CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 529/2012 (Nelly ROUGIE-EICHLER v. Secretary General)

The Administrative Tribunal, composed of:

Mr Christos ROZAKIS, Chair,
Mr Jean WALINE,
Mr Rocco Antonio CANGELOSI, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar,
Ms Eva HUBALKOVA, Deputy Registrar,

has delivered the following decision after due deliberation:

PROCEEDINGS

1. The appellant, Ms Nelly Rougie-Eichler, lodged her appeal on 13 June 2012. It was registered on 18 June 2012 as No. 529/2012.

2. On lodging her appeal, the appellant filed a request for an expert assessment and for the Tribunal to hear three fellow staff members (the nurse, witness no. 1 and witness no. 2) as well as a fourth colleague whose identity she had been unable to establish (Article 9, paragraph 5, of the Staff Regulations and Rule 25 of the Tribunal's Rules of Procedure).

3. On 25 September 2012, the Secretary General submitted his observations on the appeal. He also expressed an opinion on the abovementioned requests for investigative procedures.

4. The appellant submitted a memorial in reply on 20 December 2012, on which occasion she requested the hearing of a fourth person (witness No. 3).

5. By an order of 29 January 2013, after consulting the other judges, the Chair agreed to the request for an expert assessment; the parties were asked to agree on an expert to be appointed for that purpose.

By the same decision the Tribunal agreed to the hearing of three witnesses (the nurse and witnesses Nos. 1 and 3). It also noted that the appellant did not wish to maintain her request for the hearing of witness No. 2 and that it was not possible to order the hearing of a witness who had not been identified.

6. By an order of 12 April 2013, the Chair appointed the expert whose name had been put forward by the parties, a neurologist qualified in the field of legal redress for personal injuries and holding an inter-university diploma in the law governing medico-legal assessments as well as a certificate of professional competence for expert assessment of personal injuries (CAPEDOC: *certificat d'aptitude à l'expertise du dommage corporel*). The expert's terms of reference were set out in the same decision.

7. Following an exchange of correspondence between the parties and the expert, the appellant submitted certain supplementary documents required for the assessment directly to the expert.

8. On 17 December 2013 the expert was sworn in by means of a written procedure, the parties having raised no objections to the use of such a procedure.

9. On 10 January 2014 the expert submitted a preliminary report to the parties, inviting them to comment.

On 10 February the expert received the appellant's comments on the preliminary report.

10. The expert's assessment was faxed to the Registry on 11 February 2014 and submitted in paper form on 14 February 2014.

11. The public hearing on this appeal was originally scheduled for 13 March 2014, but at the request of the parties, who had expressed the wish to comment in writing on the expert's report, it was postponed until 26 June 2014. The Chair gave both parties a period of three weeks ending on 6 March 2014 in which to submit their conclusions with regard to that assessment; it also asked the appellant to quantify her claims for damages by the same deadline (the Secretary General would be given the opportunity to comment on those figures at a later stage).

12. At the appellant's request, the deadline was extended until 31 March 2014 for both parties.

13. The Secretary General having objected to the timetable for the procedure, the deadline for both parties was later extended again until 14 April 2014.

14. On 31 March 2014, the appellant submitted her written conclusions following the expert assessment to the Tribunal and transmitted these at her own initiative to the opposing party before the latter's own conclusions had been filed. In the same document the appellant also quantified her claims for damages.

15. On 14 April 2014, the Secretary General submitted his conclusions following the expert assessment together with his comments on the appellant's claims for damages.

16. On 19 May 2014, the Chair set the date of the hearing for 26 June 2014 and summoned the witnesses.

17. On 28 May 2014 the appellant submitted the appendices to her document of 31 March 2014.

On 6 June 2014 the appellant filed some final observations and quantified certain claims for reimbursement. The Secretary General filed documents on 17 June 2014.

18. The public hearing took place on 26 June 2015 in the Administrative Tribunal's hearing room in Strasbourg. The appellant was represented by Ms Ariane Jérôme-Martin, lawyer at the Strasbourg bar, and the Secretary General by Ms Anita Joly, lawyer at the Strasbourg bar, assisted by Ms Maija Junker-Schreckenberg and Ms Sania Ivedi, both from the Council of Europe's Legal Advice Department.

19. The proceedings commenced with the hearings of the three witnesses ordered on 29 January 2013, which were followed by the parties' submissions.

20. During her submission the appellant's counsel requested that the Tribunal order a second expert assessment should it accept the expert's findings of 11 February 2014. The Secretary General's counsel expressed her surprise, noting that the appellant had not submitted the critical opinion of a neurologist, which was the very least one would expect when an expert report was being criticised.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

21. The appellant was a permanent member of staff of the Council of Europe with a contract of unlimited duration. She was recruited in 1994 and assigned to the Registry of the European Court of Human Rights. At the time of the events in question her grade was B4. Since then the appellant has been on disability leave.

