Registry's translation, the French text alone being authoritative.

SEVENTY-FIFTH SESSION

In re ERRANI

Judgment 1269

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Carlo Errani against the European Patent Organisation (EPO) on 19 June 1992, the EPO's reply of 4 September, the complainant's rejoinder of 2 October and the Organisation's surrejoinder of 18 December 1992;

Considering Articles II, paragraphs 5 and 6(a), and VII of the Statute of the Tribunal and Articles 14, 30 and 35(2) of the Service Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, an Italian born in 1954, joined the EPO on 1 May 1983 as an examiner of patents in Directorate-General 1 (DG1) at The Hague. He resigned as from 1 November 1991.

On 15 June 1990 he wrote to the Principal Director of Administration at DG1 under the letterhead of the European section of the Italian Labour Federation (UIL). He said that the UIL had set up a section at DG1 and asked what facilities the EPO granted for the exercise of freedom of association.

In a letter of 21 June 1990 the Vice-President of DG1 ordered him to stop work for the UIL and to disband the local section, drew his attention to the duties of staff members as set out in Article 14 of the Service Regulations and said he had misread Article 30.

Article 14(1) reads:

"A permanent employee shall carry out his duties and conduct himself solely with the interests of the European Patent Organisation ... in mind; he shall neither seek nor take instructions from any government, authority, organisation or person outside the Organisation."

and Article 30:

"Permanent employees shall enjoy freedom of association; they may in particular be members of trade unions or staff associations of European civil servants."

In a note of 5 July 1990 the complainant informed the Vice-President that a new European Search Federation, known as the FER, had been established; it consisted of former members of the UIL's EPO section, which had ceased to exist as such and was a founding member of the FER. He appended a record of the FER's constitutive assembly of 4 July.

In a letter of 11 July the Vice-President asked him to supply the full minutes of the assembly and the FER's rules and to explain what the function was of members who were not on the EPO's staff but whose names appeared in the record sent on 5 July.

In a note of 2 August the complainant answered that the local section of the UIL had not been disbanded. In a letter of 8 August the Principal Director reminded him of the order to wind up the activities of the section and disband it, ordered him to provide within five days the documents the Vice-President had asked for on 11 July and said that his insubordination would be punished.

The complainant supplied the UIL's rules on 31 August and the FER's on 26 September 1990.

In a letter of 25 October 1990 the Principal Director told the complainant on the President's behalf that setting up sections of national trade unions inside an international organisation like the EPO was bound to damage efficiency; constructing a body from sections of national trade unions was against the Service Regulations; and, their activities being banned, the facilities the complainant had claimed in his letter of 15 June were refused.

The complainant lodged three internal appeals:

(a) No. 47/90, on 5 December 1990, against the ban on the local section of the UIL;

(b) No. 48/90, on the same day, against the ban on the FER's activities;

(c) No. 6/91, on 26 January 1991, against the refusal of facilities to him as secretary of the local section of the UIL.

On 10 February 1992 the Appeals Committee submitted the following recommendations to the President. All were unanimous but the one on appeal 48/90, which was adopted by a majority with the chairman's casting vote.

(1) Appeal 47/90 was time-barred and should therefore be dismissed as irreceivable.

(2) Appeal 6/91 was also time-barred and therefore irreceivable.

(3) Appeal 48/90 was receivable and should be allowed in part.

The Committee summarised the majority opinion on 48/90 in the following terms:

"(a) the right of association under Article 30 includes the right to join a national trade union;

(b) there is no evidence that the aims of the union UIL or the federation FER were opposed to the interests of the EPO;

(c) freedom of association is a fundamental right which may not be restricted by a total ban on all union activity in the EPO;

(d) the risk that national union policies might be imposed on the EPO or of a polarisation of EPO staff on national lines would seem to be exaggerated."

As to the general duties arising out of Article 14 of the Service Regulations the Committee concluded that the complainant was in breach only of a provision of the Regulations, not of a general principle, and that the mere possibility of conflict with his duties under Article 14 did not afford sufficient grounds for a ban on union activity.

In a letter of 23 March 1992, the impugned decision, the Director of Staff Policy informed the complainant that the President had on the Committee's recommendation rejected appeals 47/90 and 6/91 and reversed the decision of 25 October 1990 banning the EPO section of the FER.

B. The complainant submits that he alone had no authority to disband the local section of the UIL: it is an independent body that may be dissolved only according to the procedure in its own rulebook.

Appeal 47/90, which he lodged on 5 December 1990, was not time-barred because the challenged decision was the President's ban of 25 October on the UIL, not the orders issued on 21 June and 8 August 1990, which he refused to obey because the EPO was not competent to issue them.

Banning a union is an offence against international labour conventions on freedom of association, as both the Appeals Committee and the President acknowledged in the case that appeal 48/90 was about. The ban on the FER has been reversed and it is made up of local sections of national trade unions, including the EPO section of the UIL. The ban on that component of the FER is crippling.

