

**B. (No. 3)**

**v.**

**EPO**

**142nd Session**

**Judgment No. 5314**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr L. C. B. against the European Patent Organisation (EPO) on 23 March 2022 and corrected on 25 April 2022, the EPO's reply of 15 November 2022, the complainant's rejoinder of 20 January 2023, the EPO's surrejoinder of 28 April 2023, the complainant's further written submissions of 20 February 2026 and the EPO's final comments thereon of 9 March 2026;

Considering the application to intervene filed by Mr D. B. on 22 December 2022, the EPO's comments of 5 April 2023 and the complainant's email of 31 March 2025 informing the Registry that he withdraws his application;

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, a member of the Boards of Appeal, challenges the decision not to promote him following the entry into force of the new career system.

The complainant joined the European Patent Office, the secretariat of the EPO, on 1 June 2010 and was appointed a member of the Boards of Appeal. He was reappointed for a second five-year term starting on 1 June 2015.

In the meantime, in December 2014, the Administrative Council 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. In June 2015, decision CA/D 4/15 introduced transitional measures for chairmen – as described in the rules, hereafter chairpersons – and members of the Boards of Appeal, temporarily exempting them from the rules on performance assessment and promotion. These measures were repealed by decision CA/D 8/16 of 30 June 2016, which established a specific career system for the chairpersons and members as of 1 January 2017. Hence, the complainant was assigned, on 1 January 2017, to grade G14, step 1.

In Communiqué 2/17 of 22 December 2017, the President of the Boards of Appeal provided guidelines for the evaluation of the performance of chairpersons and members of the Boards of Appeal as of 1 January 2018. He was responsible for drawing up evaluation reports and giving an opinion on reappointments and promotions, which were to be based on the evaluation reports drawn up for the chairpersons and members' current term of office. He added that the opinions and recommendations given before 1 January 2023 were to be based on staff performance during the relevant term of office prior to the entry into force of the guidelines.

In Communiqué 02/2018 of 30 January 2018 (hereafter Communiqué 2/18), the President of the Boards of Appeal laid down the rules governing the promotion of chairpersons and members of the Boards of Appeal before 1 January 2023. He indicated that the requirement to base promotions on performance could be applied for

the first time regarding his recommendations for promotion to the Administrative Council in March 2018. He added that members of the Boards of Appeal whose reappointment took effect in 2017 or early 2018 could be affected. The recommendations regarding promotion were endorsed by the Administrative Council on 21 March 2018 and published in document CA/28/18 of 5 April 2018. However, the list of those who were promoted was published only on 11 June 2018. The effective dates of promotion varied between January 2017 and May 2018.

On 4 June 2018, the complainant filed a request for review of the 21 March 2018 decision and asked to be promoted to grade G15, step 1, with retroactive effect from 1 January 2017. He also sought payment of interest from due dates and of the contributions to the pension scheme and the salary savings plan with respect to salary imbalances resulting from his requested assignment to grade G15, step 1. He alleged in particular discrimination on the ground that members of Boards of Appeal recruited after him were assigned to grade G15, step 1, with retroactive effect to 2017.

On 21 September 2018, the President of the Boards of Appeal to whom the matter had been referred as he was the competent appointing authority recommended, in document CA/C 16/18, rejecting the request for review as time-barred. The President considered that Communiqué 2/18 referred to members of the Boards of Appeal who had been reappointed in 2017 or early 2018, which meant that those reappointed in 2015 or 2016 were not eligible for promotion in the contested promotion exercise. Consequently, the complainant, who was not eligible for promotion, knew from the date of publication of Communiqué 2/18 that he would not be considered for promotion. Hence, his June 2018 request for review was filed beyond the three-month time limit set out in Article 109(2) of the Service Regulations for permanent employees of the Office.

By decision CA/D 17/18 of 10 October 2018, the Administrative Council dismissed the complainant's request for review as irreceivable on the ground that the opinion of the President of the Boards of Appeal was justified. The complainant was so informed by letter of 19 November

2018. Decision CA/D 17/18, together with the communication of 21 September 2018 (document CA/C 16/18) and document CA/68/18, was attached to the letter. On 19 February 2019, the complainant lodged an internal appeal against decision CA/D 17/18.

