Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

116th Session **Judgment No. 3285**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr J.-M. C. against the European Patent Organisation (EPO) on 30 August 2010 and corrected on 16 September, the EPO's reply of 22 December 2010, the complainant's rejoinder of 2 February 2011, the EPO's surrejoinder of 12 May, the complainant's further submissions of 18 July and the EPO's final observations thereon dated 24 October 2011;

Considering the second complaint filed by the complainant against the EPO on 17 June 2011 and supplemented on 31 August, the EPO's reply of 22 September, the complainant's rejoinder of 12 October and the EPO's surrejoinder of 24 November 2011;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, who was born in December 1945, entered the service of the European Patent Office, the EPO's secretariat, in October 1971 as a search examiner. On 1 January 2001 he became a member – at grade A5 – of the technical boards of appeal of Directorate-General 3 (DG3).

Subparagraph (a) of Article 54(1) of the Service Regulations for Permanent Employees of the European Patent Office stipulates that the normal age of retirement is 65. However, subparagraph (b) states that a permanent employee "may at his own request and only if the appointing authority considers it justified in the interest of the service, carry on working until he reaches the age of sixty-eight", and that this option is open to members of the boards of appeal, "provided that the Administrative Council, on a proposal of the President of the Office, appoints the member concerned pursuant to the first sentence of Article 11, paragraph 3, of the [European Patent] Convention with effect from the day following the last day of the month during which he reaches the age of sixty-five".

On 11 July 2008 the Vice-President in charge of DG3 published Communication 2/08, in which he explained that a member of a board of appeal who wished to continue working beyond the age of 65 should submit his or her request to him and that the proposal of the President of the Office would be "prepared by a Selection Committee within DG3 according to the document 'Procedure for recruitment of Chairmen and Members of the Boards of Appeal', dated 9.12.1988".

In February 2010, pursuant to the above-mentioned Article 54, the complainant wrote to the Vice-President in charge of DG3 to inform him that he wished to prolong his service beyond the normal retirement age. On 18 March he underwent the requisite medical examination, after which he was declared fit to continue working. The Selection Committee, which interviewed him on 12 May, proposed to the President of the Office that his request should be refused. By a letter of 8 June 2010 the President notified the complainant that, in his case, as "there [was] no particular factor, such as organisational needs or performance, which would counterbalance the need to bring in new staff" and justify granting his request in the interest of the service, she "[would] not propose that the Administrative Council appoint [him] as a member of the boards of appeal for a further period as from 1 January 2011". That is the decision which the complainant challenges directly before the Tribunal in his first complaint, in accordance with the relevant article of the Service Regulations.

On 4 April 2011 the staff were informed that the Administrative Council had decided to appoint two new members to the technical boards of appeal with effect from 1 July 2011. One of them was assigned to the post which the complainant had vacated on his retirement. That is the decision which the complainant impugns in his second complaint.

B. In his first complaint, the complainant points out that, according to Article 1(4) of the Service Regulations, the latter's provisions apply to members of the boards of appeal insofar as they are not prejudicial to their independence, as defined in Article 23 of the Convention. In his opinion, the provisions of Article 54(1)(b) of the Service Regulations should "be revoked" or, at least, "not applied" because the fact that they lay down that board members who have submitted a request to continue working beyond the normal retirement age are appointed by the Administrative Council on a proposal from the President means that their independence vis-à-vis the latter is not guaranteed. The complainant considers that such a request should be processed according to the procedure which applies when a member's five-year term of office ends and the question arises of whether or not he or she should be reappointed, in other words the request should be submitted to the Administrative Council for a decision and the President should simply be consulted.

Referring to a draft document drawn up in November 2007, the complainant asserts that the intention of the authors of the Service Regulations, with regard to extending the appointment of an appeal board member beyond the age of 65, was to separate the role of the President of the Office, which is to submit proposals, from that of the Administrative Council, which is to exercise a discretionary decision-making authority. From this he infers that the President is required to make a proposal to that body, irrespective of whether or not it is favourable to the permanent employee in question. He adds that, in his case, a mistake of law was committed, because the decision of 8 June 2010 was taken without authority, since it was the President of the Office and not the Council who decided.

