Reply to the EPO's reply of 10-04-2019 in re AT 5-4384

1 This reply to the EPO's reply of 10-04-2019 in re AT 5-4384 is timely filed by the complainant against the European Patent Organisation, hereafter EPO, with the Administrative Tribunal of the International Labour Organisation, hereafter the Tribunal, within the term of 26 August 2019 as extended by the Registrar's e-mail of 6 June 2019, see Annex 1 to this reply.

2 The EPO's reply of 10-04-2019, Annex 2 to this reply, does not contain any arguments that cause the complainant to modify her position, but is a compendium of wrong allegations, twisted and selected facts meant to cover up the complainant's irregular dismissal by the EPO and its responsibility for her chronic occupational diseases. It is therefore rejected in its entirety, for precaution, based on the facts, evidence and arguments provided by her, either herein or at an earlier stage of this procedure. More specific submissions will follow here below.

3 **Further conventions:** Further abbreviations used: **IA**: Internal Appeal; **IAC**: the EPO's Internal Appeals Committee; **MedC**: the Medical Committee allowed to the complainant by letters of 15 and 17 July 2013; **OH**: Occupational Health; **GP**: General Practitioner; **HNP**: Hernia nucleus pulposus or herniated spinal disc; **ServRegs**: the EPO's Service Regulations as in force at the time relevant to the context in which they are cited; **C[…]**: Circular being part of the EPO's Service Regulations followed by the number of the respective circular; **CSC**: the EPO's Central Staff Committee. - Paragraphs of any submissions, whether individual ones or a plurality, are abbreviated as "para.". The term "EXHIBIT" is used only for the annexes to the brief of the complaint. References to specific parts of the EPO's latest submissions in Annex 2 to this reply, will be is specified as "[…] repo100419", the number in the latter indicating the date of submission, i.e. 10 April 2019. References to specific parts of the complainant's reply to the surrejoinder will be indicated as " […] repsur" , to specific parts of the surrejoinder as "[…]surrej", to specific parts of the rejoinder as "[…] rej" and to specific parts of the brief of the complaint (other than its annexes) as " […] compl". **- References to specific paragraphs of any of the complainant's submissions are to be construed as referring also to the references therein, including any annexes/evidence cited in such paragraphs.**

4 In para. 1 repo100419 the EPO wrongly alleged that the Tribunal would have "rejected the [complainant's] request [of 10-05-2017 in this case] and confirmed that the written proceedings were closed", without any substantiation. - With regard to para. 2 repo100419 the complainant's application of 30-11-2017 for replying to the EPO's extensive surrejoinder of 17 pages and 41 annexes was **occasioned, in particular, by the new witness statement introduced by the EPO with the surrejoinder**, in annex 39 surrej, though **the witness could – and normally would – have been heard before the EPO's first reply was due**. By the Tribunal's e-mail of 12-12-2017 the complainant was allowed a term of **90 days from that date for replying to the two surrejoinders** in cases

AT 5-4532 and AT 5-4384: Annex 3 to this reply. Upon the complainant's additional request of 12-12-2017, she was granted a term of 90 days for each of the two cases: Annexes 4 and 5 to this reply.

5 With regard to para. 4 and 18 (first sentence) repo100419:

5.1 The complainant's request by e-mail of 20-07-2018, see Annex 6, of a stay of proceedings in this case was occasioned by **compelling reasons**, i.e. (i) a then running 30-days term in re AT 5-4532 which was not extended despite the complainant's request, see Annexes 6[1] and 7 to this reply, and (ii) an aggravation of her chronic diseases, as proven by (a) the gastroenterologist's report attached to the complainant's e-mail of 20-07-2018 to the Tribunal[2], see Annex 8 to this reply, (b) her GP's report on acute pain in her right wrist, later further diagnosed by an orthopedist[3], whose report following MRI examination of her right wrist is attached as Annex 9 to this reply, (c) a diagnostic radiologist's report of 13-06-2017 on the damage to her cervical column/HNPs, see Annex 23 repsur, as well as (d) Annex 5 rej and EXHIBITs 54 and 55 confirming the link of her HNPs, osteochondroses and spondylarthoses of her cervical vertebrae with her long-lasting high workload of PC work in the EPO and/or due to her legitimate procedures. – The complainant's request of 18-01-2019 of a three-months stay of proceedings was occasioned, in particular, by her painful arthrosis in her right hand with functional restriction of her whole right arm, subchondral bone cysts and inflammation-caused infiltrates, see Annex 9 to this reply.

5.2 From para. 5.1 here above **it follows that she did not "unnecessarily [delay] the proceedings […] by submitting requests to stay the proceedings ", as wrongly alleged in para. 18 repo100419.** - An "initial arthrosis" of her right wrist was diagnosed as early as in 2009, by the way, see EXHIBIT 11, first paragraph, under "diagnoses", and is part of her upper limp/RSI(CANS) symptoms, see EXHIBIT 54: Clinical Employment Medical Physician's report, under "Wrists", "Arms" and "Sensitivity" (in translation) .

5.3 **In this context the EPO fails to mention that its two professional lawyers were always granted most generous extensions of 90 days and more** (92 days for their first reply in this case) **in all of the complainant's cases and fully exhausted them, and that the underlying internal appeal was the next to last one which the EPO treated, out of a series of 18 IAs, see para. 7.1 rej, i.e. the EPO itself directly delayed this case by 26 months (20 months for the IA[4] + (about) 3x2 months for: first reply, surrejoinder and additional reply, respectively), despite its virtually infinite**

1 The request for extension being implicitly rejected.

2 This e-mail: see Annex 6 to this reply

3 This diagnostics not yet having been performed at the time of her procedural request of 20-07-2018

4 For proof: see par. 5.4.1 repsur, 7.1 rej, EXHIBIT 49

resources[5]. On the other hand, the complainant, despite her illness, delayed this case by 13 months[6] only, these partly occasioned also by the EPO's procedural conduct, i.e. excessively delaying/disregarding her IAs, then rejecting them in about two years[7] to create high peak workloads for her and thereby to frustrate her procedural rights, see: para. 7 and subsections rej.

6 Para. 5 to 7 repo100419 only contain unsubstantiated wrong allegations[8] which are rejected.

7 Contrary to para. 8 and 9 repo100419 the comparison of the members of the IAC in Annexes 4 and 5[9]repsur unambiguously shows that **at least Ms. Reedijk was part of the original and the new IAC of 2018**. Annex 4 repsur comprises a document on the composition of the IAC in 2018 signed by the current EPO President's predecessor. – All further allegations in para. 9 repo100419 are either wrong and unsubstantiated, or irrelevant. The complainant fully maintains her position and annexed documents obtained from official sources.[10] **Regarding the alleged new IA procedure(s): see the complainant's detailed submissions in para. 22 and subsections here below.**

8 Contrary to what para. 10 repo100419 suggests, **the case underlying Judgment no. 4131 was dismissed in a summary procedure under Article 7 Rules of the Tribunal due to irreceivability, as the underlying "internal appeal was directed against what was merely a step in the process which would culminate in a final decision on his appeal", and "the steps leading to a final decision can be challenged before the Tribunal only in the context of a complaint impugning that final decision", see Judgment 4131, under 4.** Thus **the case is not a precedent for the current one. The quoted remark in consideration 5. of this Judgment as quoted in para. 10 repo100419 refers to another complaint for which the EPO's President withdrew the final decision on the IA, not to the one**

---

5 compared to the complainant's

6 i.e.: 1 month (rej.) + 6 months (reply to surrej.) + 4 months (temporary stay) + 2 months (this reply)

7 Between 22 July 2014 (rejection of RI/172/11 communicated to the complainant, this case not followed up before the Tribunal) and 31 August 2016, her last IA rejected being IA 175/13, now AT 5-4532

8 dismissing the facts and evidence of this case as allegedly "irrelevant" - which is not to the EPO to judge

9 For convenience added once more to the surrejoinder, yet identical to the last page of EXHIBIT 49

10 Given the level of conflict she cannot duly be expected to cite from the EPO's annexes instead of her own.

underlying Judgment 4131 which was filed against such intermediate step of withdrawing the final decision in the other case. In any case the quoted remark from cons. 5 is not vital to the "Decision" in Judgment 4131 at all. It must be considered a non-binding side remark in the context of the case of Judgment 4131 and certainly not binding *per se* to any other unrelated cases like this one. – Likewise, in the light of the reasoning for the dismissal of the case of Judgment no. 4131, the issue whether or not the IAC in case of the IA underlying the case of Judgment no. 4131 was properly constituted, was irrelevant to that case. **The brief statement on that issue in cons. 3 as mentioned in para. 10 repo100419 must be seen as a side remark, unreasoned and irrelevant in its context, and must thus be considered non-binding to other cases. Moreover, it seems to contravene the Tribunal standard Jurisprudence on *non-retroactivity*, see para. 22.2.8 and 22.2.9 here below.**

9 Further contrary to para. 10 repo100419, **it is emphasized that, in the cases underlying Judgments 3785 and 3694 as mentioned in para. 10 repo100419, those complainants had explicitly requested to have their cases referred back to an IAC properly constituted according to the rules. The Tribunal only allowed their respective requests, when referring their cases back to the IAC.** - **This is evidently not the case here, very much to the contrary: The complainant explicitly requested the Tribunal to continue to treat this case in substance, see para. 6 repsur, and submitted para. 4 and 5 repsur and their subsections in support of this request**. Thus, contrary to para. 10 repo100419 **the cases of Judgments 3785 and 3694 cannot be considered legal precedents for this case in this respect.**

10 Further with regard to para. 10 repo100419 and notwithstanding the comments in para. 8 and 9 here above: From the scarce information in Judgment no. 4131 on the related substantive case and from Judgment no. 3535 in the related original case (to which cons. 1 of Judgment 4131 refers) the complainant can only conclude that **the related substantive case(s) concerned mere administrative issues only, i.e. the date(s) of that staff member's promotion(s)**, while **the current case concerns the complainant's irregular dismissal** being part of a series of **gross violations of her fundamental and statutory rights**, see para. 5.6 repsur and its subsections. **The level of conflict and of suffering in both cases and the periods of time in which the respective conflicts in both cases were active, are by no means comparable: In this case the complainant has been irregularly dismissed now for almost six years, since 19-09-2019,see para. 40 compl, EXHIBIT 45, and suffered from reported harassment since 2002,** see para.5.6.2 repsur, EXHIBITs 1 and 2**. – Further issues concerning the alleged withdrawal of the final decision and an alleged new IA in this case will be treated in para. 22 and subsections here below.**

11 The EPO's allegations in para. 11 repo100419 regarding the article in Annex 17 repsur do not hold water: Annex 17 repsur consists of two parts[11], i.e. (i) an online article by Dr. Thorsten Bausch, and (ii) the e-mail of 4-3-2013 by the complainant's HR interlocutor Ms. Altun in which she introduced herself to staff as their HR interlocutor. **Both parts of Annex 17 repsur are cited in para. 9.6.5 repsur related to the belated witness statement produced by the EPO.** Regarding (i), i.e. the online article:

11.1 The author of the online article in Annex 17 repsur, Dr. Thorsten Bausch, is a senior German and European patent attorney and a partner with Hoffmann Eitle, one of the most influential, largest, oldest and most renowned patent attorneys' firms with more than 150 staff, covering all commercially relevant technical areas and all legal areas of IP law, see Annex 10 to this reply. Dr. Bausch has cooperated with EPO staff for decennia and thereby observed certain worrying "developments" in the EPO and their implications for the patent field from close-by, yet from an independent perspective, as **he cooperates with EPO staff without being EPO staff himself**. In the absence of any substantiated counter-arguments by the EPO **Dr. Bausch must be considered to write about his topic with the utmost professional competence and independance.**

11.2 In Dr. Bausch's article (i) in Annex 17 repsur, **the author refers to other experts, among them Prof. Bross, a renowned retired judge of the German Federal Constitutional Court, who raised fundamental concerns with regard to "outsourcing" EPO staff's human rights**.

11.3 It follow that there is no "hearsay" involved in these experts' concerns about the EPO. - **The article (i) in Annex 17 repsur independently proves that not only the complainant, but also other EPO staff as well as external legal experts cooperating with them raise concern about the treatment of some EPO staff members by their employer**. **In view of the practice of bullying and intimidating staff as reported therein, current employees dependent on the EPO for their livelihood like witness Mr Madeira who was belatedly summoned by the EPO to testify in this case, cannot be considered an unbiased witness, see para. 17, 24.3 to 24.8 here below.**

12 Contrary to para. 12 repo100419 with regard to Annex 7 repsur the complainant fully maintains her submissions in para. 5.2 repsur. She adds that Annex 7 repsur contains an interview with above-mentioned Prof. Bross[12] in which he mentions, (i) at the end of his answer to the first question, that "particularly in the area of human rights, there has already been much cause for concern **on the EPO level**." [emphasis by the complainant], (ii) that "**the EPO administration is also in charge of the organizational unit within the EPO for the judicial**

11 For purely technical reasons

12 In para. 11.2 here above

bodies", that "**Executive and judiciary are therefore not separated**", that "such separation […] is a core element of a modern constitutional state and a prerequisite for fair legal protection in the sense of the EPC", and that, this element being missing in the EPO, "the constitutional state becomes a farce", see Prof. Bross's answer to the second question. - **Contrary to para. 12 repo100419, the issue of para. 5.2 repsur and Annex 7 repsur is not primarily "the validity of the complainant's retirement pension", but the EPO's unfair and unfounded request to have this case remitted to its own IAs system for which the lack of separation of executive and judiciary was reproved by Prof. Bross in Annex 7 repsur.**

13 Further contrary to para. 12 repo100419, the purpose of Annex 8 repsur was clearly described in para. 5.4.4 repsur: It is part of the evidence related to the **pattern of excessive delays of the complainant's cases**.

14 Further contrary to para. 12 repo100419, Annexes 9 to 12 repsur cited in para. 5.6.5.3 repsur are **relevant proof of the repeated and therefore multiple acts of harassment against the complainant, with an escalation from 2012[13] onwards, and thus of the truly exceptionally detrimental circumstances of her work:** They show that **her then director (Mr. J.) removed her from a major part of her technical field as a documentation manager against her will, thereby precisely repeating one of his predecessor's (Mr. T.'s) decision for which the latter had been reproved by the Ombudsman, and which a former EPO President had deemed harassment, see EXHIBITs 1 and 2.**

15 Contrary to para. 13 repo100419, Annexes 13 to 15 repsur cited in para. 5.6.5.9 repsur are highly relevant to this case: They prove, by the complainant's e-mail of 25-07-2013, 18:31 h, in Annex 13 repsur and two e-mail receipts in Annexes 14 and 15 repsur as sent by the EPO's (then) internal e-mail system, that **the Administration duly received the complainant's juridically highly relevant letter of 25 July 2013, EXHIBIT 38, by which she withdrew her letter on retirement of 31-5-2013**. This seemed necessary, as **the Administration did not react to her letter of 25-7-2013, see the e-mail by director HR Operations of 29 August 2013 in EXHIBIT 39.[14]**

16 Further contrary to para. 12 repo100419, Annex 16 repsur cited in para. 5.6.7.3 repsur is **part of the proof supporting the complainant´s permanent invalidity for her last tasks in the EPO in 2013**, see para. 5.6.7 and subsections repsur. **Such invalidity is highly relevant also to this case, because it would have obliged the EPO to pay the complainant an**

---

13 Especially after she had allegedly not been re-elected as a staff committee member in the first purely electronic staff committee elections at the The Hague site of the EPO in June 2012.

14 Thus the Administration could still have denied the receipt of the complainant's letter of 25-7-2013.

invalidity allowance, had the EPO not prevented a complete examination by the MedC by generating compelling pressure for her to leave the EPO, see para. 10 and subsections repsur, and subsequently holding her to her letter on retirement of 31 May 2013, though that letter had been timely withdrawn. This type of irregular dismissal is the very issue of this case. - The EPO was also fully aware of her invalidity for her last tasks at the time of her irregular dismissal, see: (i) EXHIBIT 22 proving a working time of effectively 3 hours (6 hours at 50%), i.e. less than 50% of the working time of a full-time examiner (i.e. 4 hours), and (ii) the expert opinion by OH Physician Mr. Braal in EXHIBIT 43, under 7., supporting her invalidity. This was most likely the EPO's motivation for irregularly dismissing her and for preventing the completion of the MedC's work.

17 Further contrary to para. 12 repo100419, part (ii) of Annex 17 repsur, i.e. **the e-mail of 4-3-2013 by the complainant's HR interlocutor Ms. Altun, is relevant, as it shows that not Mr Madeira, but Ms. Altun was the complainant's HR interlocutor during the relevant time period in 2013 before the withdrawal of her letter on retirement, contrary to the EPO's wrong allegation in para. 23 surrej, see para. 9.6.5 repsur**. In the meantime the complainant noticed that **this was independently confirmed in Ms. Kindl's e-mail of 29-8-2013 to the complainant, EXHIBIT 39, last sentence of next to last section: "[…] your HR-Interloculor, Ms Juliana Altun"**. Thus **Mr. Madeira was not her HR interlocutor during the whole period from March to August 2013 and had even less reason to discuss any alleged official letter on her "retirement" with the complainant, contrary to his testimony – in fact, he did not do so.**

18 Further contrary to para. 12 repo100419, Annexes 18 to 24 repsur are relevant evidence cited in para. 10 and subsections repsur[15] in which the complainant showed that her letter on retirement of 31 May 2013 was the result of **compelling pressure**. Her submissions were occasioned by para. 33 to 37 surrej and parts of para. 40 and 41 surrej, see para. 10 repsur. - Further contrary to para. 12 repo100419, Annex 25 repsur is relevant medical evidence: see para. 13 and subsections repsur.

19 From para. 7 to 18 here above it follows that the EPO's allegations in para. 8 to 14 and (part of) 18 repo100419 are **wrong, unsubstantiated,** besides partly **outright denigrating**, and that, contrary these allegations, neither her reply to the surrejoinder nor her additional Annexes to it are "inappropriate", "improper" , "unnecessary" or "outside the scope of these proceedings", but **highly relevant to this case and fully occasioned by the surrejoinder**. **Therefore the complainant respectfully requests the Tribunal to reject the EPO's outrageous order[16] in para. 14 repo100419 to the Tribunal**

15 It is irrelevant that part of this evidence is also cited in AT 5-3988.

16 It cannot be considered a request due to its tone

that “the supplemental brief [i.e. her reply to the surrejoinder] should be disregarded”[‘sic!].

ON THE EPO’S ATTEMPT OF HAVING THIS CASE REMITTED TO THE EPO’S INTERNAL APPEALS SYSTEM

20 Contrary to para. 15 to 22 repo100419 **the complaint has not become moot, see para. 4 to 5 repsur and their subsections, fully maintained, and para. 8 to 10 here above** to which the complainant adds in para. 20 to 22 and subsections here below. She fully maintains her main and auxiliary procedural requests in para. 6 and 7 repsur, resp. - As to the exceptional circumstances of the complainant’s case, she respectfully requests theTribunal to note that in para. 6 repo100419, 1rst sentence, **the EPO admitted that this case is exceptional**, as “in **exceptional** cases, the Tribunal grants leave to file supplemental submissions […]”[17], contrary to its contradictory, wrong and/or unsubstantiated allegations in para. 17 repo100419. **The complainant detailed, in para. 10 and subsections repsur[18], in which way the exceptional “circumstances” of her work, see** para. 5.6 to 6 repsur, among them the unlawful threat with an investigation under C342, see para. 10.1.7 to 10.7 repsur, generated **compelling pressure for her to write her letter of 31 May 2013 on early retirement, being relevant to the core of this procedure**, those exceptional circumstances also aggravating her health issues which then added to compelling pressure, see para. 10.1.2, 10.1.5 and 10.8 and subsections repsur. The complainant's case is indeed **exceptional**, see para. 5.6 and subsections repsur[19], **as almost every employee's right has been violated by the EPO in her case and during the long history of her conflict.**

21 Contrary to the last sentence in para. 17 repo100419 the complainant respectfully refers to her auxiliary request in para. 7 repsur, showing that **she does not consider herself unfit to fulfill adapted tasks in line with the conclusions in her employment medical report,** EXHIBIT 54, page 8 (page 5 in translation), in the unlikely event that the EPO would be willing to assign her such adapted tasks – if the latter were refused, she would be entitled to an invalidity allowance with the emoluments in case of an occupational disease and/or extensive material damages. **In any case a major part of her livelihood is at stake here, no matter whether she is considered (i) an EPO examiner in active service, irregularly dismissed and to be restituted in her function with adapted tasks, or (ii) a former EPO examiner, irregularly dismissed and entitled to an invalidity allowance and emoluments for occupational illness and/or to extensive material damages due to the EPO’s liability for her occupational illness and her**

17 emphasis by the complainant

18 Undisputed by counter-arguments and -evidence

19 Undisputed by counter-evidence and -arguments

invalidity for her last tasks, see para. 5.6.7 and subsections repsur, as well as for her irregular dismissal, following gross violations of her human and statutory rights.

22 The submissions in para. 18 repo100419, as far as not yet refuted in para. 4, 5 and subsections, and para. 19 here above, as well as the submissions in para. 19 to 22 repo100419 and in para. 28 repo100419, the latter as far as regarding an "**impugned decision […] withdrawn and sent back to be rerun […]"** are wrong, unsubstantiated and partly denigrating and violate the principles of *rule of law*, of *good faith*, of *legal certainty*, of *non-retroactivity*, of *equality of arms* and of *impartiality and independence of the judge*, for a series of reasons:

22.1 As the Tribunal is aware, this case has **not "**been referred back to a new [IAC] for a new assessment…" (para. 19 repo100419) **by the Tribunal which is the only judicial instance that is lawfully allowed to do so after this case was lawfully referred to the Tribunal, but by the EPO which is nothing but a party to these proceedings. Purely on its own initiative and prior to the Tribunal's Judgment, the EPO re-started an IA in this case as well as in the complainant's cases AT 5-4532 and AT 5-4188, all lawfully referred to the Tribunal *in good faith*, without the complainant's participation or consent and even against her explicit will, see para. 4 to 6 repsur, and informed her accordingly, see Annex 11 to this reply. "Re-running" the complainant's IA procedure(s) against her will and on the defendant's initiative only cannot be, for various reasons:**

22.1.1 Thereby the EPO replaced the Tribunal's Judgment on this case by its own, (i) contrary to the principles of *good faith* and of *legal certainty* under which the complainant can duly expect the Tribunal to rule on this case in substance, given that it is lawfully pending before the Tribunal and has not been withdrawn by the complainant, and **(ii) contrary to the principles of impartiality and *independence of the judge,* and of the *equality of arms* of the parties to this procedure, being the essence of *rule of law*. Such procedural conduct by a defendant cannot be tolerated, by any standards. The EPO disregarded that it is a party to this procedure, not an independent judge.**

22.1.2 The EPO may not lodge IAs in the complainant's name purely on its own initiative and even against the complainant's explicit will, see para. 4 to 6 repsur, because it is not an "applicant" in the sense of Article 110 ServRegs. The wording of Article 110(4) ServRegs requires that an IA is lodged by the "applicant", such applicant being different from the "appointing authority"[20] and the "Appeals Committee" also mentioned in Art. 110(4), **the "applicant" of course referring to the (former) employee or their legal claimant against whom the appointing authority has taken the "decision challenged" by the IA (Art. 110(1) ServRegs). –** In this context it is highly

20 In this case the President of the EPO representing the Organisation

relevant that **the defendant is in an obvious conflict of interest, when allegedly procedurally acting in the complainant's name by "re-running" her IAs, thereby potentially affecting her procedural rights, in particular her access to the Tribunal as the independent judge under the Service Regulations.**

22.1.3 **Notwithstanding the latter, in personal or general civil law it requires a person's explicit signed authorisation to (legally) act in his or her name[21]. In the absence of such authorisation the EPO's procedural acts on behalf of the complainant are unlawful,** besides, more on the personal front, outright patronizing, **another attack on the complainant's dignity and fundamental rights, in continuation of the attacks on her dignity in her EPO work environment** by her former director Mr. T., see EXHIBITs 1 and 2, para. 5.6.2 and 5.6.3 repsur, and later by her former director Mr. J., see para. 14 here above, para. 5.6.4 to 5.6.6 repsur.

22.1.4 Further contrary to para. 19 repo100419, last sentence, **the EPO evidently had another choice than "to send the case back to be treated anew in an internal appeals proceeding", namely to wait for the Tribunal's Judgment on this case**. - Contrary to para. 19 repo100419, **Judgements no. 4131, no. 3785 and 3694 cannot be considered precedents for this case, see: para. 8 to 10 here above , para. 4, 4.1 to 4.5 repsur, para. 5.10 and subsections repsur[22] .**

22.1.5 Not only the "re-running" of the IA in this case by the EPO, but **also the preceding withdrawal of the final decision in re 147/13 is unlawful in view of the binding character of a final decision to the organisation**, see para. 4.2 to 4.4 repsur[23]**.** Only for precaution, the EPO's quote in para. 10 and 19 epo100419 from Judgment no. 4131, under 5., seems to contradict the Tribunal's earlier standard Jurisprudence on final decisions by organisations, such standard Jurisprudence being cited in para. 4.2 repsur, though the quote from cons. 5 is not related to the Tribunal's decision in that case as set out in para. 8 here above.

22.1.6 Further to the latter, the chronically ill complainant is confronted with a **major lack of legal certainty due to the EPO's unilateral procedural acts in this case, i.e. the alleged withdrawal of the final decision, while this case is lawfully pending before the Tribunal, and the alleged "re-running" of the IA by the EPO. In the unlikely event that the EPO's way of proceeding would be deemed lawful, this case would currently be pending in two instances – which as such would be legally absurd, but**

21 Unless that person is mentally incapacitated and placed under guardianship (in which case the person's guardian would have to sign) – which the complainant is not

22 para. 4, 4.1 to 4.5 repsur and para. 5.10 and subsections repsur as far as Judgments no. 3785 and 3694 are concerned – all undisputed by counter-evidence or –arguments

23 Undisputed by counter-evidence or –arguments

would come entirely under the EPO's liability, (i) due to the procedural abuse or at least the procedural flaws during the original IA procedure, i.e. the unlawful composition of the IAC, for which only the EPO is liable, (ii) due to the alleged withdrawal of the final decision, contravening the Tribunal's standard Jurisprudence no. 2906, under 8., no. 994, under 14., or 1006, under 2., and due to the alleged subsequent "re-running" of the IA purely on the EPO's initiative, see para. 22.1.1 to 22.1.4 here above.

22.1.7 Further to the latter, **the complainant wishes to emphasize that she would also have been absolutely unable to follow up this case in two instances for health reasons, in view of her chronic diseases and their aggravation, see para. 5.1 here above.** Contrary to what para. 19 repo100419 suggests and notwithstanding the submissions in para. 22.1.1 to 22.1.6 here above, the complainant could not be duly expected to procedurally act in the alleged "re-run" IA procedures on the EPO's initiative to safeguard her rights, because **the EPO set her three (almost) precisely overlapping terms of reply of just one month in the new IA cases opened on its own initiative, see Annex 11 to this reply, while the EPO knew - or ought to know - that this would frustrate her procedural rights due to her chronic illness, see Annex 5 rej, EXHIBITs 54 and 55. The complainant considers this continued procedural abuse as well as bullying by the EPO** and also indicated and forwarded the IAC's communications in Annex 11 to this reply to the Tribunal, see Annex 12 to this reply. - At the same time the Tribunal set her yet another partly overlapping 30-days term during the same period in re AT 5-4532, see Annex 13 to this reply. **The complainant would have been absolutely unable, due to her ill-health, to promptly reply in these four cases within (about the same)30 days-term, see para. 5.1 here above and Annex 5 rej. -** In view of both health and legal reasons as set out in para. 22.1 and subsections here above, the complainant gave preference to her procedures lawfully pending before **the Tribunal as the higher instance**, as far as possible within the constraints of her illness.

22.2 Contrary to para. 19 repo100419, last sentence, the complainant's rights would severely be harmed, **if this case were remitted to the IAC upon the Tribunal's order without being treated in substance by the Tribunal now,** contrary to the complainant's **explicit request[24] to the Tribunal in para. 6 repsur**:

22.2.1 **Either , in the unlikely event that the new IAs started by the EPO were deemed lawful** despite their above-mentioned obvious flaws, see para. 22.1.1 to 22.1.6, **she would already have lost her procedural rights in the allegedly "re-run" IAs, see para. 22.1.7 here above , or she would have to bear major additional procedural workload of harmful PC work and/or costs on her own side during a new IA procedure after referral of the case to**

24 Main request

the IAC upon the Tribunal's Judgment – all this purely due to the procedural abuse by the EPO or the procedural flaws during the original IA process[25] for which only the EPO, in any case not the complainant, is liable.

22.2.2 **If remitted to the IAC upon the Tribunal's decision, this case could be delayed by the EPO indefinitely , by just introducing formal procedural errors in the IA procedure(s), like the one regarding the IAC's composition during the original IA procedure (147/13), which would then be deemed to be a reason for repeating the IA procedure, possibly even again after the first repetition, an indefinite number of times. Thus the treatment of this case in substance by the Tribunal and thereby the complainant's access to an impartial judge within a reasonable term under Article 6 ECHR would effectively be prevented by the EPO, not only indefinitely, but infinitely, see para. 4.5 repsur, para. 5.3 and 5.4 and their subsections repsur[26]. The Tribunal cannot mean to tolerate such procedural conduct by a defendant.**

22.2.3 Further to the latter, **the complainant respectfully reminds the Tribunal that already close to six(!) years have passed since the original adverse decision of 19-09-2013, EXHIBIT 45, the EPO being accountable for more than 26 months of delay in this case, see para. 5.3 here above.** Such partly **excessive delays** for up to seven years for two of her former IAs[27] have been a **consistent pattern throughout the history of her conflict** and can only be considered **deliberate procedural abuse** by the EPO, see para. 5.4 and subsections repsur - worse is that **the EPO subsequently rejected her IAs within about two years to create high peak workloads for her, see the deliberate frustration of her procedural rights by the EPO as described in para. 7 and subsections rej and para. 5.3 here above. Thereby her chronic diseases have worsened in the meantime, see para. 5.1 here above, meaning that she is at risk of having to stay her procedures permanently for health reasons, see para. 5.5 repsur.**

22.2.4 **The Tribunal is respectfully reminded of the extensive exchanges and the advanced stage of this procedure during which the EPO has stubbornly repeated the same obvious lies to the complainant's detriment, and refuses to adapt its position, even if untenable: see, for instance, para. 26 repo100419 mentioning "the complainant [would] voluntarily [have chosen] to retire", despite the complainant's extensive substantiated arguments and evidence for her position, see para. 56 to 59 and their subsections compl, para. 15 to 18 and subsections rej, para. 9 and 10 and their subsections repsur, and in para. 24 and its**

25 With regard to the IAC's composition

26 Undisputed by counter-arguments and –evidence

27 No. 86/07 and 89/07

subsections here below. Thus it is highly unlikely that a referral of this case back to the IAC would lead to any other result than repeated refusal of her new IA, if any, see para. 5.1 and 5.2 repsur, yet after indefinite further delay, see para. 5.3 and 5.4 and their subsections repsur and para. 5.3 here above, such further delay contravening the complainant's rights under Art. 6 ECHR and the principle of *equality of arms.*

22.2.5 **The latter holds the more, as the EPO attempts to further shift the procedural balance in its own favour**, by summoning the complainant to accept a repetition of her IA procedure **under new procedural rules,** see para. 20 to 22 repo100419, such rules being **clearly favourable to the EPO**, see lower page 2 of Annex 3 repsur, and **current (revised) Article 36(2)(a) in Annex 4 repsur under which IAC members allegedly representing staff in the IAC are nominated by the President as so-called "volunteers", or are determined by drawing lots.** This does not lead to the necessary "**balanced composition" of the IAC** as mentioned by the Tribunal in **Judgment 3694, under 6., as "an essential feature underpinning [the IAC's] existence",** and to a representation of staff in the IAC in the interest of its independence and impartiality.

22.2.6 From the latter it follows that **the current composition of the IAC is not equivalent to the one at the time of the decision of 19 September 2013 (EXHIBIT 45) from which the complainant lodged her IA no. 147/13: at that time the EPO's Service Regulations still unambiguously required a balanced composition of the IAC, by having two of the four IAC members appointed by the CSC, under Article 5(3) of the Implementing Rules to Articles 106 to 113 ServRegs in connection with Articles 36(2)(a) and 111(1)(a) ServRegs as cited in the Tribunal's Judgment no. 3785, under 7. With regard to the IAC's (partly) composition by "volunteers" nominated by the President or determined by lot, the Tribunal clearly ruled, in Judgment no. 3785, under 7., that "the two volunteers did not have representative capacity",** and just did "not [express] a view about the lawfulness of the new provisions" in Judgment no. 3694, under 4., **contrary to what para. 20 repo100419 suggests.**

22.2.7 Further to the latter issue, **the complainant does not see how - or why - a later(!) change, by the EPO, of the rules for the IAC's composition with the mere purpose to "legalise" the composition already rejected by the Tribunal in Judgment no. 3785, under 7., i.e. to allow the IAC to be partly composed by such "volunteers"[28] determined otherwise than by appointment by the CSC, could possibly render the new IAC's composition balanced and thus lawful again. The new rules allowing "volunteers" determined by lot or by the President contravene the**

28 **as mentioned in the Tribunal's Judgment no. 3785, under 7., and in Article 36(2)(a) in Annex 4 repsur**

principles of *equality of arms* and of *impartiality and independence* of the IAC as a quasi-judicial body. – If this case were remitted to the IAC for repetition of the IA under the new rules, the unforeseen change of the rules of the IAs process to the complainant's detriment would contravene the principles of *good faith* and *legal certainty*, as, at the time of the decision (EXHIBIT 45) from which she originally appealed (IA 147/13), the complainant could not duly expect such change of the rules for the IAs system to her detriment – even less could she duly expect a repetition of her related IA on the EPO's initiative only, see para. 22.1.1 to 22.1.6 here above, and, in addition, under the new rules to her detriment.

