

## European Patent Office

### The President Repells A Fundamental Right ?

**E** PO President Battistelli's HR policy reveals a serious lack of understanding of fundamental rights of workers, in particular their right of association in the form of a trade-union.

A large proportion of the 7000 employees of the EPO are members of the Staff Union of the EPO "SUEPO", a member of USF. In the past, SUEPO detained an undisputed right to launch strikes to defend the collective interests of staff, and never abused it.

#### An attempt to silence staff representation

Mr Battistelli suddenly decided that the existence of an independent trade-union within EPO, able to organise successful strikes, was not of his liking. However, instead of simply prohibiting SUEPO to act inside the EPO, he opted for less visible, but very effective measures : according to a new internal rule in force since 1 July, a strike can only be launched by the trade-union if a minimum number of SUEPO members equivalent to 10% of all EPO staff, ie 700, have voted beforehand in favour of the strike. The consequence is that any group counting less than 700 employees is simply stripped of their right to strike, be it a specific place of employment (two of the four EPO agencies, Berlin and Vienna, count less than 300 employees), or a specific category of staff numbering under 700 members on all places of employment. Furthermore, the "secret" union ballots organised to check the number of SUEPO members willing to go on strike are put under the control of the administration through an ad hoc committee composed of EPO representatives and other non-Union representatives. Because SUEPO representatives are, of course, bound by data protection considerations directly derived from fundamental rights, the list of SUEPO members cannot be disclosed to non-SUEPO representatives and the ad hoc committee makes any strike action organised by SUEPO completely impossible.

Simultaneously, staff representatives were deprived of the means to communicate freely with staff, again through an indirect measure in the form of a limitation to 50 addressees (out of 7000 !) per message. Even the staff committee can only circulate messages after due authorization of the administration, which can thus exert censorship on these messages.

The EPO President has simply decided to do away, single-handedly, with several well established principles of European and international law - European Convention on Human Rights, ILO Conventions 87, 98, 151 and Art.28 of the Charter of Fundamental Rights of the EU

- some of them enshrined in the Treaty of Lisbon and concretized in various EU directives and regulations. What is worse, the Member



States of the EPO, including the 28 EU Member States seem to be approving this policy and the breach of EU fundamentals : it will be interesting to follow how these signatories of the ECHR, ILO Conventions and UN acts, will advocate the European understanding of fundamental rights all around the globe, where breaches are normally only committed by authoritarian regimes.

#### Call for strike

Indeed, the added-value of his action for the EPO seems to be rather negative and should the aim be to stop staff to go on strike, then this aim was not at all achieved : SUEPO did not organize petitions under the new rule because we do not want to lend any legitimacy to that document by actually using it. However, far from silencing EPO staff, the direct attack against trade-union activity has triggered the LIFER1 initiative set out to challenge the restrictions imposed on the work of the unions (all unions) and the autocratic and antisocial policies introduced by the Battistelli administration. At the beginning of September, a group of 1095 colleagues signed a petition to allow a strike. We take note of the impressive result of the ballot and congratulate the petitioners and Staff for their strong statement.

#### The Vote

The administration organized the polls in a very cumbersome and dissuasive way. The ballot included an "I have no opinion" answer, which would be counted against the proposal. Polling stations were manned by members of the personnel department ; in addition they were supervised by security wardens as well as by managers. The polling stations were small, and the process so slow, that at times long queues formed.



Sylvie Jacobs  
Présidente de l'USF

## The result

All hopes President Battistelli might have had that the quorum would not be attained, or if it was attained, that the results would have been at least inconclusive have been swept aside by the results : despite all the hurdles, a massive 4640 employees (close to 70% of all EPO staff) voted. This is overwhelming, even more so if we con-



sider that some colleagues were absent (without having had the opportunity to set-up a proxy) and it may have been considered too risky for contractors and probationers to vote. This means that nearly all who were in a position to vote actually did so, and of those who voted,

an amazing 90% (4184 of 4640) gave a clear YES ! A vote on strike action has turned into a vote of non-confidence. The message is clear : EPO Staff does not want to live and work in a despotic environment.

A strike was organised, amongst others, on 17th October 2013, the 40th anniversary of the signature of the European Patent Convention EPC, the



founding act for the EPO success for more than three decades : in Munich, the EPO building was deserted while a place was renamed by the Mayor of Munich in the honour of EPO : one can wonder how the EPO President explained to the attendants of the ceremony the absence of his staff and how the abolition of fundamental workers' rights at the EPO provides the EPO

with a good start into the next decades.

## The Consequences

It is now crystal clear that Mr Battistelli's HR "policy" is a dismal failure. In a normal "social democracy", those responsible for such failure not only could, but would resign from their post. We are all entitled to expect senior managers to seriously consider their positions, or risk to be removed from their posts. We are also entitled to expect that the Council finally takes its responsibility and keeps a watchful eye over Mr Battistelli's behaviour until a new President is appointed.

## The position of SUEPO

SUEPO and USF consider Circular 347 (the rules regarding strikes) an illegal attempt to limit the work of legitimate staff unions and their representatives. We will challenge the validity of these measures until they are finally repealed and until SUEPO is properly recognized and respected as a negotiating social partner.

The decisions are being challenged by SUEPO through internal channels - but the competent court, the ILOAT in Geneva, is anticipated to produce judgements with a delay of up to 15 years ! On top of those, external cases are therefore being launched by SUEPO and USF before national courts. These appeals are designed to be carried, if necessary, to the highest Federal Courts and the European Court of Justice.

The President now has to bear the consequences of his choices and explain to the Administrative Council why a strike had to be launched to defend the right to strike !

We now look forward to :

- Further steps as a consequence of the LIFER initiative ;
- Radical changes in the highest echelons of the EPO ;
- Bona fide negotiations between the (new) administration and all social partners.

SUEPO supports all claims put forward in the context of the LIFER initiative and wishes to remind the President that SUEPO remains open to genuine social dialogue.