Noting that neither Article 54 of the Service Regulations nor Communication 2/08 defines the notion of the "interest of the service", the complainant contends that the President established the criteria for evaluating it "at her own discretion" and therefore took an arbitrary decision in his case. Since this decision does not explain how his situation differs from that of a member of a board of appeal whose appointment was renewed, he also submits that he suffered unfair treatment.

The complainant considers that the above-mentioned Article 54(1)(b) was incorrectly applied, particularly because bringing in new staff was deemed an essential criterion for determining the interest of the service. On the basis of draft documents from 2007, he asserts that the authors of the Service Regulations had no intention of employing that criterion.

According to the complainant, the fact that the reasons for refusing his request, as stated in the letter of 8 June 2010, were general in nature reveals an improper use of discretionary authority, as an individual examination of the case is required whenever a permanent employee asks to continue working. Referring to the terms of that letter, he submits that the assessment of some "particular factor[s]", such as "organisational needs" and his performance, involved errors of fact and of law. He contends that, since he was a member of an appeal board, his performance was never appraised in a staff report and could not therefore be taken into account when deciding whether to extend his appointment. In addition, he submits that the aforementioned "organisational needs" were not correctly assessed and that the workload of the board of appeal to which he was assigned was such that it warranted the granting of his request, having regard to his experience, his qualifications and his work capacity. With regard to the latter point, he provides statistical data in order to draw the Tribunal's attention to the fact that his productivity was, in his opinion, above average.

Lastly, the complainant submits that his right to be heard was breached, because he was not informed of the subjects which would be broached during his interview by the Selection Committee, the

record of that interview was not forwarded to him and none of the reasons mentioned in the letter of 8 June 2010 was discussed with him in an adversarial manner.

The complainant asks to have the impugned decision set aside and to be granted a prolongation of service until 31 December 2013, with all the legal consequences that this entails. He also claims 500 euros in costs.

In his second complaint, which he filed in case the Tribunal were to find that the decision appointing his successor caused him injury, the complainant states that this decision must be set aside not only for the reasons stated in his first complaint, but also because, pursuant to Article 106 of the Service Regulations, the grounds for it should have been stated and it should have been communicated to him at once.

In his letter of 31 August 2011, the complainant says that a document published a few days earlier on the EPO's website shows that Mr L. has been appointed to the post which he vacated.

The complainant asks for both the setting aside of that decision and his appointment to his former post for the period from 1 January 2011 to 31 December 2013, with all the legal consequences that this entails. He also claims costs in the amount of 3,000 euros.

C. In its reply to the first complaint, the EPO contends that the latter is irreceivable since, as the Tribunal held in Judgment 1832, the President's decision not to propose the complainant's appointment to the Selection Committee did not adversely affect him.

Subsidiarily, the EPO submits that the complaint is groundless. First, it notes that, under the Tribunal's case law, the decision whether or not to prolong service beyond the age of 65 is a discretionary decision that can be set aside only on certain conditions which, in its view, are not met in the instant case.

The EPO then submits that the complainant's request was examined in compliance with the provisions of Article 54(1)(b) of the Service Regulations and that the impugned decision is well founded, since the interest of the service was correctly assessed. It explains that,

in the case of members of boards of appeal, that interest may depend on the "personal qualities" of the permanent employee who has reached the age of 65 and on the difficulty of replacing that person. It states that, in this case, the members of the Selection Committee carefully considered the request and reached the conclusion that, having regard to those factors, there were no grounds for extending the complainant's appointment, especially because his productivity was average and his performance, though commendable, was not exceptional. The EPO draws attention to the fact that the "interest of the service" is defined in the annex to Circular No. 302, which sets out the guidelines for applying Article 54 of the Service Regulations to permanent employees appointed by the President of the Office. It states that it is "obvious" that the criteria adopted for these employees – the needs of the service and, once these have been established, the suitability of the employee to fulfil them – also apply to members of boards of appeal. It explains that an additional criterion applies to them – namely the need to bring in new staff to DG3 – because it is important not to stymie the career and promotion prospects of permanent employees who aspire to this kind of "senior position".

Moreover, the EPO submits that, since the prolongation of the service of a member of a board of appeal beyond the age of 65 is "rather exceptional", it is "logical" that this is not done by simply renewing his or her term of office. In its view, the wording of Article 54(1)(b) of the Service Regulations is not therefore open to criticism. It considers that Article 23 of the Convention refers solely to the independence of members of boards of appeal in the exercise of their duties.