22.2.8 Further to the issues of para. 20 to 22 repo100419 and of para. 22.2.5 and 22.2.7 here above, **the repetition of the IA procedure under the new rules for the IAs process contravenes also the principle of non-retroactivity embraced by the Tribunal in multiple Judgments in all cases in which the principles of *good faith* and/or *acquired rights* would otherwise be endangered, see, for instance, no. 4168, under 4.: "[The organization] could not retroactively reduce it** [i.e. the respective complainant's salary] **without breaching the principle of the non-retroactivity of administrative acts" , no. 3884, under 4.: "The principle of non-retroactivity, which is one of the general principles of international civil service law, forbids an organization from applying to staff retroactively a rule which is unfavourable to them ", and no. 742, under 7.: "Where a provision of the Staff Regulations is amended, the Tribunal may order the organization to apply the old text rather than the new one." - As the unforeseen repetition of the IA under the new rules would contravene the principle of *good faith*, see para. 22.2.5 to 22.2.7 here above, the application of the new provisions to any potentially repeated IA would also contravene the principle of non-retroactivity**, see also para. 4.6 to 4.10 repsur. **The new rules detrimental to the complainant would thereby be applied to a case referring to a decision dating from a time when the new rules were clearly not in force.**

22.2.9 Only for precaution and contrary to para. 10 repo100419, the brief and unmotivated side remark in Judgment 4131, under 3., on the allegedly "properly constituted" IAC (of 2018), which was irrelevant to that case as shown in para. 8 here above, would also contradict the conclusions in para. 22.2.8 here above from the Tribunal's above-mentioned standard Jurisprudence[29] which supports the complainant's position that the new rules may not be applied to her IA, if remitted to the IAC upon the Tribunal's decision.

22.2.10 Further contrary to para. 20 repo100419, **quoted consideration 4 from Judgment no. 3896 is not relevant to this case**, as Judgment no. 3896 concerns an **application for interpretation of Judgment 3785 by the same**

29 As mentioned in para. 22.2.8 here above

complainant[30] who had explicitly requested to have his case "sent back to a newly composed Appeals Committee" – the case cannot be considered a precedent for this case for this reason. **Besides "the Tribunal [was] not expressing a view on the lawfulness of the new provisions", see Judgment no. 3896, cons. 4**. - The other quoted Judgment, no. 2315, under 23., is even more remote, as (i) it concerns the renewability of temporary contracts, and (ii) the complainant of that case having been aware, at the time of the last extension of his contract, of the organisation's established policy of a maximum of seven years for renewable contracts, meaning that there was no issue of a retroactive change of his existing rights and legal status in his case, as the Tribunal correctly ruled.

22.2.11 In view of the unbalanced and thus unlawful composition of the IAC, see para. 22.2.5 to 22.2.8 here above, it seems irrelevant whether such unlawfully composed IAC adopted such inappropriate and unlawful rules of procedure, contrary to para. 21 repo100419. - Contrary to para. 22 repo100419 the Tribunal is respectfully reminded that the subject matter of this case is **the complainant´s irregular dismissal, not her challenge of any specific rules or the composition of the IAC as such**, and that **she is interested and entitled to have this case treated in substance by the Tribunal, after as many as six years of delay from the original adverse decision of 19/09/2013against her, the EPO having contributed more than 26 months to such delays and attempting to prevent this case from being treated by the Tribunal in substance,** see para. 5.3 and 22.2.2 to 22.2.8 here above. The EPO's allegations that her respective arguments would be "irreceivable and should be disregarded" are entirely without substance.

22.2.12 **In view of para. 22.2.1 to 22.2.11 here above, the EPO would clearly be allowed to profit from its own turpitude by a referral of this case back to its IAs system, in more than one respect, by the original flaws of the IA and by the application of the new rules for IAs on the IAC´s composition, while the complainant would remain deprived indefinitely from a major part of her livelihood, see para. 5.8 and 5.9 repsur, also due to the aggravation of her illness, see para. 5.1 here above, and probable implications of her illness for her defence in her procedures, especially if further delayed, see para. 5.5 repsur.**

22.2.13 Further to the latter issue, **the ECtHR has ruled that cases related to dismissal, continuation of an applicant's occupation or the applicant's entire livelihood call for "expeditious decision"**, see para. 23 and subsections rej. **The decision on this case would not be expeditious even now, after more than 26 months of undue delay caused by the EPO alone despite its giant resources**, see para. 5.3, and 22.2.3 here above, while the "delays " by the complainant were not `unnecessary', but occasioned by her

30 i.e. the complainant of the case underlying Judgment no. 3785 – see also para. 9 here above

illness, see para. 5.1 to 5.3 here above, contrary to the **wrong and denigrating accusations** in para. 18 repo100419. **Even less would it be considered expeditious, if it were referred back to the EPO for repetition of the IA within an indefinite, in fact meaning an infinite time, see para. 5.1 to 5.5 repsur.**

22.2.14 **In another case of termination of employment following a long-term precarious employment situation of that complainant[31], the Tribunal refrained from remitting the case to the respective organisation and instead treated the case in substance**, though the organisation's internal appeals route had not been followed at all, see Judgment no. 3090, under 4.: "If a decision […] to terminate his or her employment is challenged on the grounds that it affects the rights of the person concerned which the Tribunal is competent to safeguard, the Tribunal must rule on the lawfulness of the disputed decision." **– The complainant respectfully requests the Tribunal to do the same in this case, though she was discriminated against in a different way**, see para. 5 and subsections repsur.

WITH REGARD TO RECEIVABILITY:

23 As to the **Receivability** of her claims and contrary to para. 23 repo100419, the EPO has not submitted any substantiated counter-arguments addressing the complainant's substantiated submissions in para. 8 and its subsections repsur which are therefore undisputed by counter-arguments and -evidence.

