L. (No. 9)

v.

EPO

134th Session **Judgment No. 4550**

THE ADMINISTRATIVE TRIBUNAL,

Considering the ninth complaint filed by Mr M. L. against the European Patent Organisation (EPO) on 5 August 2020 and corrected on 9 September 2020, the EPO's reply of 15 January 2021, the complainant's rejoinder of 17 February and the EPO's surrejoinder of 21 May 2021;

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 neither party has applied;

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

The complainant contests the "social democracy" reform introduced by decision CA/D 2/14 and implemented in particular by Circular No. 356.

Before retiring on 1 December 2015, the complainant was an examiner in the European Patent Office, the Secretariat of the EPO. He was a full member of the Appeals Committee appointed by the Central Staff Committee when the Administrative Council adopted decision CA/D 2/14 on 28 March 2014. The reform, which amended the legal framework for social dialogue, entered into force on 1 April but transitional measures were established. In the framework of the reform, the President of the Office adopted, on 2 April, Circular No. 356

concerning the resources and facilities to be granted to the Staff Committee.

On 10 June the complainant filed a request for review with the President against the implementation of decision CA/D 2/14 and, in particular, Circular No. 356. On the same day, he filed a similar request for review with the Administrative Council, which was subsequently redirected to the President of the Office as the competent appointing authority. The President rejected both requests on 11 August on the ground that the complainant was challenging general decisions which had no immediate adverse effect on him individually.

The complainant filed an appeal on 29 September 2014 in his capacity as an employee and in his capacity as a full member of the Appeals Committee since 2011. He contended that he had a cause of action because he was an "agent of the staff representation". Indeed, he was a member of the Appeals Committee appointed by the Staff Committee and, though not an elected staff representative, should be considered as performing his functions on the Appeals Committee as a "staff representation activity"; staff representatives, he argued, have the right to challenge general decisions. Consequently, he was entitled to challenge decision CA/D 2/14 and Circular No. 356, which had an important impact on the functioning of the Appeals Committee. He alleged in particular that the contested decisions were procedurally flawed, they violated the principle of equality of arms, they impaired the independence of the members of the Appeals Committee, and violated the staff's acquired rights. His mandate as a member of the Appeals Committee ran until the end of the year, but it had ended prematurely on 1 October 2014 as he was not an elected staff representative; he could, however, continue to examine the appeals that had already been assigned to him.

On 5 March 2020 the Enlarged Chamber of the Appeals Committee issued its opinion on several appeals filed against decision CA/D 2/14, including the one filed by the complainant. The Appeals Committee was divided on various issues, with only a majority of its members concluding that no illegality was established. However, it unanimously agreed that there was room for serious doubts as to the manner in which the reform was enacted and implemented, taking into consideration that

the reform had a far-reaching impact on the prerogatives and functions of staff representatives and the electoral rights of every staff member. With respect to the complainant, it unanimously found that the appeal was receivable, stating that those who, like him, had filed their appeal in their capacity as a member of a statutory body, had a cause of action to challenge the lawfulness of decision CA/D 2/14. This decision had a direct adverse impact on them in the discharge of their functions. It noted that, following the modifications introduced by the reform, the complainant's mandate as a full member of the Appeals Committee had ended prematurely on 1 October 2014, despite the fact that he had been appointed by the Central Staff Committee to perform that function until the end of the year. The Appeals Committee unanimously recommended granting him 600 euros in moral damages for undue delay in the internal appeal procedure. The majority recommended awarding him 2,000 euros in view of the "unjustified interference with [his] freedom of association" as a result of the premature termination of his term of office on the Appeals Committee. The majority found that the Office had failed to demonstrate that it would have been impossible, or at least impracticable, to bring in the reform without interfering with the duration of the complainant's term of office.

