

## Fear, Bullying, Sackings

**Munich (DK) At the European Patent Office in Munich, the conflict between the President and the staff is escalating. There is widespread talk of human rights violations, and of being spied on, like the Stasi secret police. But the police and the office of the State Attorney are unable to intervene, because the Office enjoys immunity. Today could be the day of reckoning for the management.**

The decisive clause is in Article 8 of the European Patent Convention. This governs the immunity of the European Patent Office (EPO). What exactly falls under this ruling is specified elsewhere: It is written there for instance that “The authorities of the States in which the Organization maintains premises may only enter these premises with the agreement of the President of the European Patent Office”. Put plainly, this means that although the headquarters of the European Patent Office are located in the middle of Munich, beside the River Isar, no German laws apply there. The Convention, an agreement ratified by 38 European states and forming part of international law, stipulates that no police, state attorney, or other national or state body is allowed access. “If the legal protection of an organization is set down in the conventions, then German courts don’t get a look in,” emphasises Sebastian Kolbe, an expert in labour law from the Catholic University of Eichstätt. Former Constitutional Court judge Siegfried Bross even goes so far as to say that, with intellectual constructs like these, Guantanamo could be replicated on German soil.

For many of the staff at the European Patent Office, over the past few months this immunity ruling has become something of a nightmare. Within the Office a bitter conflict has been raging between the management under President Benoît Battistelli, a Frenchman, and a large section of the workforce. And the workforce cannot count on making any recourse to national courts. There are plenty of employees who talk about the fear that reigns among them, but no-one dares to be quoted by name for fear of reprisals. The Office itself flatly rejects any connection between five suicides which have occurred among staff members in the past four years and the circumstances which prevail at work. According to an EPO spokesperson, the Office has worked very closely with the families concerned. “In none of the cases could any causal connection be established between the work and the tragedy.” He went on to speak of the cases being used for exploitation.

It is true that the EPO staff are for the most part very high earners, as well as enjoying a number of taxation privileges. “But anyone who quits or is dismissed, loses everything,” says one female employee, as the Office has its own social security system and its own schools. Handing in one’s notice means that the children have to leave their school, and there’s no unemployment benefit – not even Hartz IV. Pension claims can be curtailed too.

The conflict is taking no hostages. Among other things, in the past few months two staff council members have been sacked, who were also leading members of the in-house staff union Suepo, and a third has been downgraded. The accusation against them was alleged defamation of the Office, and having bullied a colleague on the staff council. “An individual and serious instance of misconduct was brought to light,” according to the EPO press office. The sackings are said to be the result of a proper

disciplinary procedure, and apparently had nothing to do with the fact that the people concerned were members of the staff council.

What under German law would be virtually impossible, given the high degree of protection of personnel representatives afforded by labour legislation, is possible within the EPO with relatively no trouble at all – throwing out a member of the staff council. Their status is hardly comparable with that of German staff council members, though: The staff council is indeed consulted on some issues, and can submit recommendations, but according to the EPO Code it has no rights of joint discussion with any binding effect.

The background to the dispute lies in the reforms which Battistelli, armed with very wide-reaching powers, has been pushing through since his appointment to office in 2010, and with which he aims to make patent examination more efficient. Many of his measures have incurred resistance from the workforce, and there have even been claims of infringement of human rights.

One bone of contention, for example, is a new ruling regarding sick pay. According to the Federal Ministry of Justice, which is responsible within the Federal Government for the EPO, this ruling stipulates that employees who report sick must be at home between 10.00 and 12.00 hours and between 14.00 and 16.00 hours, which the Office is entitled to check on. According to a Ministry spokesperson, however, the EPO has hitherto restricted this to absolutely exceptional cases.

Suepo represents the situation as substantially more serious. Sick employees are only allowed to leave their homes for visits to a doctor which have been notified beforehand, even if the illness lasts for weeks or months. It seems, too, that the doctor appointed by the Office must be allowed access to their homes. The Office spokesperson's response is that the EPO is an international organization, and would therefore be unable to abide exclusively by German practice. In other Member States, it seems that such rulings are entirely normal. Their aim appears in any event to achieve reform: According to the EPO, since the introduction of the ruling levels of absence due to illness have been "quite substantially reduced".

Added to this is the "Investigative Unit", which according to Suepo is notorious in the EPO and regarded by staff members as "worse than the Stasi". According to an internal guideline, accused persons are obliged to provide unrestricted co-operation with the Investigative Unit, and the right of refusal of testimony does not exist. The investigators have the right, if improper conduct is suspected, to search offices and examine computers. Suepo speaks of "police state methods", and criticizes the fact that the investigating personnel report only to the President, who is therefore legislator, prosecutor, police and judge, all rolled into one. The Ministry of Justice, according to its own assertions, has several times called on Battistelli to change these guidelines, but so far without success. The risk of self-incrimination, and the prohibition on involving an attorney in the preliminary investigation, are seen as particularly unacceptable. Conversely, the Patent Office is emphatic that Battistelli is prepared to discuss these guidelines. 2016 is said to be the year of consolidation and assessment of the reforms.

The possibilities of Suepo having any effect on the Office are, however, limited. The Union is not recognized by the EPO as a negotiating partner, although it maintains

that it represents almost half of the 7,000 or so employees. Instead, at the beginning of March the Patent Office announced a “trail-blazing agreement” with the FFPE-EPO union. President Battistelli spoke of a “milestone in the resumption of the social dialogue”. It seems that from now on the union will be formally recognized as a social partner.

But the FFPE-EPO only numbers some 75 members, and is said to be restricted to the EPO base at The Hague, according to Suepo sources. On the FFPE-EPO homepage, between its establishment in 2008 and the announcement of the concluding of the agreement a few days ago, there is not a single entry. The union did not respond to an enquiry. The Patent Office, however, stresses the fact that the little union is an offshoot “of one of the largest unions in the European public service sector”, and hails the agreement as the beginning of a closer relationship with the unions.

At the same time, Benoît Battistelli made it known in the press release that the "Memorandum of Understanding" signed with the FFPE-EPO is apparently open to all other unions within the European Patent Office. An invitation which Suepo has declined with thanks, since it views the agreement as an “agreement to gag”.

What happens next is at present unclear. Today and tomorrow the Administrative Council meets, which comprises representatives of the 38 Member States. Up to now, they have stood behind the President, but most recently there have signs that they will no longer be covering his back. By way of example, media reports suggest that the Danish chair of the Administrative Council, Jesper Kongstad, has been calling on Battistelli to improve the atmosphere at work, and to allow for an external investigation of the measures taken against the three union executives. Until then, the disciplinary measures should be lifted. In a letter from Kongstad to the other members of the Council, which is doing the rounds on the Internet, he complains that a serious dialogue with Battistelli recently proved impossible, because he left the meeting prematurely. In response to the question as to whether Battistelli is still the right man for the job, the Justice Ministry spokesperson was evasive: “It is also in the interests of President Battistelli to restore social peace in the EPO. To this end, the German side is in regular dialogue with him.”

If the President does not agree to the dismissals being investigated, the Suepo executives still have the possibility of recourse to the International Labour Organization (ILO) in Geneva, but it could take years for a decision to be forthcoming from there. The workforce at the Patent Office appear determined to continue the fight. Last week, 91 percent of more than 4,000 participating employees voted for a strike. Before that, though, the decisions by the Administrative Council will be awaited.

*Donaukurier*