

**119th Session**

**Judgment No. 3458**

THE ADMINISTRATIVE TRIBUNAL,

Considering the ninth and tenth complaints filed by Mr A. C. K. against the European Patent Organisation (EPO) on 2 October 2012;

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. The complainant ceased to perform his functions at the European Patent Office – the secretariat of the EPO – as of 1 July 2012, further to a decision taken on 6 July 2012 by the President of the Office. This decision, which followed a recommendation of the Medical Committee, also provided that the complainant was to receive an invalidity allowance.

2. In his ninth complaint, the complainant identifies as the impugned decision his pay slip received on 26 July 2012. He contends that the payslip contains an incorrectly calculated compensation for leave and an unjustified deduction for “previous months”. In addition, the complainant challenges the timing of the payment of the final lump sum that he received pursuant to Article 84 of the Service Regulations for Permanent Employees of the EPO, which was paid only after he ceased to perform his functions. He argues that such payment of the lump sum “could lead to national taxation thereof”.

3. In his tenth complaint, the impugned decision is said to be contained in a letter of 1 August 2012, reiterating a request which had already been made on 24 July 2012, namely that the complainant should collect his personal belongings from his office on 3 August 2012. The complainant understood those two letters as a threat that his personal belongings would be thrown away and requests the Tribunal “to give an opinion on this matter”.

4. As the two complaints involve the same parties and raise the same issue of receivability, the Tribunal finds it convenient to join them.

5. These complaints were filed with the Tribunal without any prior attempt to resort to internal means of redress within the EPO. The complainant justifies the direct filing of his complaints by making reference to Article 107(2)(a) of the Service Regulations, which, according to him, allows a complaint to be filed directly with the Tribunal against “decisions taken after consultation of the Medical Committee”. He also argues that the direct filing of his complaints was justified because the EPO no longer has a functioning internal justice system.

6. The Tribunal finds that the complainant has misconstrued Article 107(2)(a) of the Service Regulations. It is obvious that the Medical Committee did not consider any of the issues the complainant raises before the Tribunal and, consequently, the Committee’s recommendation regarding his invalidity does not have a direct link with the decisions that he seeks to challenge before the Tribunal. Thus, there is no legal basis for filing his complaints directly with the Tribunal.

7. Furthermore, the reasons put forward by the complainant to justify the fact that he has not challenged internally the calculation of compensation for leave, the deduction shown on his pay slip, the payment of the lump sum and the request to collect his personal belongings from his office are not acceptable. It is firm case law that a staff member is not allowed on his or her own initiative to evade the requirement that internal means of redress must be exhausted before a complaint is filed before the Tribunal (see Judgments 3190, under 9,

and 2811, under 10 and 11, and the case law cited therein). According to Article VII, paragraph 1, of the Statute of the Tribunal, a complaint shall not be receivable unless a final decision is impugned, the person concerned having exhausted such other means of resisting as are open to her or him under the applicable staff regulations (see, for example, Judgment 163).

8. Considering the above, the complaints are clearly irreceivable in their entirety and must be dismissed in accordance with the summary procedure provided for in Article 7 of the Rules of the Tribunal.

#### DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 14 November 2014, 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 11 February 2015.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