111th Session **Judgment No. 3048**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A.R. C. against the European Patent Organisation (EPO) on 1 July 2009;

Considering the applications to intervene filed by Mr P. D., Mr J. K., Ms V. M. and Ms E. W. on 12 August 2009;

Considering the applications to intervene filed by Ms S. A., Mr I. B., Ms T. B.-T., Mr A. N., Mr J. E. S., Mr J.-J. S. and Ms S. V. on 30 September 2009;

Considering the applications to intervene filed by Ms E. R. and Mr E.v.d.B. on 15 July 2010;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Article 7, paragraph 2, of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant and the interveners are serving officials of the European Patent Office, the secretariat of the EPO. Apparently, the complainant and the interveners each work a different percentage of reduced time due to sickness and none is on extended sick leave. The complainant and interveners filed internal appeals following the adoption by the Administrative Council of the present form of Article 62(5) of the Service Regulations for Permanent Employees of

the European Patent Office with effect from 1 July 2007. Article 62(1) provides for sick leave for permanent employees who are unable to perform their duties because of sickness or accident. Article 62(5) states:

> "During periods of part-time sick leave, the permanent employee shall retain his entitlement to annual leave as defined in Article 59. Annual leave taken during such periods shall be deducted in full days from the permanent employee's leave entitlement, irrespective of the percentage reduction in his working time. During such periods, the permanent employee may not take fractions of days' leave."

2. The complainant wrote to the President of the Office on 27 September 2007. His letter bore the heading "Deduction of annual leave days while working part time for medical reasons". The letter commenced with the statement:

> "I have reasons to believe that the Office has applied the new Article 62(5) Service Regulations to my annual leave days as of July 2007."

The complainant concluded his letter as follows:

> "If this new practice has resulted in a loss of leave days, I ask that those annual leave days be restored. [...] I also ask that the decision to introduce Article 62(5) be quashed. Should the Office find itself unable to accede to this request, I request that this letter be considered as the introduction of an internal appeal in accordance with Articles 106-109 of the Service Regulations for Permanent Employees of the EPO, in which case I additionally request compensation for costs and damages, as well as other and further relief."

3. It appears from the complaint that the various letters forwarded by the complainant and the interveners were registered as internal appeals on 22 November 2007 and given reference number RI/145/07. On 10 June 2008, according to the complaint, or on 10 June 2009, according to a document annexed to it, the complainant's representative contacted the Office stating that if the Office's position paper was not received before 1 July 2009, the internal means of redress would be considered exhausted. The present complaint was filed on 1 July 2009 seeking the quashing of Article 62(5) of the Service Regulations, restoration of lost leave days, costs and damages.

4. By Article VII(1) of the Tribunal's Statute, a complaint is receivable only with respect to a "final decision" and, then, only if "the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations". In view of the failure of the Office to do more than register the internal appeals filed by the complainant and interveners, it may be accepted that they have done all within their power to have their appeals dealt with in a reasonable time and, in accordance with the Tribunal's case law, that they have exhausted internal remedies. However, neither the complaint nor any of the documents annexed to it identifies any particular decision, let alone a final decision, affecting the complainant or any individual intervener. As already indicated, the letter of the complainant of 27 September 2007 merely stated that he had reasons to believe that the Office had applied the new Article 62(5) to him and, relevantly, asked that any leave days lost as a result of its application should be restored. That falls very far short of identifying a decision relating to the number of leave days available to him. And there is nothing to identify a decision of that kind affecting any of the interveners.

5. Further, it is not possible to treat the complainant's letter of 27 September 2007 as initiating an appeal against the decision of the Administrative Council to introduce the new Article 62(5) of the Service Regulations. In the first place, the heading of that letter refers to the "deduction of annual leave days", not the decision to introduce a new rule relating to their deduction. More significantly, the Service Regulations make separate and distinct provision for appeals with respect to decisions of the President of the Office and those of the Administrative Council. In particular, Article 108(1) provides for the lodging of internal appeals with "the appointing authority which gave the decision appealed against". The appointing authority is either the President or the Administrative Council. By Article 106(2), an appeal is instituted by submitting a request to the relevant appointing authority and that appointing authority must give a decision, in the case of the President, within two months from the date of the request or, in the case of the Administrative Council, within two months "from the

date on which the request was submitted to the first meeting of the Council after the request was made". If a favourable decision cannot be given, or if there is an implied decision rejecting the request, the appeal is referred to the relevant Appeals Committee, certain members of which are appointed by the President, in the case of his or her decisions, and by the Council, in the case of its decisions. The request by the complainant was clearly addressed to the President of the Office, not to the Administrative Council. That being the case and given the heading in that request, it is impossible to treat the internal appeals as appeals to the Administrative Council and, hence, as appeals against its decision to introduce the new Article 62(5) of the Service Regulations. And that is so even though the request contained a claim that Article 62(5) be quashed. That claim was secondary to the claim for restoration of lost leave days and it was specified that the request was made in consequence of the belief that Article 62(5) had been applied and that leave days had been lost. However, and as already pointed out, the request did not identify a decision, merely a supposition.

6. As the relevant documents cannot be construed as raising an appeal against the decision of the Administrative Council to introduce a new Article 62(5) of the Service Regulations, and as they do not reveal a specific decision with respect to the leave days available, the complaint is clearly irreceivable. As such, it must be dismissed in accordance with the summary procedure provided for in Article 7, paragraph 2, of the Tribunal's Rules, as must the applications to intervene.

DECISION

For the above reasons,

The complaint is dismissed, as are the applications to intervene.

In witness of this judgment, adopted on 13 May 2011, Ms Mary G. Gaudron, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2011.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet