

110th Session

Judgment No. 2984

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mrs E. H. against the European Patent Organisation (EPO) on 5 January 2009 and corrected on 23 February, the EPO's reply of 29 June, the complainant's rejoinder of 21 July and the Organisation's surrejoinder of 27 October 2009;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant is a Dutch national, born in 1957, who joined the European Patent Office – the EPO's secretariat – in 1988 as an examiner at grade A2. She currently holds grade A4. At the material time she was either Chairman or Vice-Chairman of the Munich local sections of the Staff Committee and of the Staff Union of the EPO (SUEPO).

In a letter of 6 June 2007 addressed to the then President of the Office, she accused him of having persistently attacked her as an individual for acts that she had carried out in her capacity as a staff

representative. She contended that these attacks were sufficiently systematic to constitute harassment and that, having been “organized at such a high administrative level”, they could be considered to constitute corporate harassment. She therefore requested that a procedure be initiated against the President under Circular No. 286, entitled “Protection of the dignity of staff”. Alternatively, she requested that an ad hoc procedure offering her equal remedies be initiated, given that Circular No. 286 had been provisionally suspended. She also requested that a procedure initiated against her in response to a grievance lodged by Mr U. be withdrawn, that her own complaint against the Vice-President of Directorate-General 4 (DG4) be forwarded to an Ombudsman without delay, and that the President refrain from any further harassment against her. In the event that these requests could not be granted, she requested that her letter be treated as an internal appeal under Article 108 of the Service Regulations for Permanent Employees of the EPO, in which case she claimed moral and punitive damages and costs. In the event, a new President, who had taken office on 1 July 2007, chose the latter course and the matter was therefore referred to the Internal Appeals Committee.

In her letter of 6 June 2007 the complainant referred in particular to six letters sent to her by the former President, which she regarded as examples of his attacks against her. The first is a letter of 2 December 2005 in which the President stated that the Internal Auditor had brought to his attention an e-mail sent to the latter by the complainant on 25 November 2005 containing a number of allegations against the Principal Director of Personnel. Given that the complainant was aware that this “sensitive matter” was the subject of ongoing correspondence with the President, he considered that her “parallel” communication to the Internal Auditor constituted “inappropriate and completely unacceptable” conduct. The President drew the complainant’s attention to her rights and obligations under the Service Regulations and demanded a complete written explanation within ten days, as well as an unambiguous declaration of the capacity in which she had acted. In an e-mail to the President which he shared with the complainant, the Internal Auditor, who had received a copy of the

letter of 2 December, strongly objected to the inference that he had disclosed the content of the complainant's e-mail and stated that this breach of confidentiality had almost certainly been committed by another of its addressees. The complainant argued that the letter of 2 December contained false statements and was based on information that had been improperly provided to the President by the Vice-President of DG4.

The second letter mentioned in her appeal of 6 June 2007 was sent to her on 1 February 2006 after a further exchange of correspondence on the above matter. The President wrote that it was regrettable that serious but vaguely worded allegations against a named member of staff had been broadcast in SUEPO publications and that many of the criticisms expressed in her e-mail of 25 November 2005 appeared to be "motivated more by [her] dislike of certain personnel policies than by any concern for the functioning of the Office". He urged the complainant to "draw a clearer distinction between acting with genuine concern for the interest of the Office and indulging in mobbing behaviour against an individual". The complainant considered that in this letter the President had improperly accused her of mobbing, instead of reacting correctly to a confidential request for investigation prompted by genuine concern for the interests of the Office.

In the third letter mentioned by the complainant, which is dated 7 July 2006, the President informed her that, in accordance with Circular No. 286, the allegations made against her by Mr U. would be communicated to her shortly by the Confidential Counsellor to whom the case had been referred. The complainant objected to this letter on the grounds that the President had initiated a procedure against her under Circular No. 286, even though Mr U. had not requested such a procedure, and that, by asking a Confidential Counsellor to investigate the case, he had violated the very essence of the informal procedure provided for under the Circular.

In the fourth letter dated 20 December 2006, the President informed her that the complaint she had lodged under Circular No. 286 against the Vice-President of DG4 had been forwarded to

Directorate-General 5 for verification of its admissibility. In the complainant's view, this action, which appeared to be based on frivolous reasons, had compromised the confidentiality of the procedure and caused unnecessary delay, leading her to conclude that the President had no intention of investigating her complaint.

