Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

C. (No. 3)

v.

EPO

122nd Session **Judgment No. 3693**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr T. C. against the European Patent Organisation (EPO) on 15 August 2011 and corrected on 23 September, the EPO's reply of 29 December 2011, the complainant's rejoinder of 5 April 2012, the EPO's surrejoinder of 13 July 2012, the complainant's additional submissions of 4 January 2013, the EPO's comments thereon of 8 May, the complainant's further submissions of 28 August and the EPO's comments thereon of 29 November 2013;

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 impugns the EPO's implied rejection of his internal appeals against (i) the decision not to grant him the expatriation allowance retroactively as from 1 June 2001 and (ii) the decision to cease paying him the allowance as from 1 October 2010.

The complainant joined the EPO Office in Munich, Germany, in April 1990. Prior to joining the EPO, specifically between March 1982 and March 1990, he pursued doctoral studies first at the Bundeswehr University in Munich and then at the Technical University of Munich

while working at the same time for these institutions as a research assistant.

On 21 December 2007 he requested that he be granted the expatriation allowance provided for in Article 72(1)(b) of the Service Regulations for permanent employees of the European Patent Office. He based his request on the so-called "Lamadie Note", an administrative instruction which provided that for the purposes of Article 72(1)(b) of the Service Regulations "periods during which the person recruited resided in the country in which he would be serving for the principal purpose of pursuing studies" are not to be taken into account. His request was granted and on 14 August 2008 the complainant was informed that he would receive the expatriation allowance retroactively as from 1 December 2007. However, on 6 November 2008 he filed an appeal against this decision, requesting that he be granted the said allowance as from 1 June 2001, i.e. the date on which the "Lamadie Note" had been implemented. On 30 January 2009 he was informed that after an initial examination of his case, the President of the Office had concluded that the rules had been correctly applied and had decided to refer the matter to the Internal Appeals Committee (IAC) for an opinion as internal appeal RI/188/08. On 12 February 2009 the IAC wrote to the complainant confirming receipt of the internal appeal and indicating that the time it would take to process it would depend on its workload and the dates of the hearings.

By a letter of 7 September 2010, the EPO notified the complainant of its decision to cease paying him the expatriation allowance as from 1 October 2010, on the ground that he had been gainfully employed during his doctoral studies in Munich and that this professional activity prevailed. Acting through his counsel, the complainant sent a letter dated 29 November 2010 to the Administration requesting that this decision be set aside and that the decision to grant him the expatriation allowance be restored. In the event of a negative reply, he asked that his letter be treated as an internal appeal. Although the Administration subsequently referred this request to the IAC as internal appeal RI/201/10, neither the complainant nor his counsel were relevantly notified and neither of them received a response. On 15 August 2011 the complainant filed the present complaint with the Tribunal (his third) impugning the

implied rejection of his internal appeals filed on 6 November 2008 and 29 November 2010 respectively.

In September 2012, in the course of the written proceedings before the Tribunal, the IAC, after having held a hearing, rendered a single opinion on the complainant's appeals. It unanimously recommended the setting aside of the decisions contested by the complainant, payment to him of the expatriation allowance with effect from 1 June 2001 and an award of material damages and costs. A minority of its members also recommended an award of moral damages. By a letter of 3 December 2012 the Vice-President for Administration informed the complainant of his decision, taken by delegation of power from the President, to dismiss both of his appeals as unfounded on the grounds that his doctoral studies were ancillary to his employment at the Technical University of Munich and that the initial decision of 14 August 2008 to grant him the expatriation allowance was based on an error of fact, to which he had contributed by indicating in his application for the said allowance that in the three years prior to his appointment with the EPO he was not resident in Germany.

The complainant asks the Tribunal to annul the first contested decision, insofar as it limited the retroactive award of the expatriation allowance to December 2007, and to order that his claim for the expatriation allowance be awarded as from June 2001. He also asks the Tribunal to annul the second contested decision in its entirety. He seeks an order that the EPO pay him the sums owed to him in expatriation allowance with due interest as from June 2001 to the present day and for as long as he remains employed by the EPO. Alternatively, he seeks an order for compensation having the same effect. He claims 25,000 euros in moral damages, 8,500 euros in costs, and 1,000 euros for his additional expenses.

The EPO asks the Tribunal to dismiss the complaint as irreceivable or, alternatively, as devoid of merit and to order that the complainant bear his costs.

