FOR THE ATTENTION OF
Mr. A. Campinos
President
Room 1080
EPO ISAR - Munich

Submitted via managementreview@epo.org

The requester indicated below herewith files a

Request for review
pursuant to Article 109 ServRegs,
in particular Article 109(5) ServRegs

for the following decisions:

- **Excessive deduction of money from the requester's salary for participation in a lawful strike;**
- **Unlawful adoption of a general measure (Administrative Council's decision CA/D 5/13) leading to excessive deduction(s) from the requester's salary.**

The request for review claims the following:
(i) Correction of the deducted money for a day of strike to 1/30 of a month's salary, and/or correction of the deducted money for half a day of strike to 1/60 of a month's salary, where applicable;
(ii) Payment of moral damages (800 Euro) for not having been treated with dignity and having been surcharged for participation in a legal strike by having deducted 1/20 of a month's salary for one working day of absence, and/or 1/40 of a month's salary for half a working day of absence;
(iii) Annulment of the general measure, i.e. decision CA/D 5/13, in particular the amendments to Article 65 Service Regulations, upon which the President of the Office was based to authorise the unlawful excessive deduction(s) from the requester's salary.

This request for review is submitted by:

Name: _____
Room: _____

Date: _____

I. Facts

1. In the months concerned in the annexed payslip(s), the requester participated in a lawful strike recognised by the EPO.

2. From the payslip(s), the requester realised that the Office deducted 1/20th of a month's salary for each whole day of strike, and/or 1/40th for half a day of strike, according the amended Service Regulations which entered into force on 1 July 2013 following decision CA/D 5/13.

3. According to Article 65(1) Service Regulations - valid before and after the amendments introduced therein with effect from 1 July 2013 - for the calculation of the salary for work performed during a fraction of a single month, the month is divided in thirtieths.

4. Based on decision CA/D 5/13 (see annex), and more particularly on the provisions of amended Article 65(1)(c) and (d) Service Regulations (ServRegs), a day of absence due to legal strike is treated like a day of unauthorised absence and penalised by a deduction from a month's salary, viz. by 1/20th of a month's salary. Half a day of absence is treated like half a day of unauthorised absence and penalised by a deduction from a month's salary, vis. by 1/40th of a month's salary

II. Grounds for the present request

5. The requester challenges the excessive salary deduction(s) for having participated in a legal strike. A full day of strike should have given rise to the deduction of 1/30th of a month's salary and not to 1/20th of it. Similarly, a half day of strike should have given rise to the deduction of 1/60th of a month's salary and not to 1/40th of it. The Office relied upon the amendments to Article 65 ServRegs adopted through the decision CA/D 5/13 upon making the excessive deduction of money from the salary.

6. As the Administrative Tribunal of the ILO clarified in Consideration 10 of its Judgment No. 3146 by making reference to its earlier Judgments Nos. 1786 (Consideration 5) and 1329 (Consideration 7), an appellant (i.e. also a requester for review) may challenge in the same single appeal directed against an individual decision that has been challenged within the foreseen three-month limit also the general measure on which the individual decision deemed unlawful has been based. For the challenging of the respective general measure no time bar is applicable.

7. Based on the above cited case law, the requester also challenges with the present individual request for review the **general measure**, which the Office has been relied upon to perform the excessive deduction from the salary. Consequently, the requester requests the **annulment** of the Administrative Council's decision CA/D 5/13 *ab initio*. He/she takes note that members of the Staff Committee have already challenged the Council's decision CA/D 5/13 for

the reasons given in ANNEX 1 of document CA/93/13 available in MICADO and reserves the right to adopt part or the whole of the arguments provided therein in the rest of the present procedure.