On 1 June 2020, the complainant was reappointed and promoted to grade G15, step 1, in accordance with Article 11(3)(b) of the Service Regulations.

In its opinion of 21 September 2021, the Appeals Committee unanimously found the appeal to be receivable on the ground that the complainant correctly challenged the Administrative Council's decision of 21 March 2018 and not Communiqué 2/18 as argued by the Administration. However, the majority of the Appeals Committee recommended rejecting the internal appeal as unfounded in its entirety. It considered that the allegation of unequal treatment and discrimination was unfounded, explaining that although the complainant was in a materially comparable situation to that of members of the Boards of Appeal who were eligible for promotion to grade G15, step 1, in 2017 or early 2018, a difference in treatment was justified by a legitimate aim, and the means used to achieve this aim were appropriate and proportionate. Indeed, decision CA/D 8/16 logically aligned the decisions on promotion with those on reappointment as they were based on the position of the President of the Boards of Appeal on performance. Therefore, the Administrative Council had objective reasons to make promotion and reappointment coincide. The majority found that the complainant was placed in a less favourable situation than other members of the Boards of Appeal since his possibility to be promoted was deferred until his reappointment in 2020. However, the new rules on promotion were applied prospectively as of 1 January 2017, and to all members of the Boards of Appeal. In addition, the measures were reasonable, considering the reform as a whole, and were proportional in order to guarantee the independence of the chairpersons and members of the Boards of Appeal. The majority also noted that the contested decision did not immediately and materially affect the complainant, who was merely facing a disadvantage as to his eligibility to be promoted, which could lead to a promotion in the future or not.

In addition, he had suffered no loss of income since decision CA/D 8/16 introduced a salary guarantee. The majority also explained that some promotions made in March 2018 were backdated to January 2017 for chairpersons or members of the Boards of Appeal reappointed in 2017 and who would have otherwise lost a possible promotion; however, in their case, the effective date of reappointment was after the entry into force of decision CA/D 8/16. To promote the complainant, who was reappointed in June 2015 for a second mandate, that is to say before the entry into force of decision CA/D 8/16, would have led to a disconnection between the date of reappointment and the date of promotion. Hence, no exception was justified in his case. Lastly, the Appeals Committee unanimously recommended awarding the complainant moral damages for the unreasonable length of the procedure.

By letter dated 23 December 2021, the Chairperson of the Administrative Council informed the complainant that, by decision CA/D 18/21 of 14 December 2021, the Administrative Council, which was the competent appointing authority, had rejected his appeal as unfounded for the reasons stated in the Appeals Committee's recommendations. It also agreed to pay him 200 euros in moral damages for the length of the procedure. This is the impugned decision.

The complainant asks the Tribunal to set aside decision CA/D 18/21 of 14 December 2021, as well as the Administrative Council's decision of 21 March 2018 not to assign him to grade G15, step 1. He also seeks to be assigned to grade G15, step 1, effective 1 January 2017, "with all legal consequences", and to be paid interest at the rate of 5 per cent per annum on the remuneration arrears from 1 January 2017 until the date of payment. In addition, he seeks an award of moral damages, as well as costs for the preparation of this complaint and his internal appeal.

The EPO asks the Tribunal to reject the complaint as partly irreceivable regarding some claims, namely the claim to be appointed to a higher grade, as it amounts to an injunction, which the Tribunal is not competent to order, and the claim for moral damages, as it is filed

for the first time with the Tribunal. In addition, the EPO submits that the complaint is unfounded in its entirety.

### CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of 14 December 2021 whereby the Administrative Council, endorsing the recommendation of the majority of the Appeals Committee, confirmed the 21 March 2018 decision of the Administrative Council – published in document CA/28/18 of 5 April 2018 – not to promote him from grade G14, step 1, to grade G15, step 1, during the first promotion exercise that followed the implementation of the new career regime specific to members of the Boards of Appeal (including therein the chairpersons) provided for by decision CA/D 8/16 of 30 June 2016.

