

M. (No. 3)

v.

EPO

125th Session

Judgment No. 3954

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr H. M. against the European Patent Organisation (EPO) on 4 May 2017 and corrected on 31 May 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 and disallowed the complainant's application for oral proceedings;

CONSIDERATIONS

1. The complainant is a former official of the European Patent Office, the EPO's secretariat, who retired on 1 December 2016. In the present complaint he impugns the 1 March 2017 decision of the Administrative Council to forward his request for review of 23 September 2016, challenging Administrative Council decisions CA/D 6/16 and CA/D 8/16, to the President of the Office pursuant to Article 18(10) of the Council's Rules of Procedure and the case law of the Tribunal according to which the Administrative Council is not competent to decide challenges against general decisions to be implemented by the President (see Judgment 3291, consideration 6).

2. The complainant, a former member of the Boards of Appeal, claims that the new career system introduced by Administrative Council decision CA/D 10/14, which was amended by Administrative Council decisions CA/D 5/16, CA/D 6/16 and CA/D 8/16, directly and adversely affected the reputation and functioning of each of the members and chairpersons of the Boards, as well as the perception of their independence due to “improper extraneous influences” (i.e. the new requirements for probation periods, appraisals, bonuses, and career progression). He considers that Administrative Council decisions CA/D 5/16, CA/D 6/16 and CA/D 8/16 were “self-executing” as of 1 July 2016, in that they did not need to be implemented by an individual decision. As such, they are open to direct challenge. The fact that the President of the Office, in December 2016, took implementing decisions in respect of these three Administrative Council decisions is of no consequence because the direct adverse effects existed prior to the adoption of the implementing decisions. The complainant adds that the Administrative Council’s decision of 1 March 2017 forwarding his request for review to the President of the Office is “wrong”.

3. Administrative Council decisions CA/D 5/16 and CA/D 8/16 amended the Service Regulations for permanent employees of the Office with effect from 1 January 2017, while Administrative Council decision CA/D 6/16 amended the Implementing Regulations to the European Patent Convention with effect from 1 July 2016.

4. The complaint is irreceivable for failure to exhaust the internal means of redress. The complainant was notified that the Administrative Council had forwarded his request for review to the President of the Office for determination, but he brought the present complaint directly to the Tribunal before receiving from the President a final decision in accordance with Article VII, paragraph 1, of the Tribunal’s Statute. The Tribunal also notes that the complaint, insofar as it regards Administrative Council decision CA/D 10/14, is clearly irreceivable as that decision is already being challenged by the complainant under a separate complaint, and the claims regarding Administrative Council decisions CA/D 5/16 and CA/D 8/16 are clearly irreceivable as the

complainant cannot challenge a decision which took effect after he had left the EPO.

5. As the complainant impugns a measure which cannot be considered as a final decision within the meaning of Article VII, paragraph 1, of the Tribunal's Statute, the 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 10 November 2017, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