WITH REGARD TO THE SECTION TITLED "MERITS":

24 **Among para. 24 to 29 repo100419 only para. 29 repo100419 is occasioned by the complainant's submissions in para. 9 and 10 repsur on the issue of her irregular dismissal**. – **Yet para. 29 repo100419** only comprises mere **unsubstantiated allegations and mere vague suggestions, yet leaves the complainant's substantiated arguments in para. 9 and 10 and their subsections repsur undisputed:**

24.1 **Contrary to para. 29 repo100419, the complainant did not work "on a part-time basis" as alleged, but was forced, by her chronic illness, to work on the basis of partial sick leave ever after she became chronically ill in 2009, see EXHIBIT 14[32] and para. 5.4.4 repsur. While she was "reachable via internal mail" during her presence in the EPO, she did not, contrary to the EPO's mere suggestion, receive the letter of allegedly 11 June 2013 mentioned in para. 29 repo100419 via internal mail at any time during the relevant period before she withdrew her**

31 Discrimination, in that case by successive temporary contracts for 6 years for the same kind of tasks, thereby denying that person the rights and status of a permanent employee despite the nature of her tasks

32 The percentages of her partial sick leave being calculated on the basis of full time employment, as evident from the absolute numbers of days of sick leave

alleged offer of retirement by letter of 25 July 2013. The complainant took note of the letter of allegedly 11 June 2013 only on 13 June 2014 during her accelerated national proceedings against the EPO, see para. 52 to 54 compl and para. 57 and subsections compl.

24.2 With its first reply the EPO produced another **letter of allegedly 24 June 2013** (annex 32 to the first reply) allegedly informing the complainant that the President had accepted her "offer" and asking her to send back a signed copy of that letter **"until 1 July 2013, at the latest"**. The address of that letter is her home address, yet **she did not receive it** at home or at work **during the relevant period before 25 July 2013**, see para. 15.4 and 15.5 rej, but as an attachment to the EPO's first reply to her complaint. – **If the complainant would have received any of the alleged letters of 11 or 24 June 2013, resp., by internal mail and would have refused them, as (implicitly) alleged by the EPO, or not have returned them with a signature until 1 July 2013, the EPO with its virtually infinite resources and its army of legal experts of employment law would obviously have sent her the letter(s) by registered mail and would be able to prove either their receipt or their refusal by the complainant, contrary to the unsubstantiated allegations of para. 29 repo100419. The Tribunal is respectfully reminded that the EPO did not provide any such proof, see para. 9.1 to 9.4 repsur.**

24.3 Further with regard to the **letter of allegedly 24 June 2013**, this letter **mentions Mr. Madeira as "[the complainant's] HR officer", yet the complainant has provided convincing proof that Ms. Altun, not Mr. Madeira, was her HR interlocutor[33], see para. 17 here above. Such error in a legally highly relevant document would have been unexpected, improbable, while the complainant was still employed** – it would normally have been noticed and corrected. A **probable explanation** of this error could be that **the letter was later fabricated** by someone who did not know, or was wrongly informed, who had been the complainant's HR interlocutor during the relevant period – probably **at a time at which the complainant had already been dismissed, and the relevant information been erased from the EPO's databases**.

24.4 Further with regard to the **letter of allegedly 24 June 2013**, it mentioned an **alleged "phone call on an alleged confirmation of receipt, by her, of the letter of allegedly 11 June 2013 by her alleged HR contact person Mr. Madeira of 21 June 2013 – yet a testimony by him to this end was missing at the stage of the first reply, though he could – and normally would – have been heard before the reply, had he been an unbiased witness and his statement been genuine.**

33 Or "her HR officer", both meaning: her contact person in HR

24.5 Further to this issue and contrary to para. 29 repo100419: **Only after the complainant's substantiated arguments in para. 15.5 and subsection rej, the EPO belatedly produced an alleged "witness statement" by Mr. Madeira of allegedly 30 May 2017 with its surrejoinder** (annex 39 surrej), **yet his statement was vague and unclear in part and is further not credible, as the complainant convincingly argued in para. 9.6 and subsections repsur, to which she added in para. 17 here above where she proved that Mr. Madeira was not her HR interlocutor in the period from March to August 2013 as wrongly alleged by the EPO in the letter of allegedly 24 June 2013 and in para. 23 surrej**, see the **probable explanation of this specific error in para. 24.3 here above. Thus Mr. Madeira had even less reason to discuss any legal matters of her alleged retirement with her.**

24.6 Further to this issue and contrary to para. 29 repo100419, **as an administrative employee dependant on the EPO for his livelihood, Mr. Madeira is likely to have acted under compelling pressure to testify for his employer, the EPO, against the complainant, given the reported practice of intimidation and bullying in the EPO, see para. 11.3 here above. In any case, he cannot be considered an unbiased witness. The latter holds the more, as it would be next to impossible that any honest and unbiased witness would have genuinely remembered the precise date, time and contents of an alleged telephone conversation with the complainant after about four(!) years: see the complainant's substantiated arguments in para. 9.6.3 to 9.6.5 repsur and in 24.3 to 24.6 here above. Mr. Madeira's statement does not seem true to the facts, for these reasons - thus the complainant respectfully requests the Tribunal to disregard Mr. Madeira's belated and vague statement.**

24.7 Further with regard to para. 29 repo100419, **the Tribunal is respectfully requested to note that the EPO has not provided any solid proof showing that either (i) the complainant would have received the EPO's letter of allegedly 11 June 2013 and/or of allegedly 24 June 2013, before she indisputably withdrew her letter of 31 May 2013 on early retirement, or that (ii) she would have refused any of such letters, see para. 9.and subsections repsur[34] and para. 24.1 to 24.6 here above.**

24.8 Further with regard to para. 29 repo100419, the general position in civil contract law is that **the acceptance of an offer is effective only, if it is was communicated to the offeror, unless the lack of communication must be attributed to the offeror**. **The Tribunal is respectfully requested to deem the complainant's so-called "offer" of retirement non-effective, in view of para. 24.1 to 24.7 here above , and/or to deem it null and void as the result of compelling pressure, in line with Judgment 856, under 3, see**

34 undisputed by any valid counter-evidence and -arguments

the complainant's substantiated arguments in para. 10 and subsections repsur undisputed by counter-evidence or –arguments.

