

GUIDE TO PARTICIPATION

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***EPO: Bastion of
tyranny and fear***

Violation of human rights at European Patent Office

'Bastion of fear and tyranny'

Employee participation a mockery, dismissal of critical union members, employee suicides. The work atmosphere at the European Patent Office is toxic. The director considers he has immunity in his failure to recognise human rights.

'Employees of the European Patent Office work in a bastion of fear and tyranny,' says an anonymous source within the employee representation for the Rijswijk branch (2700 employees) of the European Patent Office (EPO). The organisation, which also has offices in Berlin, Munich and Vienna, works to protect the rights of inventors. The source would prefer not to be named. 'Because,' he stresses, 'talking to outsiders about the internal state of affairs could cost you your job. President Benoît Battistelli expects absolute loyalty.' 'Do we have participation? Don't make me laugh. The employee representation is only consulted to say yes or no to a dossier. The management are not open to a substantiated opinion from the employee representation or an alternative proposal. The management also decides whether we can meet with colleagues. We must request this three days in advance, with a list of topics. Sending a message to all employees by email is forbidden. The system is automatically blocked if there are fifty or more emails. This means that employees are not being valued as empowered staff members and as people. The low point was a colleague who ended his life during working hours by jumping from the seventh floor in Rijswijk in 2013.' This is just one case, as another Rijswijk-branch employee ended his life on the last day of his holiday. The company trade union at the EPO, Suepo, also raised concerns in mid-2015 about the suicides of three employees at the head office in Munich. This makes a total of five cases of suicide in three years, due, according to the trade union, to toxic working conditions.

Sun king

As an intergovernmental organisation, formed by 38 member states who provide supervision through an **administrative council**, the EPO enjoys immunity. Thanks to this legal immunity, it can largely evade national legislation and EU laws in countries where the EPO offices are located. The prevailing view among employees, the employee representation, and the Suepo leaders is that this fact in particular is a major cause of the 'reign of terror' that the French president Battistelli is presiding over: he can simply continue to behave as a 'sun king with his own court'. In 2015, the Court of Justice in The Hague ruled, in a case brought on behalf of Suepo by lawyer Liesbeth Zegveld, specialised in human rights, that the EPO was violating human rights. The fact that the union is being obstructed from carrying out its work is a violation that outweighs this immunity. 'That the EPO has appealed this decision,' says Zegveld, 'illustrates once again the arrogance of the organisation. It believes it is above the law. You can see here how immunity is misused and an organisation can go about its work unchecked. I have never had a case with such an aggressive opponent before.' Since the judgement in the Hague, Zegveld has seen a hardening in Battistelli's action against Suepo leaders, who as EPO employees are often also active in the **central staff committee**, a kind of central works council. Two of them have been dismissed. One of these is the Dutch chair of the union, Elizabeth Hardon, whose

pension entitlement has also been cut by 20 percent, and the union's treasurer. Hardon had stated publicly that an internal investigation was under way against her, which is against the rules of the EPO. Five other active union members have been suspended pending an investigation, three of these in Rijswijk. The salary of one has also been reduced by eight levels.

Thanks to the EPO's legal immunity, president Battistelli can act as a 'sun king with his own court'

Witch hunt

Zegveld: 'This is a witch hunt to silence and incapacitate the union and critical employees. They are being called to account on trivialities and the truth of these as well as whether or not they are serious enough to dismiss someone or cut their pension is questionable.' Battistelli defended himself in the *Financieele Dagblad* newspaper by saying that there is an "orchestrated campaign to destabilise the organisation". The fact that it is only members of the union and employee representation who are involved is "pure coincidence." Apart from the case concerning the dismissal of the union leaders, Zegveld is also preparing a case against the EPO due to intimidation. 'As a union leader/employee of the EPO, according to Battistelli's guidelines you cannot inform your own members that you are the subject of an investigation. Whilst it is the task of a union to express criticism and inform members.' 'If you are being investigated,' confirms the anonymous source within the employee representation, 'you can't tell a colleague about it. So you stick to: "I was away and I can't say why." Then the other person knows enough. While the director *can* say in the paper that investigations of trade union leaders are under way.' Anyone who is summoned by the disciplinary investigation committee is entitled to support from a member of the employee representation. 'During this kind of interrogation, employees are often accused of offences that have nothing to do with them. Your guilt is already a foregone conclusion. "Stasi practices," say colleagues from Eastern Europe who work at the EPO.'

