

**P. L. (No. 3)**

**v.**

**ICC**

**129th Session**

**Judgment No. 4271**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr E. P. L. against the International Criminal Court (ICC) on 2 July 2019;

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 July 2018, in the wake of Judgment 4006, the complainant re-submitted to the new Registrar of the ICC a grievance he had initially filed in 2015 alleging harassment and unequal treatment on the part of the former Registrar. The grievance was duly forwarded to the Disciplinary Advisory Board (DAB), which submitted its report to the Registrar on 8 February 2019. At the date of filing the present complaint (2 July 2019), no final decision on the grievance had been communicated to the complainant.

2. In filing his complaint with the Tribunal, the complainant relies on Article VII, paragraph 3, of its Statute. He considers that as he did not receive a final decision within sixty days of the date on which the DAB's report was submitted to the Registrar, he is entitled to

proceed directly to the Tribunal, by filing a complaint within the following ninety-day period.

3. This approach is mistaken. As the Tribunal recalled in Judgments 4174, consideration 4, and 3975, consideration 5, for example, it is clearly established in the case law that where the Administration takes any action to deal with a claim, this step in itself constitutes a “decision upon [the] claim” within the meaning of Article VII, paragraph 3, of the Statute, which forestalls an implied rejection that could be referred to the Tribunal. Moreover, firm precedent has it that when an organisation forwards a claim before the expiry of the prescribed period of sixty days to the competent authority, this step in itself constitutes “a decision upon [the] claim” within the meaning of this provision (see, on these points, Judgments 532, 762, 786, 2681, 3034 and 3956). In the present case, it is obvious that the complainant’s grievance has been examined in accordance with the procedure set forth in the Administrative Instruction ICC/AI/2005/005. His complaint therefore cannot be considered receivable under Article VII, paragraph 3, of the Statute.

4. At the date of filing, approximately five months had elapsed since the DAB’s report was submitted for decision. The Tribunal notes that Administrative Instruction ICC/AI/2005/005 does not specify a period of time within which the final decision of the Registrar must be made and communicated to the official who lodged the grievance. The complainant does not seek to establish that his right of appeal is thus “paralysed”, which might justify the conclusion that the requirements of Article VII, paragraph 1, of the Statute are met, but rather relies, in the absence of any relevant internal provision, on his interpretation of Article VII, paragraph 3, of the Statute, which, as indicated above, is incorrect.

5. If the competent authority is not able to determine an internal appeal within a reasonable time, depending on the circumstances, an official can indeed file a complaint directly with the Tribunal, but 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 competent authority was not able to reach a decision within a reasonable time (see, for example, Judgment 3558, consideration 9, and the case law cited therein).

6. Since the complainant has not exhausted the internal remedies available to him, as required by Article VII, paragraph 1, of the Tribunal's Statute, his complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure set out 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 8 November 2019, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