

**P. (E.) (No. 6)**

**v.**

**EPO**

**141st Session**

**Judgment No. 5183**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mrs E. P. against the European Patent Organisation (EPO) on 8 May 2015, the EPO's reply of 20 August 2015, the complainant's rejoinder of 15 December 2015 and the EPO's surrejoinder of 23 March 2016;

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 seeks compensation for the consequences of her occupational disease.

Some relevant facts relevant to this case are to be found in Judgment 2935, delivered on 8 July 2010, concerning the complainant's second complaint. Suffice it to recall that the complainant is a former employee of the European Patent Office, the EPO's secretariat, which she joined in 1997. In 1999, she was appointed as an administrative employee. She was promoted in 2001 and in 2004. On 1 July 2008, the Organisation granted her an invalidity allowance, because she was unable to work owing to ill health.

On 26 October 2009, a "Report Expert Opinion" was issued by two medical specialists of the Netherlands Center for Occupational Diseases, who had been mandated by the EPO's Medical Committee to

establish whether the complainant's medical condition resulting in invalidity was an occupational disease. The specialists concluded that this was the case. The Report was integrated into the Medical Committee's opinion which was issued on 23 November 2009 outlining the occupational nature of the complainant's invalidity. The Medical Committee's opinion was notified to the complainant on 25 November 2009.

On 16 December 2009, the complainant was informed by the Principal Director, Human Resources, that, as a consequence of the occupational nature of her invalidity and in accordance with the applicable regulatory provisions, pension contributions would be paid in full from the Office's budget and the contributions deducted from her invalidity allowance since July 2008 would be fully reimbursed to her. In compensation for her invalidity on occupational grounds, the complainant received an invalidity allowance corresponding to 70 per cent of her salary, reimbursement by the Office of all pension scheme contributions and an amount of capital equal to 2.75 of her annual basic salary.

On 29 January 2010, the complainant made a request to seek compensation for the consequences of her occupational disease by invoking the fault-based liability of the Office, which, according to her, was "entirely responsible [for the situation], and at fault". She alleged "degrading treatment", "attacks against [her] dignity" and "unacceptable conducts" from her hierarchy. She sought the award of real damages, including adjustment of past emoluments, loss of income and other benefits and medical costs, as well as moral and punitive damages, and she submitted that "it would be advisable to discipline the responsible managers [...] to make sure that these persons [would] not harm any other civil servants in the future".

Her request was rejected on 29 March 2010 and registered as an internal appeal. On 19 April 2010, the Administration informed the complainant that the Office would compensate reasonable costs causally linked to the established occupational disease for which no relief could be obtained under the Collective Medical Insurance Contract.

Between November 2010 and October 2012, the complainant's counsels submitted proposals for an amicable settlement, none of which were accepted by the Office in view of the excessive amounts that were claimed.

In its opinion of 16 December 2014, the Appeals Committee's majority concluded that the complainant had failed to provide proof of grossly negligent, yet intentional, conduct on the part of the Office, meaning that there was no basis for further compensation claims against the Office. The majority recommended that the internal appeal be rejected as unfounded. Two members issued a dissenting opinion recommending that the complainant be awarded damages and costs.

By a letter dated 9 February 2015, the complainant was informed of the decision of the President of the Office to reject her appeal in accordance with the Appeals Committee's majority. A copy of the majority opinion was attached. The President further informed the complainant that "two members [of the Appeals Committee] appointed by the Staff Committee did not provide in due form a minority opinion and withdrew from any further work for the [Appeals Committee] as from 11.10.2014. It was therefore no longer possible to obtain their opinion." This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision. She further requests: (1) the adjustment of her past emoluments, amounting to 1,865.80 euros, plus compound interest, (2) compensation for loss of income and "other benefits" in the form of a lump sum of 250,000 euros or, in the alternative, an adjustment of her monthly invalidity allowance to the level of the last full salary she received, retroactive as from 1 July 2008, and subject to any further adjustment flowing from a retroactive promotion, if and when applicable, (3) the award of moral and punitive damages in a global amount of 75,000 euros, and (4) costs.

The EPO notes that the present case is the latest of a series of complaints by which the complainant seeks to increase the amount of financial compensation she has already obtained in Judgments 2557 and 2935, concerning her first two complaints. It considers that it is an attempt to reopen issues which have already been decided upon by the

Tribunal. The EPO asks the Tribunal to dismiss the complaint as unfounded and order that the complainant bear all costs that she has incurred.

### CONSIDERATIONS

1. The complainant is a former employee of the Office, which she had joined in 1997. On 25 June 2008, she was declared invalid on a permanent basis, and she effectively ceased to be in active service as of 1 July 2008. Under the EPO's no-fault regime for work-related illnesses, the complainant, whose invalidity was recognized as an occupational disease, received an invalidity allowance corresponding to 70 per cent of her salary, reimbursement by the Office of all pension scheme contributions and an amount of capital equal to 2.75 of her annual basic salary.