By a letter of 18 May 2020, the complainant was informed of the President's decision to endorse the recommendation of the majority of the Appeals Committee for the reasons it stated. However, the President disagreed with the finding that the premature termination of the complainant's term of office had violated his individual rights; he rather considered that it violated the staff representation's rights. He therefore decided to award the complainant moral damages for the early termination of his term of office, but the amount would be allocated to the training and duty travels budgetary line. In accordance with the Appeals Committee's unanimous recommendation, he awarded the complainant 600 euros for the length of the internal proceedings insofar as he had lodged his appeal in his individual capacity, and would reimburse part of the costs he had incurred. This is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision, to quash *ab initio* the decisions to amend Article 2(2) of the Service Regulations, to introduce new Articles 2(4) and 2(5) of the Service Regulations, to amend Article 111(3) of the Service Regulations and to amend Article 5 of the Implementing Rules for Articles 106 to 113 of the Service Regulations. He also asks the Tribunal to declare null and void *ab initio* the modified or newly introduced provisions. He further asks the Tribunal to declare Circular No. 356 null and void *ab initio*, and to order that all complainants, with cases being treated by the Appeals Committee after 1 July 2014, are offered the possibility to have their appeals re-examined anew by the Committee, composed with different members, and that the final decision of the President on these cases be declared null and void. He asks the Tribunal to order that Communiqué No. 45 be reinstated, to quash *ab initio* decision CA/D 2/14 in its entirety, and to declare "the content of the document CA/D 2/14 [...] void *ab initio*". He seeks an award of moral damages in the amount of 100 euros for each case examined by the Appeals Committee after 1 July 2014 and until the present case is finally adjudicated. He further seeks compensation for undue delay in the internal appeal proceedings as well as 500 euros in costs for both the internal appeal and the proceedings before the Tribunal.

In his rejoinder, he claims "exemplary compensation of moral damages". He adds that, as he was a member of the Appeals Committee, he should be entitled to moral damages "proportional" to the unlawful behaviour of the EPO.

The EPO asks the Tribunal to dismiss the complaint as partly irreceivable for lack of a cause of action, and otherwise unfounded.

CONSIDERATIONS

1. The complainant, a former EPO employee who retired on 1 December 2015, was a full member of the Appeals Committee appointed by the Central Staff Committee when decision CA/D 2/14, introducing the "social democracy" reform, was adopted by the Administrative Council on 28 March 2014.

One element of this reform involved amending Article 36 of the Service Regulations and the Implementing Rules for Articles 106 to 113 of these Regulations in such a way that the Staff Committee would henceforth be obliged to choose the persons whom it appointed to sit on most of the statutory bodies of the Organisation, and in particular on the Appeals Committee, exclusively from among its own members, whereas it had previously been possible to appoint other employees of the Office for this purpose. This put an end to a practice whereby the Staff Committee often preferred to appoint staff members – sometimes referred to as "experts" – to these various bodies, and in particular to the Appeals Committee, who were chosen from outside its own membership on the basis of their ability to represent the staff in the most effective way.

The complainant's mandate as a member of the Appeals Committee appointed pursuant to the afore-mentioned practice was ended prematurely as from 1 October 2014 in line with the transitional measures laid down in decision CA/D 2/14.

2. Considering that this aspect of the reform, as well as other measures introduced at the same time, seriously infringed the staff's rights regarding the composition and operation of the Appeals Committee, the complainant initiated the internal appeal procedure challenging decision CA/D 2/14 as well as Circular No. 356 of 2 April 2014, which implemented decision CA/D 2/14. He indicated that he was acting both in his capacity as a staff member and as a member of the Appeals Committee appointed by the Staff Committee. His appeal, together with those lodged by other employees, led to the decision of the President of the Office of 18 May 2020 which is impugned in the present proceedings. In that decision, the President rejected most of the appellants' claims.

It should be recalled that in Judgment 4482, delivered in public on 27 January 2022, the Tribunal, ruling on other complaints filed against the decision of 18 May 2020, set aside part of Article 6 of decision CA/D 2/14, which had amended Article 35 of the Service Regulations to the effect of removing the staff's right to determine the rules governing elections to the Staff Committee and of transferring to the President of the Office the authority to determine them. The Tribunal found that, by

adopting this provision, the Administrative Council had violated the staff's right to freedom of association.

