Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

D. (No. 6)

v.

EPO

135th Session **Judgment No. 4637**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr A. D. against the European Patent Organisation (EPO) on 13 August 2016 and corrected on 16 September 2016, the EPO's reply of 13 March 2017, the complainant's rejoinder of 27 June 2017 and the EPO's surrejoinder of 4 October 2017;

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

Having examined the written submissions;

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

The complainant challenges his staff report for 2014.

The regulatory framework within the EPO for creating and reviewing staff reports was amended with effect from 1 January 2015. Before that date, the framework was embodied in Circular No. 246, entitled "General Guidelines on Reporting", and, on and from that date, the framework was, with one qualification, embodied in Circular No. 366, entitled "General Guidelines on Performance Management". The qualification is that Circular No. 366 contained a transitional provision declaring that Circular No. 246 would still apply to staff reports covering the period up to 31 December 2014 "as far as concerns the content of the staff report and the procedure up to Part X of the report". However, the same transitional provision declared that the new

procedures in Circular No. 366 for conciliation and subsequent steps would apply to reports relating to that earlier period. The supersession of the former circular by the latter circular coincided with the introduction of a new career system in the EPO by decision of the Administrative Council of 11 December 2014 (CA/D 10/14), effective 1 January 2015.

On 29 September 2014 the complainant – a permanent employee of the European Patent Office, the EPO's secretariat, holding the post of examiner since 1981 – received a written warning from his director, who was his reporting officer, informing him that his performance was considered significantly below the agreed objectives for the current year. It was pointed out to him that supportive measures had been put in place to take account of his fragile health and he was invited to do his best to meet the expectations set and to indicate any other exceptional circumstances which might have explained his inadequate performance.

After taking part in a prior interview on 4 March 2015, the complainant received his staff report for 2014 signed by the reporting officer and the countersigning officer on 19 and 20 March 2015 respectively. He had received the rating "good" for the quality of his work and aptitude and "less than good" for productivity, attitude and the overall rating. In his observations of 17 April 2015, the complainant stated that he rejected the entire report on the grounds that the procedure and rules for appraising staff members and calculating his productivity using the system for assessing examiners' productivity (known by the acronym "PAX") had not been complied with. The reporting officer replied that the complainant's objections were incomprehensible and unfounded, a view which the countersigning officer endorsed.

The complainant requested that a conciliation procedure be initiated. On 11 May 2015 he was informed that his request would be dealt with pursuant to the provisions of Circular No. 366, "the only authoritative source as to the applicable procedure". He asked to be represented during the conciliation meeting, but this was refused as it was not provided for under the new circular. The meeting took place on 13 May but as the parties concerned did not reach an agreement, the staff report was left unchanged. On 27 May 2015 the complainant signed the report but submitted an objection to the Appraisals Committee on the grounds,

in particular, that the aforementioned meeting had been unacceptable, the rules and procedures for appraising staff members had not been observed, the countersigning officer had shown bias, discussions at the prior interviews had been misrepresented, and he had been subjected to harassment. He asked for the countersigning officer to recuse himself and for the performance appraisal procedure to continue.

In its opinion of 9 May 2016, the Appraisals Committee recommended that the complainant's objection be rejected and that his staff report for 2014, which in its view was neither arbitrary nor discriminatory, be confirmed. By a letter of 18 May 2016, which constitutes the impugned decision, the Vice-President of Directorate-General 4 (DG4) informed the complainant of his decision to follow those recommendations.

The complainant asks the Tribunal to set aside the impugned decision as well as the opinion of the Appraisals Committee, and to declare, first, that the PAX calculation rules were incorrectly applied when assessing his productivity and, second, that the "2014 reporting exercise" was arbitrary, discriminatory and flawed. He also requests that his staff report for 2014 be set aside and withdrawn from his personal file, that a new report be drawn up by impartial reporting officers, and that he be awarded compensation for the moral injury he submits he has suffered and costs in the amount of 2,000 euros. Lastly, he asks the Tribunal to declare unlawful the retroactive application of Circular No. 366 and, since he considers that he was subjected to threats and blackmail during the reporting exercise, he asks that his reporting officers' conduct be declared unacceptable.

The EPO argues that the complainant's cause of action lapsed when he retired on 1 September 2016. Furthermore, it contends that the request for the Appraisals Committee's opinion to be set aside is irreceivable as that opinion is a non-binding step, not a final decision. The same applies, in its view, to the request for a new staff report to be drawn up for 2014, which the Tribunal cannot grant as it is not the Tribunal's role to issue injunctions. In respect of the claim for compensation, the Organisation submits that no moral injury has been established but, if the Tribunal were to decide to set aside the staff report, the alleged injury would be sufficiently redressed. In consequence, the EPO

requests that the complaint be dismissed as irreceivable and subsidiarily as unfounded.

In his rejoinder, the complainant asks the Tribunal not to refer the case back to the EPO but to rule itself on the complaint on the basis of the documents in the file and oral proceedings. Should the case be referred back, he asks that a short and reasonable time limit be set for the final settlement of the case, that new reporting officers be appointed to draw up a new staff report, that he be allowed assistance throughout the new procedure and that he receive compensation for the moral injury allegedly suffered.

In its surrejoinder, the EPO reiterates that it is not for the Tribunal to issue injunctions.

CONSIDERATIONS

1. In his sixth complaint, the complainant seeks the setting aside of the decision taken by the Vice-President of DG4 on 18 May 2016 and the opinion of the Appraisals Committee issued on 9 May 2016 to which that decision refers. In that decision, the EPO rejected the complainant's objections to his 2014 staff report and endorsed the Appraisals Committee's recommendations. In the complaint form, the complainant lists 12 claims, which he puts in the following terms:

> "1.- set aside the final decision of the Vice-President [of] DG4 dated 18 May 2016;
>
> 2.- set aside the opinion of the Appraisals Committee dated 9 May 2016;
>
> 3.- declare that the PAX calculation rules were incorrectly applied when assessing productivity;
>
> 4.- declare that the 2014 reporting exercise was arbitrary, discriminatory and tainted with errors and flaws;
>
> 5.- set aside the 2014 staff report and order that this report be withdrawn from [his] personal file;
>
> 6.- recognise the presumption of bias and the disqualification of the reporting officers;
>
> 7.- order that a new staff report [for] 2014 be drawn up with new, impartial reporting officers;

8.- declare the retroactive application of Circular No. 366 unlawful in the 2014 reporting exercise;

9.- declare any threats or blackmail by superiors in a reporting exercise to be unacceptable;

10.- grant [him] compensation in redress for the serious moral injury suffered owing to intimidation, threats, blackmail, ill treatment and bias by all superiors, in an amount equivalent to [two] months of basic salary at grade G13/05, net of internal taxes, with interest at the statutory rate[;]

11.- award [him] 2,000 [e]uros in costs[;]

12.- hold oral proceedings pursuant to [Article 12, paragraph 1,] of the Rules of the Tribunal."

2. Article 47a of the Service Regulations for permanent employees of the European Patent Office states the following in respect of appraisal reports for staff members such as the complainant:

"(1) The assessment of performance and competencies is a managerial responsibility. It shall be conducted in a fair and objective manner.

(2) The ability, efficiency and conduct in the service of each employee, with the exception of the President and vice-presidents, shall be the subject of an appraisal report made at least once a year under the conditions established by the appointing authority.

(3) The appraisal report shall be communicated to the employee concerned who shall be entitled to make any comments thereon which he considers relevant." (Emphasis added.)

Article 110(2) of the Service Regulations, in the version applicable at the material time, provides as follows in respect of the internal appeal procedure for appraisal reports:

"The following decisions are excluded from the internal appeal procedure:

[...]

(e) appraisal reports referred to in Article 47a."

This article is supplemented by Article 110a of the Service Regulations, which, in particular, provides the following in respect of the objection procedure for appraisal reports:

"(1) In case of disagreement on an appraisal report referred to in Article 47a, the parties to the dispute shall endeavour to settle it through conciliation.

(2) If at the outcome of the conciliation, an employee is still dissatisfied with his appraisal report, he may challenge it by raising an objection with the Appraisals Committee.

(3) The President of the Office shall appoint the chairman of the Appraisals Committee, his deputy and 15 employees in active employment at the beginning of each year. From among this list of 15 employees, the chairman or his deputy will choose three members for each session.

(4) The Appraisals Committee shall review whether the appraisal report was arbitrary or discriminatory.

(5) The competent authority shall take a final decision on the objection, having due regard to the assessment of the Appraisals Committee.

(6) The President of the Office may lay down further terms and conditions for the settlement of disputes regarding appraisal reports."

3. The complainant's staff report for 2014 was drawn up in compliance with the provisions of Circular No. 246 in respect of its content and with those of Circular No. 366 in respect of the conciliation and objection procedures. The EPO introduced a new career system by decision of the Administrative Council of 11 December 2014 (CA/D 10/14). In particular, that decision inserted the aforementioned new Articles 47a and 110a into the Service Regulations so as to amend the conciliation procedure and establish an objection procedure before an appraisals committee. At the same time, Article 109(3) and Article 110(2) of the Service Regulations were amended to exclude appraisal reports from the review and internal appeal procedures.

Circular No. 246 was thus replaced with effect from 1 January 2015 by Circular No. 366. Section B(11) of Circular No. 366 sets out the details of the new conciliation procedure, while sections B(12) and B(13) describe the objection procedure before the Appraisals Committee. Section C(2) prescribes transitional measures applicable for 2014.

"**B. PERFORMANCE MANAGEMENT CYCLE**

[...]

(11) Conciliation

As soon as possible after notification that the staff member is not in agreement with the report, the countersigning officer must plan a conciliation meeting with the staff member and the reporting officer in order to reach agreement.

At the end of the conciliation procedure, the report is either amended or confirmed. The reporting officer forwards the final version of the appraisal report to the staff member, if applicable after implementation of the agreed changes and final validation by the countersigning officer.

The outcome of the conciliation is summarised by the countersigning officer and communicated to the staff member and the reporting officer.

In case of failure by the staff member to attend the conciliation meeting, the reporting and countersigning officers may proceed in the staff member's absence.

The whole process, from notification that the staff member is not in agreement with the report to the return of the appraisal report to the staff member, possibly after amendment, may not exceed 20 working days.

Should the staff member not receive the appraisal report back within this time frame, he may consider the lack of reply as a refusal to amend the appraisal report.

(12) Objections with the Appraisals Committee

If, after receiving the appraisal report following conciliation with the reporting and countersigning officers or after the time limit mentioned in the previous section has expired, the staff member

(a) does not wish to pursue the matter, he must confirm this and send the report to [the Principal Directorate Human Resources].

(b) is still dissatisfied with his appraisal report and wishes to pursue the matter, he must within ten working days request that the matter be taken further by raising an objection with the Appraisals Committee via the electronic tool, stating in writing the grounds for the objection and the relief claimed. The appraisal report, together with the summary of the outcome of the conciliation procedure, is then sent via the reporting officer to [the Principal Directorate Human Resources], which forwards it to the Appraisals Committee.

If the staff member does not respond within the above time limit, the report will be deemed complete. [The Principal Directorate Human Resources] will then close the procedure.

(13) Objection procedure

(1) The procedure before the Appraisals Committee is a written procedure, unless otherwise decided by the Committee.

(2) The Appraisals Committee examines the objections and reviews whether the appraisal report was arbitrary or discriminatory.

(3) The assessment of the Appraisals Committee is submitted to the competent authority for a final decision on the objection.

(4) The final decision taken is forwarded to the staff member, the reporting officer and the countersigning officer, together with the assessment of the Appraisals Committee.

(5) If the decision is to confirm the report, it will be deemed final and will be filed in the personal file by [the Principal Directorate Human Resources].

(6) If the decision is to amend the report, the reporting officer will be responsible for implementing the decision in the electronic tool and communicating the report to the staff member after validation by the countersigning officer. The staff member must acknowledge receipt of the amended report within fifteen working days and return it to [the Principal Directorate Human Resources], for filing in his personal file.

C. ENTRY INTO FORCE AND TRANSITIONAL MEASURES

(1) This Circular shall enter into force on 1 January 2015 and apply to the performance management cycle and resulting appraisal reports from that date onwards.

