

V. (No. 2)

v.

WHO

120th Session

Judgment No. 3552

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr C. K. V. against the World Health Organization (WHO) on 28 May 2014;

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 has filed this complaint pursuant to Article VII, paragraph 3, of the Tribunal's Statute, arguing that his internal appeal, which he initiated on 5 December 2011, has not resulted in a final decision of the Director-General. More specifically, he argues that although the Administration submitted its surrejoinder to the Headquarters Board of Appeal (HBA) on 14 August 2013, by the time he filed his complaint he had received neither the report of the HBA nor the final decision of the Director-General, and that the uncertainty surrounding his appeal makes his complaint fit for direct consideration by the Tribunal.

2. The Tribunal has consistently held that the forwarding of a claim to the advisory appeal body constitutes a “decision upon [the] claim” within the meaning of Article VII, paragraph 3, of its Statute, which is sufficient to forestall an implied rejection (see, for example, Judgments 3456, under 4, and 2948, under 7). While it is clear from the case law that the requirement to exhaust the internal remedies cannot have the effect of paralysing the exercise of a complainant’s rights (see, Judgment 2039, under 4), a complainant will be exempted from that requirement only where she or he has done her or his utmost, to no avail, to accelerate the internal procedure and where the circumstances show that the appeal body was not able to reach a decision within a reasonable time (see, for example, Judgments 1674, under 6(b), and 1970). The content of the present complaint does not show any efforts of the complainant to obtain the necessary final decision. Consequently, his complaint is clearly irreceivable pursuant to Article VII, paragraph 1, of the Tribunal’s Statute and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

3. The Tribunal notes that the complainant has since filed a third complaint from which it is apparent that in the meantime the HBA finalized its report and that the final decision on his appeal was taken on 4 December 2014. The Tribunal may therefore be able to rule on the substance of his claims once the proceedings regarding that complaint are completed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 21 May 2015, 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 30 June 2015.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