

**D. (No. 3)**

**v.**

**EPO**

**132nd Session**

**Judgment No. 4416**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Ms L. D. against the European Patent Organisation (EPO) on 23 January 2015 and corrected on 26 February, and the EPO's reply of 22 June, corrected on 14 July 2015, the complainant having failed to file a rejoinder within the allocated time;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the decision not to extend her fixed-term contract.

The complainant joined the EPO on 1 February 2009 under a fixed-term contract for a duration of two years and eleven months. On 26 September 2011 her contract was extended for a 12-month period, until 31 December 2012. By a letter of 20 June 2012 she was informed that a further extension of her contract could not be considered, as the temporary staff shortage which had justified her recruitment under a fixed-term contract was no longer applicable. Her period of employment would therefore end on 31 December 2012. This was subsequently confirmed to her in a letter dated 13 September 2012.

By a letter of 28 September 2012 the complainant requested that the decision of 20 June 2012 be withdrawn, failing which her letter was to be treated as an internal appeal. As her request was denied, the matter was referred to the Internal Appeals Committee (IAC) for an opinion.

On 20 December 2012 the complainant filed a second appeal against the “decision to end [her] contract”, requesting that it be converted into a permanent contract as from 1 January 2013.

Following a hearing, on 17 September 2014 the IAC issued two reasoned opinions concerning these appeals. In the first, it concluded by a majority that the appeal was receivable and unanimously recommended that the appeal be rejected as unfounded. In the second, the IAC recommended that the appeal be dismissed as irreceivable *ratione materiae* on the ground that the complainant’s claims were similar to those raised in her first appeal.

By two letters of 3 November 2014 the complainant was informed that, as recommended by the IAC, her first appeal was rejected as unfounded and the second was rejected as irreceivable.

The complainant asks the Tribunal to quash the November 2014 decision of “not converting [her] contract” into a permanent one or alternatively to grant her monetary compensation. In the event that a “permanent post is not offered to [her]”, she requests that a deferred EPO pension be paid to her, or, alternatively, that all pension contributions paid by the EPO be refunded and that she be awarded 50,000 euros in moral damages.

The EPO asks the Tribunal to dismiss the complaint as entirely unfounded. It considers the claim relating to pension contributions irreceivable for failure to exhaust internal means of redress.

## CONSIDERATIONS

1. The complainant left the employment of the EPO on 31 December 2012 at the expiry of her fixed-term contract. She initiated two internal appeals relating to or arising from the expiration of the contract. One was lodged on 28 September 2012 and the other on 20 December 2012. Each was finally resolved by decisions communicated to the complainant by letters dated 3 November 2014. The first-mentioned appeal was rejected as receivable but unfounded by the Vice-President of Directorate-General 4 (DG4), acting on delegation of power from the

President, and the second-mentioned appeal was rejected as irreceivable by a decision of the Principal Director of Human Resources, again acting on delegation of power from the President. In her complaint filed with the Tribunal on 23 January 2015, the complainant identifies the impugned decision as one made on 3 November 2014, without specifying which of the two decisions is being challenged or whether it is both.

2. Her brief is four pages long. Three contain argumentation. She filed no rejoinder to the lengthy and detailed pleas of the EPO in its reply. The first two pages of her argumentation are given over to the terms of the initial contract signed on 25 September 2008 and, in particular, what she describes as “Article 7 [of the] Pension Regulations” coupled with an allegation that the EPO had misled her about whether she had “a valid pension insurance”, breached its duty of care and acted in bad faith. These matters had no bearing on the lawfulness of the decision not to extend her contract.

3. The fourth and final page of her brief briefly addresses two topics. The first involves an allegation that the reasons for ending the contract were flawed. No argument of substance for this contention is revealed in her brief. The second is that she had unsuccessfully applied for positions within the Organisation and that her failure to secure any of them had involved arbitrary and discriminatory conduct on the part of the EPO. Again no argument of substance for this contention is revealed in her brief.

4. In a case such as the present, the complainant bears the burden of establishing her case (see, for example, Judgment 4381, consideration 31, and the case law cited therein). She has singularly failed to do so. Moreover a decision not to renew a fixed-term contract is a discretionary one and the bases on which it might be successfully challenged are limited (see, for example, Judgment 4363, consideration 10). For the preceding reasons the complaint should be dismissed as unfounded. It is unnecessary to engage in a discussion about the receivability of any aspect of her claims.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 8 June 2021, Mr Patrick Frydman, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2021 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

DRAŽEN PETROVIĆ