22. In her appeal the appellant contested the Organisation's decision not to award her compensation for the events that began on 2 March 2010 on the Organisation's premises. Since 3 March 2013 the appellant has been on leave due to temporary incapacity for work; she was placed on a full salary for a period of up to 36 months.

23. On 2 March 2010, the appellant suffered a malaise and was taken by a colleague (witness no. 2) to the infirmary located in the Palais des Droits de l'Homme where only a nurse (the witness referred to as "the nurse") was on duty (the doctor being in the medical service located in another building of the Organisation, the Palais de l'Europe). Witness no. 2 had previously asked the nurse to come to the office of the appellant as she felt unwell. The nurse had replied that she could not leave the infirmary, but that the ushers and security staff of the Palais des Droits de l'Homme could intervene if necessary. During her hearing the nurse explained that in an absolute emergency she could leave the infirmary and go to where her presence was required.

24. During the afternoon of 2 March, on her way home from the office, the appellant dropped in at her doctor's surgery but did not stay to wait her turn because there were too many people.

25. In the night of 2 to 3 March 2010 the appellant suffered a malaise and was rushed to hospital. About an hour previously she had suffered a first malaise during which she had vomited. Prior to that she had spent the evening asleep.

26. On 4 March 2010 the appellant underwent an operation for a cerebral oedema.

27. In his report (see paragraph 10 above), the expert appointed by the Tribunal drew attention to the following medico-legal points:

- Regarding the events of 2 March 2010, the "reliable diagnosis of a transient ischemic attack (TIA)";

- Even if the arterial wall hematoma had been detected by MRI (magnetic resonance imaging) on 2 March 2010, it was impossible to say whether at the time the appellant, who on 2 March had only shown signs of a TIA, was already suffering from the arterial occlusion that was found the following day;

- It was perfectly possible that on the evening of 2 March 2010 the appellant had only a narrowing (stenosis) of the left carotid artery linked with the dissection. In any event, by definition, since she would have been hospitalised for an assessment of the TIA she had suffered that afternoon and showed no clinical signs, there would have been no indication for administering intravenous thrombolysis;

- If the dissection had been diagnosed during a hospital examination, from a strictly therapeutic standpoint the only possible solution to be considered, in order to try to avert a serious stroke like that which she suffered during the night of 2 to 3 March, would have been to put her on treatment to "thin" her blood;

- Had the diagnosis of a dissection been established, the appellant would most certainly have been treated with injections of anti-platelet agents or anti-coagulants in a hospital environment;

- However, on the question of whether for all that the acute ischemic stroke that the appellant suffered later during the night of 2 to 3 March, at around 2 a.m., could have been prevented, the expert said that there was nothing in either the case-file or the international literature on the natural history of dissections or the use of such treatments for the prevention of a possible acute ischemic stroke that provided an answer to that question. He added that even if, in the very best of cases, the appellant had been able to benefit from the measures officially recommended by the French Health Authority for dealing with an transient ischemic attack (TIA), there was no proof that such rapid, diligent and conscientious treatment of this TIA in compliance with the official recommendations would have prevented the severe acute ischemic stroke that occurred in the night of 2 to 3 March 2010.

28. On 30 March 2011, the appellant filed a criminal complaint with the French authorities (the Strasbourg Public Prosecutor) against persons unknown. On 25 August 2011, after exchanges concerning protection of the nurse in her official capacity as a staff member of the Organisation, the authorities decided to take no further action with regard to this complaint.

29. On 8 December 2011, the appellant asked the Secretary General to recognise his civil liability for the events of 2 March 2010 and to assume the financial consequences, to be determined by means of an expert assessment. On that occasion the appellant asked before which court the matter should be taken if there was no admission of liability.

30. On 25 January 2011 the Secretary General replied that there was no legal basis for participating in judicial proceedings in respect of acts performed in an official capacity and referred to the provisions of Article 59 (complaints procedure) and 60 (appeals procedure) of the Staff Regulations. The Secretary General said nothing about the admission of his liability.

31. On 9 February the appellant lodged an administrative request with the Secretary General in accordance with Article 59, paragraph 1 of the Staff Regulations. She requested that he admit liability and repair the damages, to be quantified by means of a medical assessment.

32. On 13 April 2012 the Secretary General rejected that request. The appellant received the letter containing that rejection only on 18 April 2012.

33. In that letter the Secretary General informed the appellant that he had conducted an internal inquiry (in accordance with the Secretary General's instruction no. 51 of 10 June 2006 on internal inquiries); that inquiry had found no carelessness or negligence

on the part of the nurse who had dealt with the appellant on 2 March 2010. During that inquiry there had been hearings of staff members (including those called as witnesses before the Tribunal) as well as of the appellant and the Organisation's doctor in charge of the nurses.

