

**T. (No. 46)**

*v.*

**EPO**

**128th Session**

**Judgment No. 4206**

THE ADMINISTRATIVE TRIBUNAL,

Considering the forty-sixth complaint filed by Mr I. H. T. against the European Patent Organisation (EPO) on 28 February 2019;

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. At the material time, the complainant was a permanent employee of the European Patent Office, the EPO's secretariat. On 28 July 2015 he submitted a request for management review to both the President of the Office and the Chairman of the Administrative Council, challenging the implementation of the Administrative Council's decision CA/D 10/14 introducing a new career system. Following the rejection of his request for review, the complainant filed an appeal with the Appeals Committee on 18 December 2015.

2. In July 2016 the complainant sent an email to the Secretariat of the Appeals Committee urging it to expedite the processing of his internal appeal. He pointed out that he would soon be retiring and that it was important for him to receive a final decision on his appeal before

leaving the EPO. In reply, the Secretariat of the Appeals Committee explained that appeals were normally treated in chronological order, that his was one of a large number of similar appeals relating to the same issue, and that there was no justification for according it priority treatment. Following further enquiries as to the status of the proceedings, the complainant was informed in December 2017 that the Office's position paper was to be submitted by the end of February 2018.

3. The Office's position paper, which was filed on 23 February 2018, was forwarded to the complainant on 11 April 2018. After a further exchange of written pleadings, the complainant was notified by letter of 31 July 2018 that the written proceedings were closed and was asked to indicate whether he requested an oral hearing. The complainant requested a hearing.

4. In November 2018, in response to renewed enquiries by the complainant, the Secretariat of the Appeals Committee informed him that it would not be possible for the Committee to examine his appeal before 1 March 2019, as he had requested, because the Committee, "for reasons of coherence and efficiency", intended to examine it at the same time as other similar appeals, but the exchange of written submissions had not yet been completed in all of the cases concerned.

5. On 28 February 2019 the complainant filed his forty-sixth complaint, in which he argues that, in view of the excessive delays in the internal appeal process, the exercise of his right of appeal is paralysed and the Tribunal should therefore waive the requirement of Article VII, paragraph 1, of its Statute, that internal means of redress must be exhausted before filing a complaint.

6. Although the complainant insists that in this case the scope of his internal appeal is very limited and does not encompass the numerous other issues raised by the bulk of the appeals stemming from decision CA/D 10/14, he advances no compelling argument as to why the Committee's decision to examine these appeals in parallel should be viewed as inappropriate or unreasonable. In the circumstances of this

case, the Tribunal does not consider that the exercise of the complainant's right of appeal has been paralysed. There is therefore no justification for treating the requirements of Article VII, paragraph 1, of the Statute of the Tribunal as being satisfied.

7. It follows that the complaint is clearly irreceivable for failure to exhaust internal remedies and that it 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 10 May 2019, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