2. In the present complaint, the complainant impugns the decision of 9 February 2015, whereby the President of the Office, who endorsed the Appeals Committee's majority opinion, rejected her internal appeal in which she sought additional compensation for the consequences of her occupational disease by invoking the fault-based liability of the Office which, she alleges, was "entirely responsible for the situation and at fault".

3. The EPO submits that the complainant merely seeks to reopen issues already decided upon by the Tribunal in earlier cases. It argues that, by recasting her claim under the fault-based liability regime, the complainant is in substance attempting to recover punitive damages, a form of relief that was already rejected in Judgment 2935, consideration 5.

4. The Tribunal recalls that, according to its consistent precedent, the principle of *res judicata* operates to bar a subsequent proceeding only where the parties, the purpose of the suit and the cause of action are the same as in the earlier case (see, for example, Judgments 4501, consideration 3, 4183, consideration 8, 3950, consideration 6, 3867,

consideration 9, and 3248, consideration 3). The complainant's claims in the present case are based on the EPO's alleged gross negligence and/or intentional harm causing her invalidity. It is a separate legal basis of tort liability, distinct from the no-fault liability regime for work-related illnesses. However, some issues have already been dealt with in Judgments 2557 and 2935, delivered respectively on 12 July 2006 and 8 July 2010, concerning the complainant's first and second complaints. Therefore, the Tribunal finds that the complaint is not barred by *res judicata* in certain respects.

5. On the merits, the complainant contends before the Tribunal that the EPO was at fault and "entirely responsible" for her situation. She alleges that she was subjected to "degrading treatment" and that the Office failed to protect her from "attacks against [her] dignity" and "unacceptable conducts" from certain managers. In her view, there was "intentionality" in those "unacceptable conducts" and the EPO's failure to prevent further harm constituted gross negligence.

However, the Tribunal notes that she adduces no evidence regarding the specific facts underlying these allegations. The Tribunal further notes that the conducts and grievances at issue have already been decided and fully compensated in Judgments 2557 and 2935, which will be discussed shortly.

6. In the present case, the evidence that the complainant mainly relies on, apart from her own statements, includes the Report which was issued on 26 October 2009 by two medical specialists of the Netherlands Center for Occupational Diseases, as well as the facts described in Judgments 2557 and 2935. However, the Report contains no reference to gross negligence nor intentional fault on the part of the EPO. Its purpose, as is said, was to "establish whether the medical condition resulting in invalidity [was] an occupational disease". While it concluded that the complainant's "ongoing occupational exposure [was to be] seen as the main perpetuating factor of [her] health condition", the "patterns of behavior" identified in the Report merely referred to two events: one was the downgrading of her duties from journalistic to administrative

tasks and the other was a mismatch between her competencies and the duties she had been assigned.

7. In Judgment 2557, the Tribunal found that the EPO's conduct in knowingly assigning her higher-level duties without paying her accordingly constituted a failure to respect her dignity. Thus, the Tribunal ordered the EPO to pay the complainant a global compensation of 20,000 euros in material damages in addition to the sum already paid by the EPO, plus 5,000 euros in moral damages, and 1,500 euros in costs. Later, Judgment 2935 concerned the complainant's exclusion from a competition due to the EPO's refusal to recognize her diploma as being equivalent to a diploma of completed studies at university level. The Tribunal held that this exclusion constituted an error of law on the part of the Organisation and that the complainant had been denied a real chance of appointment. The Tribunal ordered the EPO to pay her 20,000 euros in material damages for the loss of opportunity, along with 10,000 euros in moral damages for procedural injustice and excessive delay in addition to the sum of 5,000 euros which had already been granted to her in this respect.

8. Notably, contrary to the complainant's contention, both Judgments 2557 and 2935 found that the EPO's abovementioned conduct, though flawed, did not rise to the threshold of gross negligence, let alone an intentional tort. In Judgment 2557, consideration 16, the Tribunal held that:

“[I]t is appropriate to note that, apart from her own statements, there is no evidence connecting her ill health to her working conditions. However, there is no doubt that the complainant was ill for a substantial period. And while it is not possible based on the material before the Tribunal to make a finding of harassment, it is properly to be concluded that the failure to respect her dignity was a significant factor in her illness. Accordingly, there should be an award of moral damages in the amount of 5,000 euros.”

In Judgment 2935, consideration 5, the Tribunal dismissed the complainant's claim for punitive damages, stating that:

“Such a claim may be allowed only in exceptional circumstances, for instance where an organisation’s conduct has been in gross breach of its obligation to act in good faith. The conduct objected to in this case may not be qualified in such terms.”