34. In the doctor's report it is noted that:

> "[One of the staff members conducting the inquiry] asked whether the symptoms experienced [by the appellant] were those of a cerebrovascular accident (CVA). [The doctor] replied that the symptoms described by the appellant could indicate a CVA, but could also be the sign of something else".

The doctor added that:

> "[The nurse] had told [the appellant] that if she was not feeling better when she got home she should see her doctor. [The nurse] offered to get someone to take her home, but [the appellant] declined the offer, saying that she felt better".

Later it was specified that:

> "[One of the staff members conducting the inquiry] asked whether in the event of a cerebrovascular accident the time to treatment is very important. [The doctor] said that it was, but added that it was not possible for every person who goes to see the nurse with a headache to be sent for a scan".

Further on, in the same report:

> "[One of the staff members conducting the inquiry] asked [the doctor] whether, since the events in question, any changes had been made to the way in which situations of this kind were handled. [The doctor] replied that there were efforts to be ever more vigilant, but that the possibility of this happening again could never be ruled out entirely. [The doctor] had since drawn up a specific protocol for the management of neurological accidents by the Organisation's medical service".

35. In the meantime, on 16 April 2012, the appellant had lodged an administrative complaint with the Secretary General in accordance with Article 59, paragraph 2 of the Staff Regulations. She explained that she was filing this complaint due to the lack of a reply to her administrative request within the 60-day time limit.

36. On 9 May 2012, the appellant, after receiving confirmation that her administrative request had been rejected, wrote a letter to the Secretary General confirming her administrative complaint.

37. On 21 May 2012, the Secretary General, deeming the administrative complaint to be unfounded, dismissed it. He held that there had been nothing during the dealings with the appellant that gave any reason to suspect that her condition was urgent and required the implementation of a special procedure. He added that, according to the results of the inquiry, the Organisation could in no way be considered as being at fault for the way in which its medical service had dealt with the applicant on 2 March 2010.

He inferred from this that there was therefore nothing to support the conclusion that the cerebrovascular accident that had occurred in the night of 2 to 3 March 2010, and its consequences, could be imputed to the Organisation. The Organisation could therefore not be held liable.

38. On 13 June 2012, the appellant lodged this appeal.

39. She was placed on disability leave as of 1 April 2013. She receives a lifetime disability pension and a lifelong attendance allowance. At that time she also received a lump sum disability payment, the amount of which does not need to be specified here.

II. THE RELEVANT LAW

A) The Organisation's medical service

40. Although this was not mentioned by either party, the Tribunal considers it useful to point out that according to the Organisation's intranet, the work of the Council of Europe's medical service is governed by the Secretary General's instruction No. 37 of 23 September 1998 on the operation of the medical service and medical examinations of staff members.

According to the information given by the Secretary General in his reply of 21 May 2012 to the administrative complaint (see paragraph 37 above), the main role of the Organisation's medical service concerns occupational health. It may be called upon to provide emergency or primary medical care but it is not intended to function as a general practitioner or hospital emergency department.

41. During her appearance before the persons in charge of the inquiry (see paragraph 37 above), the Organisation's doctor explained the role of the medical service, as well as her own role and that of the nurses.

On the last two points, the doctor explained that her role was that of an "occupational physician, not a general practitioner", and that an occupational medical service "was not a hospital emergency service". She added that, after seeing staff members, the doctor "may, if necessary, direct them towards the appropriate medical structures".

Regarding the nurses' role, the doctor explained that:

> "they are responsible for the administrative organisation of health checks. They receive staff members for that purpose, check that the information in their personal medical files is up to date and perform various tests (weighing, urine test, eye test, etc.) before the staff member sees the doctor for the health check. The nurses also have the task of providing primary health care services. They receive staff members for a range of different reasons".

In answer to the question put by one of the staff members in charge of the inquiry as to whether the nurses systematically consult the doctor when they receive visits from members of staff, the doctor explained that:

> "In case of doubt the nurses consult the doctor for advice or for an opinion".

B) Protocols

42. Although not strictly speaking a source of law, it is useful to mention here the protocols drawn up by the medical service's doctor, often in cooperation or consultation with external medical services. These protocols are documents setting out the standard behaviour to be adopted in the presence of given medical situations.

At the time of the facts complained of, the Organisation did not have a protocol for the management of cerebrovascular accidents (CVAs), although it has since acquired one. It was not specified during the proceedings before the Tribunal whether there was – or whether there is now – a specific protocol for dealing with TIAs. However, at the time a protocol on headaches in which CVAs are mentioned did exist.

THE LAW

43. The appellant requests that the Tribunal find the Organisation liable for the detriment she says she suffered following the events of 2 March 2010 and order it to pay her compensation for that detriment.

44. The Secretary General asks the Tribunal to dismiss the appellant's request.

I. THE PARTIES' SUBMISSIONS

A) The appellant

45. The appellant considers that the Organisation's nurse who saw her on 2 March 2010 was guilty of professional misconduct that she claims caused her enormous detriment, both pecuniary and non-pecuniary.

