

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**115th Session**

**Judgment No. 3212**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms M. S. against the European Patent Organisation (EPO) on 6 October 2010 and corrected on 6 November 2010, the Organisation's reply of 17 February 2011, the complainant's rejoinder of 15 April and the EPO's surrejoinder of 22 July 2011;

Considering the applications to intervene submitted by Messrs T. H., A. K., I. T. and P. T., and the EPO's comments of 26 September 2011 in which it informed the Registrar of the Tribunal that it considered those applications to be irreceivable since the persons concerned were not in the same situation in fact or in law as the complainant;

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, a French national born in 1949, entered the service of the European Patent Office, the secretariat of the EPO, in

May 1991 at grade B6. She was subsequently promoted on three occasions. At the material time she was employed at grade A4 in the Legal Research and Administration Directorate within Directorate-General 3 (DG3).

On 24 March 2006 the complainant, acting on the basis of Circular No. 286, filed a harassment-related grievance, composed in French, against her supervisor and four of her colleagues. On 10 April, when acknowledging its receipt, the President of the Office advised the complainant that he had “noted” that it would “be dealt with in French” and that it would be transmitted to an external Ombudsman. The Ombudsman met with the complainant on three occasions, but on being criticised by her for his “shortcomings”, he stated in a letter of 4 July that he wished to be relieved of his task. Nevertheless, on 17 July he submitted a report in which he recommended the appointment of another Ombudsman. Neither the letter nor the report were communicated to the complainant at the time.

Having been informed that a second Ombudsman, Mr L., had been appointed, the complainant objected, in an e-mail of 26 July, that he did not speak French and probably could not read it either. On 29 August she lodged an internal appeal alleging that the time limits fixed in Circular No. 286 had not been observed, which she regarded as an act of “aggravated harassment”. She also alleged a grave violation of human rights and of fundamental principles of law, and sought an award of damages. This appeal was transmitted to the Internal Appeals Committee in October.

On 9 December 2006 Mr L. submitted a first interim report stating that the grievance had been filed under false pretences, since the complainant had herself admitted that she had acted in response to the decision not to appoint her as head of the directorate in which she worked. Having had his mandate extended, on 25 January 2007 Mr L. wrote to the President to inform him that the situation was “unsustainable” and that the complainant’s colleagues felt “terrorized”. He recommended, inter alia, that she should be suspended from her duties and be offered the support of the Office’s medical staff. On

29 January the complainant had to undergo a medical examination. The same day, she received a letter informing her that the President had decided to request her, with immediate effect, not to come to work. This decision was cancelled on 12 February, because the Office's Medical Adviser had placed her on sick leave until 28 February. By a letter of 26 March the complainant was informed that from 1 April she was to be transferred to Directorate-General 2 (DG2).

Having delivered a second interim report on 8 February 2007, Mr L. submitted his final report on 8 May. In that report, apart from criticising the Administration for its inaction, he concluded that the complainant's grievance was groundless and that it would be "irresponsible" to continue exposing her colleagues to the threatening atmosphere she had created around herself. Mr L. recommended that the President consider the possibility of terminating her employment or, failing that, a series of measures beginning with a transfer. In a letter of 19 June the President, emphasising the positive impact on the complainant's behaviour of her transfer to DG2, told her that he would not follow the Ombudsman's recommendation to terminate her contract, but that any further misconduct on her part would place her at risk of having her appointment suspended and then terminated. On the basis of Mr L.'s final report and Article 12(1)(c) of Circular No. 286, he concluded that her grievance, which he had decided to reject, was malicious and frivolous, and that it had been detrimental to the persons named in it. He therefore intended to issue her a reprimand, and he invited her to state her views on the matter, which she did on 4 July. In the meantime, on 21 June the complainant had received a copy of the Ombudsman's final report and of the two interim reports that had preceded it.

