

**T. (No. 25), R. (No. 3), T. (No. 12)  
and W. (No. 9)**

**v.**

**EPO**

**132nd Session**

**Judgment No. 4429**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr I. T. (his twenty-fifth), Ms S. R. (her third), Mr P. O. A. T. (his twelfth) and Ms M. W. (her ninth) against the European Patent Organisation (EPO) on 16 April 2013 and corrected on 25 April, the EPO's single reply of 3 September, the complainants' rejoinder of 10 December 2013 and the EPO's surrejoinder of 17 March 2014;

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

Having examined the written submissions and decided not to hold oral proceedings, for which none of the parties has applied;

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

The complainants challenge a statement of the President of the European Patent Office alleging defamation.

Early November 2012, articles were published in two German newspapers concerning a proposal (draft resolution CA/98/12) made by the President of the European Patent Office, the EPO's secretariat, to pay a collective reward to staff in 2012 in light of the positive operating results. The articles highlighted some of the concerns raised by staff, through the Staff Union of the European Patent Office (SUEPO), experts and government officials who considered that rewarding staff for granting patents could raise concern about their independence, in particular for examiners, and would create an incentive for the mass granting of patents.

On 7 November 2012, the President wrote to all staff noting with regret that recent articles in the German press showed that the elementary principles of discretion and responsibility had not been followed. He stressed that the disclosure of an internal working document to the press was contrary to applicable rules and a “serious error”, which put into question the openness and transparency of the consultation and decision procedures in the EPO; it also constituted “grave misconduct”. He nevertheless continued to believe that a fruitful social dialogue within the EPO remained possible, and stated that free expression by staff representatives had a special value in the context of a social dialogue.

Shortly after, on 12 November, the complainants, who were employees of the EPO and local staff representatives (in the Munich office), wrote to the President contesting the unfounded and unjustified allegations he made in his communication. They asked him to clarify a few points, in particular whether he was accusing staff representatives of having unauthorised discussions with the media, or showing confidential documents to the media. They added that his false accusations were defamatory and insulting, and injured them in their capacity as staff representatives. Therefore, they asked him to “retract” his accusations and publicly apologise by 19 November. Having received no reply, they wrote on 21 November 2012 to the Chair of the Administrative Council and to the Chair of the Appeals Committee of the Administrative Council asking the Administrative Council to confirm, in a public statement, that it was not aware of any evidence suggesting that staff representatives were guilty of misconduct and to ensure that the President would not issue any further defamatory statements about staff representatives. They claimed compensation for damage to their reputation and costs. They added that, if the Administrative Council declined promptly to remedy the situation at its next meeting on 11 to 13 December 2012, their letter should be considered as an internal appeal under Articles 106 to 108 of the Service Regulations; an appeal against the President’s decision to defame staff representatives. The Director of the Secretariat of the Administrative Council acknowledged receipt of the letter on 22 November. The Administrative Council did not consider the matter at its December meeting. Hence, on 16 April 2013, each complainant filed a complaint with the Tribunal against the implied rejection of their request of 21 November 2012.

The complainants ask the Tribunal to declare that they are not guilty of any misconduct and that the EPO President was wrong to make a statement suggesting otherwise. They claim compensation, in the amount of 20,000 euros each, for the harm caused to their reputation, and 10,000 euros each for the failure to hear their internal appeals. They also claim moral damages for the moral injury suffered pursuant to the President's statements as well as costs.

The EPO asks the Tribunal to reject the complaints as irreceivable for failure to exhaust internal means of redress, and otherwise devoid of merit.

### CONSIDERATIONS

1. This judgment concerns four complaints filed on 16 April 2013 by four EPO employees, who at the relevant time were staff representatives. The complainants' arguments are embodied in one brief and arise from the same factual circumstances. Thus, the Tribunal joins the complaints and will rule on them in a single judgment.

