Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

A. (No. 4)

v.

Eurocontrol

136th Session **Judgment No. 4695**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr G. A. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 15 September 2020, Eurocontrol's reply of 22 January 2021, the complainant's rejoinder of 3 March 2021 and Eurocontrol's surrejoinder of 11 June 2021;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

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

The complainant challenges the decision requiring him to reimburse the undue payments of salary he received during absences that were declared to be unjustified by the Administration.

Some of the facts relevant to this case are to be found in Judgment 4694, also delivered in public this day, on the complainant's third complaint. Suffice it to recall that between 2013 and 2016, the complainant took numerous days' sick leave. As a consequence, on 30 March 2016, the Director General set up an Invalidity Committee consisting of the Organisation's Medical Adviser (Dr V.), the complainant's treating physician (Dr G.) and a third doctor selected by the other two (Dr M.), to determine the extent of the complainant's invalidity. The Committee met on 9 February 2017 and concluded that

the complainant was not suffering from a permanent invalidity that could be considered as total and that would prevent him from performing his duties. In addition, it declared him fit to return to work. By letter of 27 February, the Principal Director of Resources notified the complainant of the Committee's findings and asked him to contact the Administration to arrange his return to work as soon as possible.

After that, the complainant continued to submit further medical certificates. On 14 April 2017, in light of a new sickness certificate signing him off work, Dr M., who had sat on the Invalidity Committee, re-examined the complainant. He concluded that the complainant's medical condition remained unchanged and that, consequently, he was sufficiently fit to resume work. During June and July 2017, the Administration twice asked the complainant to resume his duties, emphasising the fact that his absences would be taken out of his annual leave entitlement and then deducted from his salary, and that disciplinary proceedings might ensue. On 1 September 2017, the complainant resumed his duties but also asked for his hours to be adjusted to 50 per cent on the basis of a further medical certificate. An appointment with the Medical Adviser was scheduled for 9 October 2017 to approve part-time working arrangements on medical grounds. On 5 October 2017, the complainant was admitted to hospital emergency. He was again placed on sick leave and was unable to attend the appointment with the Medical Adviser or subsequent appointments on the basis of medical certificates signed by his psychiatrist for the period from 11 October to 31 December 2017.

In the circumstances, the Administration asked the Medical Adviser whether he considered it advisable to convene a new Invalidity Committee and informed the complainant that his medical certificates would be accepted pending a decision on this issue. By letter of 22 December 2017, the complainant was invited to contact the Medical Service to arrange an appointment to review the state of his health.

The complainant submitted a further medical certificate for the period from 1 January to 31 March 2018. On 19 January 2018, he was examined by Dr M. By letter of 30 March 2018, the Head of the Human Resources and Services Unit informed the complainant that the Medical

Adviser had concluded, on the basis of Dr M.'s latest medical report, that he was fit for work. She also stipulated that he was to return to work on 3 April 2018.

By letter of 10 April 2018, the Administration confirmed to the complainant that he was required to resume his duties and that any future absences would be considered as unjustified and would be deducted from his annual leave entitlement and then from his salary. The complainant returned to work on 16 April 2018 under an administrative part-time arrangement which he himself had requested and which was approved by the Organisation until 31 December 2018.

In January 2019, the complainant submitted new medical certificates, which led to the Medical Service asking to see him again. On 1 February 2019, he attended the medical appointment but no examination could be carried out because, according to the Organisation, he refused to answer the questions put to him by the designated doctor, Dr M. By letter of 27 February 2019, the Head of the Human Resources and Services Unit informed the complainant that the Organisation considered that he was refusing to collaborate with the Agency in establishing the extent of his illness, while the Medical Adviser had declared him fit to return to work. She added that no further medical certificates would be accepted and that any future absence would be regarded as unjustified and accordingly would be deducted from his annual leave entitlements. In addition, the complainant was informed that, as a final resort, Dr M. would arrange for a psychiatric examination to be carried out by Professor D.

From 6 March 2019 onwards, various exchanges took place between the Administration and the complainant's counsel, in which the latter raised procedural irregularities, and in particular a failure to comply with Article 59 of the Staff Regulations governing officials of the Eurocontrol Agency.

On 2 April 2019, the complainant lodged a claim for harassment against the Agency's Human Resources Department and Medical Service.

On 7 May 2019, an expert psychiatric examination was carried out on the complainant by Professor D. who, in his report of 20 May, concluded that the complainant was fit for work. By a letter of 5 July 2019 received by the complainant on 10 July, the Head of the Human Resources and Services Unit informed the complainant of Professor D.'s findings and confirmed that the medical certificates covering the period from 1 March to 31 July 2019 would not be accepted, as had already been indicated to him on 27 February. Furthermore, once his annual leave had been exhausted, any salary paid from 9 May 2019 onwards would be regarded as an undue payment. By letter of 17 July 2019, the complainant contested that decision and also requested the production of Professor D.'s medical report of 20 May.

On 30 July 2019, the complainant asked to take early retirement and, consequently, to be paid his retirement pension. By decision of 31 July 2019, the Director General granted this request and informed the complainant that he would be retired on 31 July 2019 and would receive his retirement pension with effect from 1 August 2019.

On 2 August 2019, in view of the fact that the complainant's application for retirement had been accepted by the Director General but that the latter had reserved the right, as anticipated, to initiate disciplinary proceedings against him, the Administration asked the complainant's counsel to propose to the complainant that he withdraw the claim for harassment he had lodged on 2 April 2019 against the "Agency's Medical Advisers". This was done by the complainant on 7 August.

By letter of 13 September 2019, the complainant was informed that the matters previously referred to in the letter of 5 July 2019 needed adjusting as a result of his entitlement to a retirement pension. In particular, the overpayments of salary made to him would now need to be reimbursed as from 15 March 2019 and he would need to make contributions to the social security schemes. Accordingly, he was required to pay back the sum of 50,253.10 euros.

On 19 September 2019, the complainant challenged that letter.

By letter of 26 November 2019, the Head of the Human Resources and Services Unit stated that the date of Professor D.'s medical report, i.e. 20 May 2019, would be regarded as the point from which his remuneration would be suspended. Accordingly, the amount to be reimbursed was 24,687.56 euros rather than 50,253.10 euros. After an unsuccessful request to access his medical file and the report of 20 May, the complainant lodged an internal complaint on 17 February 2020.

On 9 April 2020, the Administration acknowledged receipt of the internal complaint and conveyed it to the Joint Committee for Disputes, specifying that it was a "decision upon the claim" – within the meaning of the Tribunal's case law – the effect of which was to interrupt the 60-day period on the expiry of which an implied rejection decision may arise under Article VII, paragraph 3, of the Statute of the Tribunal.

On 15 September 2020, the complainant filed a complaint with the Tribunal, impugning an implied decision to reject his internal complaint.

The Joint Committee for Disputes met on 30 April 2020 and delivered its opinion on 8 July 2020. Two members considered the internal complaint to be well founded as the Organisation had breached the procedure laid down in Article 59 of the Staff Regulations when disputing the medical certificates. The other two members considered the internal complaint to be unfounded as the Administration had correctly relied on the opinions of the medical experts who had examined the complainant. By letter of 7 December 2020, the Director General endorsed the recommendations of those latter two Committee members and rejected the complainant's internal complaint as unfounded.

The complainant asks the Tribunal to set aside the implied decision rejecting his internal complaint of 17 February 2020 and the decision of 26 November 2019. In his rejoinder, he seeks the setting aside of the express decision of 7 December 2020 which was taken while proceedings before the Tribunal were ongoing. The complainant asks for the Organisation to be ordered to refund all amounts retained from his pension since September 2019 as a result of that express decision which declared his absences to be unjustified for the period from

20 May to 31 July 2019. He further seeks compensation of 20,000 euros for the moral injury he considers he has suffered, and the award of costs.

Eurocontrol asks the Tribunal to reject all of the complainant's claims as irreceivable and to dismiss the complaint in its entirety as unfounded.

CONSIDERATIONS

1. In his fourth complaint, the complainant seeks the setting aside of the implied decision rejecting the internal complaint he lodged on 17 February 2020 against the decision of 26 November 2019 of the Head of the Human Resources and Services Unit of the Eurocontrol Agency, which informed him that, from the date of Professor D.'s medical report of 20 May 2019, the Organisation would no longer accept medical certificates from him and would suspend the payment of his salary. Since, between 20 May and 31 July 2019, the complainant had been paid for days of absence that the Organisation considered unjustified, the decision also informed him that he was required to reimburse a sum of 24,687.56 euros corresponding to the salary that had thus been unduly paid to him.