On 20 August the complainant lodged an appeal against the decision of 19 June. It was forwarded to the Internal Appeals Committee in October 2007 and was then joined to the first appeal. In its opinion of 19 May 2010 the Committee found that the appeals were partly well founded, especially given the successive delays in the mediation procedure. Noting that the letter of 4 July 2006, containing criticisms of the complainant, had been transmitted to Mr L. and had

even formed the basis of his report, the Committee considered that this was a serious transgression, particularly because the complainant had not been given an opportunity to state her views on the matter at the time, since she had become aware of it only upon receiving the Office's reply to her appeal. There was also a serious procedural flaw in the decision to appoint Mr L., because his knowledge of French was not sufficient to permit a proper examination on his part of the accusations of harassment made by the complainant. The Committee added that the Office, in taking the step of suspending her from her duties, had disregarded not only her right to be heard, but also the obligation to give reasons for a decision that adversely affected her. The Committee unanimously recommended that the complainant be informed officially that the decision of 19 June 2007 and the conclusions based on the report of Mr L. could not stand, and that, particularly in view of her transfer to DG2, her grievance was regarded as settled. It also recommended that she be awarded 10,000 euros in compensation for moral injury "and for all the violations of rights found to have occurred", and reimbursement of legal costs within reasonable limits.

By a letter of 20 July 2010, which constitutes the impugned decision, the complainant was notified by the Director of Regulations and Change Management that the President disagreed with certain aspects of the Internal Appeals Committee's findings. In the President's view, the complainant had consented to Mr L. conducting the procedure in English and had raised concerns about his French skills only after he had completed his final report, and the evidence produced had thus been properly evaluated. The President also denied that no reason had been given for the complainant's suspension from her duties, or that the decision in question had been taken in violation of her right to a hearing. He did agree that, in view of the time that had passed and the complainant's transfer to DG2, her grievance should be treated as settled. However, recognising that the time taken to deal with it had been excessive, he decided to award the complainant compensation of 1,000 euros for the procedural delays that had occurred during the Ombudsman procedure.

B. The complainant contends that the impugned decision was out of time, because, in her view, it should have been taken no later than 19 July 2010. She adds that, when she received the decision, she sent an e-mail to the Director of Regulations and Change Management, asking to see a signed copy of the delegated authority he had been given, but instead received an automatic reply stating that he was absent from 12 July to 9 August. She asserts therefore that the decision was signed on 9 July, and that the delay in sending it until 20 July could not be justified.

On the merits, the complainant argues that the reports compiled during the mediation procedure are flawed. In the first place, the time limits set in Circular No. 286 were not observed, and the delays experienced as a result stemmed from “serious and repeated omissions”. She accuses the Office of having thereby prevented the alleged acts of harassment from being established in a timely manner, which rendered the circular meaningless. The complainant points out that she had to agree to the appointment of Mr L., even though his command of French was insufficient and he was not therefore capable of a correct appraisal of the evidence produced, because she had been told that it was “that or nothing”. She also complains that the letter of 4 July 2006, which she thinks was detrimental to her since it contained serious accusations against her, was transmitted to her only in June 2009, in violation of her right to be heard. In her view, the letter should not have been communicated to Mr L., because it was likely to influence him against her. She further contends that the decision of 19 June 2007 is tainted with the same flaws as the reports compiled by Mr L., and should therefore be set aside.

The complainant mentions a number of “events occurring outside the procedure”. One of these was the decision to suspend her from duty, which was groundless, and no reason was given for it. Moreover, she discerns a reprisal against her in the fact that after she had lodged her second internal appeal she received a letter dated 23 August 2007, which worsened her depressive condition by summoning her for a medical examination intended not only to certify

that her sick leave was justified, but also to ascertain that she was physically capable of undergoing the disciplinary procedure announced in the decision of 19 June 2007. She observes that she was not told that this procedure was being abandoned.

Lastly, as well as complaining that the internal appeal procedure lasted for almost four years, she disputes the content of the decision of 20 July 2010. She alleges, *inter alia*, that she raised the problem of Mr L.'s language skills as early as 26 July 2006. She criticises the fact that the EPO gave no reason for rejecting that part of the opinion of the Internal Appeals Committee in which it admitted that the Ombudsman procedure was flawed in various respects, not merely by delays.

The complainant requests that the decisions of 19 June 2007 and 20 July 2010 be set aside. She also asks the Tribunal to find that the decision of 29 January 2007 was wrongful, and that reprisals were taken against her when she lodged her second appeal. Lastly, she claims compensation of 40,000 euros for impaired health and moral injury, as well as costs.