CONSIDERATIONS

1. This complaint raises the question whether the EPO erred when it first granted the complainant an expatriation allowance retroactively from 1 December 2007, rather than from 1 June 2001 when the EPO issued the "Lamadie Note" (the Note), and, relatedly, whether the EPO erred when, by its decision of 7 September 2010, it reversed the decision to grant him the allowance with effect from 1 October 2010.

2. The basis for the grant of the expatriation allowance is provided by Article 72(1) of the Service Regulations, which relevantly states as follows:

> "An expatriation allowance shall be payable to permanent employees who, at the time they take up their duties or are transferred:
>
> (a) hold the nationality of a country other than the country in which they will be serving, and
>
> (b) were not permanently resident in the latter country for at least three years, no account being taken of previous service in the administration of the country conferring the said nationality or with international organisations."

These are compendious provisions which must both be satisfied by a staff member in order to qualify for the expatriation allowance.

3. That the complainant satisfied Article 72(1)(a) is not contested as he held Greek nationality when he joined the EPO at its Office in Munich, Germany. The contested issue is whether he also met the requirement of Article 72(1)(b) in that he was not permanently resident in Germany for at least three years prior to joining the EPO.

4. The purpose of the allowance was explained, as follows, in Judgment 2597, consideration 3:

> "The expatriation allowance, called the 'non-resident's allowance' in some international organisations, is additional remuneration which is paid in order to permit the recruitment and retention of staff who, on account of the qualifications required, cannot be recruited locally (see Judgment 51, under 4).
>
> This allowance is intended to compensate for certain disadvantages suffered by persons who are obliged, because of their work, to leave their

country of origin and settle abroad. The disadvantages are indeed greater for them than for those who do not have the nationality of the country of their duty station either, but who have been living in that country for quite a long time before taking up their duties. Equal treatment demands that the provisions establishing the right of international civil servants to receive an expatriation allowance take fair and reasonable account of these different situations. The length of time for which foreign permanent employees have lived in the country where they will be serving, before they take up their duties, therefore forms an essential criterion for determining whether they may receive this allowance. It has been held that the period of three years' residence required by Article 72(1)(b) of the Service Regulations is not unreasonable (see Judgment 1864, under 6)."

5. The EPO has stated that the Note was intended to clarify the periods of time that are not taken into account in calculating permanent residence in the country where an employee will be serving for the purposes of Article 72(1)(b) of the Service Regulations. Articles 5 and 6 of the Note relevantly state as follows:

"5. The following periods of time are not taken into account for the calculation of the permanent residence in the sense of Article 72(1)(b) of the Service Regulations:

[…]

(c) periods during which the recruited agent was staying in the country in question with the principal purpose of pursuing studies.

6. The periods of study (in particular PhD), come normally under article 5(c). When the applicant, during such periods, exercises a gainful activity, it should be appreciated whether this activity has been ancillary or not, in order to decide whether the stay, in the country in question, was principally for the pursuit of studies and not for a gainful activity. The mere fact that this activity was remunerated does not suffice to conclude that the gainful activity was predominant."

6. The Tribunal provided the following perspective on Article 72(1)(b) and these provisions of the Note in Judgment 2924, considerations 3 and 4:

"3. The complainant makes his argument that he was a permanent resident of the Netherlands for less than three years by reference to an administrative instruction, the so-called 'Lamadie note' of June 2001 prepared by the then Principal Director of Personnel. It is stated therein that for the purposes of Article 72(1)(b) of the Service Regulations 'periods during which

> the person recruited resided in the country in which he would be serving for the principal purpose of pursuing studies' are not to be taken into account. This qualification is not found in Article 72(1)(b). However, that is not to say that the fact that a person was present in a country for the purpose of pursuing studies is always irrelevant to the question whether he or she was permanently resident in the country.
>
> 4. It was held in Judgment 2597, under 5, that '[t]he country in which the permanent employee is effectively living, is that with which he or she maintains the closest objective and factual links. The closeness of these links must be such that it may reasonably be presumed that the person concerned is resident in the country in question and intends to remain there.' Within the context of that test, the fact that a person was present in a country for the purpose of pursuing his or her studies may well be insufficient to establish permanent residence, particularly if there are strong links to another country. […]"

7. The complainant filed the present complaint against the implied rejection of two internal appeals. The first appeal was filed on 6 November 2008 against a decision of 14 August 2008 to grant him the expatriation allowance retroactively but only from 1 December 2007. He contends that the allowance should have been granted retroactively from the date on which the Note took effect: 1 June 2001. Having filed that appeal he was informed on 30 January 2009, almost three months later, that it had been referred to the IAC. He was further informed, by letter of 12 February 2009, that the IAC had received it and that it would be processed as soon as possible. He was further informed that the processing depended upon the IAC's workload, the time that it took for the file to be completed and when the EPO's statement became available. A copy of the file and a request for him to comment upon the issue would then be sent to him. However, the complainant heard nothing further about the appeal, for some two and a half years, when he filed the complaint directly with the Tribunal on 15 August 2011.

8. With regard to his second appeal, on 29 November 2010 the complainant had requested a reconsideration of the decision of 7 September 2010 which reversed the decision to pay him the expatriation allowance. He also requested that his letter be treated as an internal appeal in the event of a negative reply. The EPO referred the matter to

the IAC, without informing the complainant that it had done so. Having heard nothing about the matter for over eight months, the complainant assumed that the silence was an implied rejection of the appeal and raised it directly to the Tribunal in his complaint of 15 August 2011.

9. In its reply, the EPO contends that the complaint is irreceivable. It argues that when the complaint was filed the internal appeals were still pending and the complainant had not, as Article VII, paragraph 1, of the Tribunal's Statute requires, exhausted "such other means of resisting [the decision] as are open to him under the applicable Staff Regulations".

10. However, as stated in Judgment 3373, consideration 3, for example, the complaint must now be regarded as directed against the explicit final decision on both appeals that was issued on 3 December 2012. The following was relevantly stated in Judgment 3356, considerations 15 and 16:

> "15. […]
>
> It follows that, far being out of time as Eurocontrol submits, the complaint filed with the Tribunal was in fact premature.
>
> 16. However, by an express decision of 18 July 2012, the Director General subsequently dismissed the complainant's internal complaint after the Joint Committee for Disputes had issued a divided opinion. As the complainant took care in his rejoinder to impugn this express decision, the complaint must be deemed to be directed against it."

The parties have proceeded accordingly. In its surrejoinder of 13 July 2012, the EPO informed the Tribunal that the IAC heard the parties on 11 June 2012 and its opinion was expected soon. On 24 September 2012 the complainant requested the suspension of the proceedings in the Tribunal for sixty days pending the issue of the final decision on it by the President of the Office. The final decision, which was issued under delegated authority of the President on 3 December 2012, rejected the IAC's recommendations, which were favourable to the complainant. The parties have made full submissions and provided further materials on that decision.

11. In his complaint, the complainant did not request an oral hearing. This, he said, was because the issues in the case are so straightforward and he considers that the Tribunal has quite enough information to determine them. However, he reserved the right to reconsider this after he read the EPO's reply. In his rejoinder, he requests an oral hearing at which his legal counsel may address the Tribunal on the issues raised in the complaint and at which he (the complainant) would be available to answer any questions which the Tribunal has. It is determined that an oral hearing is unnecessary given the parties' detailed and ample pleadings and written submissions, the information and many documents which they have provided and the fact that the IAC's fact finding was thoroughly conducted. Moreover, the parties subsequently made ample submissions and presented further information and documents addressing the IAC's opinion and the impugned decision.

12. On the merits, the complainant contends, in effect, that the EPO breached its own rules and guidelines, the principle of legal certainty, and, additionally, subjected him to unequal treatment when it refused to grant him the expatriation allowance retroactively with effect from 1 June 2001 and then withdrew it altogether in September 2010.

13. The EPO argues that the complainant was not entitled to the allowance under the Note because it gives the EPO discretion to determine, on objective grounds, whether an applicant who works and studies at the same time should be granted the allowance. The Tribunal however holds that neither Article 72(1) of the Service Regulations, nor the Note, confers discretion to determine entitlement to the allowance. Entitlement is to be determined on the facts in light of the interpretation of the relevant provisions of Article 72(1) and of the Note, which the present case brings into consideration.