2. Eurocontrol submits that the complaint is irreceivable because the complainant did not comply with the requirements under Article VII, paragraph 1, of the Statute of the Tribunal to exhaust the internal means of redress available to him as a former official of the Organisation. However, the Tribunal notes that, pursuant to the last sentence of Article 92(2) of the Staff Regulations, an implied decision rejecting the complainant's internal complaint, challengeable before the Tribunal, arose on the expiry of four months from the date on which that internal complaint was lodged, namely on 17 June 2020. Therefore, on 15 September 2020, the date on which the complainant filed his complaint with the Tribunal, the internal means of redress available to him had indeed been exhausted. The complaint is therefore receivable and the objection to receivability raised by the Organisation will be dismissed.

3. After the complainant had filed his complaint with the Tribunal, an express decision was taken by the Director General on 7 December 2020 rejecting his internal complaint of 17 February 2020. In his rejoinder, the complainant therefore also challenges that decision.

Since the parties have had ample opportunity to comment in their submissions on the express decision to reject the internal complaint in question, the Tribunal considers it appropriate to treat the complaint as being directed against that decision.

4. The complainant also requests an oral hearing. However, the Tribunal considers that the parties have presented sufficiently extensive and detailed submissions and documents to allow it to be properly informed of their arguments and the relevant evidence. The request for an oral hearing is therefore dismissed.

5. In the impugned decision, the Director General first of all stated that the earlier decision contained in the letter of 26 November 2019 could not be considered unlawful since, in the present case, the Organisation had never required the complainant to undergo a medical examination within the meaning of Article 59(1) of the Staff Regulations. The Director General asserted that sufficient reasons were provided for that decision in the circumstances of the case and that the Head of the Human Resources and Services Unit had informed the complainant, in an earlier letter of 27 February 2019, that his absences would be regarded as unjustified from the date on which Professor D.'s final report was produced, that is on 20 May 2019.

As for the moral injury allegedly caused by the arguments raised by the Organisation in the present case, which called into question the complainant's good faith and harmed his honour and reputation, the Director General then responded by saying that he regarded this as unfounded. On the contrary, he considered that, since 2017, the complainant had displayed a non-cooperative attitude and a lack of honesty and integrity.

In the letter of 26 November 2019 to which the Director General referred in the impugned decision, the Head of the Human Resources and Services Unit had also confirmed to the complainant's counsel that the Organisation had accepted Professor D.'s report which declared the complainant fit for work and that payment of the complainant's salary had been suspended from the date of that report. In that letter, the Organisation had also reminded the complainant of its intention, previously expressed in its letter of 27 February 2019, whereby it had informed him as follows:

> "You will need to attend the appointment scheduled with [Professor D.] who will contact you directly. Your situation will be regularised based on the results of his psychiatric examination. If the examination confirms that your state of health has not changed since the last Invalidity Committee, which declared you fit for work, your remuneration will no longer be payable as from the date of [Professor D.]'s medical report."[*]

6. Among the various pleas entered by the complainant in support of his complaint, there are two that are decisive for the outcome of this dispute.

7. In the first place, the complainant submits that the impugned decision of 7 December 2020, which confirms the earlier decision of 26 November 2019, is flawed and should be set aside due to the insufficient and incorrect reasons it contains. These refer to a crucial document – Professor D.'s medical report of 20 May 2019 – the content of which was not communicated to the complainant in a timely manner.

In that regard, the Tribunal considers it clear from the submissions and the evidence in the file that the complainant, acting through his counsel, unsuccessfully requested access to that medical report on several occasions.

The first time that the complainant was informed of the existence of the report was on 10 July 2019 by the letter dated 5 July 2019 from the Head of the Human Resources and Services Unit which informed him that he had been found to be fit for work by Professor D. at the

[*] Registry's translation.

medical examination of 7 May 2019. Even though that letter referred to the medical report dated 20 May 2019, it did not attach a copy. In his letter of 17 July 2019, the complainant's counsel pointed out that no medical report had been provided to substantiate the letter of 5 July 2019.

The failure to supply any medical report enabling the complainant to understand why the medical certificates he had submitted had been refused was reiterated by his counsel in a further letter of 19 September 2019. Subsequently, in another letter of 9 December 2019, the complainant's counsel again pointed out that, despite two express requests, Professor D's expert medical report of 20 May 2019 had not been provided, and he applied to the Director General for access to the complainant's medical file.

Lastly, in his internal complaint of 17 February 2020, the complainant referred to the many requests made by his counsel to access the report and to the fact that it had still not been provided to him.