3. In the present case, the central issue to be decided is that of the lawfulness of the restriction placed on the Staff Committee's freedom to choose the staff it appoints as members of the Appeals Committee. The complainant submits, in substance, that by prohibiting the Staff Committee from appointing to the Appeals Committee persons other than its own members, decision CA/D 2/14 unlawfully infringed the staff's right to freedom of association.

4. The Organisation contests the receivability of the complainant's claims against decision CA/D 2/14 on the ground that he has no cause of action to contest a general decision of this kind.

But this objection to receivability must be rejected.

Although it is well established in the Tribunal's case law that a staff member cannot challenge a decision of general application unless and until an individual decision adversely affecting her or him has been adopted (see, for example, Judgments 1852, consideration 3, 2822, consideration 6, or 4430, consideration 14), an exception is made where the decision of general application does not require any implementing decision and immediately affects individual rights (see, for example, Judgments 3761, consideration 14, 4430, considerations 14 and 15, or 4482, consideration 4).

In the present case, on the one hand, the implementation of decision CA/D 2/14 did not require any individual implementing decision within the meaning of the case law. On the other hand, as the Tribunal has already stated on several occasions, staff members of an international organisation enjoy the right to association freely and there is an implicit clause in their contract of employment compelling the organisation to respect that right (see, in particular, Judgments 496, consideration 6, 3414, consideration 4, and 4482, consideration 5). As will be explained below, the general decision at issue directly infringed that right; consequently, the complainant was – like any other employee of the Office – entitled to challenge it in his capacity as a staff member.

Furthermore, the complainant also has a cause of action to challenge decision CA/D 2/14 in his capacity as a member of the Appeals Committee appointed by the Staff Committee insofar as, irrespective of the more general impact of the reform in question on the functioning of the Appeals Committee, that decision affected the system under which he was a member of that body and ended prematurely his mandate as a full member of it.

Finally, although the defendant submits, referring to Judgment 4194, that the complainant's cause of action to bring proceedings in this second capacity no longer exists because he was no longer a member of the Appeals Committee when he filed the complaint with the Tribunal, this argument is based on a misinterpretation of that judgment, which concerns a different situation involving the staff representation's right to have the organisation comply with a specific obligation (such as the communication of information in the case in question).

5. In support of his claims against decision CA/D 2/14, the complainant argues subsidiarily that this decision was adopted unlawfully because the composition of the General Advisory Committee, which was consulted prior to the deliberation of the Administrative Council, was flawed. However, pleas of this nature cannot be usefully raised in the present proceedings. Indeed, the complainant cannot approbate and reprobate. The invocation of the right to freely associate upon which he wished to engage the Tribunal's jurisdiction renders irrelevant the question whether the decision was also legally flawed for the other reasons raised by the complainant in this case and therefore shall not be examined by the Tribunal (see above-mentioned Judgment 4482, consideration 6, and Judgment 4483, consideration 6).

6. In Judgment 4482 mentioned above, the Tribunal emphasised that the employees' right to freely associate was an essential right and recalled, in considerations 12 to 14, that the EPO must abide by it:

> "12. [...] There can be no doubt that freedom of association is a well-recognised and acknowledged universal right which all workers should enjoy. It is recognised as a right by the Tribunal (see Judgment 4194). It is a right recognised in the 1998 ILO Declaration on Fundamental Principles and

> Rights at Work, Article 2(a), as an obligation for all ILO Member States arising from the very fact of their membership in the ILO. Freedom of association is a right recognised by the 1966 International Covenant on Civil and Political Rights, Article 22, and also by the 1966 International Covenant on Economic, Social and Cultural Rights, Article 8.
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> 13. The Administrative Council of the EPO has itself recognised the importance of human rights when formulating the rights and obligations of staff. In a decision made at its 55th meeting in December 1994, which is reproduced before the text of the Service Regulations, it and the President noted that:
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> '[...] when reviewing the law applied to EPO staff the ILO Tribunal considers not only the legal provisions in force at the European Patent Organisation but also general legal principles, including human rights. The Administrative Council also noted with approval the President's declaration that the Office adheres to the said legal provisions and principles.'
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> 14. Indeed, and importantly, the Service Regulations themselves contained a provision concerning freedom of association in force both before and after decision CA/D 2/14. Article 30 was entitled 'Freedom of association" and provided and continues to provide: "Permanent employees shall enjoy freedom of association; they may in particular be members of trade unions or staff associations of European civil servants.' [...]"

