CA/D 4/15 established a transitional automatic salary advancement for chairpersons and members of the Boards of Appeal (Article 2).

As a result, decision CA/D 4/15 made clear that the provisions of the new career system regarding probationary period, bonus, performance appraisal, step advancement, and promotion would not apply to Boards of Appeal members in 2015 or until any further decision is taken.

It is undisputed that the complainants' transposition into the new career system took effect as from 1 July 2015, whereas decision CA/D 4/15 entered into force a few days before, on 25 June 2015. Thus, it is manifest that the "declaration" of the President addressed to the Administrative Council, even assuming that it amounted to a legally binding promise, was not infringed, as the specific aspects of the employment of the members of the Boards of Appeal were taken into account.

8. The complainants further contend that the General Consultative Committee (GCC) consultation on decisions CA/D 10/14 and CA/D 4/15 was flawed, because:

- (i) the GCC was consulted on 10 October and on 19 November 2014, but not on the President's declaration of 11 December 2014. This declaration was not included in the proposal CA/84/14 Rev. 1 that was submitted to the GCC;
- (ii) the GCC was not consulted on the new version of the document concerning the proposed decision CA/D 4/15 before it was submitted to the Administrative Council for decision.

The Tribunal considers that the President's declaration of 11 December 2014 was rendered for the purpose of exempting the members of the Boards of Appeal from the main aspects of the new career system, to their advantage and not to their detriment. As a result, the complainants are not negatively affected by the failure to consult the GCC and have no interest in raising this issue. Additionally, the complainants have no cause of action as they are not acting in the capacity of members of the GCC and, in that perspective, none of their

rights was infringed (see Judgments 5178, consideration 3, and 4797, consideration 5).

The complainants contend that staff other than the members of the Boards of Appeal might have complained about the specific regime concerning the members of the Boards of Appeal, and that for this reason the GCC should have been consulted. But the complainants are former chairpersons or current or former members of the Boards of Appeal, and in this capacity, they cannot complain on behalf of different categories of staff.

This plea is also unfounded on the merits.

Changes and adjustments made to a decision following the GCC consultation do not necessarily warrant a new consultation before the adoption of the decision, and, moreover, there is no mandatory consultation on mere declarations made by the President of the Office at meetings of the Administrative Council. More broadly, having regard to the consultation of the GCC on decision CA/D 10/14, the Tribunal has already held that “[t]he proposal submitted to the Administrative Council differs from the one submitted in November 2014 to the GCC only in minor editorial modifications, and therefore there was no need to consult again with the GCC. In addition, the complainant has neither alleged nor proven that the two proposals were substantially divergent with regard to the new step advancement system, to his detriment” (see Judgment 4711, consideration 7). This reasoning also applies in the present case.

Regarding decision CA/D 4/15, the GCC was duly informed of the scope of implementation of the new career system for Boards of Appeal members, as it was consulted prior to the adoption of decision CA/D 4/15, which introduced transitional measures for Boards of Appeal members.

Regarding the automatic salary advancement introduced by decision CA/D 4/15, this feature of the transitional measures was mentioned in the document submitted to the GCC for consultation. The GCC was therefore enabled to discuss it.

9. The complainants contend that the participation of Vice-Presidents and the Management Committee (MAC) members in the GCC was unlawful.

The Tribunal has already addressed in depth these issues in Judgment 4711, consideration 5, whereby it held that the participation of Vice-Presidents and the MAC members in the GCC was lawful (see also Judgment 4898, consideration 6). This was stated in Judgment 4711 with regard to the consultation of the GCC on the same general decision which is at stake in the present complaints. It is unnecessary to repeat the analysis of the Tribunal in that judgment, and there is no need to dwell further on these pleas.

10. The complainants contest the conclusion of the Appeals Committee, endorsed in the impugned decision, that their challenge to decision CA/D 10/14 and the transposition decisions had become partly moot, in light of the adoption of measures concerning their specific situations. They contend that decision CA/D 10/14 had nonetheless affected the independence of Boards of Appeal members, between 1 January 2015 and 1 July 2015.

This plea is unfounded.

It must be recalled that on 11 December 2014, the President of the Office made the declaration evoked above. Further to that, the implementing decision CA/D 4/15 stated that the new rules concerning probationary periods and bonus systems were not applicable to Boards of Appeal members (Article 1), and that the application to them of appraisals, promotions, and step advancements based on performance appraisal was suspended (Article 3). Later, specific rules concerning the Boards of Appeal members were adopted in 2016, effective 1 January 2017.

