

S. (M.) (No. 3)

v.

EPO

(Application for interpretation)

128th Session

Judgment No. 4187

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 4052 filed by Mr M. S. on 16 August 2018, the reply of the European Patent Organisation (EPO) of 15 November and the letter of 3 December 2018 by which the complainant's counsel informed the Registrar of the Tribunal that the complainant did not wish to file a rejoinder;

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

Having examined the written submissions;

CONSIDERATIONS

1. On 26 June 2018 the Tribunal delivered in public Judgment 4052, deciding upon the third complaint filed by the complainant against the EPO. On 16 August 2018 the complainant filed an application for interpretation of that judgment. Judgment 4052 concerned the 18 February and 13 June 2016 decisions of the President of the European Patent Office – the EPO's secretariat. In his decision of 18 February 2016, the President, departing from the Disciplinary Committee's recommendation, considered that the complainant's behaviour constituted "serious and gross misconduct" and therefore imposed upon him the maximum sanction foreseen in Article 93(2)(f)

of the Service Regulations for permanent employees of the European Patent Office, namely a reduction by one third in the amount of his retirement pension. The President also decided that the complainant would remain “at all times excluded from entering the EPO premises”. In his decision dated 13 June 2016, the President rejected the complainant’s request for review and maintained his earlier decision (of 18 February 2016).

2. In Judgment 4052 the Tribunal upheld the house ban, and set aside the two aforementioned decisions of the President for the reasons stated in consideration 14, which reads as follows:

“The complainant’s plea that in the decision impugned before the Tribunal the President did not consider the instruction referred to in Administrative Council Resolution CA/26/16 is well-founded. The latter Resolution contained an instruction to the President of the Office requiring him to consider ‘the possibility of involvement of an external reviewer or of arbitration or mediation’. The fact that the President, contrary to the Administrative Council’s instruction, did not consider that possibility before adopting the impugned decision, which was the final decision on the disciplinary proceedings against the complainant, constitutes a material flaw that renders the impugned decision unlawful.”

The Tribunal further stated in consideration 15:

“[T]he case must be sent back to the President of the Office for a new examination, which shall take into account the instruction to the President contained in Administrative Council Resolution CA/26/16.”

3. In his application for interpretation, the complainant asks the Tribunal to clarify:

- (a) whether the EPO was competent to subject him, as a former staff member, to an investigation and disciplinary proceedings; and
- (b) whether Judgment 4052 implied that the investigation and the disciplinary proceedings had to restart from scratch, and if so, how evidence could be collected impartially and lawfully.

4. The EPO asks the Tribunal to dismiss the application for interpretation as irreceivable.

5. The application for interpretation is irreceivable. According to the Tribunal's established case law, "an application for interpretation is receivable only if the meaning of the judgment concerned is uncertain or ambiguous to such an extent that the judgment cannot be executed (see, for example, Judgments 1306, under 2, 3014, under 3, or [...] 3271, under 4)" (see Judgment 3984, under 10). The meaning of the decision adopted in Judgment 4052 is neither uncertain nor ambiguous. The decision of that judgment reads as follows:

- “1. The impugned decision of 13 June 2016 is set aside, as is the earlier decision of 18 February 2016.
2. The case is sent back to the EPO for the President of the Office to undertake a new examination, which shall take into account the instruction to the President contained in Administrative Council Resolution CA/26/16 dated 16 March 2016.
3. The claim against the house ban decision is dismissed.”

6. In Judgment 4052 the Tribunal upheld the house ban, set aside the two aforementioned decisions of the President of 18 February and 13 June 2016, and remitted the case to the EPO for the President to undertake a new examination. In exercising his discretionary authority during the new examination of the complainant's case, which the President shall undertake according to the decision in Judgment 4052, the President shall "consider the possibility of involvement of an external reviewer or of arbitration or mediation", as per the instruction in Administrative Council Resolution CA/26/16 and he shall provide reasons for his decision. Accordingly, the complainant's request for clarification under (b) in consideration 3, above, is irreceivable. All steps taken in the course of the investigation and disciplinary proceedings and all measures adopted prior to the 18 February 2016 decision (as well as the house ban decision) stand.

7. The complainant's request for clarification under (a) in consideration 3, above, is an attempt to relitigate a question which was already decided in Judgment 4052 and which is therefore *res judicata*.

8. The application for interpretation is, therefore, irreceivable and should accordingly be dismissed.

DECISION

For the above reasons,

The application for interpretation is dismissed.

In witness of this judgment, adopted on 14 May 2019, Mr Giuseppe Barbagallo, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

YVES KREINS

DRAŽEN PETROVIĆ