8. Firstly, the Administrative Council adopted CA/D 5/13 following consultation in a General Advisory Committee (GAC) which, in an opinion dated 25 June 2014, the Internal Appeals Committee (IAC) unanimously found to be irregular. Already in 2006 (in case RI 22/06) the IAC unanimously found that an orderly statutory consultation could not take place in an irregularly constituted GAC. Accordingly, the statutory consultation process which lead to CA/D 5/13 was fatally flawed. It is, however, established Tribunal case law that before such a change, an orderly statutory consultation must first have taken place. For this reason, the only possible conclusion is that the correct deduction would have been at the rate prevailing before CA/D 5/13, i.e. 1/30th for a day of strike.

9. It has been a long standing administrative practice to divide each month in thirtieths for every kind of financial calculation dealing with absence from the Office, it being deemed lawful or even unauthorised. The decision of hte Council gives no justification for the arbitrary increase of the financial burden by 50% (i.e. an increase of costs from 1/30 to 1/20 per day of absence) as per 1 July 2013, It is thus entirely unjustified and breaches the legitimate expectations of staff in place.

10. The deduction is also abusive, since it is arbitrary and unfair. The level of arbitrariness is manifest for the following reasons:

Even if EPO employees were to be treated as workers receiving daily wages (which is not the case), by withholding 1/20th of a month's salary for a day of absence in a month having more than 20 working days (such as December 2014), the EPO effectively charges a fee per day of deduction of money.

Furthermore, according to Article 55(1) and (2) ServRegs, the requester is required at all time to be at the disposal of the Office, in a “normal working week”, which “shall not exceed forty hours". Article 55 does not mention that a week should be distributed over five so-called working days (Monday to Friday), or depending on the actual number of working days in a month. The reason is that an employee may be called to be on duty upon necessity also on Saturday or Sunday or any Office official holiday (e.g. in case of duty travel in countries were Saturday and Sunday or Office official holidays are working days or when an exhibition or a conference or a visit to companies are scheduled on such days). Therefore, in view of that, every day of the month, including Saturday and Sunday, has to be considered for remuneration.

This reasoning is in line with ATILO Judgment No. 3369 (see consideration 8), which reminds that the “thirtieths” or “indivisible thirtieths” rule is applied in many states and international organisations, according to which deductions made from an employee’s remuneration in the event of absence – for instance in the event of a strike – are not calculated on a basis that is strictly proportionate to the duration of the employee’s absence but on the basis of

lump-sum fractions of one-thirtieth per day. This general rule precludes, by definition, the possibility of deducting an amount equivalent to a fraction other than a full number of thirtieths from the remuneration of an employee who has been absent on account of participation in a strike.

Furthermore, any day remaining in the leave balance when an employee retires is compensated for on the basis of thirtieths of the employee's monthly salary, not twentieths or any other fraction depending on the actual number of working days in any month (see Circular No. 22 of 26 November 2007, Rule 5 (f) (ii)). Since the average month has (a little over) 30 days, it is accordingly proportional and fair to deduct 1/30th of a monthly salary for each strike day. Thus, a deduction of 1/20th is disproportionate.

11. The deduction is also punitive and thus a covert disciplinary measure. The right to strike is a basic right (see also document "ILO principles concerning the right to strike"), which the Office recognises (see Article 30a ServRegs). There are only two situations in the ServRegs where working less than the full complement of days in a month leads to deductions at a rate of 1/20th: unauthorised absence and strike (see Article 65(1)(c) and (d) ServRegs). Making a strike in this way equivalent to unauthorised absence is clearly an attempt to limit the fundamental right to strike and to punish lawful strikers. Since the Office has committed to adhere to general principles of law (see introductory declaration in the ServRegs), the Office is not allowed to equate strike with unauthorised absence. For this reason also, strike deductions at the rate of 1/20th are not lawful.

12. In view of the above, the surcharge for a day (or half a day if applicable) of strike is unlawful and even offenses the dignity of EPO staff members as international civil servants. The requester therefore is entitled to request **moral damages** for such a treatment, which (in order to avoid excesses) are limited to only 800 Euro.

13. Since the present individual request for review challenges the underlying general measure, the requester also trusts that the President of the Office will inform the Administrative Council accordingly.

The requester,

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Annexes:
Administrative Council's decision CA/D 5/13
Payslip January 2021