(2) Circular [No.] 246, as amended on 17 December 2013, shall still apply to staff reports covering the period up to 31 December 2014, as far as concerns the content of the staff report and the procedure up to Part X of the report. The conciliation procedure and the subsequent steps shall be replaced by the procedure described in the present circular from Part B(11).” (Emphasis added.)

4. The complainant requests that oral proceedings be held. However, the Tribunal considers that the parties have presented sufficiently extensive and detailed submissions and documents to allow the Tribunal to be properly informed of their arguments and the relevant evidence. That application is therefore dismissed.

5. The complainant also seeks an order setting aside the Appraisals Committee’s opinion dated 9 May 2016. However, in itself, that opinion was merely a preparatory step in the process of reaching the final decision, impugned by the complainant, which did not itself cause injury. As the Tribunal noted in Judgment 4392, consideration 5, in respect of the EPO’s Appeals Committee, “[a] request to declare the opinion of the Appeals Committee null and void is irreceivable as the Appeals Committee has authority to make only recommendations, not decisions”. This is equally true of an opinion of the Appraisals Committee. Established precedent has it that such an advisory opinion does not in itself constitute a decision causing injury which may be

impugned before the Tribunal (see, for example, Judgment 3171, consideration 13).

It follows that this claim is irreceivable.

6. The complainant's claims for declaratory orders in which he seeks, first, recognition of the presumption (which does not exist in law) of bias and the disqualification of the reporting officers (referred to in point 6 of consideration 1, above) and, second, a declaration that any threats and blackmail by superiors in a reporting exercise are unacceptable (point 9 of consideration 1, above), are also irreceivable. It is settled case law that it is not for the Tribunal to issue such general declarations or declarations of law (see, for example, Judgments 4492, consideration 8, 4246, consideration 11, 4244, consideration 8, 4243, consideration 27, and 3876, consideration 2).

7. With regard to all the complainant's other claims, the EPO submits that the complaint is irreceivable since the complainant no longer has a cause of action. According to it, while the complainant had, to a limited extent, a cause of action to challenge his 2014 staff report at the time when he filed his complaint, that cause of action lapsed when he retired on the last day of the month in which he reached the age of 65 years, as provided for in Article 54(1)(a) of the Service Regulations. In the EPO's view, since the complainant is retired and has stopped work permanently, with no chance of being reinstated or resuming his career, he is no longer eligible for any career progression, whether this be through step advancements, bonuses or promotions as provided for in Chapter 2 of Title III of the Service Regulations, which deals with professional development. The EPO therefore considers that he has no cause of action to request that the report in question be set aside.

However, the Tribunal observes that a staff member has, at the very least, a moral interest in challenging a report appraising her or his performance. Thus, contrary to the EPO's submissions, the fact that the complainant has retired since the report was drawn up does not, in itself, deprive him of a cause of action. The EPO's objection to receivability must therefore be dismissed.

8. In his main claim, the complainant seeks a declaration that Circular No. 366 may not be applied retroactively to his 2014 staff report and that the circular is unlawful. He adds that the report is unlawful in every respect owing to several flaws.

9. In respect of the application of Circular No. 366 to the 2014 staff report, under Section C of that circular, it was not applied retroactively in this case but in compliance with the transitional measures concerning the conciliation and objection procedures.

In Judgment 4257, having noted the distinctions between Circulars Nos. 246 and 366, the Tribunal ruled on this very issue of the lawfulness of the application of Circular No. 366 to 2014 staff reports. The relevant excerpts are reproduced below.

