

**H. (No. 27)**

**v.**

**EPO**

**126th Session**

**Judgment No. 4048**

THE ADMINISTRATIVE TRIBUNAL,

Considering the twenty-seventh complaint filed by Ms E. H. against the European Patent Organisation (EPO) on 6 March 2017 and corrected on 30 March, the EPO's reply of 5 July, corrected on 13 July, the complainant's rejoinder of 29 September, corrected on 17 October 2017, the EPO's surrejoinder of 22 January 2018, the EPO's additional submissions of 13 March, corrected on 15 March 2018 following the production by the complainant, as requested by the President of the Tribunal, of the letter of 10 December 2015, the complainant's comments of 9 April 2018 thereon and the complainant's email of 24 April 2018;

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

Having examined the written submissions;

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

The complainant challenges the decision not to investigate her allegations of institutional harassment.

The complainant is a former permanent employee of the European Patent Office, the EPO's secretariat. Before separating from service on 15 January 2016, she or her legal representative wrote some letters, in October and November 2015, to the Chairman of the Administrative Council, Mr K., and the President of the Office alleging institutional

harassment. She requested that an independent investigation be conducted by an external authority and that immediate interim measures be taken to stop the alleged institutional harassment. On 10 December 2015 the complainant's legal representative wrote to the Danish Minister for Business and Growth explaining that he had "demanded" that Mr K., the Minister's subordinate who was at the time Director General of the Danish Patent and Trademark Office and also Chairman of the Administrative Council of the EPO, initiate an independent investigation into the complainant's allegations of institutional harassment.

By a letter of 14 January 2016 Mr K., writing in his capacity as Director General of the Danish Patent and Trademark Office, informed the complainant's legal representative that the Danish Minister for Business and Growth had asked him to reply to the letter of 10 December 2015. Mr K. noted that the "issue" which he had addressed in his letter was, in accordance with Article 10 of the European Patent Convention, the primary responsibility of the President. However, he added that the Administrative Council, and he as its Chairman, were closely monitoring the social situation in the EPO.

On 12 April 2016 the complainant wrote to Mr K., in his capacity as Chairman of the Administrative Council, requesting him to review the decision of 14 January 2016 in which, according to her, Mr K. had stated that the issue addressed in the letters of October and November 2015 – i.e. the request for an investigation by the Administrative Council of her institutional harassment claims – was the responsibility of the President. She requested the Administrative Council to derogate from Article 18 of its Rules of Procedure according to which the President should draft an opinion for the Administrative Council on a request for review. In her view, the President had a personal interest in the outcome of her case and any opinion he might provide was likely to be tainted by bias and conflict of interest. She asked that the Administrative Council make arrangements to have a legal opinion drawn up by competent independent legal experts who were not subject to the disciplinary authority of the President. She emphasised that she had written several letters asking that her allegations of harassment be investigated, but no investigation had been conducted, in breach of the

Organisation's duty to investigate. She therefore requested a review of the decision not to investigate her harassment claims and asked to be awarded "actual, consequential and moral damages", including exemplary damages as a result of the fact that the harassment had resulted in her unlawful summary dismissal. She also claimed costs and interest on all amounts to be awarded to her. In November 2016 the Chairman of the Administrative Council informed her that her request had been redirected to the President of the Office.

By a letter of 24 January 2017 the President informed the complainant that her request for review was rejected as unfounded. He noted that her request for investigation was substantiated solely with reference to procedures initiated against her following allegations of harassment and misconduct. He concluded that the mere fact that she had been subjected to investigation did not constitute harassment, and that there was no evidence that the procedures initiated against her were unlawful or were initiated for improper motives. He stated that his letter constituted a decision on the outcome of the review and that, if she considered herself adversely affected by it, she could file a complaint with the Tribunal in accordance with its Statute. That is the decision the complainant impugns before the Tribunal.

In her complaint the complainant asks the Tribunal to set aside the impugned decision, and to "confirm [her] allegation of harassment and retaliation". She also asks the Tribunal to order that the Administrative Council be requested to conduct an external, independent disciplinary proceeding against the President and other EPO officials "complicit" in harassing her. She further seeks moral and exemplary damages together with interest and costs. Lastly she asks the Tribunal to award her any other relief that it deems necessary, just and fair.

The EPO asks the Tribunal to dismiss the complaint as manifestly inadmissible and unfounded.