7. The Tribunal considers that the Staff Committee, which is the body elected by the staff to represent them before the Office's bodies, must be free to choose the persons whom it appoints as members of the Appeals Committee, which is an essential joint body. This freedom of choice is one of the components of the staff members' right to freely associate.

The provisions of decision CA/D 2/14 at stake in the present complaint violated this right in two respects.

Firstly, decision CA/D 2/14 substantially restricted the Staff Committee's power with respect to appointing its members on the various statutory bodies as it requires the Committee choose amongst its own members, whereas it could previously choose among any staff in active employment in the Office. The Tribunal notes, in this respect, that the violation of the staff representative body's prerogatives is not limited to the appointment of the Appeals Committee's members, since the provisions in question also affect the conditions for the appointment

of the members of various other statutory bodies, but, in light of the parties' arguments, the Tribunal does not need to examine this more general aspect in the present judgment.

Secondly, decision CA/D 2/14, by restricting the Staff Committee's choice of persons it could appoint as members of the Appeals Committee, had a significant negative impact, for the reasons detailed below, on the quality of staff representation within the Appeals Committee and, consequently, on the composition of that joint body, which is no longer balanced.

8. In this respect, it is important to stress first of all that, although the Appeals Committee's members appointed by the staff representation obviously are not, contrary to the Staff Committee's members, defending the employees' interests as a matter of principle, since it is their responsibility – as it is the responsibility of the members of the Appeals Committee appointed by the President of the Office – to examine the appeals before them in compliance with the requirements of independence and impartiality, the very purpose of the joint composition of this body is nevertheless to allow the expression of the respective points of view and sensitivities of the members appointed by the President and by the Staff Committee. The balance between the representation of the Administration and that of the staff within the Appeals Committee is therefore a fundamental guarantee for employees.

Moreover, the Tribunal's case law requires, to ensure that this guarantee is effective, that this balance be respected not only in terms of the number of members sitting on the Appeals Committee, but also in terms of the quality of the staff representation provided within this body.

The Tribunal had to consider the regularity of the Appeals Committee's composition at a time when the Central Staff Committee refused – precisely as a sign of protest against the adoption of the provisions under discussion in the present case – to appoint its members to the Appeals Committee and when it had consequently been decided to convene the Appeals Committee without the members representing the staff representatives. The Tribunal held, in Judgment 3694, that such practice was illegal. It noted in consideration 6 the following:

> "[C]onsidering the quasi-judicial functions of the Appeals Committee, its composition is fundamental and changing it changes the body itself. While it is true that the fundamental functions of that body must not be paralysed, it is also true that the body itself cannot be changed through a changed composition. The balance sought to be achieved by the composition of this body, which includes members appointed by the Administration and the staff representation, is a fundamental guarantee of its impartiality. That balanced composition is an essential feature underpinning its existence. Without it, it is not the Appeals Committee."

Then, having to rule on the regularity of the Appeals Committee's composition at a time when the President of the Office had decided to make up for the absence of members appointed by the Central Staff Committee by replacing them with volunteers (this decision was made before the Service Regulations were amended in 2016 to expressly authorise such possibility in exceptional cases), the Tribunal also found the practice to be unlawful in Judgment 3785, reiterating the same reasoning and noting, in consideration 7, that volunteers did not have the required "representative capacity".

