

The Administrative Tribunal,

Considering the application filed by Mr W.J. K. on 7 September 2002 for review of Judgments 2022 and 2130;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant seeks review of Judgments 2022 and 2130. His first allegation is that: "Both Tribunal Judgments disregard the material fact that there was a *prima facie* failure in both complaints by the International Telecommunication Union (ITU), [...] to comply with its own staff rules and regulations." Such alleged failure relates exclusively to the defendant's failure to complete timely, or at all, the internal appeal procedures, a failure which led directly to the complainant filing complaints with the Tribunal without waiting for the results of the internal appeals. Since the Tribunal treated the complaints as if they were receivable and dealt with them on their merits it clearly did not "disregard" such failures. The complainant has in any event suffered no prejudice.
2. The complainant's second allegation is of "material error" but the facts alleged under that heading, like those related in the previous paragraph of his application for review, deal only with alleged failures by the defendant to complete the internal appeal procedure and likewise can give rise to no recourse by the complainant since the Tribunal dealt with his complaints on their merits.
3. Next, the complainant argues that: "The Tribunal did not address nor did [*sic*] the specific claim by the complainant that the defendant failed in its obligation to complete the periodic personal report on the date established by the defendant." This is simply not true: in Judgment 2130 the Tribunal dealt with that claim and found it irrelevant, saying:

"4. As regards his challenge to the Secretary-General's decision not to appoint him, the complainant alleges that the decision is flawed because the ITU failed to complete his appraisal report in a timely manner, in accordance with the Staff Regulations and Staff Rules. The plea is of no consequence here because the evidence shows that the report in question was communicated to the Secretary-General well prior to the date of the decision he is challenging. If there was any delay, the complainant did not suffer any prejudice thereby."
4. Under the heading "discovery of new facts" the complainant alleges that in another case the: "Tribunal found for [another] complainant on the basis of the defendant's failure to comply with its own rules." He does not specify the judgment he is referring to. There is nothing surprising about such a finding where such a failure is determined to be relevant and to have caused harm to a complainant; as indicated, those conditions were not found to have been fulfilled in Judgments 2022 and 2130.
5. Lastly, the complainant alleges denial of due process in that the Tribunal did not render summary judgment in his favour when he requested it to do so. It is enough to read Article 7 of the Tribunal's Rules to determine first, that summary judgment is always a matter of discretion, never of right, and second, that in any event, it is only available in the case of complaints which are "clearly irreceivable or devoid of merit" and may not therefore be obtained at the behest of a complainant.
6. The complainant's request that "[t]o ensure no further denial of due process and no further delay [...] the President, the Registrar and any Tribunal members previously involved in the [complainant's] complaints be

excluded from participation in the application for review" is unsupported by any argument and is unacceptable; the choice of judicial assignments is both an attribute and a guarantee of judicial independence and such assignments may not be dictated by litigants.

7. His application being clearly irreceivable, the Tribunal dismisses it in accordance with the summary procedure provided for in Article 7 of its Rules.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 16 May 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 16 July 2003.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet