

**C. (No. 7)**

**v.**

**EPO**

(Application for interpretation and execution)

**125th Session**

**Judgment No. 3895**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation and execution of Judgment 3694 filed by Mr T. C. on 19 April 2017 and corrected on 6 June, the reply of the European Patent Organisation (EPO) of 18 July, the complainant's rejoinder of 25 August and the EPO's surrejoinder of 4 October 2017;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

**CONSIDERATIONS**

1. In Judgment 3694 (*C. No. 3 v. EPO*), delivered in public on 6 July 2016, the Tribunal decided the following:

- “1. The case is sent back to the EPO so that the Appeals Committee, composed in accordance with the applicable rules, may examine the appeal.
2. The claim for moral damages is dismissed.
3. The question of costs is reserved.”

The decision was founded on the fact that the Appeals Committee, which had issued the recommendations on which the impugned decision

was based, was not composed in accordance with the applicable rules, in force at the time, set out in Articles 36(2)(a) and 111(1)(a) of the Service Regulations for permanent employees of the European Patent Office, and Article 5(3) of the Implementing Rules to Articles 106 to 113 of the Service Regulations.

2. The EPO amended Article 36(2)(a) of the Service Regulations regarding the competence of the Central Staff Committee as one of the measures taken to implement Judgment 3694. In this respect it considered that it was in “the superior interest of staff to have a functioning internal appeals system” and that the protest of the Central Staff Committee against the new rules regarding staff representation and the statutory joint consultative bodies (introduced as from 1 April 2014 by the Administrative Council’s decision CA/D 2/14) had “prevented the Appeals Committee from being duly composed and thus condoned that its work would be paralysed”.

3. On 19 April 2017 the complainant filed the present application for interpretation and execution of Judgment 3694, asking the Tribunal to interpret point 1 of decision in the judgment cited above, and to clarify the following issues:

- “a) whether ‘the applicable rules’ as referred to in point 1 of Judgment No. 3694 are to be understood as the rules that were governing the composition of the Appeals Committee at the time the internal appeal was filed or the judgment was delivered or which other point in time the Tribunal deems relevant regarding the decision if certain rules governing the composition of the Appeals Committee are considered to be ‘the applicable rules’ in this specific case;
- b) with regard to the complaint underlying Judgment No. 3694 whether ‘the applicable rules’ in the sense of said Judgment may at all be rules established after the judgment was delivered and whether new rules may at all be established and applied during the pending appeals procedure and if so under which circumstances it is in accordance with fundamental principles of international civil service law to do so;
- c) if an Appeals Committee comprising members who have previously examined a case and will thus be involved in its re-examination can be considered ‘composed in accordance with the applicable rules’ as understood in Judgment No. 3694;

- d) if an Appeals Committee comprising no members appointed by the staff representation at all but consisting of one volunteer and three members drawn by lots, deemed to represent the staff by the President of the Office, can be considered ‘composed in accordance with the applicable rules’ as understood in Judgment No. 3694;
- e) if an Appeals Committee consisting of one volunteer and three members drawn by lots, without any determination which of the four persons shall sit as ordinary members and which as alternate members can be considered ‘composed in accordance with the applicable rules’ as understood in Judgment No. 3694.”

The complainant also asks the Tribunal to order the EPO to execute point 1 of the decision in Judgment 3694, to pay him at least 10,000 euros in moral damages and 4,000 euros in costs, and to pay him “a penalty for default if the EPO does not ensure that the [complainant’s] internal appeal RI/158/12 is re-examined by a properly composed Internal Appeals Committee according to point 1 and a recommendation is issued by the Internal Appeals Committee within 60 days of the delivery of the judgment in this procedure for interpretation and execution” in an amount of not less than 25,000 euros for each month’s delay.

4. With regard to the clarification requested under a) (as quoted above), the expression an “Appeals Committee, composed in accordance with the applicable rules”, in the present case refers to the procedural rules in force at the time of the execution of the judgment (i.e. the new examination of the appeal). It must be accepted that the procedural rules governing the composition of the Appeals Committee could be changed and that, in the event of a change, the new provisions should apply to the complainant’s appeal. In saying this the Tribunal is not expressing a view about the lawfulness of the new provisions. As the application for execution is only based on the arguments raised with respect to the application for interpretation, it is without merit.

5. With respect to the remaining requested clarifications, b) to e) (as quoted above), the Tribunal finds that they are not requests for interpretation of the judgment, but are instead essentially requests for advice. Specifically, the complainant asks about the lawfulness of the new norms and if their applicability to his appeal adheres to the

principles of international civil service law. These requests for advice are beyond the Tribunal's competence.

6. In his rejoinder the complainant has listed the names of witnesses, but in view of the abundant and sufficiently clear submissions and evidence produced by the parties, the Tribunal considers that it is fully informed about the case and does not therefore deem it necessary to hold oral proceedings.

7. In light of the above considerations, the present application for interpretation and execution must be dismissed. In the circumstances, the requests for moral damages, costs and the ordering of a penalty (as quoted above) must also be dismissed. The Tribunal shall not deal with the issue regarding the complainant's abuse of process, as the Organisation did not file any formal counterclaim for costs (see Judgment 3815, consideration 12).

#### DECISION

For the above reasons,

The application for interpretation and execution is dismissed.

In witness of this judgment, adopted on 24 October 2017, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 December 2017.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