

Debate in Dutch Parliament about deteriorating social climate at European Patent Office

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The parliament in the Netherlands will hold a debate on the 'deteriorating social situation' at the European Patent Office. The recent dismissal of a SUEPO trade union leader in The Hague was one of the issues triggering a request for the debate.

MP Sharon Gesthuizen of the socialist SP received support for her request from a majority of the MPs earlier this week. They have asked Secretary of Economic Affairs Martijn van Dam for a government letter on the developments at the EPO, which has one of its main offices in The Hague.



John Kerstens of the social democrat PvdA, who gave a speech last month during a demonstration of 350 EPO workers in The Hague, stated they deserve 'attention for the reign of terror - this is how I call it - at the EPO.' Esther Ouwehand of the Animal Party said she is very concerned and wants to know how the EPO can be brought under democratic control, despite the legal immunity the institution has according to the Dutch government.

The dismissal of SUEPO secretary Laurent Prunier, also a member of the EPO's Central Staff Committee, was the latest development in years of turmoil, protests and conflicts between EPO employees and the authoritarian president Benoit Battistelli, who is accused of creating a climate of fear, putting workers under intolerable pressure and ignoring the organization's own rules.

In reaction to a critical [article on the IAM blog](#) about the dismissal of the union leader, Battistelli explained [in a letter](#) that Prunier had been harassing an EPO colleague. In an ensuing [letter of Prunier](#), he denied the allegations and asked for transparency: 'The easiest solution for the public to assess the truth vs. story-telling is for Mr Battistelli to lift the confidentiality he imposes on me and I will gladly publish all the documents.'

Prunier is the third SUEPO leader to be fired this year, whereas another one was downgraded. His dismissal goes against a resolution adopted by the EPO's Administrative Council (AC) last March, which requests the EPO president 'to ensure that disciplinary sanctions and proceedings are not only fair but also seen to be so, and to consider the possibility of involvement of an external reviewer or of arbitration or mediation; pending the outcome of this process and before further decisions in disciplinary cases are taken, to (...) make proposals that enhance confidence in fair and reasonable proceedings and sanctions'.

After the meeting in March, there was some expectation that the AC, composed of representatives of the 38 EPO member states and often depicted as a lame duck, would start to take its task of supervisory body more seriously. But in June it turned out the Council, or at least a majority of its members, did not support the Enlarged Board of Appeal (EBA) when it felt threatened by president Battistelli's intervention in judicial proceedings concerning the removal from office of a member of the Boards of Appeal (BoA). The BoA member had been illegally suspended by the EPO president in December 2014. (For all details, see [this post on the Kluwer Patent Blog](#), [this Wikipedia page](#) and [this IP Kat article](#)).

The case of the suspended BoA member was brought before the EBA three times; the texts of the decisions are available here: [Art. 23 1/15](#), [Art. 23 2/15](#) and [Art. 23 1/16](#). The decisions contain an order that they should be published on the EPO website, but so far no one at the EPO has done (dared to do?) that. The BoA member is still suspended and doesn't have clarity about the future.

In another development, the Administrative Council didn't stop Battistelli from pushing through a very controversial reform of the Boards of Appeal late June 2016. On the [EPO website](#), it is described as follows: 'The Council approved a comprehensive package of reform of the Boards of Appeal, submitted by the President following an extensive preparation conducted in close co-operation with the Board of the Administrative Council. The aims are to increase the organisational and managerial autonomy of the Boards and also their efficiency. (...) This reform constitutes a landmark step for reinforcing the status, efficiency and long-term sustainability of the EPO's appeal system. It aligns the organisation and functioning of the Boards with national, European and international developments in the judiciary. (...)'

But actually, the Presidium of the AC and the Association of the Members of the Boards of Appeal (AMBA) opposed the reforms, [writing](#): 'The aims of the structural reform are to increase the organizational and managerial autonomy of the Boards, the perception of their independence and their efficiency. The presidium and the AMBA committee consider that many aspects of the above proposals do not achieve these aims and, in many aspects, even decrease the level of autonomy and independence. Nor do they follow the main internationally recognized principles or judicial independence.'

On 11 October, an [EPO Social Conference](#) was held - without representatives of SUEPO - 'to discuss the outcome of recent studies on the EPO's social and financial situation, and occupational health and working conditions.' It looks like parts of a social study, carried out by PwC, have appeared on the Techrights blog, for instance [here](#) and [here](#). The EPO has only announced that 'the studies and the feedback obtained from the conference will now be discussed with the different stakeholders in various EPO fora'.

It is not clear when the EPO debate in the Dutch parliament will be held and what can be expected from the government of the Netherlands. In 2015, a Dutch court, the so-called *Gerechtshof*, found that the EPO was violating the European Treaty on Human Rights by blocking mails from the labor unions and by limiting the workers' right to strike. The Court said that regardless of the question whether the EPO is an autonomous international organization with its own legal order and staff policy, and which in principle enjoys immunity from the jurisdiction of Dutch courts, this autonomy cannot encompass/include the right to violate fundamental European rights (...) without offering parties such as the unions any legal remedy.' In reaction to the decision, however, Ivo Opstelten, minister of the interior at the time, announced that as the EPO was 'immune from execution', there would be no action from the authorities in the Netherlands.

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