

# LET NO MAN JUDGE ...

International organizations often offer jobs to die for. But cases of arbitrary actions and bullying are piling up, with legal immunity preventing any action being taken to stop them

By **PETRA SORGE** Photos **DIRK BRUNIECKI**

**Petra Sorge is a freelance journalist in Berlin. Her work has already taken her to many countries, and in 2017, with support from the European Journalism Centre, she investigated the Indian mining sector. But it was in Munich that she found out for the first time just how little employees can rely on the ILO, the International Labour Organization.**

The right to legal recourse for Irishman Patrick Corcoran, 54, ends shortly after the Munich-Haar turnoff on the A 99. This is the territory of the European Patent Office (EPO), and even the German Basic Law no longer applies here. For years Corcoran had worked for the Boards of Appeal of the EPO as a judge, essentially deciding on whether patents had been correctly granted. That was until December 2014, when he fell under suspicion of having leaked internal information, and having slandered leading personnel at the Office. Corcoran was suddenly a kind of Number One Enemy of the State on the supranational territory. Frenchman Benoît Battistelli, President of the EPO, started a campaign of vengeance: He set spies on the Irishman, banned him from entering the building, engaged lawyers. Corcoran is today professionally ruined and psychologically shattered. The case of Judge Corcoran is a drastic example of what can go wrong not just at the European Patent Office, but at many other supranational organizations as well, such as the United Nations or the World Trade Organization. Because the organizations themselves, as well as their executives and employees often enjoy immunity, places come into being which are essentially almost outside the law, where only the rules apply which the particular organization has created for itself. If all goes well, the conditions of the job are something to dream about. But what happens if a system of despotic government comes into being within these authorities, under which nobody can protect themselves against pressure, bullying, or even contraventions of human rights?

The fact that there is more than just the Corcoran case has been shown in the interim by the 42<sup>nd</sup> demonstration by the international staff union at the European Patent Office (SUEPO). Some 300 employees gathered for the most recent event in March. They were not permitted to demonstrate on the premises of the Munich headquarters of the Office on the bank of the River Isar, and were diverted onto the street, blocked off by the police, in front of the black box of a building dating from the 'seventies. SUEPO are accusing the Patent Office of using these tactics to restrict freedom of opinion and right of assembly, and they decry what they call the "autocratic management style" and "censure" of EPO boss Battistelli. Their slogan is a demand for nothing less than "basic rights now!" According to the Union, it has recently lost almost all its leading personnel: The General Secretary in The Hague has been dismissed. In Munich it met the President and the Vice President. The Treasurer has also been downgraded. SUEPO says that they were all only doing their jobs as staff representatives.

**Photo: Stephan Elleringmann/Laif (pages 74 to 75), Antje Berghäuser (Author)**

Are staff representatives being bullied out of a job at the EPO? The EPO Directorate, to which a German citizen also belongs in the person of Vice President Raimund Lutz, General Director for Law and International Affairs, denies this. According to them, SUEPO have "always rejected" any serious attempts at dialogue on the part of the management. Not only the union, however, but also former Federal Constitutional Court judge Siegfried Bross, consider much of what goes on at the five

locations of the European Patent Office in Munich, Berlin, The Hague, Vienna, and Brussels as being unlawful. He says that “human rights are frequently being violated.” On instructions from US pharmaceutical concerns, Bross has prepared a thick dossier as an expert opinion on the status of the European Patent Convention with regard to constitutional law and the notion of a state governed by law, the act which led to the establishment of the Office in 1977. The task which was defined then was that the EPO should create incentive for companies to pursue innovations, and thereby secure jobs in Europe. In times of trade wars between the USA, China, and Europe threaten, this is needed more than ever.

