

D.-H. (No. 3)

v.

EPO

125th Session

Judgment No. 3976

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mrs G. D.-H. against the European Patent Organisation (EPO) on 10 July 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;

CONSIDERATIONS

1. The complainant filed with the Administrative Council, on 6 March 2015, a request for review challenging Administrative Council decision CA/D 11/14. Following the public delivery of Judgments 3700 and 3796, the Administrative Council forwarded this request to the President of the Office for decision. The President rejected the request for review, which the complainant describes as “fictitious”, on 12 April 2017. That is the decision which the complainant impugns in her complaint.

2. The complainant submits that the Administrative Council decision CA/D 11/14 will “most probably” reduce her net pension. She continues to argue that her request for review of that decision was properly filed with the Administrative Council and should have been

decided by that authority. In her view, given that she is a pensioner, the President is not her appointing authority.

3. These arguments, by which the complainant in effect expresses her disagreement with the Tribunal's rulings in Judgments 3700 and 3796, are clearly devoid of merit. First of all, the argument that the President is not the appointing authority for pensioners has no legal basis and could equally apply to the Administrative Council, with the result that pensioners would have no right to file a request for review. Secondly, and more importantly, because pensions, like salaries, are paid on the basis of an individual account, any general decision regarding pensions must be implemented by an individual act issued under the authority of the President of the Office. The Administrative Council therefore correctly forwarded the request for review to the President.

4. The critical element for the complainant is that, despite having been properly advised, in the President's decision dated 12 April 2017 rejecting the request for review, that she could file an appeal with the Internal Appeals Committee in accordance with Article 110 of the Service Regulations, she did not do so, and before filing a complaint directly with the Tribunal the complainant failed to exhaust the internal remedies as required under Article VII, paragraph 1, of the Tribunal's Statute. Accordingly, her complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure provided for 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