2. The complainant's 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.

3. It is useful to note that the adoption of a specific career regime for the members of the Boards of Appeal formed part of the introduction of the new career system for the Office's employees, resulting from decision CA/D 10/14 of 11 December 2014. 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 connected with the need to safeguard the independence conferred on them by Article 23 of the European Patent Convention. 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 the aforementioned decision CA/D 8/16, which took effect on 1 January 2017.

The decision not to promote the complainant, which prompted the present dispute, was contained in a deliberation of the Administrative Council of 21 March 2018, which endorsed the recommendations made by the President of the Boards of Appeal in Communiqué 2/18 of 30 January 2018. The purpose of the said deliberation of 21 March 2018 was to decide on applications for reappointment, and potential promotion on reappointment, of members of the Boards of Appeal whose five-year term of office was due to expire in 2017 or early 2018. The complainant was considered ineligible for promotion because, since his initial term of office had been renewed on 1 June 2015, he did not fall within the group of staff concerned.

4. It is appropriate, at the outset, to establish the scope of the present complaint. In his rejoinder, the complainant affirms that his complaint is not about “promotion” but about “transposition” into the new career system, and submits arguments concerning his transposition into the new career system. The Tribunal notes that the complainant has challenged his transposition into the new career system in a different complaint, which has been decided by the Tribunal in Judgment 5312, delivered the same day as the present judgment. As already noted in the facts and in consideration 3 above, the present dispute has been prompted by the first promotion exercise carried out in the decision adopted on 21 March 2018. Accordingly, any issue raised by the complainant in his rejoinder, regarding the transposition decision, falls outside the scope of the present complaint.

5. In his first plea, the complainant alleges a violation of the principle of equal treatment and non-discrimination, as follows:

- (i) there was no relevant difference warranting a different treatment among different members of the Boards of Appeal;
- (ii) the date of entry into force of decision CA/D 8/16 (1 January 2017) occurred two years after the entry into force of the new career system (1 January 2015); this was arbitrary and resulted in

less senior members being promoted, whereas he remained assigned to the grade G14 like newly appointed staff, despite his six-year seniority;

- (iii) the complainant was denied a reasonable interpretation of the transitional provisions which would have been justified in order to avoid a manifestly arbitrary and unreasonable result;
- (iv) Communiqué 2/18 by the President of the Boards of Appeal was arbitrary, given that three members of the Boards of Appeal, who were promoted to grade G15, step 1, as from 1 January 2017, had been reappointed before 1 January 2017, that is, before the entry into force of decision CA/D 8/16. They were thus in an identical situation as the complainant;
- (v) the contested decision did not pursue a legitimate aim: the Appeals Committee examined whether decision CA/D 8/16, which abolished the former transitional measures for presidents and members of the Boards of Appeal, pursued a legitimate aim, but this finding is immaterial, since the complainant had challenged decision CA/28/18 and not decision CA/D 8/16. Even accepting the Appeals Committee's finding that the aim pursued was to align promotions with reappointments in order to safeguard the independence of the members of the Boards of Appeal and that this aim was lawful, the contested decision still did not pursue a legitimate aim, given that at least 20 members of the Boards of Appeal were promoted before their reappointment; and
- (vi) the difference in treatment resulting in his non-promotion violated the principle of proportionality; he had to wait until 1 June 2020 to be promoted to grade G15, step 1. Hence, he was immediately adversely affected by his non-promotion, as he did not benefit from the salary increase associated with a promotion (approximately 1,100 euros per month, which would amount to about 45,100 euros for the period), for more than three years (from 1 January 2017 until 31 May 2020).

In his further written submissions, the complainant adds that:

- (vii) his understanding of Article 8 of decision CA/D 8/16 is in line with the Tribunal's interpretation in Judgment 5190 but Communiqué 2/18 by the President of the Boards of Appeal departed from Article 8, paragraphs 2 and 4, of decision CA/D 8/16 as understood by the Tribunal, to remove the hardship of the literal interpretation of Article 8 of decision CA/D 8/16. In doing so, Communiqué 2/18 discriminated against the complainant;
- (viii) the President of the Boards of Appeal as the author of Communiqué 2/18 has no power to unilaterally change Article 8 or any other provision of decision CA/D 8/16; and
- (ix) three colleagues were reappointed on 29 June 2016 and were promoted during the first promotion exercise.