14. The complainant contends that he was and still is entitled to the allowance because he resided in Germany from 1982 to 1990 principally for the purpose of pursuing doctoral studies in engineering at the Technical University of Munich (the University) and was employed as a research assistant to his supervising professor for the period. He explains

that, although tuition is free for doctoral studies in Germany, he worked in that capacity, as many doctoral students normally do, in order to cover their living and maintenance expenses. His research work was therefore ancillary to his studies. He presents a letter dated 11 June 2008 and another one dated 4 August 2011 from his supervising professor to support these statements. His professor confirmed that the complainant pursued graduate studies in engineering as a "scientific apprentice in the field of flight trajectory optimization" under his supervision and guidance.

The supervising professor states in the letter of 4 August 2011 that in his capacity as the Chair for the area in which the complainant studied and researched, it is common for the University to engage doctoral students in research work and much of their working time is usually dedicated to research studies as a basis for their work on their theses. He further states that "[a]ctivities conducing to the graduation could be supported and boosted even more as the students' research projects and theses [are] carried out on research aspects in fields the tutors themselves graduated in. This is extremely true of [the complainant]."

15. In response, the EPO argues that since the complainant lived in Germany for twenty years before joining the EPO he did not have to settle abroad from another country, and accordingly, granting him the allowance, when he actually resided in Germany, would denude Article 72(1) of the Service Regulations of its efficacy. The EPO also contends that the complainant would benefit from "differential treatment", since he was allowed to obtain a higher salary upon taking up his appointment with the EPO on the ground that he obtained relevant work or professional experience during the same period for which he later claimed the expatriation allowance on the ground that the same period was principally a period of study. The EPO further submits that the fact that the complainant worked on contract as a research assistant and had to give notice of termination when he left to join the EPO in 1990 is an additional strong pointer that the period of his stay in Germany at the material time was principally to pursue gainful activities.

16. The IAC suggested that the fact of the EPO's recognition when the complainant joined the EPO that his activities at the University

constituted principally professional experience may also be explained by other considerations. This, according to the IAC, is because it is often difficult to determine the boundaries between activities which are purely academic and those that are purely professional in relation to the work of a research assistant who is pursuing studies in the area of her or his research.

The IAC also found that having made the decision to grant the allowance to the complainant, the EPO could not justify revoking it, unless it showed that that decision was manifestly incorrect. It found that the EPO did not justify revoking it on the balance of probabilities, as it did not meet the required standard of proof.

The IAC also determined that by reversing the decision to grant the allowance in 2010, the EPO had violated the principle of *reformatio in peius* as, in effect, the complainant was placed in a worse position because he had filed the internal appeal that challenged the grant of the allowance made retroactively only to 1 December 2007, rather than from 1 June 2001. The Tribunal does not agree with this aspect of the IAC's findings as there is no evidence, as against surmise and speculation, that this was the reason why the EPO reversed the decision to grant the allowance. The IAC also found that the withdrawal of the allowance after the complainant had benefitted from it for over two years also violated the principle of legal certainty.

17. The Tribunal recalls the following statements in Judgment 2906, considerations 7 and 8:

> "7. The nub of this case is whether the President could lawfully reverse the decision of 6 July to promote the complainant to grade A5, as he did on 22 August 2005.
>
> Since the Service Regulations do not contain any specific provisions governing the conditions for the reversal or revocation of administrative decisions, this question can be settled only by referring to the general principles of law applied by the Tribunal.
>
> 8. In accordance with these principles, an individual decision affecting an official becomes binding on the organisation which has taken it and thus creates rights for the person concerned as soon as it has been notified to him or her in the manner prescribed by the applicable rules (see, for example, Judgments 2112, under 7(a), and 2201, under 4). As a general rule, such a decision may therefore

> be reversed only if two conditions are satisfied: the decision must be unlawful and it must not yet have become final (see Judgments 994, under 14, or 1006, under 2). Furthermore, where an individual decision does not create rights, provided that the principle of good faith is respected, it may be reversed at any time (see Judgment 587, under 4)."

18. It is observed that the impugned decision departed from the IAC's opinion and recommendations that were favourable to the complainant on the authority of Judgment 2906. However, the impugned decision relied on considerations 11 and 13 instead.

The Tribunal's statement in considerations 11 and 13 is summarised as follows: where a decision stemmed from a clerical error, i.e. a purely factual error, and not from a genuine intention of its author, the Tribunal considers that that decision did not create rights for the person concerned. Where the decision is not consistent with its author's intention, it is important that the impact of the decision should be limited as much as possible, even though its existence cannot be denied. A decision which is based on such a purely factual error could not create any rights. Accordingly, the competent authority is entitled to reverse it at any time as not doing so would possibly conflict not only with the interests of the organisation concerned but also with the principle of equal treatment of officials, insofar as it could, in some extreme cases, result in preposterous individual decisions reached by pure oversight becoming final.