> "4. [...] it is desirable to address what is a threshold issue, namely the lawfulness of Circular No. 366 that established the new framework under which the 2014 staff report was reviewed and the lawfulness of Article 110a of the Service Regulations introduced by CA/D 10/14. Under the old framework established by Circular No. 246 a staff member who disagreed with the content of a staff report could request a conciliation procedure conducted by a mediator. That began with a meeting between the mediator and the staff member, who could be accompanied by an 'expert' of her or his choice. A list of experts was established for each reporting period, half being appointed by management, the other half by the staff representation. Thereafter a non-compulsory second meeting could take place. The mediator, staff member (who could be accompanied by the expert), reporting officer and countersigning officer would attend this meeting. Any agreement reached at this meeting would be presented to the competent Vice-President for approval leading to the creation of a final report for signature. If the staff member was dissatisfied with the outcome, she or he could lodge an appeal with the Internal Appeals Committee.
>
> 5. Several features of the procedure just discussed were removed or altered by Circular No. 366. If a staff member contests the contents of a staff report then a meeting is held between the staff member, the reporting officer and the countersigning officer. No mediator is involved nor is there provision for the staff member to be accompanied by an expert or anyone else. If dissatisfied with the result, the staff member can raise an objection with the Appraisals Committee, the members of which are appointed by the Administration. Its mandate is confined to determining whether the appraisal was arbitrary or discriminatory. Unless the Committee decides otherwise, the procedure is a written one. The Committee's assessment is submitted to

> the competent authority for final decision. Thereafter there is no procedure for review by way of internal appeal.
>
> 6. The lawfulness of the new procedure is challenged by the complainant in a number of ways. First he argues that the EPO acted unlawfully by applying Circular No. 366 retroactively to his detriment and he cites Judgment 3185. Secondly he appears to argue that the new procedure does not provide an impartial review of the staff report which includes, ultimately, review by an appeals committee with management and staff representatives in equivalent numbers. [...]
>
> 10. The complainant's first argument that the EPO acted unlawfully by applying Circular No. 366 retroactively should be rejected. [...]
>
> 11. In the present case, the 2014 staff report was prepared under the provisions of Circular No. 246, being the provisions which had been operative during the reporting period. It is of no real moment for present purposes that the immediate legal foundation for the application of the provisions of Circular No. 246 was the transitional provision in Circular No. 366. The fact that on and from 1 January 2015, the procedures for reviewing a staff report were those in Circular No. 366 and not those in Circular No. 246 does not involve the unlawful application of retroactive provisions. As the Tribunal observed in Judgment 2315, consideration 23, in general terms, a provision is retroactive if it effects some change in existing legal status, rights, liabilities or interests from a date prior to its proclamation, but not if it merely affects the procedures to be observed in the future with respect to such status, rights, liabilities or interests. At best for the complainant, the latter observation about the future is applicable. But it must be borne in mind that the 2014 staff report was created after 1 January 2015 and challenged thereafter and it may be doubted that any issue of retroactive operation truly arises at all. [...]"

10. As Judgment 4257 notes, the issue of retroactivity dealt with in Judgment 3185 cited in the above excerpts, which is referred to in the standard arguments put by EPO staff representatives that are adopted by the complainant in his rejoinder, arose in different circumstances from those prevailing in the instant case. The entry into force of the new Circular No. 366 had no bearing on the content of the complainant's 2014 staff report because, in compliance with the transitional measures, it was drawn up pursuant to the provisions of Circular No. 246; it was when the conciliation and objection procedures were carried out in 2015 that Circular No. 366 was in force. That circular did not therefore effect

any change in legal status, rights, liabilities or interests from a date prior to its proclamation and so was not applied retroactively.

11. In respect of the complainant's criticism that the constitution of the Appraisals Committee rendered unlawful the conciliation and objection procedures provided for in Article 110a of the Service Regulations and Circular No. 366, aforementioned Judgment 4257 explains why that argument is unfounded:

> "12. The complainant's second argument is that the new scheme does not provide an impartial review of the staff report which includes, ultimately, review by an appeals committee with management and staff representatives in equivalent numbers. In substance, two issues emerge from this argument. The first is that the Appraisals Committee is, under the new regulatory framework, limited to considering whether the staff report was arbitrary or discriminatory. The second is that the grievance cannot be further pursued by way of internal appeal. As to this second point, the Tribunal has repeatedly spoken of the desirability of effective internal appeal mechanisms (see Judgment 3732, consideration 2, and the cases cited therein). However the Tribunal has not said it is mandatory and a precondition to the exercise of jurisdiction by the Tribunal in relation to final decisions that all such decisions are subject to internal appeal.
>
> 13. As to the complainant's argument about the limited role of the Appraisals Committee, it is not self-evidently a flaw in the framework. As the Tribunal has said in relation to its own role, the assessment of an employee's merit during a specified period involves a value judgement (see, for example, Judgment 3692 referred to earlier). By parity of reasoning, it would be reasonable for an organisation to adopt an approach that individuals (such as those comprising the Appraisals Committee) reviewing a staff report prepared by a staff member's supervisor involving value judgements would not be as well-placed to make the same value judgements but, in order to guard against abuses of the process, would have authority to assess whether the report was arbitrary or discriminatory. And while staff would understandably prefer the membership of the Appraisals Committee to include staff representation and not be limited to management, the fact that it is so limited does not render its constitution in this way, unlawful."