**THE DRAMA IS BEING PLAYED OUT** on a stage without spotlights. A place outside the law, because the immunity of the supranational EPO circumvents any judicial supervision or control. President Battistelli, however, rejects the role of the villain of the piece. He sees himself in the role of the victim. The Press Office maintains that: “Since the introduction of the reform process, the EPO has been subjected to an unparalleled campaign of defamation”, with which the Office, and in particular its top management have been “seriously discredited”. The methods include “a personal smear campaign, defamations, personal threats, false information”. And the aim is “to damage severely the reputation of the Office”. Internal circulars bear this out: The Office is afraid of a campaign not only against Battistelli, but also against his second Vice-President, the Croatian Željko Topic. One of the chief suspects as far as the Office is concerned is Patrick Corcoran. Like all other EPO staff, he is not allowed to talk to journalists. *Cicero* does, however, have three reports in its possession, classified as “confidential”, concerning his case and dating from April and May 2016, totalling more than 180 pages. They are based on forensic analyses by the Investigative Unit, an EPO intelligence-gathering body, which almost has the powers of a secret service. According to the reports, the team secretly monitored Corcoran’s E-mails and PC’s, combed through his office, seized his private USB stick, took fingerprinted. The EPO service regulations allow for the Unit to be brought in if there are accusations of defamation or molestation. In the Corcoran case, even people who were not involved at all were also put under scrutiny: The investigators prepared a publicly accessible computer with key loggers, which copy what the users are doing.

With Patrick Corcoran, according to the outcome of the trace analysis, “several thousand” files had been found. He was said to have sent numerous E-mail to senior State officials, Government leaders, journalists, or the European Parliament, apparently warning about “corruption in high places” and “nepotism”, and about a “Balkan Affair” involving Battistelli and Vice President Topic. Corcoran admitted having copies of these E-mails, but disputes having written them. The only factor which might contradict this is the sheer volume of the data. President Battistelli nevertheless ordered the suspension of the Irishman, on grounds of defamation. In these situations, EPO judges are not answerable to the Presidium but to the Administrative Council, which is intended to ensure internal independence. The Administrative Council agreed to the measure after the event, which is also against the regulations, and applied three times to the body of judges responsible, the Enlarged Boards of Appeal, to which Corcoran also once belonged, to have him suspended from office. But the judges declared the applications to be inadmissible, although they were obviously put under massive pressure by Battistelli. “All the members present of the Enlarged Boards of Appeal” regarded themselves as “under threat of disciplinary measures”, according to the decision of June 2016. “This undermines the fundamental principle of court independence.” Experts in international law have long criticised the fact that bodies of judges in many international organizations are not truly independent. The judges of such courts, such as at the World Trade Organization or the United Nations, are in most cases only temporary appointments, writes the Geneva-based attorney Matthew Parish. They are, however, often appointed by the head of the organization “against whom the complaints are being laid”. At the EPO, Benoît Battistelli accordingly ignored the Corcoran judgment. He persisted with the ban on entering the building, and together with Željko Topic even took out a private prosecution before the Munich Regional Court on grounds of defamation. In vain: There was apparently no proof that Corcoran was the originator of the E-mails, according to the findings of the Court in November 2017. But if Corcoran had not written the E-mails, then why were other obviously unhappy employees

seeking an outlet to the outside? The conditions at the European Patent Office really do make it sound like the dream job: A patent examiner earns about 11,000 Euro a month, tax free. Since 2011 the salaries have gone up by 15 percent, says the EPO. Added to that are special payments and services, school money for the children, and the status of immunity. The only problem is that anyone who loses this has a bottomless pit to fall into: Insurance, pensions, disability benefits – everything depends on one institution.