## CONSIDERATIONS

1. On 10 December 2015, the legal representative of the complainant wrote to the Danish Minister for Business and Growth. The complainant was then a member of the staff of the EPO though approximately three months earlier she had been charged with misconduct that might, at that time, have led to the termination of her employment. This in fact occurred on 15 January 2016 and her dismissal is the subject of separate proceedings before the Tribunal. The letter of 10 December 2015 noted that either the complainant or her legal representative had, in earlier correspondence, “demanded” that Mr K., then the Director General of the Danish Patent and Trademark Office and also the Chairman of the Administrative Council of the EPO, initiate an independent investigation into the complainant’s claims of institutional harassment at the EPO. The earlier correspondence was letters of 8 and, in terms, 20 October and 11 and 23 November 2015.

2. Mr K. responded to the letter of 10 December 2015 in a letter dated 14 January 2016 addressed to the legal representative of the complainant. He indicated that he was responding on behalf of the Danish Minister and he said, expressly, he did so in his capacity as Director General of the Danish Patent and Trademark Office. Mr K. noted that the “issue” which had been addressed in the letter of 10 December 2015 was the primary responsibility of the President but that the Administrative Council of the EPO, and he as its Chairman, were “closely monitoring the social situation at the EPO” and had recently “launched a social study in this important context”.

3. By letter dated 12 April 2016, the complainant wrote to Mr K. seeking a review of his decision of 14 January 2016. In that letter the “decision” of 14 January 2016 was characterised as a decision of Mr K., who, “in his function of Chairman of the Administrative Council, stated that ‘the issue addressed’ in [the complainant’s] four letters dated 8 and 21 October, and 11 and 23 November 2015 – i.e., [her] request for investigation by the Administrative Council of institutional harassment against [her] – was the responsibility of the President of the [Office],

thereby rejecting [her] request to the Council”. As shortly discussed, this characterisation is not made out having regard to the terms of the letter of 14 January 2016 itself.

4. On 24 January 2017, the President wrote to the complainant rejecting the request for review as “unfounded in its entirety”. This is the decision impugned in the complaint to the Tribunal.

5. The complaint is unfounded and should be dismissed. As just noted, centrally underpinning the complaint is what is characterised as a decision of 14 January 2016. Necessarily, to invoke the Tribunal’s jurisdiction, it must be a decision adversely affecting the complainant concerning either rights, privileges, obligations or duties arising under the provisions of staff regulations or the complainant’s terms of appointment. The complaint must allege non-observance of either or both (see Article II of the Tribunal’s Statute).

6. The letter of 10 December 2015, addressed to a Danish Minister, adverted to the allegation of institutional harassment and, in substance, was encouraging the Minister to take the opportunity of distancing himself from what the complainant perceived as a failure within the EPO to investigate the claimed harassment. The Tribunal can readily infer the letter was trying to bring about political pressure coming from the Minister directed to Mr K. The letter of 10 December 2015 did not in terms call upon the Minister to take any steps beyond, possibly, declaring his opposition to the “egregious and irregular treatment” of the complainant. It certainly did not demand or even request the vindication of a right, provision of a benefit or the enforcement of a duty or obligation of the type comprehended by Article II of the Tribunal’s Statute.

7. Moreover the responsive letter of 14 January 2016 did not address or concern, in so far as it directly responded to the letter of 10 December 2015, a non-observance of the type arising under Article II of the Tribunal’s Statute. In addition, it was written by Mr K., to the extent he was responding to the letter of 14 January 2016, in his capacity

as Director General of a State government organ. Whatever he said in that capacity could not be treated as conduct of the EPO. Nonetheless, it may be thought that part of the letter should be treated as a response by Mr K. in his capacity as Chairman of the Administrative Council. However even if it was, it said nothing conclusively or determinedly about the complainant's rights. There was not, in this respect, an administrative decision determining or resolving the complainant's legal rights.

8. The character of the impugned decision in the letter of 24 January 2017, to the extent that it was the endpoint of a chain commencing with the letter of 10 December 2015, is determined by what preceded it. It was not, in this respect, a decision concerning a matter addressed by Article II of the Tribunal's Statute. The complainant sought an oral hearing and the production of certain documents. The Tribunal is satisfied that, in the circumstances of this particular case, the complaint can be resolved fairly without an oral hearing and the production of the documents is unnecessary.

9. The complaint is unfounded and should be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 7 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

YVES KREINS

DRAŽEN PETROVIĆ