

EIGHTY-FIRST SESSION

***In re* POPINEAU (No. 12)**

Judgment 1543

THE ADMINISTRATIVE TRIBUNAL,

Considering the twelfth complaint filed by Mr. Gérard Popineau against the European Patent Organisation (EPO) on 21 October 1995;

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

Having examined the written submissions;

CONSIDERATIONS:

1.The complainant, a former employee of the EPO, has for years been in litigation with the Organisation over his administrative status and the outcome of complaints to the Tribunal. In this complaint he seeks the waiver of the diplomatic immunity of the President of the European Patent Office so that "the ordinary course of justice will not be baulked".

2.Article 13(1) of the Protocol on Privileges and Immunities of the European Patent Organisation reads:

"... the President of the European Patent Office shall enjoy the privileges and immunities accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations of 18 April 1961."

The immunities include immunity from jurisdiction. Article 19(2) of the Protocol further provides:

"The President of the European Patent Office has the duty to waive immunity where he considers that such immunity prevents the normal course of justice and that it is possible to dispense with such immunity without prejudicing the interests of the Organisation. The Administrative Council may waive immunity of the President for the same reasons."

3.The complainant wrote asking the Administrative Council to apply the last sentence of Article 19(2). His request was not granted.

4.The Administrative Council exercised its discretion under Article 19(2) in declining to waive the President's immunity from jurisdiction. Such exercise of discretion is a matter outside the Tribunal's competence, affecting as it does relations between the defendant Organisation and a member State. The complaint is therefore "clearly irreceivable" and must be summarily dismissed in accordance with Article 7 of the Tribunal's Rules.

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

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