9. In the present case, it appears from the file that the obligation imposed on the Staff Committee to choose the members to be appointed on the Appeals Committee exclusively from among its own members substantially undermined, in various respects, the quality of the effective representation of staff on that body.

10. Firstly, this obligation had the practical consequence, given that the Staff Committee was also required by decision CA/D 2/14 to appoint from among its own members the persons called upon to represent the staff in numerous other statutory bodies, of considerably limiting the time that the members of the Staff Committee called upon to sit on all the bodies in question, and in particular on the Appeals Committee, could devote to these tasks. This limited time availability was such as to impair the ability of the staff representatives who were members of the Appeals Committee to perform their duties efficiently.

The EPO argues that it had decided, in view of the increase in the workload of the Staff Committee's members, to increase their number from 28 to 44. The complainant submits that the increase was not

sufficient to make the necessary appointments under satisfactory conditions and to respond to the Appeals Committee's needs on working time allocation, especially in the light of the massive increase in the number of appeals to be examined. This submission is not rebutted by the defendant, and is in fact corroborated by the undue delays often observed at the EPO regarding internal appeal proceedings – including in the present case.

11. Secondly, it should be stressed that the members of the Staff Committee, who are often staff union representatives, are usually elected by the staff on the basis of their ability to defend effectively the staff's collective interests before the Organisation's authorities. They do not necessarily have any specific training in relation to the Appeals Committee's role and their profile, which is well suited to the tasks of defending the position of a staff unions and social negotiation, is generally not in line with the functions of the Appeals Committee's members, which are completely different and require, in particular, some legal competence to be successfully exercised. This is the main reason for which the Staff Committee often preferred to appoint "experts" from outside its own members to sit on the Appeals Committee until decision CA/D 2/14 was adopted. That possibility no longer exists pursuant to the reform, which is likely to affect the quality of staff representation within the Appeals Committee, in that the specific points of view and sensitivities of the members of the Appeals Committee appointed by the Staff Committee may no longer be expressed, at all times, with the same relevance and weight.

12. Thirdly, as the complainant rightly points out, the appointment of Staff Committee members to serve as Appeals Committee members has the disadvantage of multiplying situations of conflict of interest, since they themselves lodge numerous appeals in their capacity as staff representatives.

Although the provisions governing the functioning of the Appeals Committee provide for mechanisms to deal with such conflicts of interest when they occasionally arise, it is obviously preferable to try to prevent them. In this regard, the reform at issue here, on the contrary,

creates an inherent risk that conflicts of interest will arise, insofar as, leaving aside the case where a member of the Staff Committee sitting on the Appeals Committee has personally lodged an appeal, the Appeals Committee is frequently called upon to hear appeals lodged, individually or collectively, by members of the Staff Committee. The examination of these appeals by members also belonging to the Staff Committee inevitably raises difficulties with regard to the requirement of impartiality. It could even, in some extreme cases, prove very difficult to convene a panel that could properly examine such appeals. From this point of view, the previous practice of appointing "experts" from outside the Staff Committee was undoubtedly more appropriate.

13. Finally, the quality of staff representation on the Appeals Committee resulting from the restriction of the Staff Committee's power of appointment will be further impaired by the fact that the President of the Office has retained the possibility of appointing to the Appeals Committee – whether as chairman, deputy chairman or member – any staff member in active employment. This unrestricted freedom of choice, which, in an asymmetrical manner, allows the President to appoint the persons with the best abilities and who can, consequently, be heard effectively within the framework of the Appeals Committee, confers a significant advantage on the Administration over the staff, in terms of the quality of its representation within the Appeals Committee. This further aggravates the imbalance created by decision CA/D 2/14 regarding the Appeals Committee's composition.

14. The reasons given by the EPO in its pleadings to justify the obligation now imposed on the Staff Committee to choose its appointees to the Appeals Committee exclusively from among its own members are essentially the following:

> "One of the main goals of the social democracy reform is to increase transparency, accountability and stability in the relationship between the Office and its staff and to enhance the principle of direct representativeness [...] Elected staff representatives should be the only interlocutors between management and staff. Accordingly, the reform requires that only elected staff representatives can be members of the [Appeals Committee]. This guarantees that the sensitivity of staff is represented and that those appointed

> members, while entirely independent in the discharge of their duties - they may never seek nor accept any instructions -, are accountable to their colleagues as to how they execute their mandate."

