

**L. (No. 2)**

*v.*

**ICC**

**122nd Session**

**Judgment No. 3706**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr C. L. against the International Criminal Court (ICC) on 26 November 2015;

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 seeks to impugn his performance appraisal for the period October 2013 to February 2015. He contends that he was prevented from challenging the appraisal internally by means of the rebuttal procedure set out in Administrative Instruction ICC/AI/2010/002 because of the ICC's failure to appoint new members to the rebuttal panels after the expiry of the previous members' two-year mandates.

2. On 1 September 2015 the ICC informed the complainant in advance of the names of the new members, which were shortly to be announced officially, and extended the time limit for submitting his rebuttal statement. However, the complainant replied that these members had no legal mandate, because their appointment had not yet been

announced by an Information Circular in accordance with the applicable provisions. He informed the ICC that he considered he was prevented from rebutting his appraisal and that he would therefore proceed directly to the Tribunal. The names of the new rebuttal panel members were published officially a few days later in Information Circular ICC/INF/2015/014.

3. It is firmly established by the case law that a staff member may not on his or her own initiative evade the requirement that internal means of redress must be exhausted before a complaint is filed before the Tribunal (see Judgment 2811, under 10 and 11, and the case law cited therein). In the circumstances of this case, the Tribunal cannot accept the complainant's argument that he was prevented from pursuing the rebuttal procedure. On the contrary, the ICC took steps to ensure that he would be able to have the disputed performance appraisal reviewed by a rebuttal committee, but the complainant chose to file a complaint directly with the Tribunal.

4. The complaint is therefore clearly irreceivable for failure to exhaust internal remedies and must be summarily dismissed in accordance with the procedure set out 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 17 May 2016, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Andrew Butler, Deputy Registrar.

Delivered in public in Geneva on 6 July 2016.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

ANDREW BUTLER