25 The allegations in para. 24 and 25 repo100419 are **wrong and entirely without substance**, see the complainant's submissions here above. The complainant's submissions are – and were - clearly occasioned by those of the EPO: in her reply to the surrejoinder (as well as in her rejoinder and in this reply) **she always indicated/-s the paragraph(s) of the EPO's respective submission in this case,** to which her submissions refer, **unlike the EPO, see next paragraph.**

26 Para. 26 to 28 repo100419 contain a **seemingly arbitrary selection of topics related to the MedC – it is unclear why these specific ones have been selected and which parts of the complainant's reply to the surrejoinder they are meant to address, if any[35].** Para. 26 and 27 repo100419 are nothing but an **unsubstantiated repetition of the EPO's untenable position with regard to its unilateral decision to prematurely terminate the MedC's work, see para. 5.6.9 and subsections repsur , para. 5.6.5.8 to 5.6.5.10 repsur and para. 20 to 21.3 rej[36], as well as of its manifestly wrong allegation that "the complainant [would have] voluntarily [chosen] to retire"** (last sentence of para. 26 repo100419), **already abundantly refuted by the complainant, see para. 9, 10 and their subsections repsur, para. 15 to 21 and their subsections rej, para. 56 to 59 compl[37] and para. 24 and its subsections here above,**

27 Further to para. 26 and 27 repo100419 and **only for precaution**, the **withdrawal of her declaration of consent to exchange of medical data** was

27.1 **a temporary measure**, see para. 20 to 21.3 rej[38], in particular, the last paragraph of her e-mail to the MedC members Dr. Koopman and Braal of 14 October 2013, 20:56 h, in Annex 22 rej: "Once the "conclusions" and my medical file for this procedure have been updated, I will **directly** provide you my "declaration of consent to the exchange of confidential medical information" "[emphasis by the complainant] – in this context the Tribunal is respectfully pointed to the fact that **the complainant did not withdraw her request of the MedC at any time after she requested it by her e-mail of 13-09-2012 in EXHIBIT 25**, and

35 The premature termination of the MedC as such is the subject matter of AT 5-4532, as the EPO should be aware. See also: the EPO's conduct as decribed in para. 14.1 repsur.

36 All of these submissions undisputed by counter-evidence and -arguments

37 All of these submissions undisputed by any convincing counter- evidence and -arguments

38 Undisputed by counter-evidence and –arguments

27.2 **occasioned by the EPO itself, as the EPO unnecessarily withheld her `EPO medical file' from her for about one month after 9 September 2013, the date of the only meeting of the MedC, see EXHIBIT 43, under 5., such file having been delivered to the postal service on 1 October 2013, see Annex 21 rej, and having arrived almost simultaneously with PD4.3's decision of 9 October on the premature termination of the MedC's work (EXHIBIT 46), meaning such medical file was withheld from her basically for the whole period in which the MedC was active**, while the complainant was fully entitled to the inspection and, if necessary, correction of her personal data under Articles 11(b) and (d) of the EPO's Basic Guidelines for the Protection of Personal Data in the EPO as in force in 2013, and had a legitimate interest to do so in view of her long-lasting employment (medical) conflict.

28 The EPO´s vague references in para. 28 repo100419 to the complainant´s alleged submissions in other cases, i.e. AT 5-3829 and RI/100/13, are unclear, besides unlawful, as cross-references to documents in other procedures are not allowed, and thus **irrelevant**. RI/100/13 was the underlying IA of her case AT 5-4188 (currently stayed), not of AT 5-3829 - the EPO is utterly confused. – **As to the repetition of the complainant's IAs on the EPO's unilateral initiative only, the complainant has treated this issue under para. 22.1 and subsections here above. -** Para. 28 repo100419 contains further **wrong and unsubstantiated allegations with regard to the MedC process which the complainant feels obliged to refute, for precaution:**

28.1 Contrary to para. 28 repo100419, **on 9 September 2013 the MedC prematurely and thus unlawfully nominated a third member**, **though the term of one month from the appointment of the second medical practitioner, in this case Dr. Braal, under Article 89(3) ServRegs for the two-member MedC to come to a unanimous Opinion would have lapsed on 13-09-2013 only**: Dr. Braal was lawfully appointed by the complainant on 13 August 2013 under Article 89(2) ServRegs, see para. 33 and 34 compl and EXHIBIT 40[39]. **Thus the two-member MedC would still have had time to agree until 13-9-2013, but prematurely issued their Opinion under Article 92(2) ServRegs on 9-9-2013, though Dr. Koopman had not come to a conclusive Opinion yet, see EXHIBIT 43, under 7.**

28.2 Thus, further contrary to para. 28 repo100419, **the complainant was right in stating**, in para. 5.6.7 and their subsections repsur, that **the MedC's Opinion, see EXHIBIT 43, under 7., as far as conclusive (evidently only Dr. Braal's Opinion was conclusive!), revealed the complainant's invalidity for her last tasks[40] in the sense of Article 62a(2) ServRegs.**

39 Undisputed by counter-evidence and -arguments

40 The EPO always refused her alternative tasks in line with her medical needs.

28.3 The EPO later omitted the word "**yet**" in the MedC's report, EXHIBIT 43, under 7., in the machine-typed version of the MedC's report, see EXHIBIT 44, probably **to allege disagreement of the MedC members**. **Yet the typed version was never signed by any of the MedC members and, in the absence of any correction until now, must be considered a deliberate attempt of falsification of a crucial employment medical document by the EPO.**

29 The conclusion from para. 27, 28 and their subsections here above is that **the EPO misused (i) the consequence of its own act of withholding her `EPO medical file' from her and (ii) her irregular dismissal, see para. 24 and subsections here above, i.e. holding her to her alleged "offer" of early retirement, to terminate the MedC's work**, see EXHIBIT 46[41], **while the EPO knew - or ought to know - that such "offer" had been lawfully withdrawn**, see para. 5.6.5.9, 9 and its subsections repsur, EXHIBIT 38, para. 15 here above, **and that it had resulted from compelling pressure, see** para. 10 and subsection repsur**.** - **Contrary to para. 27 repo100419, the complainant believes to have proven, beyond any doubt, in para. 26 to 28 here above and in para. 5.6.9 and subsections repsur, that the EPO allowed and prematurely terminated the MedC process in *bad faith* only**.

30 In view of the EPO's way of acting as shown here above and its impact on the complainant's health, see para. 5.1 here above, and in view of earlier reports on the EPO's use of keyloggers, see, for instance, Annex 14 to this reply, the complainant feels unable to directly communicate with the EPO via e-mail, phone or personal conversation at this stage of her conflict – may the EPO preferably address her via the Tribunal where her cases are lawfully pending, or else, yet only if no communication channel via the Tribunal is possible, send her a registered letter marked as confidential, and may it refrain from all communication to the complainant which is not absolutely necessary and related to her conflict.

31 The complainant wishes to emphasize that her submissions throughout this procedure are mainly **undisputed by counter-evidence and –arguments.** She respectfully requests the Tribunal to reprove the EPO's **partly repeated manifestly wrong and unsubstantiated allegations** throughout this procedure which can only be considered deliberate lies, and which the complainant nevertheless had to refute, though **the EPO knew or ought to know that this caused her extensive painful PC work. The EPO's "conduct" towards her can only be qualified as outright malicious. - In view of the complainant's submissions here above and throughout this procedure she respectfully requests the Tribunal to continue to treat her case in substance (see para. 22 and subsections here above, regarding this issue), to grant her relief claimed and to entirely reject the EPO's unfounded requests.**

41 This is also the indisputable link between the current case on the one hand and the complainant's MedC-related cases no. AT 5-4532 and AT 5-3829 on the other hand.

Rijswijk ZH, 23 August 2019

Anette Koch