

**D. M. (No. 8)**

**v.**

**EPO**

**140th Session**

**Judgment No. 5084**

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighth complaint filed by Mr P. D. M. against the European Patent Organisation (EPO) on 19 January 2015 and corrected on 5 February 2015, the EPO's reply of 2 June 2015, the complainant's rejoinder of 7 September 2015 and the EPO's surrejoinder of 18 December 2015;

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 EPO's failure to implement the Ombudsman's recommendations concerning his harassment complaint.

Facts relevant to this case can be found in Judgment 3337, delivered in public on 9 July 2014, concerning the complainant's first complaint, in which he challenged the Ombudsman's procedure concerning a different harassment complaint.

The complainant is a former permanent employee of the European Patent Office, the EPO's secretariat, who retired from service on 1 December 2015. In September 2005, he initiated a formal complaint of harassment, under Circular No. 286 on the "Protection of the Dignity of Staff", applicable at the material time, against Mr L., his former

supervisor and then Principal Director of Human Resources (PD 4.3). He notably alleged that Mr L. had deliberately intimidated and harassed him over a period of two years, had delayed the recalculation of his reckonable experience, had manipulated his staff reports, had removed him from the post of Head of Recruitment in Principal Directorate Personnel and had downgraded him, had violated the Service Regulations for permanent employees of the Office and its Financial Regulations and had also undermined his position in Principal Directorate European and International Affairs (PD 5.1). The formal complaint was referred to an Ombudsman in October 2005, in accordance with the procedure set forth in Circular No. 286.

In his report of 1 June 2006, the Ombudsman found that the complainant had been subjected to recurring inappropriate behaviour by Mr L., whose mishandling of numerous conflicts had undermined the complainant's dignity. He recommended that the Administration take swift and appropriate measures to settle the issues regarding the calculation of the complainant's reckonable experience, his staff reports and posts, that it take disciplinary sanctions against Mr L. based on the complainant's allegations and that it ensure that there would be no future contact between the complainant and Mr L.

On 9 August 2006, the complainant was transferred to the post of Administrator in PD 5.1 with retroactive effect from 1 April 2006.

By a letter of 15 September 2006, the President of the Office notified the complainant of his decision regarding his harassment complaint against Mr L. Consistent with the Ombudsman's opinion, the President concluded that Mr L.'s behaviour towards the complainant was unsatisfactory. Therefore, he had decided to take appropriate measures against Mr L. With regard to the Ombudsman's recommendations concerning the complainant's reckonable experience, staff reports and posts, the President indicated that he did not want to interfere in the internal appeals on these issues, which were pending at that time, but that he had asked the respective services to treat them as a matter of priority. Moreover, he noted that it would be unrealistic to preclude any future contact between the complainant and Mr L., as recommended by the Ombudsman, given Mr L.'s function (Principal Director of Human

Resources), but that their interactions would be kept to a strict minimum considering that the complainant had been transferred to a different Directorate-General.

On 12 July 2007, the complainant wrote to the newly appointed President – who took up office on 1 July 2007 – seeking information on the state of implementation of the Ombudsman’s recommendations. In her reply of 25 July 2007, the President informed the complainant that her predecessor had already taken the “necessary steps” to comply with his decision to implement appropriate measures and that the Administration was under no obligation to reveal what measures these were. With regard to the complainant’s pending “conciliation proceeding” concerning his staff report, she indicated her predecessor assured him that his case would be treated with priority but refrained from promising any positive results, and highlighted that such proceedings usually required a certain amount of time. Furthermore, concerning the complainant’s appeal against his reckonable experience, the President explained that the respective services were doing their best to deal with his case, noting that there was an important workload and a large number of earlier appeals.

On 24 October 2007, the complainant again wrote to the President requesting immediate implementation of the Ombudsman’s recommendations. In the event that she decided not to grant his request, he asked that his letter be treated as an internal appeal against the EPO’s failure to implement the Ombudsman’s recommendations. This appeal was referred to the Internal Appeals Committee (IAC).

In its opinion dated 27 August 2014, the majority of the IAC members recommended to reject the appeal as inadmissible in its entirety. It found that the Ombudsman’s recommendations were already implemented at the time the complainant lodged his appeal, and concluded, therefore, that the complainant had no cause of action.

By a letter dated 20 October 2014, the Vice-President of Directorate-General 4, acting by delegation of power from the President of the Office, informed the complainant of his decision, in accordance with the majority opinion of the IAC, to reject his appeal as irreceivable

in its entirety and, in any event, unfounded. This is the impugned decision.

The complainant requests the Tribunal to quash the impugned decision and to confirm the conclusion of the Ombudsman that attempts were made against his dignity. He also requests the Tribunal to confirm that the Organisation's treatment amounted to further harassment and was contrary to the Ombudsman's recommendations, and to order the Organisation to effectively protect his dignity. The complainant seeks moral and punitive damages as well as costs.

