

EIGHTY-FIRST SESSION

***In re* POPINEAU (No. 9)**

Judgment 1540

THE ADMINISTRATIVE TRIBUNAL,

Considering the ninth complaint filed by Mr. Gérard Popineau against the European Patent Organisation (EPO) on 28 August 1995 and corrected on 9 October, the EPO's reply of 24 November 1995, the complainant's rejoinder of 11 February 1996 and the Organisation's surrejoinder of 2 April 1996;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. Facts relevant to this case are summed up under A in Judgment 1363 on Mr. Popineau's sixth, seventh and eighth complaints.

On 27 October 1994 the Central Staff Committee of the European Patent Office, the EPO's secretariat, published a note criticising "the lack of safeguards in law in intergovernmental organisations", describing the Tribunal as an inadequate "court of first and last instance" and finding fault with Judgment 1363. On 26 November the EPO "Gazette" published an article signed by the President of the Office answering the criticisms and commenting on Judgment 1363. The article mentioned the Tribunal's finding that the Organisation had produced sufficient evidence in support of its accusations against the complainant by providing the business registration number of the firm known as Gérard Popineau Consultants.

On 2 December 1994 the complainant asked the President to let him answer and correct those comments on Judgment 1363. Having got no reply he appealed on 19 February 1995 against the implied rejection of his claim.

By a letter of 9 March 1995 the Director of Staff Policy informed the complainant that the President rejected his appeal and had put the matter to the Appeals Committee.

By a letter of 15 May the complainant asked the Director of Staff Policy for written confirmation of his statement that the Office would not be entering a reply to his appeal of 19 February.

By a letter of 26 May 1995 the Principal Director of Personnel told the complainant that since the Tribunal's judgments had determined his status once and for all the Office would not be replying to any more of his internal appeals. That is the decision he is impugning.

B. The complainant contends that the President's article published in the "Gazette" of 26 November 1994 gave a libellous account of the issues of fact that Judgment 1363 had ruled on. In support of his plea he produces a letter of 16 February 1995 from the French National Institute of Industrial Property. The letter says that on 9 August 1994 the Institute gave the complainant a certificate stating that at the date of search it had found no trace in the business register of the firm "Gérard Popineau Consultants". The complainant concludes that the President uttered "a lie" or else had given "counterfeit evidence" to the Tribunal.

He asks the Tribunal to send the case back to the Organisation and order it to let him publish reply and correction in the "Gazette". He seeks awards of 40,000 French francs in moral damages and 5,000 francs in costs.

C. In its reply the Organisation submits that though the complaint is tantamount to an indirect and improperly presented application for review of Judgment 1363 it is not challenging receivability.

On the merits it observes that the letter of 16 February 1995 which the complainant cites is not a new fact. He had ample opportunity to obtain and produce such a certificate during the disciplinary and appeal proceedings and the proceedings before the Tribunal. The President's article is not libellous since the passage he objects to, which is about the registration of his company, simply reproduces what the Tribunal said in Judgment 1363.

D. In his rejoinder the complainant maintains that his firm was never on the business register. The Disciplinary Committee never referred to such registration and the Organisation did not bring the matter up later.

E. The EPO repeats that the letter of 16 February 1995 is not a new fact. It observes that in Judgment 1363 the registration of the complainant's firm was not the only evidence the Tribunal relied on in reaching its decision but was of lesser importance.

CONSIDERATIONS:

1. This is Mr. Popineau's ninth complaint against the EPO. He is asking the Tribunal to order the Organisation to allow him to answer and correct an article published in the "Gazette", the EPO's internal news bulletin, on the grounds that it discredited him and thus caused him moral injury.

2. The material facts are recounted in Judgment 1363 of 13 July 1994 under 2 to 16. The complainant joined the EPO in 1983 as an examiner. On 4 May 1992 the Organisation started disciplinary proceedings against him for serious breach of his professional obligations, and dismissed him for disciplinary reasons on 1 February 1993. The Tribunal found that without leave from the Organisation he had engaged in outside activity while in its employ: he had set up and run a consultancy firm which did business in the EPO's own area of competence.

3. In answer to a note circulated on 27 October 1994 by the Central Staff Committee criticising Judgment 1363 and the Tribunal the President of the Office published in the EPO "Gazette" of 26 November 1994 an article entitled "ILOAT: No legal safeguards for public servants?". By a letter of 2 December 1994 the complainant applied to the President for the right to answer and correct the article. Having got no reply, he filed an internal appeal against the implied refusal.

On 9 March 1995 the Director of Staff Policy informed him that the matter had been put to the Appeals Committee for an opinion. By a letter of 26 May 1995 the Office told him that the Tribunal's judgments on his complaints had determined once and for all his status at the EPO and that the Office would not be entering replies to any more of his internal appeals. That is the decision he is impugning.

4. The Organisation first says that it is not objecting to receivability, the complaint being in any event devoid of merit.

5. One passage in the article read:

"According to Judgment 1363 ..., an official was dismissed with a reduction in his severance grant because his behaviour towards the Organisation was found to be an extremely serious breach of his professional obligations. While on unpaid leave the official had been gainfully employed in legal research into patents for the firm '(name of the official) Consultants' that he had founded."

The article went on to report the Tribunal's "finding that, by producing the firm's business registration number, the detailed description of the firm's activities and an advertising prospectus, the Organisation had provided sufficient evidence of guilt".

6. The complainant has the following objections to those passages.

(1) They give a libellous account of the facts as put to the Tribunal and ignore the special circumstances in which judgment was delivered.

(2) Though his name is not mentioned he may be easily identified.

(3) Either it is untrue to say that the Organisation produced a business registration number or else the evidence it submitted to the Tribunal was counterfeit.

(4)The work he did was professional, not commercial.

(5)The libellous version of the facts causes him serious moral injury by discrediting him in the eyes of former colleagues.

He says that he supported his internal appeals with evidence to rebut all the charges against him and that the Tribunal refused hearings and the calling of witnesses for the defence. In sum he claims the right to answer and correct the article by virtue of a universally acknowledged principle of law.

7.He is wrong. He need only read the text to see that the passages of the article he finds libellous merely reflect Judgment 1363, which sets out the Tribunal's findings on the evidence entered by both parties. Those findings, forming part as they do of the Tribunal's judgment, are no longer challengeable and are binding on both parties as true statements of fact.

8.The only challenge that the Tribunal will allow, by way of exception, is an application for review, and a litigant may put forward such specific pleas for review as the discovery of some new fact or a formal flaw. Such indeed are the pleas that the complainant seems to have in mind. But this complaint seeks, not review of Judgment 1363, but the right of reply to the article in the "Gazette". And there is no evidence to suggest anyway that his objections are sound.

9.Since the EPO merely referred to relevant passages of Judgment 1363, the complaint must fail, including the claims to moral damages and costs.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

(Signed)

William Douglas
E. Razafindralambo
Egli
A.B. Gardner