

**M. (No. 13)**

**v.**

**EPO**

**121st Session**

**Judgment No. 3631**

THE ADMINISTRATIVE TRIBUNAL,

Considering the thirteenth complaint filed against the European Patent Organisation (EPO) by Mr W. M. on 8 May 2015;

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. In his complaint before the Tribunal, the complainant impugns the final decision dated 9 February 2015 by which his internal appeal RI/14/09 was rejected as irreceivable. The EPO considered that the appeal challenged a general decision, which, according to the EPO, is irreceivable in accordance with the Tribunal's case law, in particular Judgment 3291.

2. The complainant states that he requests from the Tribunal quashing of the "decisions impugned (salary slips of the staff members)" and that the lawfulness of all the underlying general decisions is appealed "together with the individual implementation of the Complainant's salary slips". The Tribunal finds that this represents

a fundamental change in the complainant's approach, which is contrary to the Tribunal's Statute and Rules.

3. The complainant's internal appeal is clearly directed against Administrative Council decision CA/D 32/08. As it is a general decision requiring an individual implementation, the EPO was correct in concluding that it cannot be challenged directly. To remedy the deficiency of a wrong legal approach, the complainant attempted to focus his complaint before the Tribunal on challenging individual pay slips "of all staff members" or corresponding salary statements. However, as no pay slip or salary statement bearing the complainant's name was provided in the file, it is clear that the identification of the impugned decision as an individual one is merely an attempt to overcome the main argument by which the EPO rejected the internal appeal as irreceivable.

4. To the extent that the complainant impugns before the Tribunal individual implementing decisions and that no such decision was challenged in the internal appeal, the Tribunal finds that he has failed to satisfy the requirement of Article VII, paragraph 1, of the Statute that internal means of redress be exhausted before a complaint can be submitted to the Tribunal. The complainant challenged – incorrectly – a decision of a general nature in the internal appeal. By his attempt to change the strategy before the Tribunal, the complainant implicitly acknowledged that the general decision in question required an individual implementing decision. Indeed, the decision at issue is "a general decision setting out the arrangements governing pay or other conditions of service" that "take the form of individual implementing decisions" that each employee may later challenge (see Judgments 1451, under 20, and 1618, under 5). Until a decision of general application is implemented it cannot be said to have been applied in a prejudicial manner to a staff member and, consequently, as has been consistently held, cannot be impugned (see, for example, Judgment 2822, under 6, citing Judgment 1852). As the complainant did not challenge the individual implementation of the general decision with regard to himself in his internal appeal, he has not

exhausted internal remedies in that respect. His complaint is therefore clearly irreceivable and it will be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

5. The Tribunal notes a statement signed by four other persons stating that the “appeal is filed independently and additionally” by them. As the complaint was clearly irreceivable, there was no need to request those persons to file an individual complaint form and specific annexes as required under the Tribunal’s Rules. The Tribunal will therefore attach no legal value to their statement.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 23 October 2015, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