C. In its reply the EPO asserts that in rendering its final decision it observed the time limit of 60 days from the date on which the Internal Appeals Committee transmitted its opinion.

On the merits, it submits that the procedure with the first Ombudsman was carried out as expeditiously as possible. Concerning Mr L., it explains that his purpose in asking for his mandate to be extended was to obtain further information, by means of additional interviews, so that he would be able to produce a balanced report. Likewise, although he preferred not to conduct his interviews with the complainant in French, he nevertheless had sufficient passive knowledge of French to examine the documents she had produced, as he has himself confirmed. On this point, the Organisation emphasises that from the outset the complainant had proposed using German and English as well as French during the procedure. According to the EPO, the Ombudsman's final report of 8 May 2007 shows that Mr L. was not influenced in any way by the letter of 4 July 2006. In its view,

his handling of the case was correct, and he was right in his conclusion that the grievance was malicious, frivolous and unfounded. His report was therefore an appropriate basis for a final decision by the President.

The Organisation argues that the complainant was informed that the decision to suspend her from duty had been taken on the basis of Mr L.'s recommendation, and that she made use of her right to a hearing. It seeks to show that the measures announced in the letter of 23 August 2007 were justified, and explains that the award of 1,000 euros in compensation to the complainant was decided on the basis of the Tribunal's case law.

D. In her rejoinder the complainant enlarges on her pleas.

E. In its surrejoinder the Organisation maintains its position.

#### CONSIDERATIONS

1. On 24 March 2006 the complainant, who was then working in the Legal Research and Administration Directorate of DG3 at the European Patent Office, filed a harassment-related grievance on the basis of Circular No. 286, composed in French, against her supervisor and four of her colleagues. By a letter of 10 April the President of the Office informed her that he had "noted" that the grievance, which was to be transmitted to an external Ombudsman, would "be dealt with in French". The complainant having requested during the procedure that this Ombudsman be relieved of his duties, and the latter having requested likewise in a letter of 4 July, a second Ombudsman, Mr L., was appointed.

2. Having interviewed the complainant and four of the persons named in the grievance, on 9 December 2006 Mr L. submitted a first interim report in which he noted that working relations in the directorate concerned were execrable. After having obtained an extension of his mandate and interviewed the individuals concerned a

second time, on 25 January 2007 he sent a letter to the President of the Office emphasising that the situation was “unsustainable” and making several recommendations, including that the complainant should be suspended from her duties with immediate effect. By a letter of 29 January the complainant was informed that the President had decided to ask her not to come to work. She was subsequently transferred to DG2.

3. On 8 February Mr L. issued a second interim report. In his final report, dated 8 May, he stated inter alia that the complainant had lodged her grievance under false pretences, since her real purpose was to interrupt the recruitment process for the post of director of the directorate in which she was employed. His principal recommendation was that the complainant’s employment should be terminated. By a letter of 19 June 2007 the President informed her that he had decided, on the basis of the report of 8 May 2007, to dismiss her grievance, particularly because it was malicious and frivolous, and that he was intending to issue her a reprimand.

4. In the meantime, the complainant had lodged two internal appeals. In the first, dated 29 August 2006, she complained of failure to observe the time limits laid down in Circular No. 286, and also that her grievance had not been properly investigated. In the second, dated 20 August 2007, she challenged the decision of 19 June 2007. The two appeals were referred to the Internal Appeals Committee, which decided to join them.

In its opinion, delivered on 19 May 2010, the Committee stated that the complainant’s objection to the delays in dealing with her grievance was justified. It emphasised that the first Ombudsman had wrongly assumed that Article 9, paragraph 2, of Circular No. 286 confined the investigation of harassment complaints to the six-month period leading up to the filing of the grievance, which had contributed to the failure of the first stage of the Ombudsman procedure, and had therefore been one of the causes of the delays encountered throughout that procedure. The Committee also considered that, contrary to paragraph 3 of Article 9, Mr L. had not been appointed “without

delay”. Moreover, although it was possible to extend the time available to him to deliver his report, an extension for an undefined period of time, such as was granted – according to the Committee – in this case, was incompatible with the spirit of Circular No. 286. Noting that the letter of 4 July 2006 contained criticisms of the complainant, the Committee found that the Office had acted wrongly in transmitting to Mr L. a document likely to influence him, and that the wrong thereby committed was all the more serious because of the violation of the complainant’s right to be heard, since it was only belatedly that she had been made aware of the document. The Committee added that the Ombudsman procedure was flawed by the fact that Mr L. had been appointed even though his knowledge of French was not adequate to enable him to examine properly the evidence brought to him. It concluded that the report of 8 May could not constitute an appropriate basis for the decision of 19 June 2007. The Committee also considered that the suspension of the complainant from her duties had been decided upon in violation of her right to a hearing, and that decision was not a reasoned one. It was unanimous in adopting the following recommendations:

- [...] to inform the complainant officially that the decisions taken by the President in his letter of 19 June 2007, and the findings based on the report of the Ombudsman, are not maintained and that her harassment-related grievance is considered, having regard [...] in particular to her transfer, to be settled [...];
- [...] to make the complainant an award of 10,000 euros for moral injury and in compensation for all the violations found to have occurred, and [...] to reimburse her procedural costs within reasonable limits;
- for the remainder, to dismiss her appeals as irreceivable”.

By a letter of 20 July 2010 the complainant was informed that the President did not agree that the decision to suspend her from her duties was flawed, or that Mr L. lacked a sufficient command of French. Nevertheless, recognising that the mediation procedure had not been carried out quickly enough, the President had decided to award the complainant compensation for the injury suffered as a result, the amount of the award being fixed at 1,000 euros. That is the decision impugned before the Tribunal.

5. This decision pays little regard to the criticism expressed by the Internal Appeals Committee concerning the communication to Mr L. of the letter of 4 July 2006. In view of the contents of that letter the Tribunal considers that the refusal, without valid reason, to allow the complainant to see it at the proper time constitutes a violation of her right to be heard.

6. It is not disputed that successive delays occurred during the Ombudsman procedure, of such a nature as to cause serious concern to any person involved in a harassment-related procedure, and even to destabilise such a person. Since the complainant has been paid compensation of only 1,000 euros for the injury caused to her under this head, the Tribunal considers it necessary to re-evaluate this award without losing sight of the fact, already acknowledged by the Committee, that the defendant acted promptly and diligently by putting the complainant back into a satisfactory professional setting.

7. According to Article 9, paragraph 3(c), of Circular No. 286, the Ombudsman must be able to carry out the investigation in the preferred official language of the complainant and the respondents. Clearly, this provision is intended to ensure an optimal degree of knowledge, in a harassment case, of the alleged facts, which are often especially difficult to understand and appraise.

In this case, the complainant's preferred language was French, and it is established that Mr L. did not have a full command of it. He asked the complainant to speak English during the procedure and he prepared his reports in English. The Tribunal therefore finds that the above-mentioned provision was ignored.

8. The impugned decision must be set aside for the reasons given above, without there being any need to consider the complainant's other pleas.

9. In the particular circumstances of this case, the Tribunal considers it inappropriate, having regard especially to the time that has elapsed, to order the Organisation to conduct the Ombudsman

procedure afresh. However, it takes the view that the unlawfulness of the impugned decision justifies awarding the complainant damages in an amount to be fixed *ex aequo et bono* at 20,000 euros, subject to deduction of any sums already paid by the Organisation on the same basis.

10. As the complainant largely succeeds, she is entitled to costs. She has acted alone, without the assistance of professional counsel, and her costs may therefore be limited to 1,000 euros.

11. According to Article 13, paragraph 1, of the Rules of the Tribunal, anyone to whom the Tribunal is open may intervene in a complaint on the grounds that the ruling which the Tribunal is to make may affect him or her. After the filing of the surrejoinder, four staff members of the Office lodged an application to intervene in this case, without however giving reasons. According to the defendant, none of them has lodged a harassment-related grievance. It follows that these persons are not in the same situation in fact and in law as the complainant, and their applications must therefore be dismissed (see Judgment 2237, under 10).

#### DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The EPO shall pay the complainant damages of 20,000 euros, as stated under 9, above.
3. It shall also pay her 1,000 euros in costs.
4. The complainant's other claims are dismissed.
5. The applications to intervene are dismissed.

In witness of this judgment, adopted on 2 May 2013, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 July 2013.

Seydou Ba  
Claude Rouiller  
Patrick Frydman  
Catherine Comtet