46. She argues that the Organisation's liability is also incurred for its failure to put in place a protocol for dealing with individuals in need of emergency care. She contends that such a protocol would have enabled her to receive emergency treatment, thus averting the full-blown stroke with the serious consequences from which she is suffering today.

47. In her observations in reply to the Secretary General's memorial, the appellant claims that the facts make it plain that she received no medical care from the nurse although she was presenting obvious symptoms of a CVA. She offers as proof the fact that an emergency protocol for dealing with neurological accidents was introduced after her CVA.

48. The appellant reiterates that the nurse was at fault and that the Organisation's liability is incurred for its failure to put in place a protocol for dealing with individuals in need of emergency treatment. In her opinion such a protocol would have enabled her to receive emergency care and to avoid the full-blown stroke with the serious consequences from which she is suffering today.

B) The Secretary General

49. In his memorial the Secretary General argues that it is clear from an analysis of the facts as established by the internal inquiry (see paragraph 27 above) that no liability can be imputed to the Organisation.

50. After dwelling on the statements made by the five staff members questioned during the inquiry and making a series of remarks, the Secretary General examines the issue of the Organisation's liability with regard to the care that the appellant received from the nurse and to the protocol in force at the time of the events in question.

1. Care given to the appellant by the nurse

51. On this first point the Secretary General, after referring to models of protocols for the management of emergencies and neurological accidents, claims that the signs shown by the appellant could in no way legitimately be seen as giving reason to suspect a vascular or neurological emergency. That being the case, the nurse did everything she should have done by checking the appellant's blood pressure, blood sugar and consciousness. He adds that in the absence of any specific signs giving rise to the suspicion of a serious or emergency situation, there was no reason to alert the doctor, who was not on the spot but in another building of the Organisation, and even less reason to call the emergency medical services.

2. Protocol

52. Regarding the second point, the Secretary General acknowledges that it is indeed the case that the protocols in force at the time did not allow all possible situations to be envisaged. However, he argues that the existence of a protocol would still not have prevented the problem from occurring. Indeed, he claims that in view of the absence of any signs giving reason to suspect a serious condition making it necessary to call the emergency services, the existence of a protocol would not have changed anything. As to whether a protocol and, consequently, emergency medical care would have allowed the full-blown stroke and its serious consequences to be averted, this is an entirely different matter, one of ascertaining whether there is a definite, direct and exclusive relationship of cause and effect between the lack of organisation reflected in the absence of a protocol and the detriment suffered. He argues, however, that at this stage the question does not even arise, because even if the nurse had consulted an emergency protocol, she would have taken the same view of the behaviour to be adopted.

53. He states, finally, that it can be concluded from the information contained in the case-file that there is no liability on the part of the Organisation.

II. THE EXPERT'S FINDINGS, THE PARTIES' COMMENTS AND THE APPELLANT'S CONDITIONAL REQUEST FOR A SECOND EXPERT ASSESSMENT

A) The expert's findings

54. The expert, who was chosen by common agreement between the parties and appointed by the Chair after consultation with the other members of the Tribunal, was tasked with replying in his report to all the questions that the parties wished to have put to him.

55. The expert submitted the following findings:

> "The nurse who saw the appellant in the infirmary of the Council of Europe on 2 March 2010 following the latter's [transient ischemic attack] is not guilty of any personal misconduct. She acted in compliance with the rules that are binding upon her by virtue of her professional training and the nature of her work for the Council of Europe.
>
> She therefore cannot be held responsible for any loss of opportunity.
>
> If, due to a more precise personal understanding of the risks linked with a [transient ischemic attack], she had taken action to have the person rapidly admitted to the neurovascular department of a hospital, it is impossible to say whether antithrombotic treatment administered in the evening of 2 March 2010 would have prevented a subsequent acute ischemic stroke involving the left carotid artery, like that which occurred a few hours later".

B) The appellant's comments

56. The appellant emphasises that there is a contradiction between the expert's findings and those of the doctor mandated by her insurance company as part of its legal aid cover to provide expert assistance during the assessment. She adds that those conclusions also contradict statements made by the expert himself during that assessment.

C) The Secretary General's comments

57. After noting the expert's conclusion that the appellant had suffered a TIA, the Secretary General emphasises that while it may be argued that a doctor should have been able to diagnose a TIA on the basis of her symptoms, the same reproach cannot be made of a nurse. He adds that a nurse's job is to examine the patient within the limits of her possibilities for any obvious signs of a condition requiring emergency treatment.

D) The appellant's conditional request for a second expert assessment

58. During her submission, after criticising the expert's assessment and drawing attention to the discrepancies between his findings and those of her expert, the appellant's counsel requested that the Tribunal order a second expert assessment in the event of its agreeing with the conclusions of the first.