The Tribunal observes that these submissions stem from a certain lack of understanding of the specific nature of the tasks assigned to the members of the Appeals Committee appointed by the Staff Committee. The role of the members of the Appeals Committee is not to act as "interlocutors between management and staff". Moreover, they cannot, strictly speaking, be held "accountable to their colleagues as to how they execute their mandate" without jeopardising their independence and impartiality in the exercise of their functions.

It is clear, moreover, that these submissions do not take into account the various disadvantages, highlighted above, of limiting the Staff Committee's freedom of choice with respect to the appointment of members of the Appeals Committee.

Finally, it seems somewhat paradoxical that the EPO claims that it modified the previous arrangements on that point with a view to improving the conditions of staff representation within the Organisation when the Staff Committee was clearly opposed to this modification and in the absence of any evidence in the file that the Organisation was responding to a wish expressed by the staff members.

The EPO's argument cannot therefore lawfully warrant the violation of the employees' right to freely associate by restricting the Staff Committee's powers and undermining the quality of staff representation on the Appeals Committee.

15. It follows from the foregoing that, as requested by the complainant, Article 13 of decision CA/D 2/14, which amended Article 5 of the Implementing Rules for Articles 106 to 113 of the Service Regulations concerning the composition of the Appeals Committee, should be quashed to the extent that Article 5, paragraph 3, provides that, for the purpose of the application of Article 111, paragraphs 1(a) and (b), of the Service Regulations, the members and alternate members of the Appeals Committee appointed by the Staff Committee must be appointed "from among its members". As demonstrated above, this

provision is unlawful as it improperly restricted the staff representation body's freedom of choice with regard to such appointments.

Article 7 of decision CA/D 2/14, which amended Article 36 of the Service Regulations concerning the powers of the Central Staff Committee, should also be quashed to the extent that it provides, in Article 36(2)(a), that appointments to the statutory bodies for which the Central Staff Committee is responsible "shall be made from among elected Staff Committee members at either the local or central level, save for the members of the Disciplinary Committees and Selection Boards". This provision is also flawed insofar as it prevents the Central Staff Committee from appointing its members on the Appeals Committee, unlike for appointments to the other specific bodies it mentions, from outside the Staff Committee at either the central or local level.

With regard to the quashing of Article 7, the Tribunal notes that, although it is not one of the provisions of decision CA/D 2/14 that the complainant specifically requested to be quashed in his claims for relief, he has contested the lawfulness of that article in his complaint, and he seeks the quashing of decision CA/D 2/14 in its entirety. Consequently, the quashing of Article 7 by the Tribunal cannot be considered *ultra petita*. The quashing of Article 7 is necessary for the sake of consistency with the quashing of Article 13, because the two provisions are interdependent; leaving Article 7 as it stands would have the consequence of depriving the quashing of Article 13 of any effect.

16. The complainant's claims concerning other provisions of decision CA/D 2/14 will, on the other hand, be rejected.

The complainant challenges Article 2 of decision CA/D 2/14, which amended Article 2(2) of the Service Regulations to provide that employees on contract, like permanent employees, may act as members or chairman of the Appeals Committee. However, apart from the fact that the provision in question merely confirmed the text previously in force, the Tribunal is not convinced by the complainant's argument that the independence of employees on contract would necessarily be affected due to the fact that the continuation of their employment relationship would be "directly dependent on the goodwill of the President [of the

Office]". Indeed, the fact that these employees may face non-renewal of contract does not in itself disqualify them from sitting on the Appeals Committee, particularly given that Article 112 of the Service Regulations requires its members to be independent and impartial. Moreover, allowing only permanent employees to be appointed as members of the Appeals Committee would be an unjustified discrimination against employees on contract. Indeed, the career of any staff member is dependent on the Office's authorities.