The EPO requests the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, as unfounded.

#### CONSIDERATIONS

1. The complainant impugns the 20 October 2014 decision by which the Vice-President of Directorate-General 4, by delegation of power from the President of the Office, rejected as irreceivable the complainant's internal appeal lodged against the 25 July 2007 decision, which, in turn, deemed that the former 15 September 2006 decision, containing measures aimed at the protection of the complainant from harassment, had been duly implemented. At the relevant time, the 15 September 2006 decision endorsed the recommendations contained in the Ombudsman's report of 1 June 2006, pertaining to a complaint submitted by the complainant against Mr L., who at the time was his superior.

2. The complainant alleges that the impugned decision wrongfully considered his appeal as irreceivable. In his view, the 15 September 2006 decision was not duly implemented, namely with regard to the second and fourth recommendations of the Ombudsman, as:

- no disciplinary action had been taken against Mr L.;
- Mr L. was still in Selection and Promotion Boards, and could still negatively influence his career; and
- the complainant was still the victim of continued harassment.

On the merits, he contends that, by not taking the appropriate measures in response to the Ombudsman's recommendations, the Office failed to protect his dignity, breached its duty of care, misled him on several occasions, and did not offer effective means of redress given the length of the internal appeal procedure.

3. To the extent the complainant alleges that he is the victim of continued harassment, the complaint is irreceivable, as he does not refer to specific episodes attributable to Mr L. and to the failure to implement the 15 September 2006 decision in this respect. Moreover, the complainant's allegations before the Tribunal in this regard are too vague to establish legal flaws or a breach of the EPO's duty of care.

4. In the remainder, the complaint is unfounded, without there being any need to dwell on the receivability issues raised by the EPO. The 15 September 2006 decision endorsed the recommendations of the Ombudsman and adopted the appropriate measures, which fell within the discretion of the decision-making authority. As will be explained in the following considerations, the complainant has not established any legal flaws.

5. The complainant advances no arguments as to the lack of implementation of the first recommendation of the Ombudsman, that is to take "[s]wift and appropriate measures [...] regarding the calculation of reckonable experience, staff reports and post of [the complainant]". On the contrary, there is evidence in the record that it was lawfully implemented.

6. As to the second recommendation of the Ombudsman, that is to take "[d]isciplinary sanctions against [Mr L.] based on the allegations", firstly, the Tribunal notes that, pursuant to Article 12(1)(b) of Circular No. 286, the President has a clear discretionary power to decide whether to initiate disciplinary proceedings. Secondly, the Tribunal's case law, more generally, establishes that the alleged victim of harassment is not entitled to have a disciplinary sanction applied to the alleged author. The Tribunal recalls that disciplinary relations

between an organization and a staff member do not directly concern other members of staff or affect their position in law. Consequently, a decision regarding a disciplinary inquiry or a disciplinary measure relating to one staff member ordinarily will not adversely affect other staff. Thus, a staff member ordinarily has no cause of action to challenge a disciplinary sanction or a refusal to impose one on another staff member (see Judgments 4944, consideration 8, 4512, consideration 6, and the case law quoted therein). This is the position in this case. In addition, in the present case, the aim of Circular No. 286 on the “Protection of the Dignity of Staff” is “to prevent behaviour which negatively affects the dignity of those working at or for the European Patent Office [...] and to provide a means of dealing with problems should they occur”. The Circular and the Tribunal’s case law more generally do not provide staff with any right to request disciplinary proceedings against another member of staff. In this respect, the complainant’s claims based on the EPO’s failure to impose disciplinary measures against Mr L. are, at the very least, unfounded, if not irreceivable for lack of cause of action.

7. As to the fourth recommendation of the Ombudsman, that is “to assure that both parties will not come into contact in the future”, the complainant contends that Mr L. was still in Selection and Promotion Boards, and could still negatively influence his career. This allegation is speculative, as the complainant has not alleged that he participated in selection and promotion procedures from 2006 to July 2009, involving Mr L., nor has he established, to the Tribunal’s satisfaction, how Mr L., who retired on 1 July 2009, could still negatively influence his career.

8. As to the complainant’s plea concerning the length of the internal appeal, the Tribunal notes that the appeal was lodged on 24 October 2007 and was decided on 20 October 2014. The delay is egregious and it would, in normal circumstances, justify the award of moral damages. However, having regard to the specific circumstances of this case, the Tribunal finds that the complainant is not entitled to moral damages. The EPO has observed, without being contradicted by the complainant, that the length of the procedure was due to the ongoing

discussions between him and the Organisation in order to reach an overall settlement of “several pending internal appeals and Court procedures”, including the internal appeal at stake in the present case.

9. In conclusion, since the complainant’s pleas are partly irreceivable and unfounded for the remainder, all his claims are rejected and the complaint will be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 6 May 2025, Mr Michael F. Moore, Vice-President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal’s Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.