Lastly, the EPO holds that the complainant's allegation that his right to be heard was breached is unfounded, because the Selection Committee interviewed him. It annexes to its submissions the minutes drawn up by that body.

In its reply to the second complaint, the EPO explains that the decision to appoint Mr L. should have been challenged before the Administrative Council, in accordance with Article 11(3) of the European Patent Convention. However, insofar as the complainant's

second complaint is a sequel to his first, which he filed after having exhausted internal means of redress, it is of the opinion that they should be joined. It considers that, if the Tribunal finds that the first complaint is irreceivable, the second will be receivable, but in the opposite case, the second complaint must be declared irreceivable since there would be no cause of action.

On the merits, the EPO says that it was not bound to notify the complainant of his successor's appointment, because he was only indirectly concerned by it. It explains, however, that the complainant was informed about it on 11 August 2011 through the EPO's website and that the fact that he was not notified individually caused him no injury, because his complaint was filed within the time limits. It submits that the complainant has failed to put forward any cogent argument to justify his request that Mr L.'s appointment should be cancelled and that, in these circumstances, his second complaint must be regarded as groundless. In keeping with the Tribunal's case law, the EPO has forwarded the second complaint to Mr L., but he does not wish to comment.

D. In his rejoinder to his first complaint, the complainant submits that the latter is receivable, since the letter of 8 June 2010 does constitute a final decision adversely affecting him.

On the merits, he presses his pleas. Having become acquainted with the contents of the Selection Committee's minutes, he challenges the grounds for its decision in his case. Citing Judgment 2845, he is surprised that it was not considered to be in the interest of the service to prolong the service of a permanent employee whose performance was, in his words, "laudable". Moreover, he notes that the reasons given by the President are slightly different to those of the Committee and that the argument that there was no "particular factor […] which would counterbalance the need to bring in new staff" is not one of the criteria listed in the annex to Circular No. 302.

In addition, the complainant regards the publication, during the summer of 2010, of the vacancy notice for his post as proof that the

workload of the board of appeal to which he was assigned warranted the prolongation of his service.

In the rejoinder pertaining to his second complaint, he submits that, if the Tribunal finds that his first complaint is irreceivable, his second will be receivable. On the merits, he enlarges on his pleas.

E. In its surrejoinder to the first complaint, the EPO maintains its position. It emphasises that the vacancy notice for the complainant's post made no reference to the workload of the board of appeal to which he was assigned. It says that the complainant's performance could be taken into account when his request to continue working was examined and that the assessment of that performance is not tainted with any error of fact. It endeavours to show that the statistics supplied by the complainant do not correctly reflect the true situation and that in 2010, for example, he had the lowest productivity of all the rapporteurs of that board. It holds that Judgment 2845 is irrelevant, since the facts giving rise to that case were different to those in the instant case.

In its surrejoinder to the second complaint, the EPO expresses the hope that the Tribunal will find that the complainant's first complaint is receivable and that his second is not.

F. In his further submissions regarding his first complaint, the complainant maintains that, at this stage of proceedings, it was unnecessary to raise the issue of his productivity statistics, because the Selection Committee did not consider it appropriate to do so and members of boards of appeal are not subject to a staff report. He alleges that the statistics for 2010 could not be used to justify the decision not to prolong his service, since some of them relate to facts occurring after its adoption.

G. In its final observations, the EPO produces statistics showing that, in 2005, 2006 and 2010, the complainant had the lowest productivity of all the rapporteurs of the board of appeal to which he was assigned.

CONSIDERATIONS

1. Article 54 of the Service Regulations for Permanent Employees of the European Patent Office, which sets the retirement age for permanent employees at 65, was amended on 1 January 2008 to allow those who so request to carry on working until the age of 68, "if the appointing authority considers it justified in the interest of the service".

The second sentence of paragraph (1)(b) of this article makes it clear that this option is open to members of boards of appeal, to whom the Service Regulations apply only insofar as they are not prejudicial to their independence, "provided that the Administrative Council, on a proposal of the President of the Office, appoints the member concerned pursuant to the first sentence of Article 11, paragraph 3, of the [European Patent] Convention with effect from the day following the last day of the month during which he reaches the age of sixty-five".

