

**119th Session**

**Judgment No. 3457**

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mrs A. D. E. H. against the European Patent Organisation (EPO) on 31 March 2014 and corrected on 2 June 2014;

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 has worked at the European Patent Office, the secretariat of the EPO, since 1998. In May 2009 she lodged an internal appeal against her staff report covering the period from 1 August 2004 to 31 December 2005. During this period, she worked as an examiner and was released from her normal duties, on a 50 per cent basis, for staff representation activities. In her appeal she contested the content of the staff report and alleged that it had been prepared in breach of the applicable procedure.

2. The Internal Appeals Committee (IAC) issued its opinion on 18 September 2013 and on 19 December 2013 the Vice-President in charge of Directorate-General 4, acting on behalf of the President of the Office, decided to follow the unanimous recommendation of the IAC to set aside the contested staff report. However, he also decided to split the reporting period in question into two parts. For the first part, from 1 August 2004 to 31 January 2005, he decided that the assessment made with respect to the complainant's previous staff report (covering

the period 1 January 2004 to 31 July 2004) would also apply, once that staff report was completed and approved. Hence, there would be one staff report for the period from 1 January 2004 to 31 January 2005. For the second part, from 1 February 2005 to 31 December 2005, he decided to request the reporting officer for that period, Mr T., to evaluate again the complainant's performance, but only with respect to that period.

3. In her complaint before the Tribunal, the complainant impugns the decision of 19 December and requests that the EPO "refrains from further steps aiming at drawing up a staff report replacing the report withdrawn" and that it "ensures that the complainant does not suffer from further adverse effects of the absence of proper staff report on her record of performance". She also claims moral damages and costs.

4. The Tribunal notes that the complainant successfully challenged the staff report, which was set aside as a result of her internal appeal. Consequently, she did not have a report on her performance for a period of time.

5. The decision that the complainant challenges before the Tribunal is a decision of a procedural nature and not a final decision adversely affecting her. It is a decision to start a new process of performance evaluation, and only at the end of this process would the complainant be in position to assess whether or not the outcome of the process is prejudicial to her. Her complaint to the Tribunal is therefore premature and will be summarily dismissed in accordance with the procedure provided for in Article 7 of the Tribunal's Rules.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 31 October 2014,  
Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M.

Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I,  
Dražen Petrović, Registrar.

Delivered in public in Geneva on 11 February 2015.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