59. The Secretary General's counsel for her part expressed surprise at the appellant's failure to submit the critical opinion of a neurologist, which was the very least one would expect when an expert report was being criticised.

60. The Tribunal notes that the aim of this request is to have it decide on an investigative measure, subject, however, to the condition that this decision shall be suspended if the Tribunal disagrees with the expert's conclusions. The Tribunal has doubts as to whether, even if its Rules of Procedure do not expressly forbid it, the request for an investigative measure can be made conditional upon an event – the Tribunal's position with regard to the expert assessment – that concerns, moreover, not the preparation of the appeal but a later phase of the Tribunal's deliberations, even though it is true that the Tribunal can reopen the investigation phase at any moment.

61. Whatever the case may be, the Tribunal does not need to rule on the question of the admissibility of this request because, in any event, even if it does not agree with all the expert's findings, it does not deem it necessary to order a second expert assessment, since it has in its possession the facts needed in order to rule on the merits of the appellant's claim for damages.

III. THE TRIBUNAL'S ASSESSMENT

A) Preliminary remarks

62. The Tribunal considers that there is no problem with establishing the facts; indeed, there has been no real disagreement between the parties in this respect. Where they differ is on the interpretation of the facts and on the legal conclusions to be drawn from them. That being the case, before ruling on the appellant's two grounds of appeal, the Tribunal must examine the witness statements and the conclusions of the expert assessment.

63. The Tribunal must also rule on the conditional request for a second expert assessment put forward by the appellant during the hearing of 26 June 2014, which constitutes a request for a measure of inquiry pursuant to Rule 32, paragraph 2, of the Tribunal's Rules of Procedure. This rule reads as follows:

> "1. The Tribunal may, at any stage of the proceedings, call for the production of documents or of such other evidence as it finds necessary.
>
> 2. The Tribunal may arrange for any other measures of inquiry which it finds necessary."

64. Before conducting that examination, however, the Tribunal wishes to point out that in view of the facts, the legal issue at stake here is not so much to establish whether

the Organisation's liability is incurred because it did not detect that the appellant was going to have – or might have – a cerebrovascular accident (CVA), which indeed is what happened in the night of 2 to 3 March 2010, but rather whether it can be held liable for its failure to notice that during the afternoon of 2 March 2010 the appellant had suffered a TIA, an attack which by definition is transient, but which may give reason to fear a subsequent CVA, which can have devastating effects on the life of the person concerned.

1) The witness statements

65. The Tribunal has considered the statements made before it in conjunction with those made during the internal inquiry (see paragraph 33 above); the latter do not contradict the former. It is clear from those statements, first of all, that the appellant did not go to the Organisation's infirmary for what might be described as an "ordinary" feeling of unwellness. Indeed, her condition can rather be considered as justifying the urgent attention that, according to the Secretary General himself (see paragraph 40 above), should be given by the Organisation's medical service even if its role is not that of a general practitioner or hospital emergency department.

The Tribunal offers, as proof of this, the fact that instead of immediately taking herself off to the infirmary, as she would have done had she had an "ordinary" feeling of being unwell, the appellant was obliged to ask a colleague for assistance, and it was even debated whether to call on the fire safety staff for help. Moreover, the facts as related – independently of those pertaining to the appellant's state of health during her stay in the infirmary of the Palais des Droits de l'Homme – notwithstanding a few minor discrepancies, confirm that interpretation. The Tribunal attaches particular importance to the appellant's statement that she could feel herself slipping into unconsciousness, and to the time – almost an hour and a half – that she spent in the infirmary, sleeping. And finally, the nurse did, after all, advise the appellant to see her doctor, a fact to which the Tribunal also attaches some importance; indeed, according to the protocols in force at the time, and which were drawn to the Tribunal's attention, this suggestion would not have been made in the case of an "ordinary" feeling of unwellness, but rather only if, for any reason, medical monitoring of the patient's condition was considered necessary or desirable.

It is true that the appellant did not take this advice; indeed, although she went to her doctor's surgery that same afternoon, she did not stay to wait her turn, but left without seeing the doctor. The Tribunal does not consider this course of action to be enough on its own to exonerate the Organisation from all potential liability, but rather sees it as linked with the fact that her attention was not drawn sufficiently strongly to the importance of consulting her doctor; neither, it seems, did the nurse underline the importance of doing so quickly.

From the nurse's statements before the Tribunal, it also appears that her action was based essentially on what the appellant had said about her state of health at the time of her presence in the infirmary; the nurse herself noted but did not take into

account what she had been told by the appellant's colleague about the appellant's condition just before coming to the infirmary.

66. It also appears from those statements that the appellant was aware from the outset that her condition was urgent and that she underestimated her symptoms, probably due to the fact that the critical phase of the TIA, which by definition is transient, had passed. The Tribunal offers by way of proof the fact that while the appellant did go to her doctor's surgery, she left of her own accord without waiting her turn to see the doctor or having appealed either to the other patients or the doctor himself to be seen as a matter of priority.