The fifth letter cited by the complainant, which is dated 21 February 2007, also concerns the above-mentioned procedure. In this letter, the President explained why he had decided to refer the case to a Confidential Counsellor on the basis of Article 6(1)(a) of Circular No. 286, emphasising that this did not replace the Ombudsman procedure set out in Article 10 of the Circular, and that the counsellor merely provided additional support, "acting on request either of the protected person or the respondent, depending on who has asked for assistance". He added that he had asked the Personnel Department to arrange a meeting with her and Mr U. to enable both parties to express their views. The complainant considered this announcement to be an attempt to put undue pressure on her. She pointed out that no such meeting was foreseen in Circular No. 286 and that all the actions mentioned by the President in this letter had been undertaken on his own initiative and not on the recommendation of a properly appointed Ombudsman.

Lastly, the complainant pointed to a letter of 31 May 2007 in which the President drew her attention to an article published by SUEPO on 8 March 2007 concerning "dignity procedures" against staff representatives. According to the President, the complainant was identified in the article as having been targeted by such a procedure, and the article disclosed confidential details of the procedure which could only have been known to the parties and to the Confidential Counsellor. He therefore considered that she had breached her obligations under Article 14 of the Service Regulations and he was considering the possibility of issuing her a written warning under Article 93(2)(a) of the Service Regulations. He asked her to comment within a fortnight.

The present complaint also stems from a second appeal which was prompted by an exchange of correspondence between the complainant

and the Vice-President of DG4. In March 2006 a staff survey, known as the “Human Capital Survey”, was conducted by the Office in collaboration with an external consultant. Shortly after the survey had closed, the Administration submitted to the General Advisory Committee a proposal for a new reporting system for examiners. On 30 May 2006 SUEPO sent an e-mail to staff, inviting them to redo part of the survey so that the proposal for the new reporting system could be taken into account in their responses. To that end, it had extracted from the original survey a set of questions relating in particular to the staff’s trust in senior management, and this “mini-survey” could be completed online via the SUEPO website. On 1 June 2006 the Vice-President of DG4 asked the complainant not to go ahead with the “mini-survey”, but the following day the results of the “mini-survey”, and those of the original survey with which they were compared, were published on the SUEPO website.

On 24 July 2006 the Vice-President of DG4 informed the complainant that the Office was examining the possibility of taking disciplinary action against her in connection with the “mini-survey” and her announcement, at the general assembly of the Munich local section of SUEPO, that she was considering initiating a public campaign to harm the reputation of the outgoing President. He asked the complainant to provide her comments in writing by 15 August. The complainant replied on 20 September, indicating that she assumed that the letter of 24 July was directed to her in her capacity as Chairman of the Munich SUEPO Committee, and she commented “on behalf of the Committee”. She strongly denied having made the statement of which she was accused.

In a letter of 16 November 2006 the Vice-President of DG4 stated that his letter of 24 July had been addressed to her in her personal capacity, as the Office considered SUEPO Munich to be merely “an association of individuals with personal responsibility”. He emphasised that the Office fully respected the freedom of association, but that this freedom did not exempt her from her duties and obligations under the Service Regulations, which were also applicable to staff representatives. The Office considered that the unauthorised use, adaptation, rerun, and publication of the “Human Capital Survey”

and its results constituted a breach of its copyright and of the Guidelines for the protection of personal data at the EPO. Consequently, the Vice-President asked the complainant to remove the survey and results from the SUEPO website immediately. He informed her in closing that, “[a]lthough certain breaches of duties under the EPO Service Regulations ha[d] occurred, the President [...] [would] refrain from any disciplinary proceedings and sanctions at this stage”.

By a letter of 30 November 2006 the complainant asked the Vice-President of DG4 to withdraw his letter of 16 November. Failing this, her letter was to be treated as an internal appeal, in which case she reserved the right to claim moral damages and costs and to lodge a complaint under Circular No. 286. She pointed out that, although he was aware that the acts of which he complained were acts of SUEPO, he had chosen to single her out in her personal capacity as the target for questions and threats of disciplinary measures. In her view, this conduct was arbitrary and constituted harassment. Noting that the Vice-President had provided no details of the alleged breaches, nor any evidence of her personal involvement in them, she concluded that his actions were designed to threaten and intimidate a SUEPO Committee member, in violation of her freedom of association. The complainant was informed by letter of 18 January 2007 that her request had been denied and that the matter had therefore been referred to the Internal Appeals Committee.