6. It is appropriate to recall that Article 2 of decision CA/D 8/16 amended Article 11 of the Service Regulations, entitled "Assignment", by introducing a paragraph 3 which, in relevant part, read:

"(3) Members of the Boards within the meaning of Article 1, paragraph 4, shall be assigned as follows:

- (a) on their first appointment, grade G 14, step 1, for members [...];
- (b) grade G 15, step 1, for members who have completed at least a term of five years, provided they have been recommended for promotion to this higher grade and step by the President of the Boards of Appeal. In the absence of such a recommendation for promotion on re-appointment, they shall remain at their grade and step and continue to receive the net basic salary they were paid during their previous term.  
[...]"

Article 8 of decision CA/D 8/16, which provided for transitional measures concerning the implementation of the reform resulting from this decision, stipulated the following in its paragraphs 2 and 4:

"(2) A member of the Boards within the meaning of Article 1, paragraph 4, [of the Service Regulations] already in service on 31 December 2016 shall be assigned to the grade and step specified for his job group in Article 11(3)(a) of the [Service Regulations]. If, however, his net basic salary as at 31 December 2016, including any salary difference guaranteed under the new career system for all staff (Article 56(4) of [decision]

CA/D 10/14) and any full advancement of salary acquired by that date, is higher than that payable for that grade and step, he shall continue to receive the higher salary until the end of his term. This higher salary shall also be taken into account for pension purposes.

[...]

(4) If, after expiry of his term, a member of the Boards in job group 3 already in service on 31 December 2016 is re-appointed in the same job group, he shall be assigned to a grade and step in accordance with Article 11(3)(b) [of the Service Regulations]. If, however, the net basic salary within the meaning of paragraph 2 above which he was paid during his previous term is higher than that payable for that grade and step, he shall continue to receive the higher salary until the end of his new term. This higher salary shall also be taken into account for pension purposes.”

Communiqué 2/18 adopted by the President of the Boards of Appeal, containing the criteria for promotions of board members during the transitional period, identified the eligible members by making reference to Boards of Appeal members whose reappointment “took effect in 2017 or early 2018”.

7. The Tribunal held, in Judgment 5190, considerations 11 and 12, that it follows from the combination of the aforementioned provisions of Article 8(2) of decision CA/D 8/16 and Article 11(3)(a) of the Service Regulations, as amended by that decision, that the members of the Boards of Appeal already in service on 31 December 2016 were to be assigned to grade G14, step 1, on the date when that decision came into force, in other words – pursuant to Article 13 of the decision – on 1 January 2017. In this respect, it is clear from these provisions that the transposition of the employees concerned on that date had to be construed as a “first appointment” within the meaning of Article 11(3)(a) referred to above.

In Judgment 5190, consideration 11, the Tribunal held that it also follows from the combination of the abovementioned provisions of Article 8(4) of decision CA/D 8/16 and of Article 11(3)(b) of the Service Regulations, to which Article 8(4) refers, that members of the Boards of Appeal who underwent this reclassification that is grade G14, step 1, on 1 January 2017 could only be promoted to grade G15, step 1, on a renewal of their term of office after 31 December 2016. Although

the complainant argues, in support of his contention, that Article 11(3) of the Service Regulations does not expressly contain such a proviso, he fails to take into account the provisions of Article 8(4) of decision CA/D 8/16, which specifically govern the situation of a Boards of Appeal member already in office on 31 December 2016, who, according to those provisions, could only be promoted “after the expiry of [his] term”. Given the context for this wording, it is clear that the term being referred to was the one that was in progress when the reform came into force.

Thus, the choice to apply that rule to the promotion exercise at issue was in keeping with the actual wording of decision CA/D 8/16.

As a result, the Administrative Council was right to consider that members of the Boards of Appeal who had been reappointed before 1 January 2017 could only potentially be promoted upon a subsequent renewal of their term.

This reasoning also applies in the present case.

