

M. (T.) (No. 10)

v.

EPO

130th Session

Judgment No. 4329

THE ADMINISTRATIVE TRIBUNAL,

Considering the tenth complaint filed by Mr T. P. C. M. against the European Patent Organisation (EPO) on 10 January 2020 and corrected on 6 April 2020;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant, a former permanent employee of the European Patent Office (the EPO's secretariat), read several press articles alleging that the EPO secretly monitored computers accessible to the public. In his complaint he states that "there is not the shred of a doubt that also [his] family has become and is the victims of malware from the side of the management of the Office, and such already for a considerable time (like the colleague which had been spied upon secretly [he and his family] were most probably also spied on, before – in excess – cynically impudent manipulations became visible and vires absolutae and vires compulsivae have various times been applied) and to an extreme extend" (original emphasis).

2. In June 2019 he sent a letter to the President of the Office formulating two requests: (a) to provide him without delay with an officially signed written declaration that he and/or his family members

were not and/or are not the victims of malware and spy software by the EPO; and (b) if this is the case, to restore without delay the systems before such attack and refrain from any such activity in the future.

3. As the complainant did not receive a reply to his letter, he lodged a request for review by an email of 13 August 2019. By an email of 15 October 2019, the Administration informed him that his request for review would not be registered because his written communications did not seem to be related to any individual decision adversely affecting his rights as a former employee of the EPO

4. The complainant filed his complaint under Article VII, paragraph 3, of the Tribunal's Statute, indicating on the complaint form that the EPO had failed to take a decision, within the 60-day period mentioned in that provision, on his 13 August 2019 request.

5. Without examining whether the complaint is properly filed under Article VII, paragraph 3, of the Statute, the Tribunal considers that it is not competent to deal with it.

6. Pursuant to Article II, paragraph 5, of its Statute the Tribunal is competent to hear complaints alleging "non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations".

The complainant requested the President of the Office to provide him with a written declaration affirming that he was not a target of certain practices alleged in press articles. There is no obligation in the Service Regulations for the President to issue such a declaration and therefore the decision not to grant such a request does not amount to "non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations".

Similarly, the complainant did not affirm that his home equipment was illegally monitored. In fact, his allegation that his equipment at home was monitored by the EPO is purely hypothetical and he asks that this hypothetical violation should cease. Again, he does not allege "non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations".

7. In this case, the Tribunal finds that the complainant, a former official of the EPO, does not allege any breach of his terms of appointment or of provisions of the EPO's Service Regulations that are applicable to him. It follows that the complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 13 July 2020, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 24 July 2020 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

DRAŽEN PETROVIĆ