At the complainant’s request, her two appeals were joined by the Committee, which issued its opinion on 10 September 2008. In the course of the internal appeal proceedings, several other matters were raised by the complainant, some of which were dismissed by the Committee as inadmissible extensions of the original subject matter of the appeal. The Committee did, however, give consideration to her allegations regarding a meeting of the Consultation Group held on 29 March 2004 at which she had been sent out of the room and then criticised in the ensuing discussion, the support allegedly given to

Ms E. under Article 28 of the Service Regulations in proceedings initiated by the latter against the complainant and other staff representatives, and a letter in which the complainant was accused of having infringed Communiqué No. 45. A majority of the Committee came to the conclusion that the letters and events on which the complainant relied did not, either individually or collectively, establish that she had been harassed or that her right to freedom of association had been infringed. However, the Committee unanimously considered that, by denying the complainant's request for a procedure similar to that of Circular No. 286, the Administration had breached its obligation to investigate her claims promptly. Indeed, in view of the likely duration of the internal appeal proceedings and the fact that the President against whom the allegations were made would soon be leaving the Office, the decision to refer the matter to the Internal Appeals Committee was bound to prevent timely investigation of her claims. The Committee therefore unanimously recommended that she be awarded 3,000 euros in moral damages, as well as costs. It recommended by a majority that the appeals be dismissed as unfounded for the remainder. In their minority opinion, two members of the Committee took the view that there had been corporate harassment against the complainant, as well as injury to her dignity.

By a letter of 11 November 2008, which constitutes the impugned decision, the complainant was informed that the President had decided to award her moral damages and costs in accordance with the Committee's recommendation and to reject her remaining claims as unfounded.

B. The complainant submits that she has been subjected to a series of unjustified, hostile attacks by the two former Presidents of the Office and by the former Vice-President of DG4, which injured her dignity and which, taken as a whole, amount to corporate harassment. She states that these attacks, which were aimed at preventing the staff representation from criticising certain managers, were perceived as highly intimidating and that, in addition to causing her grief, they have seriously affected her health.

She points out that the Office has ignored the fact that the actions which prompted these attacks were collective actions and has denied her the protection to which she is entitled as a staff representative. For example, she was the only staff representative to be targeted in connection with the “mini-survey” to which the Vice-President of DG4 referred in his letter of 16 November 2006. In the complainant’s view, given that the Organisation does not recognise SUEPO as a legitimate internal body, a question arises as to whether it can impose internal sanctions on a SUEPO Committee member for actions undertaken by SUEPO simply because the individuals concerned are employed by the Office.

With regard to the meeting of 29 March 2004 she states that, having asked her to leave the room, the Vice-President of DG4 accused her of having sent a letter to the President complaining about the Principal Director of Personnel which, in his view, amounted to harassment. She was thus deprived of the possibility to defend herself against this serious accusation. Furthermore, it is not disputed that the letter in question was never sent and, according to the complainant, the Vice-President knew that it was only a draft. She argues that, since it is part of the duty of the staff representation confidentially to draw the attention of a superior to failings of a manager, her letter would not have warranted such a “violent attack” even if it had actually been sent.

For the same reason, she considers that the e-mail she sent to the Internal Auditor on 25 November 2005 did not warrant the threatening response conveyed by the President’s letter of 2 December 2005, which she perceived as highly intimidating. The complainant adds that, in light of the Internal Auditor’s reaction to this letter, the President’s statement that her e-mail had been brought to his attention by the Auditor appears to be false. She fails to understand how the majority of the Internal Appeals Committee was able to reach the conclusion that it was within the discretion of the President to denounce her behaviour as “inappropriate and completely unacceptable”.

