

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**S. (No. 4)**

**v.**

**EPO**

**141st Session**

**Judgment No. 5197**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr M. S. against the European Patent Organisation (EPO) on 6 April 2021 and corrected on 21 April 2021, the EPO's reply of 4 August 2021, the complainant's rejoinder of 7 September 2021, the EPO's surrejoinder of 30 November 2021, the additional evidence provided by the complainant on 20 February 2024, the EPO's comments thereon of 8 March 2024, the complainant's further submissions of 22 June 2025 and the EPO's final comments thereon of 1 July 2025;

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 objects to the arrangements for the payment of the additional compensation to the retirement pension for health reasons provided for under the new invalidity scheme.

On 14 December 2007 the Administrative Council of the EPO adopted decision CA/D 30/07 amending the invalidity scheme with effect from 1 January 2008. As from that date, employees under 65 years of age no longer able to perform their duties for reasons of invalidity were assigned to non-active status. They no longer received,

as was previously the case, an invalidity pension subject to national income tax, but an invalidity allowance that was, in theory, exempt from that tax.

On 26 March 2015 the Administrative Council adopted decision CA/D 2/15, amending the provisions of the Service Regulations of the European Patent Office, the EPO's secretariat, relating to sick leave and invalidity with effect from 1 April 2015, including by replacing, by its articles 34 et seq., Chapter III of the Pension Scheme Regulations of the Office. The provisions governing the invalidity allowance were thereby abrogated. Transitional measures provided, however, that until 31 December 2015, the rights and obligations of a recipient of an invalidity allowance on 31 March 2015 would continue to be governed by the provisions in force on that date. As from 1 January 2016, the recipient would cease to receive the invalidity allowance and would instead be granted a retirement pension for health reasons, increased by a compensatory payment intended to offset any difference in income, up to the basic level of invalidity benefits to which he was entitled on 31 December 2015. The methods for the calculation of this compensatory payment were provided for under article 72, paragraph 2(b), of decision CA/D 2/15, mentioned above. In the event that the retirement pension received from 1 January 2016 was subject to national taxation, the recipient could also claim the tax adjustment set forth in Article 42 of the Pension Scheme Regulations, which consisted of two elements: 50 per cent of the theoretical national income tax levied on the pension plus 100 per cent of the national income tax on the tax adjustment.

The complainant is a former staff member of the Office. He ceased active service owing to invalidity on 1 November 2008 and therefore received, firstly, an invalidity pension until 31 December 2007. Further to the introduction of a new pension scheme by Administrative Council decision CA/D 30/07 of 14 December 2007 mentioned above, he was then assigned non-active status and, secondly and with effect from 1 January 2008, started receiving an invalidity allowance. Lastly, thirdly and as from 1 January 2016, following the further reform resulting from decision CA/D 2/15 mentioned above, he is in receipt of a retirement pension for health reasons, supplemented, in his case, by a

compensatory payment, by the tax adjustment and, for the reason set out below, by additional compensation.

On 17 July 2015 the Department of Salaries, Pensions and Administrative Services informed recipients of an invalidity allowance of the reform introduced by decision CA/D 2/15. It advised them that, as from 1 January 2016, they would be drawing a retirement pension for health reasons on the basis of Article 72 of the decision and that, consequently, they would no longer be on non-active status but would move to pensioner status. It indicated that the retirement pension was subject to national taxation, for which they would receive a tax adjustment, and that they would receive a compensatory payment covering the difference between the amount of the invalidity allowance received until 31 December 2015 and that of the pension paid as from 1 January 2016.

In October 2015 the staff members concerned received an estimate of the amount of their retirement pension for health reasons. On 17 November 2015 the Pensioners' Association wrote to the President of the Office with respect to the implementation of the provisions of Article 72, paragraph 2, of decision CA/D 2/15, concerning the methods for the calculation of the compensatory payment. The following day, a revised estimate was sent to the recipients of such pensions. In response to the concerns articulated by the Pensioners' Association, the Vice-President of Directorate-General 4 explained, on 11 February 2016, that, if the compensatory payment and fiscal adjustment did not match the gap in benefits induced by national taxation, the Office would pay, as a third compensatory measure, "additional compensation" under its duty of care. This transitional measure was provided for in a paragraph 4 added to Article 72 of decision CA/D 2/15, on the understanding that it was for the President to determine the detailed conditions for this additional reimbursement, as well as the procedure to be followed.