***Left: Former judge at the Federal Supreme Court Siegfried Bross is making serious accusations***

***Top: No German labour law applies at the European Patent Office in Munich***

**WHEN BATTISTELLI BEGAN** to trim the Office towards maximum efficiency, the mood at the EPO started to go downhill. Since he took office in 2010, he has increased the number of patents approved by 82 percent, to 106,000 in 2017, a new record. And, according to the Office, with operational costs coming down. He achieved this by introducing a new performance-related remuneration, and by screwing performance targets higher and higher. This year, according to the union, the staff are again supposed to commit themselves to a productivity increase, up by 10 to 20 percent over 2017. Battistelli is also congratulating himself on having days off sick cut by 40 percent. He has established medical snooping and monitoring units. A regulation – Circular 367 – states that persons off sick must be at home daily from 10.00 to 12.00 and from 14.00 to 16.00, in case the Office doctor comes knocking. Anyone who is not at home is threatened with sanctions, including patients suffering from depression or burnout. Munich attorney Alexander Holtz counts up how many basic rights this ruling is infringing: “First, the general right of personality, second the right of integrity of the place of residence, and third also the needs and rights of family members, are all affected.” The Press Office states that: “The reforms will secure the future of the Office and make the EPO into a European success story”. The “success story” also includes the fact that in the past six years five employees have committed suicide. It has even happened directly at the place of work: According to SUEPO, at The Hague one man jumped out of the office window, and another hanged himself on the last day of his holiday. The union sees a connection with the Battistelli reforms. The EPO states that it is “most deeply concerned” about the suicides. But “against all principles of collegiality”, a number of isolated individuals have exploited the incidents “for political purposes”.

Why this unconditional growth course adopted at the Patent Office? All for the economy, and for Europe as a place of and for ideas? Even the world of industry is taking an increasingly sceptical view of this. At the end of 2016, the economic attorneys magazine *Juve* asked 168 technology companies how they assessed the quality of the patent issuing procedures at the EPO. 54 percent said that they were dissatisfied. A slim majority of 50.2 percent also saw defects in the appeal procedure. The question of how independent these are is at the present time also a cause of concern to the Federal Constitutional Court: Karlsruhe reports that four actions are pending relating to inadequate legal protection against decisions by the Boards of Appeal.

Munich patent attorney Gero Maatz-Jansen from the firm of Grünecker says that the EPO must not be allowed to become a profit centre. His expectation is that patent examiners should take their time to examine innovations thoroughly. His agency applied submits around 3,000 patents to the EPO annually. In earlier days, about half of these would have been granted; last year this suddenly shot up to more than 2,500. Maatz-Jansen is sceptical about this: “If the monopoly right which the applicants thereby acquire is examined too carelessly, and therefore cannot be put to use, then it’s worthless to them.” This poses a threat to the entire patent system. Has each of the patents really earned its name? Many EPO patent examiners have in the meantime begun issuing warnings themselves that they can no longer ensure the quality of their work. In mid-March, 924 of them wrote an open but anonymous letter, certified by a notary, to the Administrative Council: They were “far too often forced into the dilemma” of either striving for high quality or subjecting themselves to the orders from their superiors. The fear of sanctions is substantial. One of the few to speak out about the procedures at the EPO is Roland Klausecker, 44, a character with a three-day beard and a polo shirt. He calls by Skype

from South Korea, where he works for car suppliers Schaeffler as Asian Regional Manager, Director of Tools and Prototypes. Following an accident, Klausecker is severely disabled by 18 to 100 percent: On his left side he is minus a hand, the sight in one eye, and his ear is also severely damaged. On the right side he is missing parts of his fingers. This has never impaired his performance. Klausecker studied production engineering at the University of Erlangen, became a member of the scientific staff, and then applied to the European Patent Office. He passed all the admission tests, and the specialists and experts were highly satisfied. The Office doctor had reservations: Klausecker was said to be fit for work, but the possibility could not be excluded that at some stage his right hand might be overstressed by working on the PC. Klausecker was screened out.