However, notwithstanding that a decision which is based on a purely factual error did not create any rights, it could be reversed only on certain conditions dictated by the principle of good faith. This principle requires, first, that the power to reverse a decision resting on a factual error must be exercised as soon as the competent authority notices the error in question and not at a later date chosen at its own convenience. Secondly, this principle requires that if the person who benefitted from the error has not contributed to it, she or he must not suffer any unfavourable consequences from the application of the decision in question during the period before it was reversed.

19. The impugned decision stated that the IAC erred when it recommended that the two internal appeals should be upheld, as the

EPO had granted the allowance to the complainant based on a clear error of fact as to the complainant's residence when he joined its service. It must therefore be determined whether the 2007 decision to grant the allowance to him stemmed from a clerical error, i.e. a purely factual error, and not from a genuine intention of its author, which may vitiate that decision so that its reversal was lawful.

20. In Judgment 2906, the Tribunal considered that the decision to promote the complainant was manifestly unlawful because it rested on inaccurate facts and also because the complainant's promotion to grade A5 was contrary to the applicable legal rules. It found that notwithstanding that the President of the Office had a discretionary power to grant promotions, the Tribunal's case law stated that, in view of the crucial role assigned to the Promotion Board in the procedure laid down in Article 49 of the Service Regulations and various subsequent guidelines, the President may promote someone only on the Board's recommendation. The effect of this was that the President's authority to promote a staff member to grade A5 would have been lawful only if it rested on a prior recommendation to that effect from the Board. In that case the Board had recommended that the complainant should be promoted to grade A4(2), not grade A5. The Tribunal held that, for this reason, the President's decision to promote the complainant to the latter grade was "plainly unlawful". The last two words are critical. They are synonymous with "manifestly unlawful". Clearly, this was a typical case in which the decision to promote the staff member was the result of "a purely factual error" which vitiated the decision, as it rested on inaccurate facts and was contrary to applicable legal rules. The decision was accordingly reversed.

21. In the present case the nub of the EPO's case, which echoes the reasoning in the impugned decision, is that it (the EPO) made a clear error of fact when it granted the allowance to the complainant because he was actually resident in Germany in the three years prior to joining the EPO contrary to what he had declared in his application for the expatriation allowance, but his residence there was not principally for pursuing studies; on account of that declaration (for the expatriation

allowance) he contributed to the error; on those bases the EPO was entitled to reverse the decision and could have required him to reimburse the sums from which he benefitted. The impugned decision also stated that the decision to grant the allowance was reversed as soon as the error came to the EPO's attention. However, this latter statement does not state exactly when and by what means the error came to the attention of the EPO. The letter of 7 September 2010, which informed the complainant that the decision to grant the allowance was reversed, stated that "[w]e performed a review of your case based on […] Art. 72 of the Service Regulations and on the conditions outlined in the [N]ote […] dated 7 June 2001". The Tribunal considers that inasmuch as a review of a decision that was favourable to the complainant was being conducted, ordinary principles of procedural fairness required that he should have been notified of it and given an opportunity to explain why it should not have been reversed.

In the letter of 7 September 2010 it was further stated that based on the supporting documents in the complainant's file, "it appear[ed] that [he] w[as] gainfully employed during [his] PhD studies in Germany, and that this professional activity was prevailing" and for this reason the benefit was to cease as of 1 October 2010. The Tribunal finds that this critical reason was unsound in that it was not based on an assessment showing whether there was a new appreciation that the complainant's residence in Germany during the material period was principally for a gainful activity. In short, nothing in the letter explains the error which vitiated the decision of 14 August 2008 to grant to him the allowance.