On 5 May 2017 the complainant was informed that, if the compensatory payment after deduction of national tax was insufficient, he would receive, as additional compensation and as agreed with the Pensioners' Association, an additional payment equivalent to the difference between the amount of the benefits received for all tax years

until he reached the age of 65. A detailed method for the calculation of this additional compensation was sent to him. He was also advised that this compensation could be claimed only after the deduction of national tax on the basis of the annual tax statement.

On 26 June 2017 recipients of a retirement pension for health reasons received a new estimate of benefits, including the tax adjustment and theoretical income tax, as well as a claim form enabling them to request, as appropriate, the additional compensation.

For the year 2016, the complainant automatically received, albeit late, the sum of 17,387.88 euros as compensatory payment. He then claimed payment of the additional compensation on the basis of the income tax deducted from his retirement pension for health reasons and received, on this count, the sum of 8,225.88 euros, which was reflected in his pension payslip for November 2017.

On 27 November 2017 the complainant submitted a request for review of his November 2017 pension payslip, claiming that the amount of the additional compensation was “inaccurate” and requesting payment of the difference between the amount of the national tax paid for the tax year 2016 and the additional compensation already paid to him. He also requested an advance payment of the additional compensation for the tax years 2017 and 2018. This request for review was rejected on 25 January 2018. On 19 February the complainant filed an internal appeal.

In its opinion of 23 July 2020, which also concerned six other staff members, the Appeals Committee unanimously found that the reform introduced by decision CA/D 2/15 had not altered the amounts received by the recipients of a retirement pension for health reasons, but noted that annual income tax deductions by the national tax authorities could be considerable and that the additional compensation mechanism applied – which consisted of reimbursements a posteriori once the final tax statement was issued – was prejudicial to the pensioners and breached the duty of care owed to them by the Office, since those concerned were also obliged to bear for at least one year the financial burden of making advance payments of the national tax ultimately due. Consequently, it recommended inter alia that the Organization should pay the additional

compensation in advance during the tax year in which the national tax was due.

By a letter of 28 January 2021, the complainant was notified of the decision of the Vice-President of Directorate-General 4, taken by delegation of power from the President, to reject his internal appeal in part. Nevertheless, the Vice-President undertook to better inform him of the method for the calculation of the additional compensation mechanism and to review his individual situation, with retroactive effect as appropriate. It was noted in this regard that, although more detailed information concerning these methods should have been communicated to the pensioners for health reasons earlier than by the letters of 5 May and 26 June 2017, the damage that could have arisen from this failure would be sufficiently compensated by an award of 1,000 euros, as suggested by the Appeals Committee. On this count, the complainant was awarded this sum in compensation for the moral injury suffered. However, it was clearly stated in this decision that the lack of advance payments of additional compensation was consistent with the duty of care owed by the Office. The Vice-President justified the fact that she did not follow the recommendations of the Appeals Committee on the matter as follows: firstly, the compensatory tax adjustment mechanism already allowed the complainant to be paid in advance more than 50 per cent of the national tax ultimately due, with the consequence that the payment a posteriori of the additional compensation was not, in itself, susceptible to cause him unreasonable financial hardship; secondly, an actual reduction of the income received by the complainant following the transition to the pension scheme for health reasons could only officially be determined after the final amount of national tax due was established, which justified the retroactive payment of the additional compensation; thirdly, while the Office had undertaken to guarantee him the same level of income as he received prior to the reform, that did not mean that it also undertook to tailor the additional compensation mechanism to the specificities of each country's tax regime. Lastly, the complainant was awarded the sum of 200 euros for reimbursement of the registration fee for his internal appeal. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, to recognize that the EPO, by its delays in the payment of the additional compensation, breached its duty of care, and to order the establishment of a procedure for the payment of additional compensation which would ensure that the complainant did not have to bear the cost of paying national tax in advance, for example by monthly payments against tax payments ahead of the dates established by the tax authorities. He also seeks an award of material damages, with interest on arrears, payment of 10,000 euros in damages for the moral injury which he considers he has suffered and an award of 1,000 euros in costs. Lastly, he asks the Tribunal to “draw the other consequences”<sup>\*</sup> from the evidence that applied to him. In his further submissions, the complainant updates the amount of the compensation claimed.

