

# EPO FLIER No. 37

The EPO-FLIER wants to provide staff with uncensored, independent information at times of social conflict

## Battistelli's record: legal harassment and retaliation

The EPO's current president, Mr Battistelli will long be remembered for riding roughshod over staff's rights and for his acts of revenge against anyone who tried to stop him. Simultaneously acting as accuser, prosecutor and judge, he could count on the zealous assistance of PD-HR Elodie Bergot. His brutal management methods have transformed a former *model international civil service organisation* into an Orwellian dystopia.

### Interference with the internal appeals system

In 2014, the workload of one of the members of the Internal Appeals Committee (IAC)<sup>1</sup> had (been) increased to a point where there was not enough time to fulfill his duties as an IAC member. These duties include "completing opinions or dissenting opinions following the hearings and sessions within the deadlines provided."<sup>2</sup> The member, who had been nominated by the Central Staff Committee (CSC), informed the IAC chairman that he was not able to attend a number of oral hearings because his workload was too heavy, including a significant backlog of dissenting/minority opinions<sup>2</sup>. VP4 and VP5 then publicly accused the CSC's nominees and claimed that they would "not duly support the procedure"<sup>3</sup>. The CSC nominees subsequently resigned from the IAC. PD-HR suspended the (former) member who had suffered from his heavy backlog and threatened another one with a disciplinary measure<sup>3</sup>. The staff made its voice heard through five demonstrations within a single month. They claimed respect for the rule of law and freedom of association.

The IAC continued in a three-member composition - without members nominated by the CSC. Probably not a coincidence: the overall success rate for internal appeals dropped from 25% in 2013 to 11% in 2014 (see table).

In 2015, Mr Battistelli nominated two staff representatives to the IAC who had volunteered for the job upon his request. While the IAC then acted again in a five-member composition, the overall success rate dropped further to 2%.

The three-member composition and the five-member composition with volunteers were both successfully appealed<sup>3,4</sup>. In ILO Judgments No. [3694](#) and [3785](#) the Tribunal found that the

1 The IAC is composed of five members, the chair and two members being nominated by the president, and the remaining two members being nominated by the CSC

2 ILO Judgment No. [3971](#) (see eg considerations 12 and 16)

3 *Non-functioning of the Internal Appeals Committee - the story behind Communiqué 12/16* (SUEPO Munich, 06.12.2016); in a Communiqué of 30.09.2014, VP4 and VP5 said that "CSC appointees are putting artificial hurdles to the daily functioning of the IAC, e.g. providing minority views by documents redoing the opinion, thus duplicating the work already done."

4 [ILO Decisions Said To Confirm EPO Staff Lack Fair Legal System](#) (IP-Watch, 01/12/2016)

composition was not balanced and sent the cases back to the EPO so that they could be examined by an IAC “*composed in accordance with the applicable rules*”<sup>5</sup>.

The non-functioning of the IAC left visible traces in the appeal statistics:

	2013	2014	2015
IAC opinions	25% <sup>3</sup>	11% (20/175) <sup>6</sup>	2% (4/194) <sup>6</sup>
Final decisions	10% (14/141) <sup>7</sup>	2% (18/139) <sup>6</sup>	1% (2/243) <sup>6</sup>

*Table: Development of the success rate of internal appeals (allowed or allowed in part): opinions of the IAC and final decisions taken by the president (the number of cases are indicated in brackets).*

### The president’s decisions on internal appeals

The final success rate, i.e. after decision by the president, dropped from 10% in 2013 over 2% in 2014 to a miserable 1% (!) in 2015. The EPO’s Board of Auditors commented the 2015 numbers with the following words: “*The number of cases in which the Appeals Committee opinion and the final decision of the President differed was lower than last year.*”<sup>6</sup> What they did not say was that the IAC had left only a few occasions where Mr Battistelli could deviate from their recommendation, unless he wanted to reverse some of the IAC’s negative opinions to demonstrate his ‘immeasurable goodwill’ towards his staff.

### Investigations, suspensions and disciplinary proceedings

In December 2014, President Battistelli suspended a Boards of Appeal (DG3) member and imposed a house ban on him. During the preceding secretive investigation, the Office had made use of cameras and keylogging in a semi-public area, and the investigative unit had consulted the data protection officer *retroactively* to have their covert surveillance action authorised<sup>8</sup>. In 2015 and 2016 the president and the Administrative Council (AC) made three attempts<sup>9</sup>, all spectacularly unsuccessful, to have the board member removed from office.<sup>10</sup> They retroactively changed the regulations so that the DG3 member could be suspended for longer. During the disciplinary proceedings, the president refused the accused the right to hear witnesses<sup>10</sup> - demonstrating a terrifying disregard for legal process in what is in effect an organisation set up to implement a set of laws. In December 2017, through Judgments No. [3958](#) and [3960](#) the Tribunal quashed the suspension, and observed - in highly critical tones for the ILO - that the president had a major conflict of interest so that he should not have been involved in the matter.