In light of this sequence of decisions, the Appeals Committee held that the internal appeals were moot with regard to the following contested features of decision CA/D 10/14:

- (i) probationary period;
- (ii) advancement in steps, promotion, and performance appraisals;

- (iii) control by the President of the Office of the procedure for advancement in steps, promotion, and performance appraisals; and
- (iv) the bonus system.

The complainants contend that the reform was applicable to them as of 1 January 2015 until 1 July 2015.

Despite the multiplicity of the complainants' arguments, they fail to demonstrate that the contested reform was actually applied to them as of 1 January 2015 until 24 June 2015, and there is no evidence in the file in this respect. It is, thus, immaterial that Articles 1 and 3 of decision CA/D 4/15 do not expressly state that they are applicable as from 1 January 2015 rather than from 25 June 2015 (that is the date when decision CA/D 4/15 entered into force), because the combined reading of the President's declaration of 11 December 2014 and of decision CA/D 4/15 shows that the EPO had no intention to apply the reform to the complainants between 1 January and 24 June 2015, and, in fact, it did not.

Additionally, the Tribunal notes that the complainants cannot allege that the President's declaration of 11 December 2014 had no legal value and effect, because they themselves rely on the binding effect of this declaration in order to ground other pleas contained in their brief (see Judgment 4550, consideration 5).

The complainants seem to imply the actual application of decision CA/D 10/14 to them from the alleged circumstance that during 2015 the former career system was no longer applied to them, as they did not receive step advancements according to the former system, and considering that despite the vacancies for chairpersons posts, none of the members of the Boards of Appeal were proposed for promotion. The Tribunal notes that the former regime, as far as step advancement is concerned, was no longer applicable to the complainants, as the reform entered into force on 1 January 2015 and specific transitional measures concerning automatic salary advancement for the complainants were provided for in Article 2 of decision CA/D 4/15.

The complainants also contend that some of the new rules, namely those concerning probationary periods and the bonus system, were not suspended by the transitional measures and, thus, remained applicable to them. As already said, there is no evidence that these rules were applied to the complainants, and they are not allowed to challenge general decisions unless and until they are applied to them by means of individual decisions.

Furthermore, the complainants' allegations concerning the reputational risk and the perception of their independence as of 1 January 2015 are mere speculation.

Therefore, the Appeals Committee did not err in finding that the challenge to decision CA/D 10/14 and the transposition decisions was partly moot, and that the only remaining live controversy concerned the complainants' transposition to new grades and steps.

11. The complainants devote a large part of their arguments to pleas according to which the abolition of the former system of automatic step advancement based on seniority and its replacement by promotion and merit-based step advancement constituted a breach of their acquired rights and of their legitimate expectations. They contend that:

- (i) advancement based on seniority was an essential and fundamental term of their employment, which induced them to join – and then remain at – the EPO, and that its abolition was unjustified and unreasonable;
- (ii) considering that Articles 11 and 23 of the EPC provide that the members of the Boards of Appeal are appointed by the Administrative Council for a term of five years and cannot be transferred, it can be inferred from these provisions that the independence of the members of the Boards of Appeal is an essential and fundamental term of their contracts;
- (iii) the new performance-based advancement can negatively affect the independence of chairpersons and members of the Boards of Appeal;

- (iv) the reason given to adopt the reform, that is to improve the efficiency of the Boards of Appeal, is not established; and
- (v) the reform had a significant adverse effect on the amount of their remuneration and, therefore, on their future pensions.

This plea is unfounded.

The question of whether the abolition of automatic step advancement based on seniority infringed an acquired right has already been addressed and rejected by the Tribunal. In Judgment 4711, consideration 8, the Tribunal held that staff had no acquired right to automatic step advancement based on seniority. The Tribunal recalled that the amendment of a provision governing officials' situations to their detriment constitutes a breach of an acquired right only when such an amendment adversely affects the balance of contractual obligations, or alters fundamental terms of employment in consideration of which the officials accepted an appointment, or which subsequently induced them to stay on. In order for there to be a breach of an acquired right, the amendment to the applicable text must relate to a fundamental and essential term of employment. Judgment 4711 considered the situation of a staff member who was transposed into the new career system and, thus, was no longer entitled to automatic step advancement based on seniority, but still had the opportunity of step advancement based on the appraisal of performance and expected competencies. In such a situation, according to consideration 8 of Judgment 4711, there is no unreasonable alteration to the balance of contractual obligations, as the step advancement is related to the discharge of the staff members' obligations; and there is no alteration of the fundamental terms of employment in consideration of which the official accepted the appointment (see Judgment 4274, considerations 16 to 18, for a similar reasoning in a similar situation).

The same principle was stated in Judgments 4990, 4889, 4712, and 4710, and, in addition, in Judgment 4888, considerations 7 to 10, whereby the Tribunal dismissed the applications for review filed against Judgments 4712, 4711, and 4710.

The Tribunal also held in Judgment 4889, consideration 7, that staff rules providing for the grant of promotion within an international organisation do not confer any acquired rights on staff. Unless the new rules substantially deprive staff of their former prospects for advancement, an organisation always has the ability to amend those arrangements according to need.

In a case where the complainant was in a specific situation and, on the one hand, he was no longer entitled to automatic step advancement according to the former career system, and, on the other hand, he was not entitled to step advancement based on merit according to the new career system, the Tribunal held that this did not imply either that an acquired right was infringed or that his career was “frozen” (see Judgment 4990, consideration 3).

Additionally, the Tribunal has already addressed the specific situations of the members of the Boards of Appeal and held that the new career system does not alter their independence and does not infringe their acquired rights and legitimate expectations (see Judgments 5186, considerations 13 to 16, and 5185, consideration 11; see also Judgment 4990, consideration 4). There are no grounds for a different reasoning in the present case.

The Tribunal held in Judgment 5186, consideration 13:

“As regards members of the Boards of Appeal, the Tribunal considers that the examination of the specific provisions concerning them cannot but lead to the same conclusion. Firstly, Article 2 of decision CA/D 4/15 had provided that, during the transitional period defined therein, they were to receive an automatic salary advancement equivalent to the award of one additional step, and this increase was then included, pursuant to Article 8 of decision CA/D 8/16, in the basic salary guaranteed to the employees concerned. Secondly, Article 2 of the latter decision provided that members of the Boards of Appeal could be promoted on re-appointment, provided they were recommended for promotion by the President of the Boards of Appeal, based on an assessment of their merits. Moreover, the complainant himself benefited from these arrangements, as he received a salary advancement in July 2015 and was promoted to grade G15, step 1, on 1 June 2017. Lastly, members of the Boards of Appeal have several career outlets available to them, such as becoming [chairperson] of one of the Boards.

Having regard to these various considerations, the Tribunal finds that the changes made to the previous career regime for members of the Boards of Appeal did not alter their fundamental terms of employment, within the meaning of the abovementioned case law, and that the complainant's plea alleging a breach of his acquired rights cannot, therefore, be upheld."

12. The complainants' contention that the reform breached their legitimate expectations has already been addressed and dismissed by the Tribunal, in Judgment 5186, consideration 15 (see also Judgment 5185, consideration 13). There are no grounds for a different reasoning in the present case.

It is well established in the Tribunal's case law that no breach of legitimate expectations can occur when the rule on which the expectations claimed by an employee are based has been lawfully abolished (see Judgments 5071, consideration 13, 4990, consideration 4, 4712, consideration 5, and 3256, consideration 16).

The Tribunal held in Judgment 5186, consideration 15:

"The complainant maintains that the transposition of his grade into the new career system breached the principles of good faith and legitimate expectations.

However, his line of argument on this point, which amounts, in essence, to an allegation that his legitimate expectations were disregarded, will be rejected.

It is well established by the Tribunal's case law that no breach of legitimate expectations can occur when the rule on which the expectations claimed by an employee are based has been lawfully abolished (see, in particular, Judgments 4990, consideration 4, 4712, consideration 5, and 3256, consideration 16). It follows from the foregoing that the abolition of the previous provisions of the Service Regulations governing the career development of Board of Appeal members was not, in itself, in any way unlawful.

It would, of course, have been possible for legitimate expectations to arise from an undertaking formally given by the EPO as to the retention of these old provisions or the anticipated content of the provisions which were to replace them (see Judgments 5072, consideration 16, 5071, consideration 13, and 4898, consideration 12). However, although the complainant refers in this regard to various documents submitted in evidence, the Tribunal considers that none of them contains any formal assurances as would constitute such an undertaking on the part of the Organisation.

That finding also applies to the aforementioned decision of 4 November 2015, which, as the complainant points out, contained the assertion – which subsequently turned out to be inaccurate on the introduction of the career regime specific to members of the Boards of Appeal resulting from decision CA/D 8/16 – that, in the new job group into which he had been transposed, he could attain the salary corresponding to the final step of his former grade. It is clear from the wording of the decision in question on this point (‘you may still be able to reach the final step in grade [...]’) that this merely referred, in any event, to the possibility of this occurring and was not an undertaking by the EPO to that effect, or even a guarantee that the potential for it to happen would not subsequently change. The complainant cannot, therefore, justifiably claim that any assurances were given to him in that decision, or, as he does in the alternative, that the decision contained misleading information.”