From the appellant's statements – which are not, strictly speaking, witness statements, but which are worth reiterating here – it also appears that the appellant, who says she was not in a normal state all evening, did not call a doctor, and that neither did she do so when she suffered her first malaise during the night. Thus it is clear that she herself also underestimated the seriousness of her situation.

2) The expert assessment

67. The expert appointed by the Tribunal maintains in his findings that the Organisation's liability is not incurred as a result of the nurse's behaviour, whom he claims cannot be held responsible for any loss of opportunity. He bases his opinion on two elements: the absence, during the examination of the appellant at the infirmary, of any symptoms that would have allowed a TIA to be diagnosed, and the fact that, while one may regret that the nurse did not mention the possibility of such an attack, she could not in the light of her professional training be blamed for not having done so.

68. Finally, according to the expert, the fact of being immediately taken to hospital as of the afternoon of 2 March 2010 would not in itself have prevented the appellant from having a CVA. However, the expert does not comment on whether, had that been the case, the consequences of the CVA might have been less severe than they actually were due to the rapidity of the treatment.

69. The Tribunal notes, finally, the opinion expressed by the expert in his findings that the Organisation's liability is not incurred. However, the Tribunal does not consider itself bound by that conclusion, not only because in accordance with the Latin dictum *judex peritus peritorum*, the Tribunal reserves the right to assess the facts reviewed during the expert assessment at its own discretion, but also because it is the Tribunal's duty to check whether, above and beyond the obligations of a nurse, the Organisation did everything in its power to provide the appellant with assistance.

3) The conditional request for a second expert assessment

70. The Tribunal considered the question of whether it is admissible to make a request for an investigative measure conditional upon the Tribunal taking one decision rather than another. Indeed, such a procedure would be tantamount to the Tribunal

adopting an investigative measure after ruling on the merits of the appeal, which by definition is not possible.

In his findings, the expert appointed by the Tribunal reaches the conclusion that the Organisation's liability is not incurred. Since the Tribunal disagrees with that conclusion, it does not need to rule on the admissibility of that conditional request for a second expert opinion, or, in the event of finding it admissible, on whether that request should be accepted or not.

B) The merits of the claims

71. Before examining the merits of the appellant's claims, the Tribunal notes that, as indicated above, in order to justify or invalidate the claim for compensation, the question on which the parties focus is that of whether or not the nurse should have known that the appellant was having a CVA. The Tribunal is of the opinion that in order to rule on the claim for compensation submitted to it, it is not this question that needs to be answered, but rather the question – which appears even more relevant in light of the expert assessment – of whether the nurse should have realised that the appellant had suffered a TIA. In order to answer that question the Tribunal must of course bear in mind all the facts in its possession.

1) The appellant's treatment by the nurse

72. The Tribunal accepts the expert's point that given her training, a nurse cannot in principle be blamed for failing to detect a TIA. However, the Tribunal considers that there were a sufficient number of factors in the instant case for the nurse to have been alerted to the advisability of consulting the doctor, who was the only one who could perform a medical diagnosis. Thus, even if, as the Secretary General says, a nurse has an obligation in terms of the means and not the result, the fact remains that in this instance it was precisely this obligation of means that was not complied with. As the Tribunal sees it, that obligation cannot be considered as having been complied with for the simple reason that the nurse, having noted an improvement, confined herself to suggesting that the appellant have someone take her home and advising her to see her doctor "if she wasn't feeling well and if the symptoms were to reappear".

The Organisation's doctor acknowledged that the appellant's symptoms could indicate a CVA, but that they could also be the sign of something else (see paragraph 34 above); however, the fact that a nurse is not "bound" to recognise the signs of a CVA does not absolve the Organisation from liability, since it freely chose the arrangements put in place in the part of its medical service that is located in the Palais des Droits de l'Homme.

That being the case, it is clear that the nurse's behaviour does not exonerate the Organisation from all liability. Admittedly things might have been different – although it is impossible to be sure – if the nurse had sent the appellant to see the Organisation's doctor or called the emergency services. For that reason it must be concluded that the

appellant lost an opportunity to receive hospital treatment from the moment of the occurrence of her first malaise during the night of 2 to 3 March 2010.

73. However, this cannot be considered as the only behaviour that led to the occurrence of the CVA that same night, because the appellant had been warned that it was advisable to contact her doctor if the symptoms should reappear, yet she did not do so. This does not exonerate the Organisation from liability, but it must be taken into account when quantifying the damages to be paid.

2) The lack of a specific protocol

74. The Tribunal notes that this question was not addressed in the expert assessment. From the information provided by the parties, it appears that at the time of the events in question the Organisation did not have a protocol for the management either of CVAs or TIAs. However, it did have a protocol concerning headaches, in which it was mentioned that in serious cases these could indicate the presence of a CVA.