The Tribunal sees no reason to depart from its previous assessment of the lawfulness of the constitution of the Appraisals Committee. As Article 47a of the Staff Regulations provides, the assessment of performance and competencies is a managerial responsibility, and the constitution of the Appraisals Committee is appropriate in view of its

purpose. The suspicion of bias to which the complainant draws attention in his submissions owing to that constitution does not rest on any tangible, substantiated evidence of any kind.

12. The complainant further submits that the objection procedure before the Appraisals Committee set out in Circular No. 366 does not include the same safeguards as the internal appeal procedure before the Appeals Committee. However, the complainant does not put forward any arguments showing the objection procedure to be flawed. That the procedure before the Appraisals Committee is a written procedure, unless otherwise decided, does not breach his right to be heard. The Tribunal points out that respect for the adversarial principle and the right to be heard requires that the official concerned be afforded the opportunity to comment on all relevant issues relating to the contested decision (see Judgments 4408, consideration 4, and 2598, consideration 6), but there is no general principle requiring her or him to be given an opportunity to present oral submissions (see Judgment 4398, consideration 4). Furthermore, the complainant had the opportunity to submit his observations at several points during the conciliation procedure and in the objections he submitted to the Appraisals Committee.

13. The fact that the Appraisals Committee's mandate is confined to determining whether a staff report is arbitrary or discriminatory does not in itself render the procedure flawed, as the Tribunal has already noted in the excerpt from Judgment 4257 cited in consideration 11, above.

Likewise, there is no substance to the complainant's submission, drawing on the standard arguments put by EPO staff representatives on this point, that the Appraisals Committee's narrow mandate restricts the scope of the Tribunal's own power of review in this area.

It should be borne in mind that the Tribunal exercises only a limited power of review in the matter of staff appraisal. Judgment 4564, consideration 3, states the following in this respect:

> "[...] assessment of an employee's merit during a specified period involves a value judgement; for this reason, the Tribunal must recognise the discretionary authority of the bodies responsible for conducting such an assessment. Of course, it must ascertain whether the ratings given to the

> employee have been determined in full conformity with the rules, but it cannot substitute its own opinion for the assessment made by these bodies of the qualities, performance and conduct of the person concerned. The Tribunal will therefore intervene only if the staff report was drawn up without authority or in breach of a rule of form or procedure, if it was based on an error of law or fact, if a material fact was overlooked, if a plainly wrong conclusion was drawn from the facts, or if there was abuse of authority. Regarding the rating of EPO employees, those criteria are the more stringent because the Office has a procedure for conciliation on staff reports and the Service Regulations entitle officials to appeal to a [...] body [...]"

Since the Tribunal's power of review does not extend to determining as such whether appraisals are well founded, the fact that the Appraisals Committee's power of review is itself confined to assessing whether an appraisal report is arbitrary or discriminatory does not affect the Tribunal's power of review, which continues to be exercised on the same terms as previously.

14. Lastly, the conciliation procedure set out in Section B(11) of Circular No. 366 is not unlawful simply because it does not provide for an independent mediator to be present during the conciliation meeting, in contrast to the situation under Circular No. 246. There is a presumption of the good faith of reporting officers, and the lack of a mediator does not in itself render the process biased. As regards the lack of opportunity to be assisted during the conciliation meeting, the Tribunal considers that the complainant's criticism that there is thus an obvious imbalance of power is unfounded. The mere fact that Circular No. 366 does not provide for such assistance does not make the conciliation procedure inappropriate or that circular unlawful. The Service Regulations set out situations in which staff members are entitled to be assisted. They do not provide for such a right before the Appraisals Committee. The refusal of the complainant's request to have assistance during that conciliation procedure therefore does not render the impugned decision unlawful.

