

28 March 2016, 18:59

European Patent Office: Woeful lack of law

"A public authority on the brink of the abyss", of 3 March:

"[European Patent Office](#)" (EPO) is a "super authority" – at least according to the head office – which is established on the soil of Munich. But the power games being played out at the EPO go way beyond local considerations, beyond the intrigue aroused by an obviously power-obsessed boss, and well beyond the interests vested in Munich, Bavaria, and even Germany; they are of major (European-level) importance politically, and of major significance with regard to constitutional law. The cause and core of the scandalous spectacle being enacted on the bank of the River Isar appear to lie in the "immunity" which the EPO was granted in its foundation charter by the states which support it, as an authority which is most specifically not EU. Or the way in which EPO President Benoît Battistelli interprets and applies this "immunity" unimpeded by his Administrative Council, on which the Federal Minister of Justice actually sits; the clear establishment of total autonomy, exempt not only from all straightforward rules of law of the host and location country (such as the law relating to protection against dismissal, law relating to labour tribunals, and many more besides), but even exemption from all protection of basic rights, such as are enshrined in the Bavarian Constitution, the Basic Law (GG) of the Federal Republic of Germany, and in the European treaties and statutes.

It is bad enough that, in the heart of Bavaria, so proud of its constitution, as described by the *Süddeutsche Zeitung*, a situation could come about in which the presidential will alone prevails, a wilful domination which commits aggressive abuses against, among others, Article 9 Para. 3 GG (Freedom of Formation and Action of Staff Unions); but it is utterly intolerable that the decisions by the President, taken against individuals against this spirit of freedom, which in individual cases threaten their very existence, are not subject to any appeal by way of any effective outside or independent means of legal recourse.

Every German politician, when journeying in totalitarian or otherwise suspect countries, is beset on all sides when on their travels by demands to push hard in favour of the Western "export asset of the state governed by law". But at the same time, amazingly, they turn a blind eye to the fact that on their own soil an institution exists which denies thousands of employees the essential constituents of that notion of the state governed by law, such as the guarantee of legal recourse and the protection of basic rights. What this means is that, leaving aside all the complexities of international law, the status of the EPO becomes a matter of honour for all those whose task it is to promote the notion of the state governed by law to pursue this not only abroad, but right here, on their own territory, and, if necessary, as in this case, to bring it about. This includes, as a priority, the Minister of Justice, by virtue of his office. But every other constitutional patriot should be urged to this as well – and not least in the media. Even if the present issue could be "cleared up" by a potentially expensively purchased (the *SZ* reports rumours of a golden handshake of 18 million Euro) or forced departure of President Battistelli, the situation cannot be allowed to remain that the Member States allow their EPO to continue to operate outside the constitutional principles of Europe and of the individual states. *Dr. Hans-Joachim Frieling, Munich*