

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

**111th Session**

**Judgment No. 3012**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr J. T.B. against the World Health Organization (WHO) on 18 May 2009 and corrected on 21 July, the Organization's reply of 3 November 2009, the complainant's rejoinder of 5 January 2010 and WHO's surrejoinder of 11 March 2010;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. Facts relevant to this dispute and details of the complainant's career are provided under A in Judgment 2017, concerning the complainant's first complaint, and in Judgment 2434, concerning his second complaint.

Suffice it to recall that the complainant considers that he has contracted onchocerciasis, a parasitic disease that may eventually lead to blindness in affected persons. He is convinced that his eye infection was contracted in the performance of his duties as a collector of

blackflies (insects that are vectors of the disease) on behalf of WHO in Côte d'Ivoire between 1974 and 1978. In 1994 he asked the Organization to recognise a causal link between the performance of his official duties and his eye disease and filed a claim for medical expenses with the competent WHO services.

In his first complaint he impugned the rejection of the appeal he had filed in 1998 with the Organization's Headquarters Board of Appeal following the decision to reject his claim for medical expenses. The Tribunal invited the Director-General of WHO to take a new decision on the ground that the purpose of the notification of intention to appeal filed by the complainant with the said Board was clearly to challenge the medical findings of the Advisory Committee on Compensation Claims, and not to allege any violation of the Staff Regulations and Staff Rules of WHO, and the case ought therefore to have been referred to a medical board.

Pursuant to Judgment 2017 a medical board was set up. At a meeting in Abidjan in December 2001, it concluded that it could not "objectively establish a link between [the complainant's] work as blackfly collector and [his] eye disorder". In the light of the board's report, the Advisory Committee on Compensation Claims recommended that the Director-General of WHO should reject the complainant's claim for compensation. By a decision of September 2002 the complainant was informed that the Director-General had accepted the recommendation.

On 30 January 2004 the Director-General, acting on a recommendation by the Headquarters Board of Appeal, which had convened after the complainant decided to file an appeal against the decision of September 2002, ordered as an exceptional measure the constitution of a new medical board. The decision of 30 January 2004 constituted the impugned decision in the case that led to Judgment 2434. The complaint was dismissed as irreceivable. In that judgment, the Tribunal encouraged the complainant to choose a medical practitioner to sit on the new medical board to be constituted so that "the procedure to determine his rights, which [had] already lasted too long, [could] be concluded".

The new medical board was composed of the medical practitioner appointed by WHO, the practitioner chosen by the complainant and a third practitioner appointed by these two members. On 15 August 2006 the first of these practitioners conducted a series of examinations on the complainant in Geneva in order to determine whether there was a link between his illness and the performance of his official duties. Two weeks later the board met to consider the complainant's medical file. The practitioner appointed by WHO signed the resulting report and the other two practitioners transmitted their agreement by e-mail in February 2008. The report concluded, on the one hand, that no "objective element" could be invoked to link the complainant's eye problems to a parasite infection and, on the other, that the complainant's bilateral optic nerve atrophy could be a side effect of a medical treatment that he had received.

The report of the medical board was submitted to the Advisory Committee on Compensation Claims which, at its meeting on 26 May 2008, took note of the first conclusion and observed that the second, which revealed that the complainant had taken anti-parasitic drugs which could have produced side-effects, brought to light a new element which called for further investigation. At its meeting of 19 September 2008 the Committee observed that the drugs prescribed to the complainant could not have been the cause of his disease. On 5 November 2008 it recommended to the Director-General that he reject the complainant's request for recognition of his ocular disorder as service-incurred. By a letter dated 20 January 2009, which constitutes the impugned decision, the complainant was informed that the Director-General had accepted the Committee's recommendation, namely that his illness was not attributable to the performance of his official duties and that his claim had been rejected.

B. The complainant takes the Organization to task for its "failure to offer [him] any assistance" in preparing his trip to Geneva in August 2006, notes that he was again "left to [his] own devices" on 15 August 2006, and complains of the "neglect" that he suffered during his return trip to Abidjan.