He lodged appeal 6/91 on 26 January 1991 against the refusal to let the UIL post announcements and grant time off for its representatives. Inasmuch as the staff association which the Administration has approved does enjoy such facilities he sees the UIL and the FER as discriminated against.

He claims:

(1)a declaration that the EPO's ban on the local section of the UIL, a component of the FER, was ultra vires and in breach of international labour conventions on freedom of association and that the EPO should of its own accord and forthwith have reversed so blatantly unlawful a decision;

(2) the award of one guilder in token moral damages;

(3) a declaration that the ban on the FER will not be properly lifted until the ban on its component, the EPO section of the UIL, has been lifted as well;

(4) a declaration that the EPO section of the UIL shall, in proportion to its membership and without discrimination, enjoy the same facilities as any other staff union;

(5) an award of 5,000 Swiss francs in costs.

C. In its reply the EPO submits that the complaint is irreceivable because it discloses no cause of action. Having resigned on 1 November 1991 the complainant is no longer an EPO employee and may not be a member or act as secretary of the local section either of the UIL or of the FER. Since the decision he is challenging causes him no injury his interest in the dispute is academic.

The EPO maintains that appeal 47/90 was time-barred: the Vice-President of DG1 issued the order to disband the local section of the UIL in his letter of 21 June 1990, not in the purely confirmatory one of 25 October. That is borne out by the findings of the Disciplinary Committee on a similar case (in re Popineau No. 5) which Judgment 1244 ruled on.

In subsidiary pleas the Organisation submits that though the complainant was free to belong to any national trade union an international civil servant must perform his duties in utter independence of member States and indeed of any outside body, be it public or private. Membership of a national trade union within the EPO might impair that independence. Besides, the local section of the UIL represented only research scientists in category A whereas Article 35(2) of the Service Regulations calls for equal representation of all categories.

The EPO cannot work properly unless its staff have a sense of unity, and because of their different backgrounds that means striking a careful balance. Article 30 of the Service Regulations refers to European trade unions and staff associations because they answer the special needs of the international civil service. It ensures ample protection of the right to freedom of association within the Office.

Appeal 6/91 was irreceivable for two reasons: like 47/90, on which it was contingent, it was time-barred, and it showed no cause of action insofar as the ban on the local section of the UIL relieved the EPO of extending facilities to it.

Lastly, the complainant has shown no moral injury warranting damages.

D. In his rejoinder the complainant says there was nothing "academic" about his interest in the case.

He develops his pleas on receivability and objects to the EPO's assumption that members of the local section of the UIL would be disloyal to the Organisation, act at cross-purposes with it or take orders of a political nature from outside.

He presses his claim to token damages for moral injury because the EPO's libellous remarks about trade unions to which he belonged impaired his honour and dignity.

ILOATLastly, his claim to costs is warranted because one of his internal appeals was allowed in part.

E. In its surrejoinder the EPO points out that it ordered the complainant to apply the procedure for disbanding the UIL section under the material rules, not to disband it himself. His claim to facilities for union activities concerned that section and no other. The Organisation never made insulting or libellous remarks about him.

CONSIDERATIONS:

1. On 25 October 1990 the President of the European Patent Office took a decision, which he in part upheld and in part amended by a decision of 23 March 1992, to ban the foundation of a new trade union for EPO staff. The complainant, who used to be on the staff of the EPO, wants the Tribunal to set the decision aside. In his submission it was tantamount to unlawful interference in the exercise of freedom of association, which Article 30 of the Service Regulations guarantees in the following terms:

"Permanent employees shall enjoy freedom of association; they may in particular be members of trade unions or staff associations of European civil servants."

He also claims one guilder in moral damages and 5,000 Swiss francs in costs.

2. This case is the same in substance as one the Tribunal ruled on in Judgment 1244 - in re Popineau No. 5 - in that both Mr. Gérard Popineau and the present complainant were acting in close concert and lending each other support. So the Tribunal need only refer to what it has already said in that judgment, but with the qualifications set out below.

3. On 15 June 1990 the complainant sent the Principal Director of Administration at the EPO's office at The Hague (DG1) a note announcing that a local section of the Italian Labour Federation (UIL) had been set up there and asking him how it might be granted full facilities for carrying on its work, such as the right to bargain, time off for its representatives, means of publication, the posting of notices and the provision of meeting rooms.

4. In his reply of 21 June the Vice-President of DG1 protested strongly that setting up the section was contrary to the Organisation's independence and the international status of its staff and therefore called upon the complainant, under threat of disciplinary action, to disband the section within ten days. Unlike Mr. Popineau the complainant did not incur such action.

5. By a note of 5 July 1990 the complainant told the Administration that the section of the UIL had been superseded by a section of an association within the EPO known as the European Search Federation (FER-EPO). But it appears from the ensuing correspondence that it was just a cover for the UIL, which the complainant was leading, and the similar French body, the SNCS-FEN, which Mr. Popineau was in charge of.