8. The Tribunal also acknowledged, in Judgment 5190, consideration 12, that the approach taken by the authors of these regulations and transitional measures had some rather unusual consequences. It led to the situation where, for reasons that had nothing to do with the assessment of employees’ comparative merits, members of the Boards of Appeal who had been appointed since 2012 could be promoted to grade G15, step 1, on the basis of their dates of appointment – and, consequently, dates of reappointment – from 2017 onwards, whereas those appointed before 2012 – who had therefore been reappointed prior to 1 January 2017 – had to wait longer to be eligible for such promotion, even though they had been in office for a longer time. The Tribunal notes that the complainant, who had been appointed as a member of the Boards of Appeal on 1 June 2010, and who had been reappointed on 1 June 2015, was disadvantaged in this exact manner, since he was not eligible for promotion until 1 June 2020.

However, according to the Tribunal’s case law, an international organisation has wide discretionary power to determine salary structures or the arrangements for career progression that form part of

general staff management policy which the organisation is free to pursue in accordance with its interests (see Judgments 5072, consideration 9, 4889, consideration 9, 4274, consideration 15, and 3275, consideration 8). The same goes for the definition of transitional measures that may accompany a reform of staff regulations (see, in particular, with regard to the implementation of the new career system resulting from decision CA/D 10/14, Judgment 4711, consideration 10). The Tribunal can therefore only interfere with decisions taken by an organisation in these areas in case of a manifest error indicative of an abuse of this discretionary power. The Tribunal considers – in particular for the reasons which will be explained in the following considerations – that the peculiarities highlighted above are not sufficient to find that the EPO, in establishing the disputed transitional measures for career progression of the employees concerned, committed a manifest error of this kind.

9. As to the alleged violation of the principle of equal treatment, according to the Tribunal's case law, this principle requires, on the one hand, that officials in identical or similar situations be subject to the same rules and, on the other hand, that officials in dissimilar situations be governed by different rules defined so as to take account of this dissimilarity (see Judgments 5071, consideration 14, 4681, consideration 9, 4277, consideration 21, and 3900, consideration 12).

The Tribunal considers that, while the arguments put forward by the complainant in this regard are certainly not without substance, they cannot be accepted for the reasons set out below.

First, the Tribunal notes that the delayed progression suffered by those members of the Boards of Appeal who had already completed a full term of office on 31 December 2016, compared with those whose first term of office was still in progress on that date was – at least partially – compensated for, in terms of remuneration, by the guarantee to preserve their previous basic salary contained in Article 8(2) of decision CA/D 8/16. While it is true that, unlike some of his colleagues who had also completed a first term, the complainant did not, prior to his promotion to grade G15, step 1, receive a salary equal to or higher

than that attaching to that grade and step, it is clear from the evidence that he received a salary higher than that corresponding to grade G14, step 1, which therefore mitigated the consequences of the delayed progression complained of.

Dealing, more fundamentally, with entitlement to promotion as such, it should be emphasised that, where an international organisation is required to apply the principle of equal treatment to officials in dissimilar situations, the Tribunal's case law recognises the broad discretion that the organisation has in assessing the scope of the dissimilarities in question in the light of the rules concerned and in defining rules appropriate to those dissimilarities (see, in particular, Judgments 5071, consideration 14, 4995, consideration 16, 3034, consideration 24, 2194, consideration 6(a), and 1990, consideration 7). However, as the Tribunal held in Judgment 5190, consideration 18, it is inevitable that, when a reform of staff regulations is implemented, as in the present case, certain categories of employees will be affected differently depending on their particular attributes, such as their seniority or career progression, and, obviously, the organisation cannot be expected to define a specific legal regime for each of these categories. The choices made by the organisation in this respect can therefore only be criticised in the event of a manifest error constituting an abuse of its discretion in the matter.

In the present case, the Tribunal considers that the respective situations of those members of the Boards of Appeal who had already completed a full term of office and those whose first term of office was still in progress were not so dissimilar, in the light of the statutory provisions in question, as to require the EPO to apply separate rules to those categories of employees. Decision CA/D 8/16 cannot, therefore, be regarded as tainted, on this point, by a manifest error of assessment, and Communiqué 2/18 and the impugned decision adopted an approach consistent with decision CA/D 8/16.

10. The complainant invokes the similarity of the situation of those members who, like him, had been reappointed before 1 January 2017 and those who had been reappointed as from 1 January 2017, for

the purpose of grounding his allegation that members reappointed before 1 January 2017 should have been considered as eligible for promotion.