With regard to the President’s letters of 1 February 2006, 7 July 2006 and 21 February 2007, she likewise considers that his accusations

were inappropriate and constituted a personal attack on an individual staff representative in connection with collective actions of the staff representation. Moreover, in response to the concerns addressed to him by Mr U.'s lawyer, the President took it upon himself to initiate a procedure under Circular No. 286 which had not been requested, and then failed to adhere to the Circular, since he asked a Confidential Counsellor to report to him on the case instead of referring it to an Ombudsman. This, she says, increased both the threat and the level of uncertainty to which she was exposed, and she asks the Tribunal to take into account the Office's lack of due diligence with regard to this procedure in any award of damages it may decide to make.

As for the President's letter of 31 May 2007, which again targeted her individually for actions which were collective, she submits that the extremely short period that she was allowed to respond to the proposed disciplinary measure was calculated to cause her stress. She notes that his successor subsequently decided that no disciplinary measure was required.

The complainant asks the Tribunal to quash the impugned decision and to declare that the incidents cited by her can reasonably be considered as offending her dignity. She claims moral damages for corporate harassment or, alternatively, for repeated injury to her dignity, and moral and punitive damages for wilful and gross violation of fundamental rights. She also claims costs.

C. In its reply the defendant explains that, unlike the Staff Committee, whose status, composition, functioning and role are enshrined in the Service Regulations, SUEPO has no legal status within the EPO. It is "tolerate[d]" by the Organisation and is allowed to use certain Office facilities, but it does not have a right of publication through official EPO communication channels. The "mini-survey" was carried out, not by the Staff Committee, but by SUEPO, and since the latter is not a legally recognised entity the Vice-President of DG4 addressed his letter of 16 November 2006 to the complainant in her personal capacity. Indeed, as Chairman of SUEPO, she could be expected to liaise between the Administration and SUEPO. The Organisation emphasises that, according to the

majority of the Internal Appeals Committee, the “mini-survey” could be regarded as constituting a breach of the complainant’s obligations under Article 14 of the Service Regulations, and the letter of 16 November did not offend her dignity or infringe her freedom of association.

As regards the letter of 31 May 2007, the EPO denies that the President targeted the complainant individually by addressing it to her in her personal capacity. Being a party to the procedure initiated in response to Mr U.’s grievance, she alone was in a position to provide SUEPO with the confidential information that it disclosed in its publication of 8 March 2007. This disclosure constituted a breach of her obligations under Article 3(3) of Circular No. 286 and the threat of disciplinary action was therefore understandable.

The defendant further contends that the conduct of the Vice-President of DG4 at the meeting of 29 March 2004 did not offend the complainant’s dignity or constitute harassment. It points out that the Principal Director of Personnel, who was targeted by the letter that was then discussed with the chairpersons of the various Staff Committees, was also asked to leave the room, and that by speaking with those chairpersons, the Vice-President emphasised their responsibility rather than the complainant’s.

In the Organisation’s view, the President’s letter of 2 December 2005, in which he described the complainant’s conduct as “inappropriate and completely unacceptable”, was neither malevolent, nor defamatory, nor disparaging, and it lay within the bounds of the freedom of expression that he enjoys. He did not act arbitrarily or abuse his authority, and his reaction cannot be considered as amounting to harassment. The defendant observes that the complainant was then Vice-Chairman of the Munich local sections of both the Staff Committee and SUEPO and was thus “part and parcel of a political life where relations between staff representatives and management are sometimes strained”.

It shares the view of the majority of the Internal Appeals Committee that the letters of 7 July 2006 and 21 February 2007 likewise do not support a finding of harassment. It explains that the

President believed that the dispute between the complainant and Mr U. might be resolved by mediation, and he therefore decided to mandate a Confidential Counsellor to undertake the necessary investigations with a view to resolving the matter amicably. He recommended that a meeting be held with the complainant and Mr U. because there were rumours to be clarified and this meeting would give them both an opportunity to state their points of view.

The EPO considers that the incidents on which the complainant relies were acceptable in the context of exchanges between the Administration and the staff representatives and emphasises that no disciplinary measure was actually taken against her. In the absence of any evidence of unlawful conduct on its part, it submits that the claims for damages and costs should be rejected.

D. In her rejoinder the complainant maintains her position in full. She produces two letters from the current President's predecessor which, in her view, show that she was subjected to unjustified hostilities until very recently.

