

B. (Nos. 12 and 15)
(Application for execution)

B. (No. 17)

v.

EPO

128th Session

Judgment No. 4202

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgments 3887 and 3986 filed by Mr F. B. on 11 October 2018 and corrected 2 January 2019;

Considering the seventeenth complaint filed by Mr F. B. against the European Patent Organisation (EPO) on 11 October 2018 and corrected on 17 December 2018;

Considering Articles II, paragraph 5, VI, paragraph 1, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. Facts relevant to this case are to be found in Judgments 3887, 3986 and 4128. For present purposes, it is sufficient to recall that the complainant is a former staff member of the European Patent Office, the secretariat of the EPO, who was dismissed for misconduct by a decision of the President of the Office of 6 September 2013, which was confirmed by the President of the Office on 21 November 2013.

2. By a letter of 24 July 2018 the Principal Director of Human Resources informed the complainant that, in light of Judgment 3986 – which was delivered in public on 26 June 2018 on an application for execution of Judgment 3887 –, the Administration would forward his case in July to the Disciplinary Committee for that Committee to order a medical assessment of his health by an expert and to make a new recommendation. She added that he would then be contacted by the Disciplinary Committee, which would explain to him the next steps to be followed. She indicated that upon receipt of the opinion of the Disciplinary Committee the President would review the legal basis of his dismissal.

3. On 9 August 2018 the complainant wrote to the President asking him to execute Judgments 3887 and 3986, to provide him with the names and emails of the members of the Disciplinary Committee, to provide him with the information he had asked for in a communication of 2 August 2018 which had remained unanswered, and to provide him some evidence that the file pertaining to his case was forwarded to the members of the Disciplinary Committee. He also asked to be granted additional financial compensation for material and moral damages, and costs. On 21 August 2018, the Principal Director of Human Resources informed him that his case would be sent to the Disciplinary Committee that would convene after the summer break. Her letter of 24 July merely indicated that his case would be referred to the Disciplinary Committee in July and not that this Committee would examine it in July.

4. On 11 October 2018 the complainant filed a seventeenth complaint indicating on the complaint form that he was contesting the implied rejection of his request of 9 August 2018.

On the same day he filed with the Tribunal an application for execution of Judgments 3887 and 3986. On 19 December 2018, the complainant, who had been asked to correct his application for execution, stated that this was his “second and due Application for due Execution of such Judgments nr. 3887 & 3986”. He explained that that application and his seventeenth complaint were “not two different and separate Complaints”. The Tribunal nevertheless observes that he maintained both.

5. The Tribunal notes that the complainant's claims for relief in the application for execution of Judgments 3887 and 3986 are identical to those set out in his seventeenth complaint, and that the complainant relies on the same factual background. Although it is unusual that an application for execution is identical to a new complaint, the Tribunal finds it convenient to join the complaint and the application for execution.

6. The complainant asks the Tribunal to: set aside the President's implicit decision refusing to execute in full Judgments 3887 and 3986; to set aside the President's implied rejection of his request of 9 August 2018; to cancel "each one of all the several possibly detrimental consequences, as induced by each one of the several elements of any one of same impugned decisions, refusals and rejections", and to be reinstated. He also asks the Tribunal to order the President to answer the questions he raised in his request of 9 August 2018 and to disclose the names of several members of the "current" Disciplinary Committee.

7. By a letter of 12 February 2019 the Registrar of the Tribunal brought to the complainant's attention the fact that Judgment 4128, which had been delivered in public on 6 February 2019, was of direct relevance for the issues he had raised in his seventeenth complaint and in his application for execution of Judgments 3887 and 3986. The complainant did not react.

8. In Judgment 3986 delivered in public on 26 June 2018 on the application for execution of Judgment 3887, the Tribunal provided clear explanations as to how Judgment 3887 must be interpreted and executed. These issues cannot be reopened again.

9. Concerning the application for execution of Judgment 3986, the Tribunal finds that the process described in the letter of 24 July 2018 and the email of 21 August 2018 complies with the steps described in that judgment for executing Judgment 3887. It also notes that, contrary to the complainant's allegation, there was no implied rejection of his request of 9 August 2018 given that the EPO replied to his request on

21 August specifying the steps that would be followed to execute Judgment 3986. The Tribunal trusts that this procedure is ongoing and that the Disciplinary Committee has dealt with the complainant's case.

10. In so far as the complainant seeks reinstatement, the Tribunal recalls that in Judgment 4128 it decided the following:

“4. [...] the decision of 21 November 2013 was set aside only ‘in the part regarding confirmation of dismissal for misconduct in accordance with Article 93 of the Service Regulations, as [was] the same part of the decision of 6 September 2013’.

5. Following Judgments 3887 and 3986, the determination that the complainant was not reinstated [...] is *res judicata*. The EPO had no reason to reopen the case. [...]”

11. In the foregoing premises, the complaint and the application for execution are clearly irreceivable and must be summarily dismissed in accordance with the procedure set out in Article 7, paragraph 2, of the Rules of the Tribunal.

DECISION

For the above reasons,

The application for execution and the complaint are dismissed.

In witness of this judgment, adopted on 24 May 2019, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