

Kluwer Patent Blog

ILOAT cases: EPO repays excessive strike deductions, tensions remain

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Two months after a series of ILOAT judgments stating that former EPO president Benoit Battistelli abused his power by implementing new rules to restrict the rights of staff members to strike in 2013, the EPO has detailed in which way it intends to carry out the judgments.



According to a SUEPO report, EPO president António Campinos published a communiqué on 14 September 2021, explaining that the Office intends to apply the outcome of the judgments to all staff on strike since July 2013 only insofar as they concern excessive strike deductions or for unauthorised absence on 2 and 3 July 2013. The payments should be completed by the end of the year.

However, no moral damages will be awarded by the EPO to those who neither filed a complaint in front of the Tribunal nor an application to intervene.

An important element in the judgments ([see this post](#)) was the June 2013 decision CA/D 5/13 of the EPO's Administrative Council, "creating a new Article 30a of the Service Regulations for permanent employees of the European Patent Office concerning the right to strike and amending the existing Articles 63 and 65 concerning unauthorised absences and the payment of remuneration. (...) Paragraph 10 of Article 30a authorises the President to lay down further terms and conditions (...) Relying on that provision, the President issued Circular No. 347 containing 'Guidelines applicable in the event of strike'. This text entered into force on 1 July 2013, at the same time as CA/D 5/13."

The ILOAT concluded that Circular No. 347 was unlawful and also that the EPO management had excessively reduced salaries of staff members who participated in strikes. In [case 4433](#) for instance, a lawfully called strike was illegally considered as unauthorised absence and not as a day of strike and the complainant's salary was punitively deducted by 1/20th instead of 1/30th.

In the various cases concerning strike limitations, the ILOAT – apart from ordering reimbursement of excessive strike deductions – awarded moral damages to the complainants amounting to between 2000 and 8000 euros. It is now clear that these moral damages will not be extended to all staff. According to SUEPO, in “a meeting with the Central Staff Committee (CSC) on 15 September, Mr Campinos even strongly excluded any form of apology from the Organisation to its staff.”

A SUEPO publication, which was distributed to staff last week, shows the strained relationship between EPO president Campinos and staff representatives. According to the trade union, Campinos burst out in anger during a meeting on the strike judgments, when the Central Staff Committee suggested he should take responsibility for mistakes of the past by apologizing to the staff:

“Meeting with the President: Lessons (not) learnt

On 15 September, the staff representation could address for the first time directly with Mr Campinos the ILOAT strike judgments of 7 July.

The staff representation argued that all EPO staff had been adversely prejudiced by the violation of their fundamental right to strike and by abuses of power. An International Organisation cannot take a fundamental right from its staff, give it back more than 8 years later and pretend that nothing happened. In his reply, Mr Campinos threatened to reduce cash injections into the pension reserve funds if he were to grant moral damages to all staff. Mr Campinos added that we should understand that in our Organisation, it’s just about moving money from one place to another. One could expect that upper management could be held accountable for designing HR policies violating fundamental rights, but Mr Campinos preemptively warned anyone who could point the finger at his services which he fully entrusts with further reforms.

The staff representation then suggested that the Organisation takes responsibility for mistakes of the past by at least apologizing to its staff. Mr Campinos bursted out in anger and shouted that he would not apologize and that we would never get an apology from him. With this statement, Mr Campinos confirms that he not only takes full responsibility for the continued policies during the first 3 years of his mandate, but also fully endorses the Battistelli administration. Mr Campinos reproached the staff representation to be not constructive when willing to discuss events that happened ages ago and added that we may have won this one but we don’t win 8 out of 10 of our cases. Here, Mr Campinos confused quality and production: in terms of legal procedures, some are more fundamental than others.

In the meeting, Laurent Germond, Director Employment Law, recalled that the Tribunal’s statute does not foresee any class action procedure and that complaints will remain of an individual nature. The Office intends to apply the outcome of the judgments to all staff on strike since July 2013 only insofar as they concern excessive strike deductions or for unauthorised absence on 2 and 3 July 2013.”

According to the trade union, 38 pending cases before the ILOAT and the filing of hundreds of applications to intervene to the ATILO since the announcement of the strike judgments on 7 July may have been one of the reasons for Mr Campinos to extend the outcome of some of the judgments to all staff.

A video conference planned for 30 September 2021 by President Campinos to discuss the strike

regulations and a memorandum of understanding was cancelled as SUEPO wasn't allowed to be accompanied by its legal advisor, and topics that had been brought forward by SUEPO such as the new career system were excluded from the agenda.

The EPO didn't react to a Kluwer IP Law request for comment on the issue of the ILOAT judgments and/or the SUEPO's publication about the meeting of 15 September.

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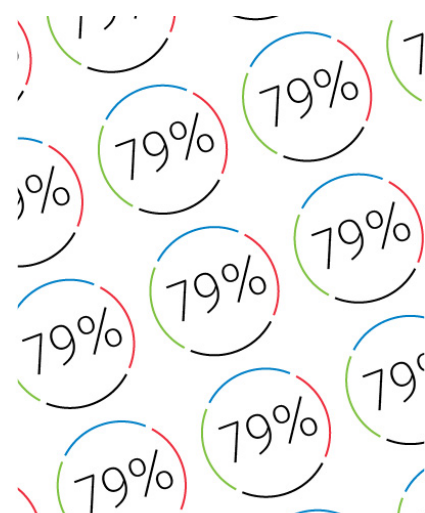
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