6. The upshot of lengthy correspondence was that on 25 October 1990 the Principal Director wrote to the complainant on the President's behalf saying that it was contrary to the Service Regulations to set up the local section of the UIL and the FER-EPO and confirming refusal of the "facilities" he had claimed in his letter of 15 June 1990 for the UIL. The complainant lodged three internal appeals against that decision:

(a) No. 47/90, on 5 December 1990, against the ban on the local section of the UIL:

(b) No. 48/90, also on 5 December, against the ban on the FER-EPO; and

(c) No. 6/91, on 26 January 1991, against the refusal of staff union facilities for the UIL.

7. On 10 October 1991 the Administration filed its reply with the Appeals Committee. The complainant resigned from the EPO as from 1 November 1991.

8. The Appeals Committee reported on 10 February 1992, shortly after reporting on the similar appeals from Mr. Popineau. It noted that the complainant had resigned but drew no conclusions on that count. It held that appeals 47/90 and 6/91 were out of time and irreceivable because they ought to have been brought against the original decision of 21 June 1990. It held appeal 48/90 to be receivable.

9. On the merits of appeal 48/90 it said that it had in the meantime seen a judgment delivered on the subject of freedom of association on 18 January 1990 by the Court of Justice of the European Communities (Maurissen v. Court of Auditors, 1990, ECR I-116). In the light of that judgment it stressed the fundamental importance of freedom of association, which was embodied in the Service Regulations. It held that the EPO had been wrong to ban the FER-EPO; restrictions were warranted only where the freedom guaranteed in the Service Regulations had been abused in that individual staff had acted in breach of the Organisation's independence and internal efficiency; and no such breach was proven in this case.

10. On the Committee's recommendation the President of the Office took his final decision of 23 March 1992, and

that, together with the decision of 25 October 1990, is the one impugned. According to the decision of 23 March 1992 the Organisation:

(a) dismissed appeals 47/90 and 6/91 as irreceivable; and

(b) lifted the ban on the FER-EPO in the decision of 25 October 1990.

11. The complainant came to the Tribunal on 19 June 1992. The Organisation raises the preliminary objection that his complaint is irreceivable because it discloses no cause of action, he having resigned from the EPO, but the objection fails for both procedural and substantive reasons.

12. As to the procedural issue, the complainant lodged his internal appeals at a time when he was still on the EPO's staff. He thereby duly instituted proceedings against the Organisation and will not forfeit the right to pursue them unless it be shown that his very resignation has destroyed the cause of action.

13. In fact he still has a proper cause of action even since resigning. As a staff representative he was filing suit both for himself and in the common interest. Since neither the Service Regulations of the EPO nor the Statute of the Tribunal allow staff associations as such to file suit, the only way for them to safeguard their interests is for individual officials to act as their representatives in furtherance of the common rights and interests of the whole or part of the staff. In Judgment 1147 (in re Raths) the Tribunal held, under 3 and 4, that an EPO staff member might in such circumstances act in his capacity as chairman of the Staff Committee.

14. It is only fair to acknowledge a similar right for a staff member who, while defending his own case, is also pursuing some particular common interest that the Service Regulations safeguard. Because of the procedural requirements the Organisation's point of view would, if it were allowed, have the effect of depriving the staff represented by the complainant of any possibility of protecting their rightful collective interests. Because of its peremptorily hostile attitude the Organisation never considered the issue of the representative character of the association and the complainant's position in relation to it, and it is therefore impossible to rule out the existence of some common interest in the complainant's suit, even after his resignation.

15. Although the Organisation's preliminary objection on the grounds of his resignation therefore fails, his complaint is otherwise irreceivable for the reasons that were set out in Judgment 1244.

16. As regards appeals 47/90, about the UIL, and 6/91, about the grant of facilities, the complainant failed to exercise his right to file internal appeals within the time limit as reckoned from the decision of 21 June 1990. The Tribunal therefore declines to entertain the parties' pleas on the merits of the material points of the merely confirmatory decision of 25 October 1990.

17. As regards the part of that decision on appeal 48/90, which the Appeals Committee held to be receivable, the President of the Office reversed it by his final decision of 23 March 1992. In its reply to the complaint the Organisation explains that by reversing the impugned decision on that issue the President intended to comply with the Appeals Committee's recommendation. In its surrejoinder it further argues that "there is no question but that freedom of association is a basic principle of the international civil service".

18. The Tribunal accordingly holds that the complaint discloses no cause of action and is irreceivable insofar as it relates to the trade union organisation known as the FER-EPO.

19. The conclusion is that the complainant's claims fail in their entirety, including the one to an award of moral damages.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Mr. Pierre Pescatore, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

!J300!Delivered in public in Geneva on 14 July 1993.

(Signed)

José Maria Ruda
P. Pescatore
Michel Gentot
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.