

# Slap in the face for Battistelli: Suspended EPO judge wins court victory right down the line

**The judge of the Board of Appeals at the European Patent Office (EPO) suspended three years ago is to be reinstated, under a decision yesterday by the Administrative Tribunal at the International Labour Organisation in Geneva (ILOAT) (File Refs. 3958 and 3960). The supreme labour court for employees of international organisations also awarded the EPO judge, in two separate rulings, a total of some 40,000 Euro in compensatory payment for moral damages and compensation for loss of earnings.**



Benoît Battistelli

The decisions are likely to increase the pressure enormously on the Administrative Council of the Patent Office to bring the disciplinary proceedings to a close and to reinstate the judge. The judge had made recourse to the ILOAT due to his suspension and its extension imposed by the Council.

“The ILOAT has ruled”, said the judge’s lawyer, Senya Okay, “that Mr. Battistelli was biased in these proceedings, and has a conflict of interests. The tribunal accordingly decided in my client’s favour.” The ILOAT criticised the fact that EPO President Benoît Battistelli had featured in the internal Office disciplinary proceedings both as a party as well as an advisor to the disciplinary structure relating to EPO judges. There were accordingly doubts as to the impartiality of the President. The judgment also indirectly implied the accusation that the President and Administrative Council had not respected an adequate distribution of power with regard to the disciplinary proceedings.

This accusation has been lurking in the background ever since the case first began in December 2014. At that time, Office supremo Battistelli imposed a ban on the judge entering the EPO, and pushed through his suspension by way of the Administrative Council. According to the EPO statutes, the Administrative Council is exclusively responsible for disciplinary matters relating to members of the Boards of Appeal.

The reason for the suspension was the accusation of dissemination of unpublished information and critical expressions of opinion about the activity of the Boards of Appeal, as well as the beleaguered EPO Director Željko Topić. The judge was also accused of having uttered accusations and threats against the EPO and its staff. By way of evidence a USB stick belonging to the judge was confiscated. According to information provided to JUVE, this was found to contain, among other things, critical articles about Topić. These did not derive

from the judge himself, however. Whether this is a contravention of EPO regulations has been a matter of dispute right to the bitter end.

### **Explosive material**

The case became incendiary because of the issue of the independence of the Boards of Appeal from the Office itself. Last year the Administrative Council undertook a further separation from the EPO Court. As well as that, the disputes surrounding the manner in which disciplinary matters are dealt with at the Office became more heated. Specifically, in formal terms an EPO judge can only be suspended by the Administrative Council if the Enlarged Board of Appeal recommends such a measure. Last year, however, the Court rejected this, after Battistelli intervened in writing in the ongoing proceedings. The Enlarged Board of Appeal regarded this as a massive exertion of influence, and ended the proceedings without a recommendation.

Experts then regarded the Administrative Council as being under an obligation to reinstate the judge. This did not happen. Added to that, Topić and EPO President Battistelli took out private prosecutions against him before courts in Munich and Croatia. According to the EPO Statutes, these prevented a decision in the disciplinary matter if it had not yet been resolved. According to information provided to JUVE, however, these actions have in the interim been terminated, either because they were withdrawn or because the courts rejected them as unfounded.

“The Administrative Council now no longer has no reason to draw the proceedings out any further”, said Senay Okyay. “They must now reinstate my client as a member of the Boards of Appeal. By way of the two ILOAT judgments and various decisions by the Munich Regional Court and the Munich State Attorney’s Office, it has now been confirmed by a third party beyond any doubt that the accusations made by Mr. Battistelli against my client are unfounded.”

### **Showdown coming up**



Christoph Ernst

The Administrative Council will in all probability make a decision in the matter next week, when the representatives of the 38 EPO Member States will gather for their last meeting in Munich. The issue is already on the agenda. Some observers are of the view, however, that this may not necessarily be a decision based on facts of law, because the Administrative Council is, above all, a political body. During the weeks leading up to the ILOAT decision, there were rumours circulating at the EPO that the Administrative Council could reject a reinstatement, and instead put the judge back to work in his former position as a patent examiner. This would once again make Office boss Battistelli his direct superior.

That would add fuel to the fire. The situation at the EPO is already very tense. Parts of the EPO staff, among them the main staff union SUEPO and a number of EPO judges are locked in a bitter dispute with Battistelli. This is why the new leader of the Administrative Council, Dr. Christoph Ernst, made it clear in a JUVE interview in November that the restoration of social peace in the Office is one of the primary goals of the supervisory body for the future. The Administrative Council is setting a great deal of hope in this situation on the EPO chief executive designate, António Campinos, who will be taking over from Battistelli in July 2018.

“The Administrative Council will be examining the decision thoroughly, and drawing the necessary conclusions such as the situation calls for”, was how Ernst responded to an enquiry from JUVE. (Mathieu Klos)