22. After the impugned decision was issued, the EPO provided a statement dated 21 February 2013, which was made by its Director of HR Operations, who authored the letter of 7 September 2010 reversing the decision to grant the allowance. The Director states, in the 2013 statement, that between 1997 and 2000 she was Deputy HR Director at the National Research Centre in Munich, which "applied the working conditions of universities". She further states that those conditions clearly differentiate between a contract as a PhD student and a contract as a full-time research assistant employee on the basis of salary: PhD students were paid a half of what full-time researchers were paid. She states that

a net salary of 3,800 German marks, which the complainant received as a research assistant, was clearly the salary of a full-time researcher at the time, since a PhD student who worked as a research assistant received a net salary of between 1,500 and 1,800 German marks. The Tribunal considers that these assertions are unsupported and self-serving, as is the further statement that, "[f]urthermore, at the end of a contract as [a] PhD student you have to deliver a Doctor thesis which [the complainant] did not. As a consequence it is obvious that the [N]ote was never applicable for [sic] him."

23. It is noteworthy that the EPO states in its pleadings that it decided that the complainant was not entitled to the allowance, among other things, taking into account that he did not obtain the doctoral degree notwithstanding the length of time that he spent at the University. Accordingly, the EPO states that "[c]onsidering the number of years spent at the University, it cannot be excluded that the complainant stopped his PhD and only worked for the University" but that the complainant is silent on this. The EPO opined that the period from 1982 to 1990 was a much longer period than is normal to complete doctoral studies and these factors provided additional bases for the determination that his studies were ancillary to his job. The Tribunal holds that these reasons are based on mere assumptions. They are also based on considerations that are irrelevant to the question that was to be decided: whether the complainant's stay in Germany for the period when he resided there prior to his joining the EPO "was principally for the pursuit of studies" entitling him to the allowance, or whether it was principally for the pursuit of a gainful activity in which case he was not so entitled.

24. It is determined that the EPO has provided no reliable facts or bases for its decision to reverse the grant of the expatriation allowance to the complainant having granted it in circumstances which were not plainly unlawful. Accordingly, the claim to set aside the decision of 7 September 2010 reversing the decision to grant the allowance to him is well founded. The impugned decision will be set aside to the extent that it determined that the reversal of the decision to grant the allowance was lawful.

25. As to the claim that the grant of the allowance should have been made retroactively with effect from 1 June 2001, the EPO has no rules that preclude a retroactive grant. The complainant was not aware that he might have qualified for the allowance until another staff member brought the Note to his attention. The EPO had not circulated it. The EPO states that it had not done so because it was intended to guide its human resources officers in determining entitlement to the allowance in such cases.

The complainant states that he made the claim when he realised that the allowance might be granted to him particularly given the guidance of the Note from which other staff members had benefitted. While wrongdoing on the part of an applicant may preclude entitlement, there is no evidence of wrongdoing by the complainant in making his case for obtaining the allowance. The question for the purpose of receiving the allowance was not whether he was simply resident in Germany during the relevant period. It was whether he was resident there "principally for the pursuit of studies and not gainful activity". That question had to be determined, and was determined in his favour, by the EPO by applying the facts which the complainant presented to support his application. It is observed, for example, that in the declaration concerning the expatriation allowance in the form which the complainant filled out on 21 December 2007 when he requested the allowance, he stated that between 1982 and 1990 he pursued doctoral studies at the Technical University of Munich. He made a similar statement in a letter of the same date to the Human Resources Department.

26. The complainant argues that he was subjected to unequal treatment, as other employees were granted the allowance retroactively from 1 June 2001. However, it is not clear that the complainant was in the same position in fact and in law as those other staff members. Accordingly, his claim concerning unequal treatment is rejected.

Having decided on 14 August 2008 that the complainant was entitled to the expatriation allowance, the EPO ought to have granted it to him retroactively from the date on which the Note came into effect on 1 June 2001. An order that he should be paid retroactively to that

date will accordingly be made. The complainant will also be awarded 6,000 euros costs.

DECISION

For the above reasons,

1. The impugned decision of 3 December 2012 is set aside to the extent that it upheld the decision not to grant the expatriation allowance to the complainant retroactively from 1 June 2001, and is also set aside because it upheld the decision of 7 September 2010 to reverse the grant of the expatriation allowance to the complainant.

2. The EPO shall pay the complainant the expatriation allowance to which he is entitled with effect from 1 June 2001.

3. The EPO shall pay the complainant within 30 days of the date of the public delivery of this Judgment all arrears of the expatriation allowance to which he is entitled under paragraph 2 of this decision, together with interest at the rate of 5 per cent per annum until the date of payment.

4. The EPO shall also pay to the complainant costs in the amount of 6,000 euros.

5. All other claims are dismissed.

In witness of this judgment, adopted on 12 May 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