## THE ORGANIZATION OF THE EUROPEAN PATENT OFFICE

**Member States**

**European Patent Office**

*monitors*

**Administrative Council**

**European Patent Convention**

**Boards of Appeal**

**Left: The staff have already demonstrated 42 times – to no effect**

Had a German business acted like that, the legal system and anti-discrimination authorities would have reacted, with alacrity. Not so the European Patent Office. Klausecker took legal action. He was convinced that he had been discriminated against. He considered himself to be extremely fit: In 2010 he climbed Island Peak, a six thousand metre mountain in the Himalayas. In 2006 the Federal Constitutional Court declared that it did not have jurisdiction in the matter, because the EPO enjoys immunity. The European Court of Human Rights came up with a similar argument in 2015: The claim was inadmissible, because the EPO is a “legal person” and “not a party” to the European Convention on Human Rights. The Munich Office is therefore not bound by the document which the 47 Member States of the Council of Europe with their 820 million citizens all signed. For ten years Klausecker fought his legal fight, and the result was nothing. His court campaign makes it clear why it is almost impossible for employees, applicants, companies, and also ordinary citizens to pursue their rights with any success against an international organization. The ex-Constitutional Court judge Siegfried Bross summarised the legal situation surrounding the European Patent Office like this: “With such an organizational structure of an international organization, it would be possible, quite legally, to operate a Guantánamo right in the middle of Munich”. The Irishman Patrick Corcoran, in any event, sees himself as a victim of character assassination. A leak seems to have been responsible for this. In October 2015 the *Süddeutsche Zeitung* reported that “something unbelievable” had apparently been found in his office: “Two clubs – and National Socialist propaganda material”, including nationalist songs and “prohibited emblems”. The newspaper attributed the findings to the EPO internal investigation unit.

**WHERE DID THIS REPORT COME FROM?** Did Battistelli make use of the press for his own personal game? Is Corcoran a right-wing extremist? His attorney, labour lawyer Senay Okyay, rolls her eyes at the question. “I would never defend anyone with right-wing extremist views!”. The young attorney sits in her somewhat unassuming office in Munich’s Stachus district. The walls are empty, but her desk is all the fuller. Files relating to EPO employees, including Patrick Corcoran. She says: “Yes, my client is a history geek, and he has collected historical material about Germany. But am I also a Nazi because I’ve got a book at home about Hitler?” What is striking in any event is that a month before the SZ article appeared the Enlarged Boards of Appeal had rejected Corcoran’s suspension from office.

Neither this, nor the other judgments exonerating him have ever been published by the Office, which contravenes the Statutes. Instead, the leak reached the public. Although Corcoran was publicly pilloried, he did win another valuable judgment, before the Geneva-based Tribunal of the International Labour Organization, the ILO, the only court which might be in a position to plug the legal loopholes with regard to the supranationals. It is responsible for 58,000 employees in 62 international organizations. The snag: It is focused only on the legal framework which the international organization itself provides. British star attorney Geoffrey Robertson, who also defended the author Salman Rushdie, is convinced: The ILO court does not fulfil the human rights standards at issue. Not only because here too the judges can be caught out by their short terms of office, always only three years. Nor is there any “fair and open legal hearing”, since the judges decide on the presentation of records alone. Errored decisions cannot be scrutinised. There is no appellate instance. Corcoran only won before the ILO Tribunal because the EPO disregarded its own rulings and infringed the internal separation of powers. The judges decided that the Irishman should be “immediately” reinstated and that he should be paid 35,000 Euro in compensatory damages. To date, the EPO is refusing to give him back his old job. In February he was apparently offered a place at The Hague which was entirely divorced from his area of expertise, and 850 kilometres away from his home – “pure bullying”, says attorney Okyay. In between Corcoran has become ill, suffering, like a lot of people at the EPO, from severe depression. Okyay says: “My reward is that at least he’s still alive.” The ILO Tribunal is in reality powerless: It has neither the power to impose sanctions nor to enforce judgments. Even the suicides at the EPO did not come up for discussion at the Geneva Tribunal. And there’s more: At the end of January it decided that the Office had acted correctly when it fired the beleaguered staff representative Elizabeth Hardon. To this day, attorney Senay Okyay will not let the case go. This originally involved her client, Frenchman Jean-Pierre Bardelot, who actually had a different name. She remembers him as a good-natured *bon viveur*. In early 2012 he hanged himself in a Munich suburb. Okyay is convinced that the EPO could have prevented this. Bardelot had suffered from depression, but his superiors still initiated disciplinary procedures against him. She remembers a phone call. “The Office won’t stop until they have found some way to dismiss me.” He had even mentioned the planned suicide to two of his colleagues.

