119th Session **Judgment No. 3461**

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mr R. P. against the European Patent Organisation (EPO) on 14 January 2013 and corrected on 12 April 2013;

Considering the ninth complaint filed by Mr W. H. H. against the EPO on 21 March 2013 and corrected on 24 April 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. At the material time the complainants were employees of the European Patent Office, the secretariat of the EPO, and members of the EPO's General Advisory Committee (GAC). On 28 March 2012 the Administrative Council adopted decision CA/D 2/12, which amended Article 38 of the Service Regulations for Permanent Employees of the Office and its Implementing Rule concerning the selection of the members of the GAC. Each complainant wrote to the Chairman of the Council on 31 May requesting that the Council instruct the President of the Office to submit a proposal to the Council with a view to revoking the changes introduced by decision CA/D 2/12 and that the Council then adopt that proposal. They both indicated that the GAC had been consulted prior to the decision CA/D 2/12 being taken but that it had been irregularly constituted; consequently the consultation process was flawed. They asked that, in the event their respective requests could not

be granted, their letters be considered as an internal appeal within the meaning of Article 107 of the Service Regulations.

2. On 8 October 2012 the President of the Office, in accordance with Article 18(1) of the Rules of Procedure of the Administrative Council, drafted an opinion concerning the appeals filed by the complainants and other members of the GAC, and submitted it to the Council for decision. In his view, the complainants were challenging a general decision of the Council that needed to be implemented by individual decisions of the President before it could have any legal effect on employees. He also stated that the contested decision merely sought to clarify Article 38 of the Service Regulations and its Implementing Rule, and therefore did not in itself have any legal consequences which adversely affected the complainants. Consequently, the President requested the Council to dismiss the appeals as manifestly irreceivable.

3. During its meeting held on 25 and 26 October the Administrative Council unanimously decided, following the recommendation made by the President, to dismiss the appeals as manifestly irreceivable and not to make the President's opinion available to the public. The Council's decision is summarised in document CA/82/12 of 9 November 2012.

4. Mr P. filed his complaint with the Tribunal on 14 January 2013 challenging the decision of 9 November 2012 that he allegedly became aware of only on 10 January 2013. Mr H. filed his complaint with the Tribunal on 21 March 2013, also challenging the decision of 9 November 2012. He alleges that he was made aware of it only on 12 March 2013 by Mr P. Both complainants indicate that, to date, the decision has not been notified to them personally. They contend that their complaints should be considered receivable *ratione temporis* because they filed them within 90 days of having become aware of the impugned decision. Mr P. asks the Tribunal to quash decision CA/D 2/12 and to examine the lawfulness of decision CA/D 22/09 on the basis of which CA/D 2/12 was taken. Mr H. asks the Tribunal to set aside the Administrative Council's decision of 9 November 2012 and to remit the case to the EPO in order that proper appeal proceedings may be followed. He also claims damages and costs.

5. As the two complainants contest the validity of the same decision (CA/D 2/12) on identical grounds, the Tribunal finds it appropriate to join their complaints.

6. The Tribunal finds that the complaints must be dismissed as irreceivable as neither of the complainants has a cause of action. The contested decision CA/D 2/12 does not affect the complainants, either as individual employees or as individual members of the GAC as it has not yet been implemented. The decision caused, at the time it was challenged, no change to their personal membership in and contributions to the GAC. Moreover, the Tribunal notes that the complainants cannot act as representatives of the GAC as a whole in impugning this decision, as the GAC itself was involved in the decision-making process and gave its advice based on the majority opinion of its members. According to the Tribunal's case law established in Judgment 3291, under 7, "[the complainant] could not be considered to have a cause of action as he did not represent the GAC as a whole. That is because the GAC was consulted and submitted its opinion, which shows that the majority did not agree that the documents submitted were insufficient." To allow an individual GAC member to file a complaint on behalf of the GAC as a whole, when she/he disagrees with a decision taken by the Administrative Council following consultation with the GAC, would be contrary to the "majority rule" that the GAC has adopted in relation to the opinions it provides and to the Tribunal's case law on *locus standi*, according to which a decision may be impugned only by persons who are directly adversely affected by it.

7. Considering the above, the complaints must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Tribunal's Rules.

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