Thus, in order for members of boards of appeal to continue working, they must be reappointed under the same conditions as those governing their initial appointment, since their last term of office must be deemed to end automatically at their normal date of retirement.

2. The special procedure for examining requests from members of boards of appeal to continue working after the age of 65 is set out in Communication 2/08 of 11 July 2008, which was signed by the Vice-President in charge of DG3. This text stipulates that the proposal to the Administrative Council to reappoint the persons in question is prepared by a selection committee, in accordance with the applicable points of the document entitled "Procedure for recruitment of Chairmen and Members of the Boards of Appeal" dated 9 December 1988.

3. As he was born on 4 December 1945, the complainant, who held grade A5 and had been a member of boards of appeal since 1 January 2001, would normally have retired on 1 January 2011.

However, on 5 February 2010 he asked to be allowed to carry on working until the age of 68 on the basis of the above-mentioned provisions. This would have postponed his retirement until 1 January 2014.

4. After he had been interviewed by the Selection Committee, the complainant's request was refused by the President of the Office, as proposed by that Committee. By a letter of 8 June 2010 she informed him that she "[would] not propose that the Administrative Council appoint [him] as a member of the boards of appeal for a further period as from 1 January 2011".

That is the decision which the complainant impugns before the Tribunal in his first complaint.

5. At its 127th session, held on 29 and 30 March 2011, the Administrative Council appointed, with effect from 1 July of that year, a new member of the boards of appeal to fill the post vacated as a result of the complainant's retirement. This decision was announced on 4 April 2011.

That is the decision forming the subject of the complainant's second complaint.

6. In this second complaint, the complainant has requested that oral proceedings be held. However, in view of the abundant and sufficiently clear submissions and evidence produced by the parties, the Tribunal considers that it is fully informed about the case and does not therefore deem it necessary to grant this request.

7. The EPO's request for the joinder of the two complaints does not meet with any objection on the part of the complainant. These complaints, which contain some common claims and chiefly rest on the same arguments, are largely interdependent. The Tribunal therefore considers that they should be joined in order that they may form the subject of a single judgment.

8. The EPO objects to the receivability of the first complaint on the grounds that it is not directed against an act adversely affecting the complainant.

Its reasoning in this connection is based on Judgment 1832, which concerned a complaint filed by a permanent employee to challenge the appointment of another person to the post of member of a board of appeal for which he had applied, and in which the Tribunal considered that the proposal for appointment submitted by the President of the Office constituted merely one step in preparation for the decision taken at the end of the procedure by the Administrative Council.

However, the Organisation is mistaken as to the scope of that precedent; it does not apply to a complaint directed against a refusal to propose an appointment where, as in the instant case, the refusal of the request of the permanent employee in question does not involve consideration of the merits of any competing candidate. In these circumstances, the position adopted by the President of the Office has the effect of ending the procedure, since the Administrative Council, which by definition has no proposal before it, is not called upon to take a decision on the request of the person concerned.

For this reason, such a refusal does constitute a decision having an adverse effect and it may therefore be challenged before the Tribunal. The fact that the post vacated as a result of a permanent employee's retirement is normally supposed to be filled by a decision of the Administrative Council, as it was in the instant case, is immaterial in this respect, since that decision is subject to a procedure which is legally separate from that concerning the refusal to prolong service.

9. In support of his first complaint, which will be examined in the following paragraphs, the complainant contends that the provisions of Article 54(1)(b) of the Service Regulations are unlawful insofar as they make the prolongation of service of a member of the boards of appeal subject to the submission by the President of the Office of a proposal for the reappointment of the person in question. He considers that this prolongation of service should be decided by

the Administrative Council after the President of the Office has merely been consulted, as is the case when members of the boards of appeal are reappointed under Article 11(3) of the European Patent Convention, and that the above-mentioned provisions undermine the independence conferred on these members by Article 23 of the Convention by authorising the President to submit a proposal and thus enabling him or her to preclude their reappointment.

Contrary to the complainant's apparent assumption, a prolongation of service under Article 54 cannot be equated with an ordinary extension of a staff member's term of office. Since the career of a member of staff normally ends automatically when that person reaches retirement age, any such prolongation is, by definition, an exceptional measure. The Tribunal therefore sees nothing unusual in making the granting of such a prolongation subject to the discretionary assessment by the President of the Office of whether it is in the interest of the service, and the fact that he or she is given the authority to propose such a measure cannot be deemed, *per se*, to undermine the independence of the members of boards of appeal.