2. By letter dated 12 November 2012, the complainants wrote to the President stating that his 7 November 2012 memorandum, published on the Intranet accessible to all employees, contained unfounded, unjustified, and insulting allegations against them, and that they felt injured by the defamatory accusations and therefore asked him to remedy the situation by 19 November 2012. The letter concluded: "[We] further draw your attention to the fact that your personal legal immunities are subject to waiver by the Administrative Council under Article 19(2) of the Protocol on Privileges and Immunities of the EPO. [We] sincerely hope that this matter will be resolved amicably." Having received no reply within the stated deadline, the complainants wrote to the Chairs of the Administrative Council and of the Appeals Committee of the Administrative Council in a single letter dated 21 November 2012, with the following subject headings:

“President's defamation of staff representatives

Request for exoneration

Appeal against [the] President's decision to defame staff representatives.”

In the letter it was noted that “[p]ursuant to Article 4 [of the] European Patent Convention, the Administrative Council exercises general oversight over the work of the President”. Thus, the Administrative Council was requested to:

- “(i) confirm, in a public statement, that it is not aware of any evidence suggesting that staff representatives are guilty of any misconduct; and/or
- (ii) exercise its powers under Articles 11(3) [of the] European Patent Convention and/or Article 93 of the Service Regulations to ensure that the President issues no further defamatory statements about staff representatives.”

Furthermore, the complainants wrote that if the Administrative Council declined promptly to remedy the situation at its next meeting on 11 to 13 December 2012, the 21 November 2012 letter should be considered as an internal appeal under Articles 106 to 108 of the Service Regulations. It is worth noting that the complainants, in this combined request and announced appeal to the Administrative Council, refer to their previous 12 November 2012 letter to the President with the following words: “[t]he President was warned that should he fail to apologise by 19 November, the aggrieved staff representatives would take any actions necessary to remedy the harm caused to their reputations, including initiation of legal proceedings”.

3. In the present complaints, the complainants, relying on Article VII, paragraph 3, of the Tribunal’s Statute, impugn the Administrative Council’s implied rejection of their 21 November 2012 request regarding the President’s statement of 7 November 2012, communicated to all staff, on the basis that “[t]he Council has met twice since the appeal was filed” and has failed to consider their “appeal”. The complaints are receivable *ratione temporis* since they were filed within ninety days running from the expiration of the sixty days allowed for the taking of the decision on the claim made by the complainants, as no explicit decision was made by the Administrative Council on that request.

4. On the merits, the Tribunal will address, as a threshold issue, the question stemming from the Administrative Council’s failure to consider the complainants’ 21 November letter to the Chair of the Administrative Council as an internal appeal. The complainants expressly requested that should the Administrative Council decline to remedy the situation at its next meeting on 11 to 13 December 2012, their letter be

considered as an appeal against such an implied rejection of their request. It is not disputed that the Administrative Council did not process that appeal. The Tribunal recalls that the right to an internal appeal is a safeguard which international civil servants enjoy in addition to their right of appeal to a judicial authority (see Judgment 3127, consideration 13).

5. In the present case, as noted above, the Administrative Council implicitly rejected the complainants' request to consider their letter as an internal appeal, thus violating its duty of care and the complainants' right to an internal appeal.

6. In light of the above, the Tribunal decides that, as the Administrative Council implicitly rejected the complainants' request to consider their 21 November letter as an internal appeal if it did not approve their initial request to sanction the President, the implied decisions are unlawful and must be set aside. The cases will be remitted to the EPO for the complainants' appeals to be examined in accordance with the applicable rules. Considering that the cases will be sent back to the Organisation for a proper appeal procedure to be followed, the complainants are not entitled to an award of moral damages. As they partially succeed, they are entitled to costs in the total amount of 3,000 Swiss francs. All other claims are dismissed.

#### DECISION

For the above reasons,

1. The implied rejection identified in consideration 3 above is set aside.
2. The cases are sent back to the EPO in accordance with consideration 6, above.
3. The EPO shall pay the complainants costs in the total amount of 3,000 Swiss francs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 4 June 2021, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2021 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