In this respect, the Tribunal notes that the aim of Communiqué 2/18 was to align promotion with reappointment. This choice, adopted in the context of transitional measures, is a discretionary one; it was reasonable and cannot be censured by the Tribunal.

11. The complainant's allegation that, despite the declared aim of Communiqué 2/18, more than 20 members were promoted before a decision on their reappointment had been adopted, fails.

The backdating of some promotions to 2017 aimed at offsetting the gap between the entry into force of decision CA/D 8/16 on 1 January 2017 and that of Communiqué 2/17 on 1 January 2018.

12. The complainant's allegation that three members of the Boards of Appeal were in the same situation as him, that is they had been reappointed before 1 January 2017, but, unlike him, were promoted during the first promotion exercise after the entry into force of decision CA/D 8/16 of 30 June 2016, is undemonstrated.

The situations of the complainant and of the three members of the Boards of Appeal to whom he refers were different in fact and in law.

The complainant was reappointed on 1 June 2015. The three members in question were reappointed more than one year later, during 2016, but their reappointment was effective on 1 January 2017.

Communiqué 2/18, containing the criteria for promotions of board members during the transitional period, identified the eligible members by making reference to Boards of Appeal members whose reappointment "took effect in 2017 or early 2018".

The relevant date for the eligibility for the promotion exercise was the date when the reappointment took effect, not the one when the reappointment decision was adopted.

Since the reappointment of the three members of the Boards of Appeal in question took effect on 1 January 2017, even though the reappointment decisions were taken at an earlier date, they were eligible for promotion, whilst the complainant was not eligible, considering that his reappointment was effective before 1 January 2017.

13. In light of the foregoing, the complainant's first plea is unfounded.

14. In his second plea, the complainant alleges a breach of the EPO's duty of care, as follows:

- (i) he expresses criticism towards the new career system;
- (ii) although the new career system was based on performance, he had to wait until he was reappointed (on 1 June 2020) to be rewarded for his excellent performance over a decade. This caused "unnecessary distress"; and
- (iii) his "hardship" was aggravated by the fact that the reappointments and promotions of members of Boards of Appeal are published within the EPO without laying down the criteria. Hence, it would be assumed that he did not qualify for promotion, whereas junior members did, and this was "humiliating".

This plea is unfounded.

First, any issue concerning the new career system falls outside the scope of the present complaint.

Second, the complainant's argument that he had to wait until 1 June 2020 for his promotion overlaps with the arguments contained in his first plea. Since the Tribunal held that the promotion exercise was lawful and that the transitional measures did not show manifest error or abuse, there are no grounds for a finding that the EPO breached its duty of care.

As to the alleged "hardship" stemming from the circumstance that the criteria for eligibility were not published, the Tribunal holds that from the mere reading of Communiqué 2/18 it is understandable that the complainant's non-promotion resulted from the implementation of

Communiqué 2/18 and decision CA/D 8/16, and not from his performance. Thus, the allegation of undue hardship is unsubstantiated.

15. In his rejoinder, the complainant seems to advance a new plea, or at least new arguments, to ground his request for moral damages. He alleges that the internal process was flawed because he was not given the opportunity to comment on the 21 September 2018 opinion expressed by the President of the Boards of Appeal, recommending that his request for review be rejected as irreceivable. As a result, the merits of his case were mentioned for the first time in the internal appeal procedure.

This plea is unfounded.

The complainant had the opportunity to comment on the case during the internal appeal process, where his case was approached on the merits. In these circumstances, moral prejudice is not established.

16. In his further written submissions, the complainant observes that further discrimination against him was perpetrated by means of the Administrative Council's decision CA/D 5/23 of 29 June 2023.

This contention is manifestly irreceivable as it is addressed against a decision which is not the subject matter of the present complaint.

17. In conclusion, since the complainant's pleas are unfounded, his claims are rejected and his complaint will be dismissed.

18. Given the outcome of the case, there is no need to deal with the receivability issues raised by the EPO, other than those specifically addressed by the Tribunal in the considerations above.

#### DECISION

For the above reasons,

The complaint is dismissed.

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.