There is therefore no reason whatsoever for the Tribunal to consider that the provisions in question should "be revoked" or "not applied", as the complainant requests.

10. As Article 54 refers to the criterion of the interest of the service, it gives the authority deciding on requests for a prolongation of service broad discretion which is subject to only limited review by the Tribunal. Pursuant to its case law, the Tribunal will interfere with such a decision only if it was taken without authority, if a rule of form or procedure was breached, if it was based on a mistake of fact or law, if an essential fact was overlooked, if a clearly mistaken conclusion was drawn from the facts or if there was an abuse of authority (see Judgment 3214, under 12, concerning the application of the same

article to the request for a prolongation of service of a member of boards of appeal, Judgment 2969, under 10, concerning its application to a staff member in a different category, and Judgments 2377, under 4, 2669, under 8, or 2845, under 5, concerning the application of similar rules providing for the possibility of remaining in office after normal retirement age).

11. The complainant submits that the impugned decision was taken without authority.

Relying on the aforementioned provisions of Article 54 of the Service Regulations, which make it clear that decisions on requests to carry on working lie with the "appointing authority", he contends that, for members of boards of appeal, the authority in question is the Administrative Council by virtue of Article 11(3) of the European Patent Convention. He infers from this that, by denying him such an extension, the President of the Office unlawfully encroached on the Council's competence.

As stated earlier, the second sentence of Article 54(1)(b) makes the continued service of a member of a board of appeal beyond normal retirement age subject to reappointment by the Administrative Council "on a proposal of the President of the Office". A long line of precedent has it that a provision of this kind, which grants the executive head of an organisation the power to propose that another organ adopt a decision, authorises that person to refrain from making such a proposal if he or she sees no reason for it (see Judgment 585, under 5). Moreover, the Tribunal has already had occasion to apply this case law with regard to the text at issue here in the aforementioned Judgment 3214, under 13, and the complainant's submissions in this respect do not convince it that it should modify its analysis.

The President of the Office was therefore competent to take the impugned decision not to propose the complainant's renewed appointment as a member of a board of appeal to the Administrative Council and thus to preclude his further employment.

12. The complainant also complains that his right to be heard was breached because, in his opinion, the impugned decision was based on criteria, reasons and factors of which he had not been informed beforehand and which were not discussed with him in an adversarial manner. However, the complainant was duly interviewed by the Selection Committee, and the fact that the decision taken thereafter might have been partly based on considerations other than those expressly mentioned during that interview, or in other exchanges, cannot be regarded *per se* as a breach of his rights of defence. This argument will therefore be dismissed.

13. The complainant takes the EPO to task for not sending him the Selection Committee's opinion or, at least, a record of his interview with that body.

The Tribunal's case law has it that, as a general rule, a staff member must have access to all the evidence on which the competent authority bases its decisions concerning him or her, especially the opinion issued by such an advisory organ. A document of that nature may be withheld on grounds of confidentiality from a third person but not from the person concerned (see, for example, Judgments 2229, under 3(b), or 2700, under 6).

The Tribunal observes that the complainant does not say that he asked for the document in question. While the Organisation could not lawfully have refused to grant such a request, it was under no obligation to forward the document of its own accord (see Judgment 2944, under 42, or the aforementioned Judgment 3214, under 24). The position would have been different only if – as is not the case here – the reasons given by the competent authority for its decision had been confined to a mere reference to the advisory body's opinion.

Moreover, it must be noted that the EPO annexed to its reply a copy of the minutes of the Selection Committee's deliberations, which contained a summary of the complainant's interview as well as the full text of its opinion.

14. Having acquainted himself with the contents of the latter document, in his rejoinder the complainant challenges the merits of the considerations forming the basis of the Selection Committee's rejection of his request to continue working. But the pleas regarding alleged errors of law or of fact in respect of these considerations are irrelevant and the fact, on which the complainant also relies, that the reasoning underpinning the Committee's opinion differs slightly from that of the decision of the President of the Office, does not in any way constitute a flaw.