75. The Tribunal cannot rule out the possibility that the existence of a specific protocol for the management of CVAs might have assisted the nurse in her action. Conversely, however, it cannot be inferred that the lack of such a protocol was responsible for the facts in question. Whatever the case may be, one cannot reasonably blame the Organisation for the absence of a specific protocol. The Tribunal therefore concludes that the absence of such a protocol does not constitute a specific breach of the Organisation's rules or of the principles of sound organisation that it is bound by, but may have contributed to the fact that the nurse was not able to give the appellant different advice.

3) Conclusion

76. The appeal is founded and the decision to reject the appellant's claim for compensation must be annulled, even if the appellant is partly responsible for what happened in the night of 2 to 3 March 2010. That responsibility must be taken into consideration when calculating the compensation owed to her.

IV. CLAIMS FOR COMPENSATION

77. Following the filing of the expert assessment, the appellant claims compensation for pecuniary and non-pecuniary losses.

78. Regarding pecuniary loss, she requests compensation for temporary and permanent losses.

79. In respect of temporary losses, the appellant:

a) reserves the right to calculate the health expenses which she claims are difficult to quantify;
b) requests 12 495 euros for loss of earnings from 1 April 2013 to 30 June 2014 ;
c) requests 27 648 euros for human assistance from 23 September 2010 to 31 October 2012 ;
d) claims a sum for miscellaneous expenses from 2 March 2010 to 31 October 2012, which she also reserves the right to quantify.

80. In respect of permanent losses, the appellant:

a) states that she will quantify her future health expenses as soon as her state of health permits her to transmit the documents that are essential for quantifying those expenses;
b) calculates her loss of earnings at 281 797 euros;
c) requests 58 078 euros in respect of expenditure incurred, due to her loss of autonomy, for the purchase of wheelchairs;
d) reserves the right to request the reimbursement of other expenditure incurred due to her loss of autonomy (adaptation of the bathroom, purchase of equipment and taxi fares) as soon as her state of health permits her to transmit the documents that are essential for quantifying that expenditure;
e) requests 257 254 euros for human assistance.

81. Regarding non-pecuniary loss, the appellant requests:

a) 6 450 euros for total temporary functional deficit;
b) 9 295 euros for partial temporary functional deficit;
c) 50 000 euros for the suffering endured;
d) 100 000 euros non-material damage;
e) 20 000 euros for temporary aesthetic damage;
f) 150 000 euros for permanent aesthetic damage;
g) 100 000 euros for loss of amenity;
h) 100 000 euros for loss of the prospect of founding a family;
i) 30 000 euros for sexual detriment;
j) 50 000 euros for professional detriment.

82. Regarding procedural costs, the appellant requests reimbursement of expenses incurred of 8 000 euros. She also requests that the costs of expert assessments and all other expenses incurred by the present proceedings be borne by the Organisation. During the proceedings, the appellant said that her insurance had agreed to cover her costs.

83. In conclusion, the appellant asks the Tribunal for total compensation of 1 253 017 euros and wishes to reserve the right, in respect of temporary pecuniary losses, to calculate health and miscellaneous expenses incurred, and in respect of

permanent pecuniary losses, to calculate future health expenses and other expenditure pertaining to her loss of autonomy.

84. For the Secretary General, even if one were to accept that the nurse's failure to suspect a TIA (totally regressive and hence with no parenchymal damage) could be considered as constituting gross negligence, there is no certain and direct link of cause and effect between that alleged negligence – the existence of which he denies – and the appellant's present condition. For him, therefore, it is out of the question to envisage repairing the full extent of the damages arising as a result of the CVA that the appellant suffered later. The Secretary General's observations regarding the heads and quantum of damages to be envisaged are therefore submitted in the further alternative.

85. First, the Secretary General recalls that in France there is no automatic binding scale for compensation payments and that administrative tribunals and courts of law apply different practices. He therefore deems it appropriate to be guided by the standard in force in the Regional Commissions for the Compensation of Medical Accidents.

86. After pointing out that the appellant received a lump sum disability payment (see paragraph 35 above), the Secretary General contests either the existence or the amount of certain damages, while accepting other claims on the appellant's part.

87. Regarding pecuniary loss, the Secretary General claims with respect to temporary losses that the appellant does not substantiate her claim concerning the existence of health expenses that remain to borne by her. He says that the figure for the loss of earnings should be 12 495 euros, that the cost of human assistance is already covered by the attendance allowance that the appellant receives (see paragraph 35 above) and, finally, that the various transport expenses should be covered by her health insurance.

88. Regarding permanent losses, the Secretary General points out that future health expenses will be covered by her health insurance. As regards loss of earnings – which he notes are to be calculated from 1 July 2014 to the appellant's retirement at the age of 60, and not on the basis of life expectancy – the theoretical loss of earnings is 98 294 euros. The expenses incurred as a result of reduced autonomy should be covered individually for each item on presentation of the invoices and finally, the cost of human assistance after stabilisation is covered by the abovementioned attendance allowance and therefore does not incur costs for the appellant.