Increased work pressure

'The employees of the EPO,' the anonymous employee representation member continues, 'are highly educated people, who are frustrated that they are not given any room to determine for themselves how to carry out their work and the conditions under which they do so. The management of the EPO wants to promote more competition between employees. A new remuneration system has been devised for this, among other things. From now on, the supervisor will determine when you receive a pay rise. He can also unilaterally change other terms of employment. Meanwhile, he can overload you with mountains of work. The workload in some units has increased by 30 percent. So it's logical that a lot of people are taking early retirement or reporting sick. Anyone who is at home sick but takes a walk or rides their bike is in violation and risks disciplinary action.' 'The internal occupational health and safety service, which is supposed to work towards reintegration, is itself overworked, due to understaffing. Preventive measures against sick leave are modest in comparison with the repressive measures being imposed. It is difficult to talk about occupational health and safety topics. The employee representation is trying, but the standard reaction is often that this kind of topic must be discussed "in another context", at central level. After which you hear nothing more about it.' The employee representation also received a negative response to the proposal for a risk inventory at the EPO workplaces. The Labour Inspectorate is not allowed inside the building due to the immunity of the EPO. 'The employee representation also encouraged the management to conduct an investigation into the link between the work atmosphere and the suicides. But no reaction to this was ever received.' Battistelli did react in an interview with the *NRC Handelsblad* newspaper, in which he called the suicides 'personal tragedies, with no evidence of a link to the office'. The Labour Inspectorate is familiar with the nature of the complaints via the media and other sources. 'But we do not have the authority,' according to a spokesperson, 'to conduct an investigation at the EPO, in the same way that we also cannot enter

embassies. We will therefore also not pass judgement on indications of possible misconduct. After all, we are not able to investigate anything.' Indeed, there was also no investigation after an employee chose to take a fatal fall from seven floors up on Dutch territory.



President Benoît Battistelli. Photo: AFP/Emmanuel Dunand

Demonstration

Patent examiners *can* demonstrate on Dutch territory. So they did that en masse at the end of January in Rijswijk, in protest against the dismissal of two colleagues due to their trade union activities as well as the downgrading of a third employee. Member of the House of Representatives John Kerstens (PvdA - Dutch Labour Party) took part in the demonstration and submitted a motion in which he asked the cabinet to 'pull out all the stops' to ensure a normal working relationship and respect for employees' rights. State Secretary Martijn van Dam (Economic Affairs, PvdA - Dutch Labour Party) then announced an 'independent investigation' into working conditions at the EPO, expected to be carried out around the time this publication goes to press. 'The government has remained neutral on the situation at the patent office for a remarkably long time,' states Liesbeth Zegveld, 'but it does bear responsibility for ensuring human rights are respected on its territory. If nothing is done, the Dutch state could possibly expect a court case concerning this on behalf of Suepo. On the other hand, I am noticing that the cabinet is beginning to have had enough now that the EPO is continuing to violate human rights on all fronts, such as the right to collective bargaining, the right to assembly and freedom of expression. And all that apart from the fact that individual rights such as work and pensions are being affected and employees are apparently being driven to suicide.'

Normalise

The Danish chair of the administrative council for the patent organisation, Jesper Kongstad, asked the 38 participating countries to have the disciplinary measures against members of the union investigated by an independent committee. Battistelli immediately rejected the investigation proposal. It does not seem very likely that the EPO countries, which will be meeting in mid-March, will vote against Kongstad's proposal. In this case, Battistelli's days would appear to be numbered. The staff representation remains active in the meantime, in the expectation of better times to come. 'The whole situation should normalise at some point, as it's supposed to in a democratic country. The employee representation could cease activities due to the lack of participation but then the communication and feedback with colleagues would immediately be completely lacking. Now the employee representation can continue to collect dossiers and function to provide support for employees' problems. The employee representation is also allowed to publish on the Intranet, although this is not very noticeable as you have to click five or six times to reach their page. Many of the things the employee representation do are also tasks of the P&O Department. But the employees and their representatives see them as the enemy. This is understandable, as the head of P&O was appointed from Battistelli's personal circle of friends.'