He criticises the sluggishness of the proceedings, noting that he had to wait for almost five years to be informed of the final decision to reject his claim for medical expenses. Given the sacrifices that he had agreed to make as a WHO staff member, the complainant finds that this sluggishness demonstrates “a lack of consideration” for him.

He presents new facts with a view to persuading the Tribunal of the existence of a causal link between the tasks entrusted to him when he worked for the Organization and the disease he contracted. He also accuses the Organization of bad faith, since it was fully aware, according to him, of the risks associated with his duties. He maintains that WHO “hastened to place [him] under treatment” as soon as the remedy was discovered.

The complainant challenges the Director-General’s decision to reject his claim for compensation and requests the Tribunal to order the Organization to provide a copy of the medical board’s report, signed by the three medical practitioners, “so that all the parties are equally well informed”. He also asks for a copy of the “preliminary reports” drawn up by two of the practitioners on the board.

C. In its reply the Organization emphasises that the complainant has not exhausted all available internal remedies, since he did not file an appeal with the Headquarters Board of Appeal against the Director-General’s decision of 20 January 2009 before referring the matter to the Tribunal. It points out that the complainant had been reminded of this requirement on the previous occasions when his case was considered and that he had then appealed to the Board in accordance with the prescribed procedure. It concludes that his direct appeal to the Tribunal is premature and that the complaint should therefore be declared irreceivable.

Moreover, as the complainant did not file his complaint against the decision of 20 January 2009 within the time limits prescribed by the Statute of the Tribunal, WHO contends that it is time-barred.

The Organization replies subsidiarily on the merits. It considers that the complainant’s “remonstrations” regarding WHO’s lack of

assistance are unwarranted, since he had been provided with travel guidance in advance of his trip and had been picked up on his arrival in Geneva in August 2006, and his taxi expenses had been covered during his stay. It asserts that the slowdown in the proceedings and their duration are due to “entirely objective factors”. The Organization points out that the complainant can seek any additional information he requires from the Health and Medical Services, and it provides the documents requested in the complaint as an annex to its reply.

D. In his rejoinder the complainant states that he was unable to obtain the medical documents from 1982 that confirmed his parasitic infection because of the “armed rebellion” that was raging in Séguéla (Côte d’Ivoire). He affirms that the medical treatment prescribed for him from 1989 could account for the negative results of the fresh examinations conducted in 1994 and 2006.

Furthermore, the complainant rejects WHO’s objection to the receivability of his complaint: he submits that he exhausted internal remedies and that the decision of 20 January 2009 failed to inform him of the procedure to be followed for a possible challenge. He further claims to have filed his complaint within the prescribed time limits.

The complainant expresses surprise at the ineffective functioning of the medical board and submits that the duration of the proceedings attests to the ill will of the Organization, which is “determined to wear [him] down”. Lastly, the complainant disputes the legitimacy of the medical board’s report, which was signed by only one medical practitioner, and leaves it to the Tribunal to assess its validity. He describes the suffering he endures from his ocular disorder.

E. In its surrejoinder WHO states that the complainant’s rejoinder raises no new factual or legal point, and it maintains its position. It reiterates that all available medical data were taken into consideration and indicates that the members of the medical board were disconcerted by the fact that the only test yielding a positive result had

never been confirmed by a subsequent examination, “although in cases of onchocercal infection, subsequent results are invariably positive”. Lastly, with regard to the absence of handwritten signatures on the medical board’s report, WHO explains that this stage was replaced by an electronic signing procedure.

### CONSIDERATIONS

1. Judgment 2017, delivered on 31 January 2001, concerned a decision taken with respect to the ocular disorder that the complainant believes he contracted while working as a blackfly collector for the WHO Onchocerciasis Control Programme. In that judgment, the Tribunal considered that the complainant’s claim should, in view of its medical nature, have led to the setting up of a medical board, and it sent the case back to the Director-General for a new decision on that claim.

Pursuant to the judgment, a medical board composed of three medical practitioners was established to look into the causes of the condition. As the Director-General, on completion of the procedure ordered by the Tribunal, rejected the complainant’s claim that his ocular disorder should be recognised as constituting an illness attributable to the performance of his official duties, the latter filed an appeal with the Headquarters Board of Appeal, which recommended that a new medical board comprising three other practitioners be set up. By Judgment 2434, delivered on 6 July 2005, the Tribunal dismissed the complainant’s second complaint, filed against the Director-General’s decision to accept that recommendation, on the ground that the decision allowed the appeal he had filed. However, the Tribunal invited the complainant to choose a practitioner to sit on the future medical board and to inform WHO accordingly, so that “the procedure to determine his rights, which [had] already lasted too long, [could] be concluded”.