15. The complainant criticises the actual content of the contested decision by submitting, with regard to its form, that insufficient reasons were given for it and, with regard to its merits, that it is based on criteria and factors that could not lawfully justify it.

16. The grounds given for the decision show that it is based, on the one hand, on the consideration that, in the EPO's opinion, in the interest of the service, it was necessary "to bring in some new staff" to fill the positions of the chairpersons and members of boards of appeal and, on the other, that no particular factor related to "organisational needs" or the complainant's "performance" would, in the instant case, have warranted an exception being made to the general policy of bringing in new staff.

17. Having read the decision in question, the Tribunal will not endorse the complainant's statement that it contains "no precise, detailed reasons". On the contrary, the decision sets out in detail the legal and factual considerations underpinning it.

While it is true that this reasoning could apply equally to other refusals to prolong the service of members of boards of appeal, there is nothing unlawful in this, since it is clear from the evidence on file that, contrary to the complainant's assertions in this regard, his request was examined individually.

In addition, the President of the Office was not bound, when justifying her decision, either to mention the precise definition of the interest of the service to which she intended to refer, or to reply to each and every argument put forward by the complainant during his interview before the Selection Committee. Nor was she obliged to list all the factors which might have made it possible to grant the complainant's request to continue working, or to explain why the complainant's case differed from those of other members of boards of appeal who did obtain a prolongation of service. The complainant's various submissions on these points will therefore be dismissed.

18. Contrary to the view taken by the complainant, the criteria forming the basis of the decision on his request, as set forth in the reasons given for that decision, cannot in substance be regarded as arbitrary and do not involve any mistake of law.

In particular, the complainant has no grounds for saying that the advisability of recruiting some new members to the boards of appeal was not something that the President of the Office could lawfully consider. Such a management goal is indeed related to the interest of the service, and the fact on which the complainant relies, namely that this criterion was not mentioned in the documentation laying the foundations for the amendment of Article 54 of the Service Regulations, which permits a prolongation of service, does not in itself prevent the competent authority from referring to it.

Nor is there any merit in the complainant's contention that the President of the Office committed a mistake of law by assessing his performance in order to decide on his request. Although it is plain from Article 47(2) of the Service Regulations that, unlike other permanent employees of the EPO, members of the boards of appeal are not subject to periodic staff reports, this provision cannot have the effect of excluding the quantity and quality of work done from the criteria used by the competent authority to decide on a member's request to carry on working, since it is necessary to ascertain that the extension of their appointment is in the interest of the service.

19. Lastly, the complainant also challenges the assessment made by the President of the Office of the merits of his request. He submits that a prolongation of his service would have been in the EPO's best interests, because it would have enabled the board of appeal to which he belonged to continue to benefit from the services of an experienced member. He also extols his own performance by emphasising that it was not criticised at any point during his career. However, within the limited review to which a decision on such matters is subject, as defined in consideration 10 above, the Tribunal would interfere with the disputed assessment only if it were tainted with an obvious mistake, and it must be found that, despite the complainant's arguments on this point, the evidence in the file discloses no such mistake.

20. In support of his second complaint, which the complainant filed as a precaution in case the Tribunal concurred with the EPO's objection to the receivability of his first complaint, he complains that he was not notified of the Administrative Council's decision to appoint his successor to the post which he had vacated on his retirement. In his opinion, this omission rendered that decision unlawful.

It is, however, plain from his submissions that the complainant intended to enter this plea only if the Tribunal did not deem the refusal of his request to continue working to be a decision adversely affecting him, with the result that only the appointment decision could have been challenged before the Tribunal. In view of the findings under consideration 8 above, this plea must therefore be considered to have been withdrawn.

Nevertheless, the Tribunal draws attention to the fact that, while the circumstances in which an administrative decision is notified may determine the beginning of the period of time within which it may be challenged, they have no bearing whatsoever on the lawfulness of that decision.

Otherwise, the complainant confines himself in his second complaint to repeating exactly the same arguments as in his first complaint, but this time directing them, in case they might be of some avail, against the appointment of his successor. These submissions will be dismissed in their entirety for the same reasons as those set forth above.

21. It follows from the foregoing that both complaints must be dismissed in their entirety, without it being necessary for the Tribunal to rule on the receivability of the second complaint.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 14 November 2013, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Claude Rouiller
Seydou Ba
Patrick Frydman
Catherine Comtet