13. As regards the complainants’ arguments contesting the need for the reform, it is not for the Tribunal, in any event, to review the advisability or merits of the changes which an international organisation wishes to make to salary structures or to the arrangements for career progression, that form part of general staff management policy which an organisation is free to pursue in accordance with its interests (see Judgment 4889, consideration 9, concerning the same reform contested in the present case, and the case law cited therein).

14. The complainants further contend that the reform implied a deferment in steps and of the maximum salary (except for Mr M.), and that this would amount to a “*de facto* disciplinary measure”, that is, a downgrading.

This plea is unfounded.

This issue has already been addressed and dismissed by the Tribunal in Judgment 5186, consideration 14, and there are no grounds for a different reasoning in the present case.

The Tribunal held in Judgment 5186, consideration 14:

“This plea is immaterial, since this abolition arose through the simple application of general statutory provisions and, therefore, could clearly not be regarded as a sanction for personal conduct. It should also be pointed out that the transposition of the complainant to the new career system did not lead to a lower salary or reduced responsibilities.”

15. The complainants argue that the six-month gap between the adoption and the entry into force of the reform implied that the salary increase was awarded in July 2015, taking into account the basic salary on 31 December 2014 without considering the right to salary advancement accrued in the meantime.

This plea is unfounded.

The Tribunal has already addressed and rejected similar arguments in Judgments 5070, consideration 9, 5069, consideration 11, 4990, consideration 6, 4889, consideration 8, 4712, consideration 5, and 4711, consideration 9, and there are no grounds for a different reasoning in the present case. The principle of *stare decisis* is applicable (see Judgment 5298, also delivered this day).

16. The complainants contend that the former “55/60-year Rule” should remain effective for those who reached that age during their ongoing mandate, irrespective of the entry into force of the reform. On the basis of that rule, chairpersons and members of the Boards of Appeal would reach the final step of their grade by 55 years of age or 60 years of age (as modified in 2007). Not “honouring” this rule had negative financial consequences on the complainants.

This plea is based on the assumption that the complainants had an acquired right or a legitimate expectation to the application of this rule. In light of its case law concerning the acquired rights and legitimate expectations, the Tribunal is satisfied that the “55/60-year Rule” was not an essential and fundamental term of employment and that its repeal did not breach any acquired rights or legitimate expectations. In this vein, the Tribunal recalls its case law concerning the repeal of a similar rule (the “age-50 rule”) by the EPO in 2004. On that occasion, the Tribunal held that the particular arrangements for the grant of promotion confer no acquired rights, because on recruitment, staff cannot foretell how they will fare in their career, and an organisation may always change the rules on promotion for the sake of efficiency and to cope with changing circumstances. As a result, the Tribunal held that “the age-50 rule [...] [was] merely one of the arrangements for the

grant of promotion within the meaning of the case law” (see Judgments 3524, consideration 3, and 3256, considerations 14 and 15).

Moreover, as argued by the EPO, the calculations submitted by the complainants concerning future losses due to the repeal of the “55/60-year Rule” are premature and speculative because they do not take account of various events, for instance, possible promotions upon reappointment.

17. The complainants allege a violation of the principle of equal treatment and non-discrimination, as the transposition rules were based only on the basic salary as of 31 December 2014 and did not take into account the years of experience/seniority in the grade. This criterion gave rise to unequal treatment of the complainants in comparison with chairpersons or members of the Boards of Appeal who had less seniority in these functions but who were transposed to a higher grade.

This plea is unfounded.

The issue raised by the complainants has already been addressed and rejected by the Tribunal (see Judgment 5071, consideration 16; see also Judgments 5186, consideration 16, and 5185, consideration 17). Again, the principle of *stare decisis* is applicable (see Judgment 5298, also delivered this day).

18. The complainants allege that the transitional period introduced by decision CA/D 4/15 was too lengthy. Given that decision CA/D 4/15 discontinued the application of the new career system to them and specific measures were introduced only in 2016 by decisions CA/D 6/16 and 8/16, they remained for two or even three years without a proper career system applicable to their specificities. Moreover, they had to operate for more than two years with support staff who were under the full authority of the President.

This plea is unfounded.

The Tribunal notes that during the transitional period, the complainants received automatic salary advancements, in keeping with Article 2 of decision CA/D 4/15. Furthermore, there is no evidence that the appointment of support staff by the President affected the

independence and operation of the Boards of Appeal. In this respect, reported rare incidents do not amount to convincing evidence.