E. In its surrejoinder the EPO likewise maintains its earlier submissions.

CONSIDERATIONS

1. This complaint arises from the President's decision of 11 November 2008 on two internal appeals that were joined by the Internal Appeals Committee. The first appeal concerns an allegation of corporate harassment. The second appeal concerns a letter of 16 November 2006 written to the complainant by the Vice-President of DG4, regarding the activities of SUEPO.

2. Throughout the material time, the complainant held leadership positions in the Munich local sections of both the Staff Committee and SUEPO. She alleges that, starting in 2004, she was the target of a series of attacks by the two former Presidents of the Office

and the former Vice-President of DG4, which individually were affronts to her dignity and collectively amounted to corporate harassment. Her allegations are largely based on an incident in March 2004 and a series of letters addressed to her by the President and the Vice-President of DG4 stemming from her involvement in a number of actions which, she maintains, were taken collectively by the staff representatives.

3. As the extensive background to the complaint is detailed above under A, only the specific incident and letters are summarised below.

4. The incident in March 2004 concerns a meeting convened by the Vice-President of DG4 during which he asked the complainant, the Principal Director of Personnel and others, except his assistant and the chairpersons of the Staff Committees, to leave the room. He then produced a letter written by the complainant to the President alleging improper behaviour by the Principal Director of Personnel. The complainant claims that the Vice-President said that the letter “would amount to harassment”. It was later revealed that the letter was a draft and had never been sent to the President.

5. The following is a summary of the relevant letters from the President to the complainant:

(1) Letter of 2 December 2005

In this letter, the President informed the complainant that the Internal Auditor had notified him of an e-mail in which the complainant had requested an inquiry into the activities of the Principal Director of Personnel. The President reprimanded the complainant for contacting the Internal Auditor. He observed that that e-mail and an earlier letter coupled with accusations made against the Principal Director of Personnel in two SUEPO publications gave the impression that the latter was the target of a sustained campaign of a malicious and defamatory nature. The President accused the complainant of attempting to cloak her role in the matter in ambiguity and “blur the personal responsibility

[she bore]”. He demanded an explanation for her actions and an “unambiguous declaration of the capacity in which [she was] acting”. He also reminded her of her rights and duties under the Service Regulations.

(2) Letter of 1 February 2006

In this letter, the President observed that the complainant’s actions in relation to the Principal Director of Personnel appeared to be motivated by her dislike for certain personnel policies and not by concern for the functioning of the Office. He accused the complainant of mobbing the Principal Director of Personnel.

(3) Letter of 7 July 2006

The President informed the complainant that she would be contacted by the Confidential Counsellor about a complaint brought against her under Circular No. 286, concerning the protection of the dignity of staff, on the basis of allegations made by Mr U.

(4) Letter of 20 December 2006

The President advised the complainant that her complaint under Circular No. 286 against the Vice-President of DG4 was being reviewed for the purpose of verifying its admissibility.

(5) Letter of 21 February 2007

In this letter, the President advised the complainant that he had decided to refer Mr U.’s grievance to a Confidential Counsellor. He also informed her that he had asked the Personnel Department to arrange a meeting between her and Mr U. for the purpose of establishing the history of the matter and giving both parties an opportunity to present their respective positions.

(6) Letter of 31 May 2007

In this letter, the President accused the complainant of breaching the obligation of confidentiality set out in Circular No. 286. In the 8 March 2007 issue of “SUEPO informs”, the complainant’s initials were used, making her identifiable in a description of Mr U.’s case against her. Disciplinary action was threatened in this

letter and the complainant was asked to provide her written comments by 15 June.

6. The complainant responded on 22 June 2007 to the letter of 31 May rejecting the assertion that she had breached the obligation of confidentiality and asked the President to withdraw his accusations. Prior to that, by a letter of 6 June 2007, she had requested that a procedure under Circular No. 286 be initiated against the President pursuant to Article 106 of the Service Regulations. In the alternative, she called for an ad hoc procedure offering her a comparable level of legal protection.

7. A new President took office on 1 July 2007. She decided not to initiate a procedure under Circular No. 286, but rather to remit the complainant's allegations against her predecessor to the Internal Appeals Committee for an opinion. This is the first appeal referred to above.

8. As noted above, this complaint also concerns a letter written by the Vice-President of DG4 to the complainant on 16 November 2006. As this letter is the continuation of an exchange of correspondence between the complainant and the Vice-President, a summary of the prior correspondence is necessary.