**BENOÎT BATTISTELLI** President

**ŽELJKO TOPIC** Vice-President Directorate-General Administration

**RAIMUND LUTZ** Vice-President Directorate- General Legal/ International Affairs

**ALBERTO CASADO CERVIÑO** Vice-President Directorate-General Patent Granting Process

## **THE EPO MANAGEMENT**

Photos: European Patent Office (4)

**Top: Internationality and immunity apply not only at the EPO in Munich**

**Left: Attorney Alexander Holtz speaks of infringement of fundamental rights**

“This way it would be possible quite legally to operate a Guantánamo in the middle of Munich”

## **Attorney Senay Okyay fights for the rights of a number of EPO employees**

**STAFF REPRESENTATIVE ELIZABETH HARDON** at that time wrote an E-mail via a union server in which she raised questions about Bardelot's superior: "Many of us believe that the behaviour of the manager and the groundless attacks by the personnel executive contributed significantly to the death of the colleague. Formally, of course, the Office will deny any blame." Someone from the server forwarded the confidential E-mail, and that was how President Battistelli got to hear about it. He engaged the Disciplinary Committee. This was unable to find that Hardon has committed any gross misconduct, but Battistelli ignored the advice of the experts - and downgraded Hardon. The judges at the Geneva ILO followed his justification that Hardon had "defamed" a colleague. Her behaviour had been "serious" and "incorrect". Conversely, whether there could have been some truth in Hardon's accusations was something the court never investigated. Instead, Battistelli was handed a blank cheque: He can also make decisions by the internal disciplinary bodies and the Boards of Appeal concur, provided that the appeal is "well founded in content". A "frightful judgment" says Stefan Schennach, who chairs the Social Committee in the Council of Europe. "Why have a clearing body at all, if the chief executive is not bound by internal decisions?" The Austrian Social Democrat has concerned himself intensively with what goes on at the EPO. What has been reported to him from there in confidence, as well as from the branch in The Hague, he regards as "grievous despotism". He has written a draft for a resolution calling on the Parliamentary Assembly of the Council of Europe to impose more transparency, more rule as a state of law, and higher social standards in international organizations. The recommendation speaks of "abuse of power". This is directed not only at the EPO, but at all international organizations. Schennach describes the case of two wives of UN employees in Austria who asked him for help. Their husbands were divorcing them, but were refusing to provide separation allowances and maintenance payments for the children from the marriages. Because of the immunity for UN employees, the women were unable to claim either in Austria or in their original homelands. Even the United Nations did not feel responsible. Both the divorced women faced an uncertain future. Their residence was linked to the visas of the ex-husbands. The paper now being laid before the Council of Europe calls for the concept of immunity to be reined in, including in the EU. Schennach calls it "incomprehensible" that EU offshoots in the Member States can make recourse to diplomatic immunity even though they are only "outlying authorities of the Commission". "Does the Bavarian representation in Berlin also enjoy immunity?" As well as this, all the international organizations should also be subjected to an independent adjudication authority, such as that of the Council of Europe or of courts which are still to be established. The Council of Ministers of the Council of Europe would have to agree to the draft resolution, however. And then, how could the reform be put into effect in real terms? Nevertheless, the EPO Administrative Council has openly declared that it needs a more socially competent President than Battistelli. Plans are for him to be succeeded as from July by the Portuguese António Campinos, hitherto the Director of the EU Intellectual Property Office in Alicante. The only problem is that he is regarded as Battistelli's vassal. Since October, Germany has been holding a strategically important position: Chair of the EPO Administrative Council, with Christoph Ernst even being a Ministerial Councillor from the Justice Ministry. The Federal Justice Ministry has let it be known, however, that Germany, as an individual state, has "no powers of intervention or supervision", and therefore has no authority of instruction in respect of the EPO. It is "obliged to follow the route by way of the organizational bodies of the Organization, and in that context is only one of 38 contracting states."

Even the United Nations do not feel responsible