The EPO submits that several of the complainant’s claims are irreceivable, since they invite the Tribunal to issue declarations of law or injunctions or that they are too vague. The Organization asks the Tribunal to dismiss the complaint as irreceivable in part and unfounded in its entirety.

#### CONSIDERATIONS

1. Besides various pecuniary claims, the complainant asks the Tribunal to recognize that the EPO, by its delays in the annual payments of the additional compensation made to mitigate the impact of the national tax levied on his retirement pension for health reasons, breached its duty of care, and to order the establishment of a procedure for the payment of additional compensation which would ensure that he did not have to bear the cost of paying this tax in advance. He suggests that such a procedure should allow tax payments to be covered ahead of the dates established by the tax authorities.

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<sup>\*</sup> Registry’s translation.

2. It should be noted in this regard that the complainant is subject to the tax regime of Germany, where tax is deducted at source and income tax is paid during the current tax year, as income is received, and then corrected at the end of the following year based on a tax return. Furthermore, an additional tax on the compensatory payments and tax adjustments paid by the Office is also deducted a posteriori. Consequently, the complainant states that he is “totally financially dependent on the EPO” and “without any income for long periods while awaiting distant compensation payments, with the constant fear of not being able to finance upcoming obligations”\*.

3. The written submissions show that, when the 2015 reform resulting from Administrative Council decision CA/D 2/15 led to the replacement of the invalidity allowance by a retirement pension for health reasons with effect from 1 April 2015, the Office introduced three corrective compensatory measures to mitigate the financial impacts of this reform, namely: (1) a compensatory payment to offset any difference in income up to the basic level of invalidity benefits to which the officials concerned were entitled on 31 December 2015 and, therefore, to offset the difference between the basic amount of the invalidity allowance received on 31 December 2015 and that of the retirement pension for health reasons paid as from 1 January 2016; (2) a tax adjustment in the event that the retirement pension was subject to national taxes in the State of residence; and (3) additional compensation, paid up to the age of 65, if it appeared that the compensatory payment described under item (1) above was insufficient after deduction of national tax, to ensure a balance between the basic gross amount received by the official concerned under the invalidity allowance and the basic gross amount received, since 1 January 2016, of the retirement pension for health reasons. The EPO argues in this regard that the complainant already received, de facto, an advance payment covering more than 50 per cent of the theoretical national income tax deducted from his retirement pension, 50 per cent of the tax levied on the

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\* Registry’s translation.

additional compensation for the current tax year and 100 per cent of the tax withheld on the tax adjustment.

In the complainant's view, the corrective compensatory measures introduced during the 2015 reform were nevertheless inconsistent with the commitments to budgetary neutrality promised by the Office to the officials concerned, which constituted a breach by the Office of its duty of care towards its former staff members on invalidity. He contends that this is because an application for additional compensation can only be made after deduction of the national income tax, on the basis of the annual tax statement, hence such compensation was in most cases paid only one and a half to two years after he had to make advance payments on national tax prepayments.

The EPO submits that it was not possible to pay the additional compensation before the annual tax statement was received, as it would not be known for certain whether the tax adjustment and compensatory payment already provided for in this respect were insufficient to offset the impact of the national income tax applied to the retirement pension for health reasons.

4. In his rejoinder, the complainant states that what is at issue in the present case "is not the level of the [additional] compensation, but the timing of its payment by the EPO"\*.

The matter in dispute is, consequently, limited to the consideration of this issue.

5. In this regard, the EPO argues that the timing of the additional payment is fully consistent with its duty of care. On the one hand, on account of its very purpose as specified in the applicable provisions, additional compensation can only be paid after deduction of the national tax; on the other hand, the complainant fails to sufficiently establish that the time at which this compensation is paid to him causes him insurmountable financial difficulties, particularly as the Office in any event makes him other advance payments that should, largely and in

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\* Registry's translation.

real time, allow him to cover the national tax that he is called upon to pay before receiving the additional compensation.