8. The complainant maintains – and the Organisation has not effectively denied – that Professor D.'s medical report was not sent to him until 20 February 2020, and even then it was written in Dutch, a language that he does not understand. In this regard, the written submissions show that the report was sent directly to the complainant's treating physician between 19 December 2019 and 20 February 2020, the latter date being when the physician forwarded a copy to the complainant. In an internal email of 9 December 2019 following receipt of a request for access made that same day by the complainant's counsel, the Administration made the following admission before forwarding the report in question to the treating physician: "we are obliged to give it considering that it is the basis on which we will deduct his unjustified absences".

9. Although Eurocontrol agrees in its submissions that "[t]he dispute concerns the legitimacy of [...] categorising the complainant's absences from 20 May 2019 until his retirement on 1 August 2019 as

unjustified absences", the Organisation does not provide any explanation or response for failing to send the medical report to the complainant before 20 February 2020. The Tribunal also notes that, despite the fact that Professor D.'s report of 20 May 2019 formed the basis for the Organisation's decision of 26 November 2019 later confirmed by the impugned decision, it does not appear anywhere among the numerous documents in the file.

10. As two members of the Joint Committee for Disputes rightly pointed out in the opinion of 8 July 2020, "no reference to the findings of the medical examination carried out by [Professor D.] was issued or sent to the [complainant]", leaving him unable to properly challenge the fact that the Organisation had categorised his absences for the period from 20 May to 31 July 2019 as unjustified absences. Although the Organisation upheld the finding made by Professor D. at the medical examination of 7 May 2019 that the complainant was fit for work, it failed to include the examination report when it advised him of that fact on 5 July 2019, in a letter which he did not receive until 10 July. What is more, when the Head of the Human Resources and Services Unit sent the complainant her decision of 26 November 2019 informing him that she had accepted that medical report and that the Organisation was suspending payment of his salary, she did not include a copy of the report on that occasion either.

11. Firstly, it is established case law of the Tribunal that the reasons for a decision must be sufficiently explicit to enable the person concerned to take an informed decision accordingly. They must also enable the competent review bodies to determine whether the decision is lawful and, in particular, the Tribunal to exercise its power of review (see Judgment 4467, consideration 7).

Secondly, the Tribunal has repeatedly confirmed that a staff member must have access to all evidence on which an authority bases or intends to base its decision against her or him (see Judgments 4412, consideration 14, and 2700, consideration 6). In Judgment 4587, consideration 12, the Tribunal stated that the failure to communicate important documents to a staff member before a decision is taken

against her or him is a breach of the complainant's rights to proper due process, noting in particular the following:

> "[It] disregarded the rights of the complainant to proper due process in terms of communication of documents. The case law of the Tribunal establishes that, as a general rule, a staff member must have access to all evidence on which the authority bases (or intends to base) its decision against her or him. Under normal circumstances, such evidence cannot be withheld on grounds of confidentiality (see, for example, Judgment 2700, consideration 6; see also, on the issue of breach of due process, Judgment 4412, consideration 14)."

The complainant's first plea is therefore well founded. This breach by the Organisation of the complainant's rights to due process vitiates the decision of the Head of the Human Resources and Services Unit of 26 November 2019 on which the impugned decision of 7 December 2020 was based, which renders both these decisions legally flawed.

12. In the second place, the complainant submits that the Organisation also breached the provisions of Article 59 of the Staff Regulations and the procedure that had to be followed in order to categorise his absences for the period from 20 May to 31 July 2019 as unjustified and, as a consequence, to demand reimbursement of his salary in the amount of 24,687.56 euros.

Article 59 of the Staff Regulations provides as follows in paragraphs 1 and 5, those being the paragraphs relevant to the present case:

> "1. An official who provides evidence of incapacity to perform his duties because of sickness or accident shall automatically be entitled to sick leave.
>
> The official concerned shall notify the Agency of his incapacity, as soon as possible and at the same time state his present address. He shall produce a medical certificate if he is absent for more than three days. This certificate must be sent on the fifth day of absence at the latest, as evidenced by the date as postmarked. Failing this, and unless failure to send the certificate is due to reasons beyond his control, the official's absence shall be considered as unauthorised.
>
> An official on sick leave may at any time be required to undergo a medical examination arranged by the Agency. If the examination cannot take place for reasons attributable to the official, his absence shall be considered as unauthorised as from the date that the examination is due to take place.

> If the finding made in the examination is that the official is able to carry out his duties, his absence shall, subject to the following subparagraph, be regarded as unjustified from the date of the examination.
>
> If the official considers the conclusions of the medical examination arranged by the Agency to be unjustified on medical grounds he may, within two working days of receipt of the decision declaring his absence unauthorised, submit to the Director General a request that the matter be referred to an independent doctor for an opinion.
>
> The Director General shall immediately transmit the request to another doctor agreed upon by the official's doctor and the Agency's medical officer. Failing such agreement within five days of the request, the Director General shall select a person from a list of independent doctors to be established for this purpose each year by common consent of the Director General and the Staff Committee. The official may, within two working days, object to the Director General's choice, whereupon he may choose another person from the list, which choice shall be final.
>
> The independent doctor's opinion given after consultation of the official's doctor and the Agency's medical officer shall be binding.
>
> Where the independent doctor's opinion confirms the conclusion of the examination arranged by the Agency, the absence shall be treated as unjustified from the date of that examination. Where the independent doctor's opinion does not confirm the conclusion of that examination, the absence shall be treated for all purposes as having been justified.
>
> [...]
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> 5. The Director General may refer to the Invalidity Committee the case of any official whose sick leave totals more than twelve months in any period of three years to consider total permanent invalidity subject to the conditions of Article 78. Such referral shall only be optional and shall not constitute a right for the official."

13. These provisions therefore stipulate that a Eurocontrol official who provides evidence of incapacity to perform her or his duties because of sickness is automatically entitled to sick leave. The official may, however, at any time be required to undergo a medical examination and, if the finding made in that examination is that the official is able to carry out her or his duties, the absence will be regarded as unjustified, subject to the official's right to submit to the Director General a request that the matter be referred to an independent doctor for an opinion, if the official considers the conclusions of the medical examination to be unjustified on medical grounds. If that opinion, which is binding,

confirms the conclusions of the examination arranged by the Agency, the absence is to be treated as unjustified as from the day of that examination.

14. The Tribunal notes that it is clear from the submissions and the evidence in the file, firstly, that the complainant did submit medical certificates to the Administration as evidence of his incapacity to work from January to June 2019, as acknowledged by the Organisation. This is also confirmed by the complainant's sickness record sheet drawn up by the Organisation for the period from July 2013 to July 2019. In addition, the letter from the Head of the Human Resources and Services Unit of 5 July 2019 confirms that medical certificates covering the period from 1 March to 31 July 2019 were indeed received by the Organisation.

Secondly, the Organisation acknowledges that it was after receiving the new medical certificates effective from January 2019 that it invited the complainant to arrange a date for the medical examination, which took place on 1 February 2019 with Dr M. and which resulted in Dr M. recommending that the opinion be sought of a psychiatric expert, Professor D., who then prepared the medical report of 20 May 2019.

Lastly, when the complainant was finally informed by the Organisation of the existence of that medical report, by the letter of 5 July 2019 received by him on 10 July, his counsel notified the Administration that his client wished to request a referral to an independent doctor for an opinion in accordance with Article 59 of the Staff Regulations.

15. The submissions indicate that it could only have been the medical examination referred to in Article 59 of the Staff Regulations that justified the Organisation's request for the complainant to undergo a medical examination by Dr M. and then a psychiatric examination by Professor D. following receipt of the complainant's medical certificates. Consequently, it must be noted that the Organisation breached that provision by preventing the official from determining whether the findings of these examinations by Dr M. and Professor D. were "unjustified on

medical grounds", through its failure to send him a copy of Professor D.'s final report and then its failure to act on the request made by the complainant's counsel on 17 July 2019 for a referral to an independent doctor.

16. In the impugned decision, the Director General submits that the decision contained in the letter of 26 November 2019 cannot be regarded as unlawful since the Agency had never required the complainant to undergo a medical examination within the meaning of Article 59(1) of the Staff Regulations. According to the Director General, the procedure involving that type of medical examination was not adapted to the circumstances that prevailed at the time of the medical examinations carried out by Dr M. and Professor D.

However, the Tribunal considers that the Organisation is mistaken in maintaining that it never sought to apply that provision of the Staff Regulations on the facts, since that was the only provision of the Staff Regulations that could apply to this situation. It is uncontested that the complainant submitted medical certificates attesting to his absence due to sickness as from January 2019. In such a situation, the Administration could not simply refuse the certificates; it had to either accept them or request a medical examination. Indeed, the Organisation specifically recognised this in relation to the complainant's case, in internal emails exchanged in December 2017 in which the Head of Compensation and Benefits wrote to the Medical Adviser, Dr V., and to the Head of the Human Resources and Services Unit, that the Organisation could not simply refuse the certificates in such a situation.

The request for a medical examination with Dr M. and subsequently, on the initiative of Dr M., with Professor D. could therefore only fall under paragraph 1 of Article 59. It is apparent from the file that there is no other procedure in place at Eurocontrol that provides for a different mechanism to apply in such a case. That was also noted by the two members of the Joint Committee for Disputes who concluded, in the opinion of 8 July 2020, that the Administration had not followed the procedure laid down in this respect by Article 59 of the Staff Regulations.

17. In its submissions, the Organisation attempts in vain to explain and justify the process it followed, relying on the fact that the Invalidity Committee had declared the complainant fit for work in its opinion of 9 February 2017, which the complainant did not challenge at the time. However, that argument is of no assistance to the Organisation in the present case. Under Article 59(5) of the Staff Regulations, an official's case may be referred to the Invalidity Committee for consideration of permanent invalidity subject to the conditions of Article 78 of the Staff Regulations. In its opinion of 9 February 2017, the Invalidity Committee found that the complainant did not suffer from any total permanent invalidity that prevented him from performing his duties and stated that he was therefore required to resume work. However, neither the Invalidity Committee's opinion nor the aforementioned provision are of any help in determining whether the complainant's absence after January 2019 could be justified on medical grounds in accordance with Article 59(1) and with the medical certificates that had been supplied at the time.

Firstly, the complainant did not dispute the Invalidity Committee's findings of 9 February 2017 but instead submitted medical certificates for subsequent absences due to sickness. These sickness absences were therefore subject to the procedure laid down by Article 59(1) of the Staff Regulations.

Secondly, the evidence in the file establishes that the Organisation was well aware that there was no specific procedure other than that laid down in Article 59(1) in a situation where an official refuses to work after an Invalidity Committee has found that she or he has no total permanent invalidity and should return to work. An email exchange on 9 and 10 October 2017 between the Head of Compensation and Benefits, the Head of the Human Resources and Services Unit and the Organisation's Medical Adviser, concerning the "refusal to work after an invalidity commission *[sic]*", recorded the following: "if we put our new habit *[sic]* in the rules of application, we can defend our policy in court, otherwise a lot of discussions with layers *[sic]* to foresee!" (Dr V.); "[c]urrently, there is no rule of application but I can imagine that we can of course prepare one" and "[a]s you said, no doubt that

without any regulation we will face difficulties" (Head of Compensation and Benefits); and "[y]es indeed the subject deserves a rule" (Head of the Human Resources and Services Unit).

It is clear from these assertions that the Administration knew that it was following a procedure which did not exist anywhere in the Organisation's rules and which it was, therefore, unable to impose on an official without first informing him of the relevant parameters, where applicable. The Tribunal considers that Eurocontrol cannot justify its conduct, as it attempts to do in its submissions, by arguing that what occurred was ultimately done for the benefit of the complainant since "a strict application by [the Organisation] would have had harsher consequences for [him]", which, in any event, has not been established.

18. Since the Organisation breached its own rules by ignoring the procedure laid down in Article 59(1) of the Staff Regulations before concluding that the complainant's absences due to sickness during the period concerned were unjustified, this second plea is also well founded and renders both the impugned decision and the decision of 26 November 2019 legally flawed.

As a result of the foregoing, both of those decisions must be set aside, without there being any need to rule on the other pleas entered by the complainant in his submissions.

It follows that Eurocontrol should be ordered to reimburse to the complainant, by way of compensation for the material injury caused to him, the amounts wrongly retained by the Organisation from his pension in order to repay his remuneration for the period from 20 May to 31 July 2019, that is the sum of 24,687.56 euros.

19. The complainant claims that the Organisation should also pay him moral damages of 20,000 euros for "recklessly calling into question his good faith in a way likely to cause serious harm to his honour and reputation". However, the Tribunal has on many occasions reiterated that, in relation to damages, the burden of proof falls on the complainant, who must establish the injury complained of. In the present case, the

complainant has not adduced any specific evidence of this alleged harm to his honour and reputation.

This claim must therefore be dismissed as unfounded.

20. As the complainant succeeds, he is entitled to costs, which the Tribunal sets at 8,000 euros.

DECISION

For the above reasons,

1. The decision of the Director General of Eurocontrol of 7 December 2020 and the decision of the Head of the Human Resources and Services Unit of 26 November 2019 are set aside.
2. Eurocontrol shall pay the complainant material damages in the amount of 24,687.56 euros.
3. It shall also pay him 8,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 3 May 2023, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