2. The medical board’s report was not submitted until February 2008, both on account of the difficulties encountered in appointing the

third medical practitioner and on account of the slow pace of communication between the various parties. It concluded that the complainant's ocular disorder could be a side effect of a drug treatment prescribed for onchocerciasis. It stated, however, that it had been unable to establish conclusively that he was in fact suffering from the disease at the time.

In accordance with paragraphs 28 and 29 of Annex E to Part II, section 7, of the WHO Manual, the report was submitted to the Advisory Committee on Compensation Claims, which was tasked with submitting recommendations to the Director-General on the claim filed by the complainant. After questioning the complainant, the Committee noted that the latter had taken a very small quantity of a drug on a single occasion for preventive purposes. It concluded that the drug in question could not have been the cause of the ocular disorder and recommended that the Director-General reject the said claim. By a decision of 14 November 2008 the Director-General endorsed that recommendation. The complainant was informed thereof by a letter dated 20 January 2009, which he impugns before the Tribunal.

3. The defendant maintains that the complaint is irreceivable for failure to exhaust all means of redress within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal. According to the case law, a complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him. The only exceptions allowed to this requirement are cases where staff regulations absolve the complainant from initiating a prior internal appeal procedure, where there is an inordinate and inexcusable delay in the internal appeal procedure, where for specific reasons connected with the personal status of the complainant he or she does not have access to the internal appeal body or, lastly, where the parties have mutually agreed to forgo the requirement that internal means of redress must be exhausted (see, for example, Judgments 1491, 2232, 2443, 2511 and 2912).

4. The procedure to be followed is set out in paragraphs 28 and 29 of Annex E to Part II, section 7, of the WHO Manual.

Pursuant to these provisions, claims for compensation for medical reasons are considered by the Director-General on the basis of a report by the Advisory Committee. In the event of a conflict of opinion on the medical aspects of the relationship between the alleged illness and the performance of official duties on behalf of the Organization, the Director-General may refer the case to a medical board composed of three duly qualified medical practitioners, one of whom is chosen by the patient. The decision to be taken by the Director-General on completion of the procedure is deemed to be a final action within the meaning of Staff Rule 1230.8. An appeal to the Headquarters Board of Appeal may be filed against this decision pursuant to paragraph 28(e) of Annex E to Part II, section 7, of the Manual.

5. In the present case the complainant challenged the Director-General's decision directly before the Tribunal, whereas he should have had recourse to the Headquarters Board of Appeal. However, the circumstances do not warrant a derogation from the rule governing the exhaustion of internal means of redress set forth in Article VII, paragraph 1, of the Statute of the Tribunal. It follows that the complaint is not receivable.

6. However, it is appropriate to emphasise that the decision of 20 January 2009, which the complainant claims – apparently in good faith – to have received on 20 February 2009, fails to mention the means of redress and the relevant time limits. It is true that, in the absence of any statutory provision requiring such a reference, this omission will not ordinarily constitute a flaw warranting restoration of the time limit. However, in the very specific circumstances of this case, given the complexity of the applicable rules of procedure, the duration of the procedure and the complainant's serious disability, the



Organization's duty of care required it to indicate these means of redress and time limits clearly in its decision. The complainant will therefore be accorded a new time limit to appeal to the Headquarters Board of Appeal, starting from the date on which he is notified of the present judgment, i.e. the sixty-day time limit prescribed by Staff Rule 1230.8.

#### DECISION

For the above reasons,

1. The complaint is dismissed.
2. The complainant shall be accorded a new time limit for filing an appeal with the Headquarters Board of Appeal, as stated under 6, above.

In witness of this judgment, adopted on 12 May 2011, Mr Seydou Ba, Vice-President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2011.

Seydou Ba  
Claude Rouiller  
Patrick Frydman  
Catherine Comtet