89. Regarding non-pecuniary loss, the Secretary General states that:

a) he has no particular remarks on the sum put forward in respect of the temporary functional deficit for the period from 3 March 2010 to 31 October 2012; a reasonable average figure for the temporary suffering endured would be 13 675 euros;

b) since the temporary aesthetic damage does not constitute a major change it cannot enter into consideration, and compensation should not in any case exceed
3 000 euros;
c) permanent aesthetic damage should be quantified at 2 400 euros;
d) loss of amenity should not be confused with a person's condition following an accident, which by definition has an impact on that person's means of mobility; this head of damage therefore needs to be substantiated, but since the appellant does not do so, it cannot be taken into account;
e) the claim that the loss of the prospect of establishing a family has a "direct and definite link" with the accident remains purely hypothetical;
f) compensation for sexual detriment does not appear acceptable, particularly at the amount being claimed;
g) professional detriment is already covered under the loss of earnings head and corresponds purely and simply to that loss of earnings; hence its compensation must be equal to the economic cost of the damage, which is already covered under loss of earnings.

90. The Secretary General does not comment on the procedural costs.

91. In conclusion, the Secretary General asks the Tribunal to dismiss the claims regarding heads of damage that are unfounded and to reduce those which may enter into consideration to more reasonable proportions.

92. The Tribunal notes, to begin with, that pursuant to Article 60, paragraph 2, of the Staff Regulations, it has unlimited jurisdiction regarding disputes of a pecuniary nature. In the case of other disputes it can annul the act complained of. It can also order the Organisation to pay the appellant compensation for the damages resulting from the act complained of.

93. Since this dispute is of a pecuniary nature, the Tribunal does not have to confine itself to annulling the act complained of, while leaving it to the Secretary General to take the necessary measures to execute its decision in order to compensate the appellant, but can rule on the claims as submitted by the appellant.

94. The Tribunal notes, regarding the appellant's claims, firstly that she failed to quantify a number of them during the written procedure. She also failed to quantify them later during the oral proceedings. The claims in question are the ones mentioned in sections a) and d) of paragraph 79 and sections a) and d) of paragraph 80 above.

The Tribunal cannot establish the appellant's right to payment of those claims while giving her the right to quantify them afterwards. Therefore, since these claims have not been supported or justified, they should be dismissed. It is up to the appellant to decide whether she wishes to again request their reimbursement by lodging an administrative request in application of Article 59, paragraph 1 of the Staff Regulations.

95. Regarding her other claims, the Tribunal agrees to the sum of 12 495 euros for loss of earnings under the head of temporary pecuniary losses. Regarding the claim of 27 648 euros for human assistance, the Tribunal decides on the payment, up to and not exceeding that sum, of 50% of the amount that remains to be borne by the appellant, on presentation of the supporting documents.

96. Regarding the claim for permanent pecuniary losses, the Tribunal decides that the loss of earnings is 98 294 euros. The expenses incurred due to the loss of autonomy and the need for human assistance must be reimbursed, on presentation of the supporting documents, on the basis of 50% of the amount that effectively remains to be borne by the appellant.

The Organisation must therefore pay to the appellant the sums referred to above in accordance with the modalities indicated.

97. Regarding the claims for non-pecuniary loss, the Tribunal notes that the total sum for all heads of damage together amounts to 615 745 euros. The Secretary General for his part agrees to pay damages of 19 075 euros.

98. Considering that the Organisation cannot be held solely liable for the accident, the Tribunal considers that it must award under this heading a total sum of 100 000 euros to be paid by the Organisation for the loss of opportunity suffered by the appellant.

99. Regarding procedural costs, the Tribunal considers that it must award the requested sum of 8 000 euros, from which shall be deducted any amounts received by the appellant by way of legal assistance.

V. CONCLUSION

100. The Tribunal concludes that the appeal is founded and that the Organisation must pay the appellant the sums indicated above.

For these reasons, the Administrative Tribunal:

Decides not to order a second expert assessment;

Declares the appeal founded and annuls the decision complained of;

States that the Secretary General must pay the appellant the sums indicated in section IV of the decision in accordance with the modalities described there;

States that the Organisation remains liable for the cost of the expert assessment for which it has already advanced the payment;

States that the Secretary General must reimburse the sum of 8000 euros for legal

expenses, from which shall be deducted the amount received by way of legal assistance.

Adopted by the Tribunal in Strasbourg on 17 March 2015, and delivered in writing pursuant to Rule 35, paragraph 1, of the Rules of Procedure of the Tribunal, on 20 March 2015, the French text being authentic.

The Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
S. SANSOTTA	C. ROZAKIS