

**E. (No. 5)**

*v.*

**EPO**

**124th Session**

**Judgment No. 3892**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Ms B. E. against the European Patent Organisation (EPO) on 6 February 2017;

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. On 28 September 2015 the complainant filed a request for management review, challenging the lawfulness of the Administrative Council's decision CA/D 10/14, as applied to her individually in her pay slip for September 2015. This request was rejected as unfounded by a decision of 19 November 2015, and on 4 December 2015 the complainant lodged an appeal with the Appeals Committee. On 30 June 2016 she was informed that her appeal had been registered under the reference RI/194/15.

2. By an email of 20 January 2017 the complainant enquired whether the Office had submitted its position paper responding to her appeal and, if so, when she could expect to receive it. On 24 January 2017, a lawyer working for the Appeals Committee informed her that

the Office's position paper had not yet been submitted and that, although appeals were in principle dealt with in chronological order, "it [was] unfortunately not possible at the moment to inform [her] of a fixed date or even of an estimated date when the position paper [could] be expected". The lawyer explained that the consequences of Judgments 3694 and 3785, which had recently been adopted by the Tribunal, were still being discussed, and that these judgments were likely to have repercussions on the planning of the Appeals Committee's work, hence the current uncertainty. He added that the complainant would be kept informed of further developments.

3. The complainant filed her fifth complaint on 6 February 2017, impugning the "decision" of 24 January 2017. She acknowledges in her brief that no final decision has yet been taken on her internal appeal, but she argues that in this case an exception should be made to the requirement of Article VII, paragraph 1, of the Tribunal's Statute that internal means of redress must be exhausted. Referring in particular to Judgments 1829, 1968, 3679, 3685 and 3714, she contends that it is impossible for her to obtain a final decision in the foreseeable future and that she is therefore entitled to come directly before the Tribunal.

4. According to firm precedent, a complaint filed directly with the Tribunal is irreceivable unless the complainant shows that the requirement to exhaust internal remedies has had the effect of paralysing the exercise of her or his rights. It is only then that she or he is permitted to come directly to the Tribunal where the competent bodies are not able to determine an internal appeal within a reasonable time, depending on the circumstances (see, for example, Judgment 3558, under 9).

5. The circumstances of this case are not such that the exercise of the complainant's right of appeal can be said to be paralysed. The Tribunal recognises that its finding in Judgments 3694 and 3785 that the composition of the Appeals Committee was unlawful is liable to have repercussions on many other decisions taken by the EPO's appointing authorities on internal appeals, in addition to the decisions impugned in the complaints leading to those judgments. However, the

necessary reorganisation of the Appeals Committee's workload that this will entail, which, in view of the number of appeals concerned, can be expected to take some time, has not paralysed the exercise of the complainant's rights.

6. On the contrary, it is clear from the materials on file that the complainant's appeal is being processed and there is no justification for making an exception to the requirement of Article VII, paragraph 1, of the Statute of the Tribunal. Moreover, the complainant may want to seek compensation for any undue delay in the processing of her internal appeal if and when she impugns the final decision on her appeal.

7. It follows that the complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 16 May 2017, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

DRAŽEN PETROVIĆ