9. On 30 May 2006 the Munich and Berlin local sections of SUEPO invited staff to redo part of an earlier survey to give them an opportunity to take into account in their responses a proposal for a new reporting system for examiners. The staff was informed that SUEPO had prepared a "mini-survey" comprising a subset of the relevant questions and had posted it on its website for completion online. The rerun of the survey was scheduled to last until 2 June 2006.

10. On 1 June the Vice-President of DG4 asked the complainant not to carry out a rerun of the staff survey that had been conducted by management. On 2 June SUEPO published the "mini-survey" and the results on its website.

11. In a letter of 24 July 2006 to the complainant, the Vice-President of DG4 stated that SUEPO's action was considered "an unacceptable interference with the process of the official staff survey which intends to generate mistrust towards its results". The Office was of the view that the activity ignored the procedural framework agreed to between the Office and the staff representation. Further, the rerun was conducted without regard to the Guidelines for the protection of personal data and without due consideration for intellectual property rights of the Office or the external consultant with whose collaboration the official survey had been conducted. The Vice-President observed that the conduct seemed inappropriate and contrary to the complainant's duties under Article 14 of the Service Regulations to conduct herself solely in the interests of the Office. He also referred to the general assembly of the Munich local section of SUEPO held on 21 June 2006 at which, he alleged, the complainant had announced that she was considering a public campaign to harm the reputation of the outgoing President. He reminded her that a staff representative may not engage in public actions that impair the dignity of the international civil service, or the reputation of the Office and its members and drew her attention to Circular No. 286 concerning the protection of the dignity of staff members, including management. He noted that the actions referred to in the letter seemed to be incompatible with the duties of a staff representative and, therefore, the possibility of taking disciplinary action against her had to be examined. He asked the complainant to respond by 15 August.

12. In her response of 20 September 2006 the complainant stated that since the actions were those of SUEPO she assumed that the Vice-President's earlier observations were directed to her in her capacity as Chairman of the Munich local section of SUEPO and not at her personally. She replied to the concerns surrounding the rerun of the survey and strongly denied making the statement about smearing the President's reputation.

13. In his letter of 16 November 2006 the Vice-President of DG4 clarified that his earlier correspondence was directed to her personally. He observed that the Office considered SUEPO as merely an

association of individuals with personal responsibility, since it had not been possible to trace any registration, article of association, or constitution for this entity. He emphasised the Office's respect for the principle of freedom of association; however, this principle did not exempt the complainant from her duties and obligations under the Service Regulations, which were also applicable to staff representatives. He reiterated his earlier comments regarding the survey and requested that everything associated with the survey be removed from the SUEPO website. Lastly, he stated that, although there had been breaches of duties under the Service Regulations, the President had decided that he would refrain from taking any disciplinary proceedings or sanctions in light of the fact that she had not committed any prior disciplinary offences.

14. In her letter of 30 November 2006, the complainant stated that the Vice-President of DG4 had apparently singled her out as the target for questions and threats of disciplinary action. She viewed these attacks as arbitrary, personal harassment and a violation of the principle of freedom of association. She asked the Vice-President to withdraw his statements, failing which her request should be considered as an internal appeal. On 18 January 2007 the complainant was informed that her appeal had been referred to the Internal Appeals Committee. This is the second appeal referred to above.

15. The complainant contends that she has been the target of numerous hostile, highly intimidating attacks by the two former Presidents and the Vice-President of DG4. These personal attacks injured her dignity, caused her significant stress and seriously affected her health. She maintains that having regard to their source these attacks taken together amount to corporate harassment.

16. The complainant claims that she was wrongfully singled out and blamed for actions taken by the staff representation which ought to have attracted collective responsibility. In addition to the added stress associated with being held personally responsible, she was denied the protection to which she is entitled as a staff representative.

17. Further, if the EPO is correct in its assertion that an individual may be held accountable for action taken as a SUEPO Committee member, then the exercise of the disciplinary power must be taken in accordance with the applicable Service Regulations. The complainant argues that in her case none of the “attacks” complied with the provisions of Article 93 of the Service Regulations.