2015 saw public demonstrations of Munich staff, organised by the staff union SUEPO, in an almost monthly rhythm. In November 2015 president Battistelli suspended three staff representatives

5 These judgments forced the EPO to reform its internal justice system. This was done through CA/D 7/17 which stipulates that the IAC shall be chaired by external judges or lawyers. But the current system still contains some significant flaws; see eg [EPO-FLIER No. 31 Reform marathon continues](#), 27.06.2017 ([www.epostaff4rights.org](http://www.epostaff4rights.org))

6 Reports of the Board of Auditors of the European Patent Organisation on the 2015 and 2016 accounting periods ([CA/20/16](#); [CA/20/17](#))

7 *Report on the European Patent Office’s review and internal appeal procedures* ([CA/21/15](#))

8 [The so-called data protection officer of the EPO signed off on keylogging, hidden cameras](#) (FOSS Patents, 14.06.2015); <https://www.scribd.com/doc/268613394/EPO-Data-Protection-Officer-Authorizing-Surveillance>

9 [Art. 23 1/15, Art. 23 2/15 and Art. 23 1/16](#) (Wikipedia)

10 [Remember the House Ban? How two years flies past](#) (The IPKat, 17.11.2016)

(committee members of SUEPO Munich) and imposed a house ban. A few days later, two officials of SUEPO The Hague were summoned to make statements before the EPO's Investigation Unit, sent by the president. The Register noted that *"it was the mass protest that appears to have been the spark that led the heavy legal response from the EPO."*<sup>11</sup>

In January 2016, after disciplinary proceedings based on secretive investigations, President Battistelli fired two of the suspended Munich staff representatives and downgraded the third<sup>12</sup>.

Various newspapers and TV programmes<sup>13</sup> became aware of the situation and reported on the continued staff protests and the machinations at the EPO. In a letter<sup>14</sup> to the AC, the Dutch Institute of Patent Attorneys criticised Mr Battistelli for his *"intolerant and destructive people management style"* and expressed that they *"sincerely believe that the current situation at the EPO has spun out of control by the actions of its President."* They urged the Administrative Council *"to stop the President of the EPO from continuing these unproductive and destructive practices."*

In March 2016, the AC passed a resolution<sup>15</sup> instructing the president *"to ensure that disciplinary sanctions and proceedings are not only fair but also seen to be so"* and *"before further decisions in disciplinary cases are taken, to [...] make proposals that enhance confidence in fair and reasonable proceedings and sanctions"*.

But in November 2016, despite the Council resolution and all other protests, President Battistelli fired another staff union representative, this time an official of SUEPO The Hague.<sup>16,17</sup>

In a letter<sup>18</sup> to the Netherlands Parliament, Dutch foreign minister Bert Koenders claimed that the social situation at the EPO would have to improve soon and the disciplinary measures taken against staff union officials should be reconsidered.<sup>19</sup>

## **What comes next?**

The ILO-AT has the final say. It held its 126<sup>th</sup> Session from 23 April to 18 May 2018. The Tribunal's judgments on several prominent cases will be delivered in public on 26 June 2018 at 3 p.m.

The pattern of institutional harassment and retaliation against staff union officials cannot have escaped the judges' attention.

But the last batch of ILO judgements caused more than a few raised eyebrows as they seemed, if not to condone the aggressive actions of the EPO management, at least to avoid expressing any strong criticism, let alone providing anything that would resemble any meaningful relief to the appellants. Hopefully this was just a "blip" and more measured decisions will be handed down in the 126<sup>th</sup> Session.

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11 [http://www.theregister.co.uk/2015/11/30/european\\_patent\\_office\\_launches\\_lawyers/](http://www.theregister.co.uk/2015/11/30/european_patent_office_launches_lawyers/)

12 [Sanctions contre les représentants syndicaux à l'OEB : une honte et une profonde injustice](#) (Pierre-Yves Le Borgn, 17.01.2016)

13 [Protest tegen 'intimidatie' bij Europees Octrooibureau](#) (NOS Nieuwsuur, 28.01.2016); [TV report with subtitles](#)

14 [Letter on behalf of the Dutch Institute of Patent Attorneys \(Orde\) to AC chairman Jesper Kongstad](#) (12.02.2016)

15 [RESOLUTION ADOPTED BY THE ADMINISTRATIVE COUNCIL ON 16 MARCH 2016](#)

16 [Firings will continue until morale improves - Mempel revisits the EPO](#) (The IPKat, 07.11.2016)

17 [Report From Yesterday's EPO Protest at The Hague, Which Several Politicians Attended](#) (25.11.2016)

18 [Letter of Dutch Minister of Foreign Affairs Bert Koenders to the Netherlands Parliament](#) (23.02.2017)

19 [President Battistelli under pressure to improve 'unacceptable' social situation at EPO](#) (Kluwer blog, 21.03.2017)