In any event, the two-year timeframe to adopt the specific regime for the complainants was not unreasonably lengthy, having regard to the complexity of the decision to be taken.

19. The complainants allege a violation of the principle of non-retroactivity as follows:

- since, by means of decision CA/D 10/14 to be read in conjunction with the President’s declaration, the new career system was not applicable to them, the previous system was the default applicable one as from January 2015;
- therefore, decision CA/D 4/15 retroactively changed the situation by transposing the complainants and adopting transitional measures, but not a finalised career system.

This plea is unfounded.

The Tribunal has already held, in consideration 10 above, that it can be inferred, from a combined reading of the President’s declaration of 11 December 2014 and of Articles 1 and 3 of decision CA/D 4/15, that the complainants were never subjected to the new rules concerning probation, bonus, and merit-based step advancements.

The issue of retroactivity must be addressed with respect to Article 2 of decision CA/D 4/15, which established salary advancements as from 25 June 2015, based on the salary received on 31 December 2014, that is the last salary before the reform entered into force on 1 January 2015. As a result, the complainants who, in keeping with the former regime, would be entitled to automatic step advancement between 1 January 2015 and 24 June 2015, did not receive them.

The Tribunal notes that the President’s declaration could not be binding on the Administrative Council and, thus, the latter had the discretionary power, in adopting decision CA/D 4/15, to take transitional measures it deemed appropriate, without any obligation to be totally consistent with the President’s declaration.

Transitional measures fall within the discretion of an organisation, and it is not the role of the Tribunal to review them, unless they are manifestly erroneous or amount to an abuse of authority. This is not the case here. The reform entered into force on 1 January 2015, for all staff of the EPO, including the members of the Boards of Appeal, even though the transposition decisions were adopted six months later. Thus, it was reasonable that the transitional measures did not take into account the six-month gap between the entry into force of the reform and the transposition decisions, and did not consider the automatic step advancement that would have accrued until 24 June 2015 if the old rules had still been in effect.

The complainants err in assuming that, in light of the President's declaration, the reform was not applicable to them until 25 June 2015 and, thus, the former regime remained applicable. On the contrary, the reform entered into force, also for them, on 1 January 2015, for what concerned transposition into the new career system, and, thus, as from 1 January 2015, the former automatic step advancement was no longer applicable. It was lawfully replaced, for the whole year 2015, by the mechanism established in Article 2 of decision CA/D 4/15.

20. The complainants lament the failure by the EPO to act in good faith and to abide by its duty of care regarding the independence of the members and chairpersons of the Boards of Appeal. This is demonstrated, in the complainants' view, by the failure to take into account the "months in step" obtained until 31 December 2014 or until 1 July 2015, and by the fact that the President of the Office ignored the issues raised regarding the specific situation of the members and chairpersons of the Boards of Appeal.

This plea is unfounded.

The Tribunal notes that the EPO did seek to mitigate the effects of the reform by guaranteeing officials the maintenance of their previous basic salary. Specifically, for members of the Boards of Appeal, an automatic salary increase mechanism was provided in Article 2 of decision CA/D 4/15, and an additional salary guarantee in Article 8 of

decision CA/D 8/16. The claim of breach of the EPO's duty of care cannot be upheld given these measures.

21. The complainants contend that the Appeals Committee's opinion was flawed, given that the Appeals Committee failed to address some of their arguments.

This plea is unfounded.

This issue has already been addressed and rejected by the Tribunal in Judgment 5186, consideration 4. The Appeals Committee adopted a single opinion upon a number of internal appeals, including those lodged by the present complainants.

While the appeal bodies must rule, in principle, on each of the pleas raised before them (see, for example, Judgment 4063, consideration 5), they are not required to respond in detail to all the arguments put forward in support of these pleas (see Judgments 5188, consideration 6, 5186, consideration 5, 4507, consideration 3, and 4165, consideration 8).

22. Since the complaints are unfounded on the merits, the Tribunal will not deal with the receivability issues raised by the Organisation, other than those specifically addressed by the Tribunal in the considerations above (see Judgment 4710, consideration 6).

23. In conclusion, as the complainants' pleas are unfounded, all their claims are rejected, and the complaints will be dismissed.

24. The applications to intervene must, as a consequence of the outcome of the complaints, also be dismissed.

DECISION

For the above reasons,

The complaints are dismissed, as are the applications to intervene.

In witness of this judgment, adopted on 12 May 2026, Mr Michael F. Moore, President of the Tribunal, Mr Clément Gascon, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 16 July 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

CLÉMENT GASCON

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.