18. The EPO replies that the actions taken against the complainant were warranted. As the Internal Appeals Committee observed, the complainant’s behaviour as a staff representative was “decidedly borderline”. The defendant maintains that it did not fail to respect the complainant’s dignity but instead worked to protect the dignity of other staff members and the interests of the Organisation from the complainant herself. In addition, no disciplinary action against the complainant was in fact taken.

19. Further, the EPO argues that, as SUEPO has no legal status within the EPO, the individual members of SUEPO can be held accountable for their actions within the union. It maintains that it fully respects the freedom of association rights of staff members as set forth in Article 30 of the Service Regulations; however, staff representatives are still required to respect the dignity of fellow staff.

20. The Organisation takes the position that in all of the instances in which the complainant was criticised by the Administration her actions warranted reprimand. Therefore, it cannot be said that the former Presidents’ and Vice-President’s communications with the complainant constitute harassment.

21. The Tribunal observes that this last argument is grounded on the assumption that the actions giving rise to the warnings and reprimands were in fact the actions of the complainant personally. The Tribunal finds that the record does not support this assumption.

22. It is clear from the exchange of correspondence in relation to the Principal Director of Personnel that the action was being taken

by the Munich Staff Committee and not by the complainant. As such, any allegations of improper conduct or criticism should have been directed to the Munich Staff Committee and not to the complainant personally. Although the fact that the complainant signed her correspondence in her capacity as “(MSC/SUEPO)” i.e. “Munich Staff Committee/SUEPO” may have caused some confusion as to whether the correspondence was on behalf of one or both of those bodies, there is no basis upon which this “blurring” could found an inference that the complainant was acting in her personal capacity. Further, there is no evidence that the complainant in fact acted in her personal capacity.

23. It is also clear from the Vice-President’s letter of 16 November 2006 that the complainant was being held personally responsible for the rerun of the survey. The defendant argues that, since SUEPO has no status in the EPO, the individual members of SUEPO can be held accountable for their actions within the Union. For the purpose of the complaint, a consideration of the soundness of this argument is unnecessary as it does not appear on the record that the complainant was, in fact, personally responsible for the rerun of the survey.

24. As SUEPO has no separate legal personality, its members and officials are personally liable for any actions taken on its behalf. However, it does not follow that administrative concerns surrounding its activities should not be directed to SUEPO officials, in their capacity as such. Moreover, in the case of group activity, the EPO can neither hold those not involved personally liable nor single out one individual as being responsible for the activity of the group.

25. With respect to the President’s letters of 7 July and 20 December 2006, the Tribunal finds that, whether taken in isolation

or in the context of the larger exchange of communications between the parties, these letters cannot be construed as offending the complainant's dignity or amounting to harassment. They are simply intended to inform the complainant about the status or the steps being taken in relation to procedures initiated under Circular No. 286.

26. The last letter referenced by the complainant is the President's letter of 31 May 2007 in which the complainant is accused of breaching her obligation of confidentiality. Whether correctly or incorrectly, the complainant was viewed as the only person who could have revealed the information. In these circumstances, where the alleged breach occurred in connection with a matter in which the complainant was personally involved, it cannot be said that the complainant was being singled out for action taken by the staff representation. Additionally, it does not show a lack of respect for the complainant's dignity or constitute harassment.

27. Lastly, the Tribunal rejects the complainant's assertion that being asked to leave the meeting of 29 March 2004 was an affront to her dignity. The Tribunal notes that a number of people, including the complainant, were asked to leave the meeting for the purpose of carrying on a particular discussion in their absence.

28. The Tribunal concludes that the President's letters in which he singled out the complainant for the actions of the Munich local section of SUEPO in relation to the Principal Director of Personnel and the letter of the Vice-President of DG4 concerning the staff survey were affronts to the complainant's dignity and, considered together, constitute harassment.

29. The complainant is entitled to moral damages in the amount of 5,000 euros and costs in the amount of 750 euros. All other claims will be dismissed.

DECISION

For the above reasons,

1. The President's decision of 11 November 2008 is set aside to the extent that it rejected the complainant's appeals as they concerned her claims of harassment.
2. The EPO shall pay the complainant moral damages in the amount of 5,000 euros.
3. It shall pay the complainant costs in the amount of 750 euros.
4. All other claims are dismissed.

In witness of this judgment, adopted on 29 October 2010, Ms Mary G. Gaudron, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2011.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet