

119th Session

Judgment No. 3465

THE ADMINISTRATIVE TRIBUNAL,

Considering the twenty-third complaint filed by Mr I. H. T. against the European Patent Organisation (EPO) on 7 March 2013;

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 is an employee of the European Patent Office, the secretariat of the EPO. He filed his complaint exclusively in his capacity as Chairperson of the Staff Committee in Munich.

On 30 June 2011 the Administrative Council adopted decision CA/D 4/11 abolishing the Audit Committee. On 28 September 2011, the then Chairperson of the Staff Committee in Munich, Ms H., acting in her capacity as a staff representative, filed an appeal against that decision together with another employee. During the internal appeal proceedings, elections to the Staff Committee took place and the complainant was elected Chairperson. On 26 November 2012 he wrote to the Chairman of the Administrative Council indicating that he wished to substitute himself for his predecessor, Ms H., in the appeal that she had filed against decision CA/D 4/11, which she had decided not to pursue.

On 12 December 2012, in accordance with the Appeals Committee's recommendation, the Administrative Council decided to reject the appeal. That is the decision the complainant impugns before the Tribunal.

2. The complainant submits that his complaint is admissible *ratione personae* according to Article II, paragraph 6, of the Tribunal's

Statute, and in light of the Tribunal's jurisprudence, in particular Judgments 2562, 2857 and 2919, which recognise that elected staff representatives exercising their duties within the meaning of Article 34 of the Service Regulations for Permanent Employees of the Office can file internal appeals and complaints regarding decisions and acts adversely affecting groups of EPO employees or the entire EPO staff. As he is the "successor in title" to the former Chairperson of the Staff Committee who had initiated the appeal against the decision to abolish the Audit Committee, his complaint before the Tribunal should be deemed admissible. As to the merits and pursuant to Article 38(3) of the Service Regulations, the complainant argues that the decision should have been submitted to the General Advisory Committee for an opinion.

3. The Tribunal finds that there is no evidence in the file that the Appeals Committee of the Administrative Council allowed the complainant to be substituted for the previous Chairperson of the Staff Committee in the appeal she had filed. Indeed, on the material before the Tribunal, it appears that the previous Chairperson withdrew her appeal. Nor is there any evidence that the complainant has received a final decision, directed to him, on that appeal. In these circumstances, it must be considered that he has failed to exhaust the internal means of redress as required under Article VII, paragraph 1, of the Statute of the Tribunal. His complaint is therefore clearly irreceivable and must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal. It follows that there is no reason to hold oral proceedings as requested by the complainant.

DECISION

For the above reasons,

The complaint is 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