6. In his further submissions filed on 22 June 2025, the complainant states as follows:

“The EPO has finally acknowledged the problem of delay in the payment of tax credit [understood as meaning additional compensation], which is sometimes paid two years after a retiree on an invalidity pension has paid tax on his pension.

The EPO updated its procedure in 2024 and adopted a new practice in 2025. It is regrettable that the EPO waited from 2015 to 2024 to recognize a blatant problem, seriously affecting the complainant, and ten years to find a simple solution.

The EPO now pays ‘advance tax compensation’ during the tax payment year, in the amount of the tax compensation from the previous year. In 2024 advance compensation on income tax for 2024 was paid at the end of September, whereas the complainant starts paying tax in early March. For 2025 the EPO asked the complainant to submit a request for payment of the advance compensation, which was paid after he had submitted the request.

This approach is illustrated in the calculation of material damages set out in Attachment No. 13, which shows the ‘advance compensation’ of September 2024. Attachment No. 13, attached herewith, is an update of the estimate of material damage, as I indicated to the Tribunal when filing the complaint: ‘Updates will be sent to the Tribunal when the data required for the calculations, from the EPO and the tax authorities, are available’. The numerical data not available at the time, which were indicated by question marks in the calculation tables in the Annex (Attachments Nos 8 and 12) have been entered. The list of attachments has also been updated.

Since the EPO’s new practice does not appear in any staff regulation, and the EPO could at any time discard the idea of advance compensation, it is important that a decision by the Tribunal ensure an enduring solution.”\*

In its final comments of 1 July 2025, the EPO nevertheless notes that the changes in the arrangements for the payment of additional compensation do not constitute recognition of any “problem” or the unlawfulness of any previous arrangements, with the consequence that no fault could be attributed to it as a result of this change, including with regard to its duty of care.

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\* Registry’s translation.

7. In view of the subject of the dispute as specified in consideration 4, above, and in the light of the further comments made by the parties, the Tribunal first of all considers that there is no need to rule on the complainant's claim that a procedure for the payment of additional compensation which would ensure that he did not have to bear the cost of paying this tax in advance should be ordered. This claim has become moot. It would, in any event, have been declared irreceivable due to the fact that the Tribunal is not competent to issue such injunctions against an international organization (see, to this effect, Judgment 4885, consideration 12).

8. With regard to the complainant's claim seeking recognition of a breach by the Organization of its duty of care, the Tribunal finds that it cannot be considered, in the light of the arguments put forward by the EPO in its written submissions, that this was the case.

Indeed:

- An international organization is free to modify its invalidity scheme and is not required to this end to establish a compensation mechanism covering the entire loss sustained by its staff members following the transition from one regime to another nor to take into account the individual effects of national taxation on each employee (see, to this effect, Judgment 3623, considerations 7 and 10), it being understood that the principle of tax exemption does not apply to former staff members (see, in particular, Judgment 2257, consideration 20).
- The purpose of the additional compensation mechanism was never to fully exempt pensioners for health reasons from national taxes or to allow them to claim interest on arrears due to the advance payment of national income tax, but merely to relieve them to a certain extent of their tax burden.
- The potentially negative impacts of a payment a posteriori of the additional compensation were mitigated in part by the other compensatory measure, namely the tax adjustment.

- The EPO thus showed substantial care by introducing three compensation measures during the reform of the invalidity scheme in 2015, including the additional compensation mechanism.
- The fact that the EPO, having again reviewed the situation, finally decided to introduce changes to the payment arrangements by making advance payments of additional compensation during the current tax year does not imply, in itself, that it breached its duty of care by not making this change earlier.

It follows that the plea alleging a breach of the duty of care and the related claim must be rejected.

9. Since the EPO did not breach its duty of care, the complainant's claims for material damages, as well as interest on arrears, and moral damages must also be rejected.

10. Lastly, the claim that the Tribunal should “draw the other consequences”<sup>\*</sup> from the dispute must be rejected as being too vague and imprecise for it to be entertained (see Judgments 1485, consideration 5, and 637, consideration 5).

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

#### DECISION

For the above reasons,

The complaint is dismissed.

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<sup>\*</sup> Registry's translation.

In witness of this judgment, adopted on 3 November 2025, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, 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.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLEMENT GASCON

RENÉ M. VARGAS M.