The complainant also challenges Article 3 of decision CA/D 2/14, which inserted *inter alia* new paragraphs 4 and 5 into Article 2 of the Service Regulations providing that the President of the Office shall appoint the chairmen and deputy chairmen of various statutory bodies, with the exception of the Staff Committee, and adopt the rules of procedure of those bodies. With respect to the Rules of Procedure of the Appeals Committee, the President shall adopt the rules after consultation of the Chairman of the Administrative Council, as provided for in Article 12 of decision CA/D 2/14, which amended Article 111(3) of the Service Regulations. The complainant also contests that amendment. However, while it is true that the Staff Committee previously appointed one of the deputy chairmen of the Appeals Committee and that the Appeals Committee itself adopted its own Rules of Procedure, the contested amendments cannot be regarded as exceeding the limits of the discretion available to the Administrative Council to determine the operating procedures of the Office, as these amendments do not infringe the Appeals Committee's independence, or the employees' right to a fair internal appeals procedure.

With regard to the drafting of the Rules of Procedure of the Appeals Committee, which has since been entrusted – by virtue of another revision of the Service Regulations adopted in 2017 – again to the Appeals Committee, subject to their approval by the President of the Office, the Tribunal rejects as unfounded the complainant's contention that the transfer of competence to the President by decision CA/D 2/14 was in itself a breach of the principle of equality of arms to the detriment of staff members in the internal appeal procedure. Such a breach could only be identified if a particular provision of the rules adopted by the

President would favour the Administration to the detriment of the other party in the way internal appeals were conducted. However, it must be noted that the complainant does not challenge any specific provision of the Rules of Procedure of the Appeals Committee in his complaint before the Tribunal.

17. The complainant's claims concerning Circular No. 356 on the "[r]esources and facilities available to be granted to the Staff Committee" are also unfounded.

The complainant submits that the Circular provides for working time deductions for members of the Staff Committee sitting on the Appeals Committee, which are much more limited than those authorised by Communiqué No. 45 previously applicable. However, unless it would in itself undermine the possibility for the members of the Appeals Committee to properly carry out their duties, which is not established based on the pleadings, the mere fact that these new rules would be less favourable than the previous ones would not, in any event, be sufficient to render them unlawful. In particular, the complainant is wrong to believe that he can invoke the violation of an acquired right which the Organisation could not infringe.

The Tribunal notes, moreover, that the quashing of Articles 7 and 13 of decision CA/D 2/14, pronounced by this judgment for the reasons set out above, does not deprive Circular No. 356 of a legal basis. The complainant's claims that the Circular be declared null and void and that Communiqué No. 45 be reinstated are therefore rejected, without it being necessary to rule on the defendant's objection to their receivability.

The Tribunal observes, however, that, pursuant to the quashing of Articles 7 and 13, the Staff Committee will again have the possibility to appoint members of the Appeals Committee that are not among its members, and consequently the EPO will have to either amend Circular No. 356 or adopt new rules concerning the deduction of working time for those members of the Appeals Committee similar to those laid down in the Circular for members of the Disciplinary Committees and the Selection Boards appointed under the same conditions.

18. Since Articles 7 and 13 of decision CA/D 2/14 are unlawful, the impugned decision of 18 May 2020, by which the complainant's internal appeal and those of various other employees were decided, is itself unlawful as it was taken on the basis of a flawed opinion of the Appeals Committee. That is because, since the members of the Appeals Committee appointed by the Staff Committee had not been appointed under conditions which respected the Staff Committee's freedom of choice, the composition of that joint appeals body is irregular and the opinion rendered by it is substantially flawed.

The impugned decision will therefore be set aside insofar as it concerns the complainant's appeal, without there being any need to rule on the complainant's other arguments challenging the lawfulness of that decision.