15. It follows that the complainant's various pleas seeking a declaration that the retroactive application of Circular No. 366 and the circular itself are unlawful are unfounded.

16. The complainant also disputes the lawfulness of the "2014 reporting exercise". It must be noted in this respect that, as was recalled in consideration 13, above, the Tribunal exercises only a limited power of review in this area.

In respect of the provisions that remained applicable to 2014 staff reports pursuant to the transitional measures set out in Section C of Circular No. 366, Section B of Circular No. 246, concerning preparations and instructions for filling in the relevant official electronic form, provided that paragraph 1 of Part VIII, concerning the staff member's comments, was intended to allow that staff member "to comment on the report as a whole or particular aspects of it, and to mention any special considerations which may have affected his performance". Paragraph 4 of Part VIII added that if the staff member wished to comment, she or he was to provide confirmation and include any comments she or he wished to make.

The Tribunal observes that, in the 2014 staff report, the complainant chose only to provide general observations without including any comments as Circular No. 246 and the official electronic form allowed him to do.

As the complainant is unable to provide convincing proof of circumstances falling within the scope of the Tribunal's limited power of review, no fault can be found with the 2014 staff report in the circumstances of the case. The Tribunal agrees with the Appraisals Committee that, as the Committee stated in its opinion, the complainant has not provided any evidence proving that his staff report was flawed. Indeed, the Committee was correct in finding that the disagreement rather concerned different points of view regarding the quality of the complainant's work, on the subject of which the Tribunal cannot substitute its opinion. The complainant's submissions concerning the productivity targets which, in his view, were incorrectly increased and assessed are precisely of this nature.

17. As regards the complainant's suspicions of bias and prejudice on the part of the reporting officers and the chairwoman of the Appraisals Committee, under the Tribunal's settled case law, the complainant

bears the burden of proving such allegations. They must be supported by evidence of sufficient quality and weight to persuade the Tribunal; mere suspicion is clearly not enough (see, for example, Judgments 4543, consideration 8, 4382, consideration 11, and 3380, consideration 9).

In consideration 15 of aforementioned Judgment 4257, the Tribunal found that, in that case, the Appraisals Committee had accepted correctly that consideration of whether the staff report was authored by individuals who were partial was a matter comprehended by its role in assessing whether the report was arbitrary or discriminatory. In the instant case, the Appraisals Committee rightly dismissed the complainant's argument of bias.

18. Lastly, the allegations of threats and harassment on which the complainant dwells at length in his rejoinder are vague, uncorroborated and go substantially beyond the scope of the instant case. These allegations mostly concern incidents that occurred in 2012, 2013 and 2014, which preceded the 2014 staff report and occurred in circumstances where the complainant did not submit a formal complaint of harassment pursuant to Circular No. 341 concerning policy on the resolution of conflicts and on the prevention of harassment at the EPO. The complainant's allegations of threats and harassment in his sixth complaint show clearly that his main criticism in this respect relates to the EPO's alleged negligence in not having initiated an investigation and having allegedly disregarded Circular No. 341, despite his reports of the conduct of the reporting officers concerned towards him, which does not have a bearing on the lawfulness of the staff report at issue.

The complainant's request that the 2014 staff report be set aside and withdrawn from his personal file as well as his request that a new staff report be drawn up by impartial reporting officers (which appear in points 5 and 7 of consideration 1, above) must therefore be dismissed.

19. Lastly, the complainant's claim for compensation for the serious moral injury he allegedly suffered will not be granted. The Tribunal recalls that, with regard to damages, the complainant bears the burden of proof and she or he must provide evidence of the injury

suffered, of the alleged unlawful act adversely affecting her or him, and of the causal link between the unlawful act and the injury (for example, Judgments 4158, consideration 7, 4157, consideration 9, and 4156, considerations 5 and 6). In no event has evidence been provided of an unlawful act in the present case.

20. It follows from the foregoing that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 November 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 1 February 2023 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