9. The complainant reported that, on 4 July 2007, the EPO subjected her to a medical visit to verify the genuineness of her sick leave, which, in her view, was both “unwarranted and vexatious”. She also complains that the Appeals Committee’s majority was adding “insult to injury” when it tried to present the said medical visit as the “Office exercising its duty of care”. The Tribunal finds that the 4 July 2007 medical visit was in line with the former Rule 12 of Circular No. 22, setting out the guidelines for leave, which allowed the relevant service to verify the genuineness of sick leave. As from 2 September 2013, Circular No. 22 was amended and Rule 13 mandated permanent employees on sick leave to cooperate with the relevant services to enable verification.

10. The complainant has not produced any evidence to substantiate her allegations of gross negligence or intention to harm on the part of the EPO. Vague allegations of “degrading treatment”, “unacceptable conducts”, “failure to prevent further harm” and “attack against [her] dignity” do not suffice without other corroborating evidence. Thus, her fault-based liability claims must be dismissed as unfounded.

11. Turning to the alleged procedural irregularities, the complainant contends that the final decision of 9 February 2015 was based exclusively on the majority opinion of the Appeals Committee, which was solely composed of management representatives. In her view, the EPO’s deliberate suppression of the dissenting opinion due to its favorable position toward her constituted an “unacceptable obstruction of justice”. Further procedural deficiencies asserted by the complainant include breach of confidentiality through unauthorized disclosure of medical information, inaccuracies in the majority opinion, irregular signatures of members endorsing the majority opinion and excessive delays in the internal appeal proceedings.

12. By contrast, the EPO submits that the complainant's arguments on procedural aspects are without influence on the merit of her liability action for damages. It explains that the minority opinion did not comply with the formal requirements, that the alleged breach of confidentiality is unfounded, that the duration of proceedings was justified in light of the circumstances, and that the majority opinion was validly signed.

13. The Tribunal notes that the complainant produced a witness statement from one of the dissenting members of the Appeals Committee, testifying that the minority opinion was sent via email, respectively on 1 October and 6 October 2014, within the extended deadline, however, the paper version was on its way. The Tribunal agrees that the minority opinion should have been appended to the Appeals Committee's opinion, in line with the EPO's past practice. Yet, as explained by the EPO and supported by evidence in its reply, despite multiple requests from the Appeals Committee's Secretariat and Chair, the two dissenting members continued to send their opinion in an unacceptable form and layout. In those circumstances, the Chair of the Appeals Committee decided, according to the provisions of the Rules of Procedure of the Appeals Committee, to submit the minority opinion to the President of the Office. The Tribunal sees no convincing evidence that the dissenting opinion was unlawfully suppressed. The Tribunal also finds that the fact that the minority opinion was not appended did not prejudice the complainant, as the impugned decision, by endorsing the majority opinion, was based on independent and sufficient grounds. The Tribunal recalls its case law that, in some cases, it can be accepted that the non-disclosure of documents can be subsequently remedied, including in proceedings before the Tribunal (see, for example, Judgments 4437, consideration 15, and 3117, consideration 11). That is what occurred in this case, since a copy of the Appeals Committee's minority opinion was forwarded to the complainant as an annex to the EPO's reply, with the result that she was duly enabled to challenge its contents in her rejoinder.

The complainant further alleges inaccuracies and inconsistencies in the dates of the signatures on the majority opinion. The Tribunal concurs with the explanation provided by the Chair of the Appeals

Committee on 30 July 2015, namely that no irregularity arises from members signing on different days and sending their signatures from separate locations, which is usual practice. Moreover, the Tribunal finds no inaccuracies in the Appeals Committee's majority opinion.

14. The complainant also alleges that the disclosure of medical information without her consent infringed her privacy. However, she has not demonstrated that any medical data was disclosed in a manner that was prejudicial to her. The Report, which was issued on 26 October 2009, contains only the medical information necessary to establish the causal link between the complainant's disease and her working conditions. The Tribunal is satisfied that the said Report included only such "medical precisions as to make [its findings] understandable", without infringing her privacy.

15. As regards the alleged excessive delay in the appeal process, the Tribunal considers that, given the circumstances of the case and taking into account the complainant's counsels' proposals for an amicable settlement between November 2010 and October 2012, there was no inordinate nor unreasonable delay that requires an award of damages to be made to the complainant.

16. It follows from the foregoing that the complainant's pleas on the procedural grounds are unfounded.

17. There are two final procedural issues to be addressed.

The complainant requests the disclosure of a certified copy of the Appeals Committee's minority opinion. The EPO has already provided the dissenting opinion in its reply. This request for disclosure is therefore now moot.

The complainant also requests oral proceedings and asks to call the dissenting members as witnesses. The Tribunal, however, notes that the parties have presented ample submissions and documents to permit it to reach an informed decision on the case. The request for a hearing is therefore rejected.

18. In the foregoing premises, the complaint will be dismissed in its entirety.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 20 October 2025, Mr Michael F. Moore, 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 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.