19. The complainant requests that all staff members who have lodged an internal appeal which has been considered by the Appeals Committee since 1 July 2014, be given the opportunity to have it reconsidered with a view that a new final decision be taken. He seeks compensation in the amount of 100 euros for each case dealt with by the Appeals Committee between 1 July 2014 and the date of delivery of the present judgment. However, since the complainant does not provide evidence that he is acting on delegation of authority from the employees concerned, he has no standing to make such claims on their behalf, and cannot claim compensation for their own prejudices. His claims in that respect must therefore be rejected as they concern third parties.

Insofar as the afore-mentioned claim also concerns the complainant himself, the Tribunal considers that since the present judgment rules on all the claims he had submitted, it will not send the case back to the EPO for a fresh examination despite the fact that the impugned decision of 18 May 2020 is set aside. However, the complainant will be awarded, as requested, 100 euros in moral damages for the prejudice he personally suffered pursuant to the irregular examination of his internal appeal.

20. In the decision of 18 May 2020, the President acknowledged that the premature ending of the complainant's mandate, as well as that of four other employees appointed by the Staff Committee to sit on statutory bodies, in accordance with the transitional measures foreseen by decision CA/D 2/14, was an unlawful act for which an award of moral damages was warranted. However, considering that the damage concerned the staff representation, and not the employees themselves, the President decided to depart on this point from the opinion of the Appeals Committee and to pay a global sum of 10,000 euros credited to the training and duty travels budgetary line of the Staff Committee.

The complainant, who does not formally contest the President's analysis of the nature of the prejudice suffered, nevertheless challenges his choice as to the method of compensation. It should be recalled that, according to the Tribunal's well-established case law, employees are not entitled, when they file a complaint against an organisation in their capacity as staff representatives, to receive damages in their personal capacity (see, for example, Judgments 3258, consideration 5, 3522, consideration 6, 3671, consideration 5, or 4230, consideration 15). In the present case, the President's decision on the compensation due to the staff representatives concerned as a result of the unlawful premature ending of their mandate is not inappropriate; although the complainant alleges that the increase in the abovementioned budgetary line will result in a reduction in the funds allocated by the Office to that line, the documents in the file do not support that allegation.

In addition, if the complainant notes in his submissions that the amount of 10,000 euros is not, in his view, proportionate to the seriousness of the Organisation's conduct, or at least seems to be "in the lower end", the Tribunal observes that, in any event, he does not formally request in his claims for relief that this amount be increased.

21. The complainant seeks compensation for the excessive length of the internal appeal procedure, which led to the decision of 18 May 2020. But the Tribunal notes that, while the duration of those proceedings, which lasted almost six years, is indeed unreasonable, the complainant was already awarded 600 euros in moral damages in that respect. He has

not established, particularly in view of the fact that he left the EPO in 2015, that he has suffered injury warranting additional compensation. His claim will therefore be rejected.

Lastly, the Tribunal considers that the complainant's request to be awarded exemplary damages on the ground that the undue delay in the internal appeal procedure is evidence of bad faith on the part of the Organisation is unsubstantiated.

22. As the complainant succeeds in part, he is entitled to 500 euros in costs for the proceedings before the Tribunal, but no costs will be awarded for the internal appeal procedure in accordance with the Tribunal's standard case law.

DECISION

For the above reasons,

1. The decision of the President of the Office of 18 May 2020 is set aside insofar as it concerned the complainant's appeal.
2. Articles 7 and 13 of the Administrative Council's decision CA/D 2/14 modifying Article 36 of the Service Regulations and Article 5 of the Implementing Rules for Articles 106 to 113 of the Service Regulations respectively are set aside to the extent indicated in consideration 15 above.
3. The EPO shall pay the complainant 100 euros as moral damages.
4. The Organisation shall pay the complainant 500 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 5 May 2022, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, Mr Jacques Jaumotte, Judge, Mr Clément Gascon, Judge, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

PATRICK FRYDMAN

HUGH A. RAWLINS

JACQUES JAUMOTTE

CLÉMENT GASCON

ROSANNA DE NICTOLIS

HONGYU SHEN

DRAŽEN PETROVIĆ