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ILOAT: Former EPO president Battistelli violated staff's right of free association

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The EPO violated the fundamental right of free association of its staff in 2014 by giving (former) president Benoit Battistelli the power to determine the detailed conditions relating to the staff committee elections. The Administrative Tribunal of the International Labour Organization (ILOAT) has ruled this in its [judgment 4482](#), which was published after its [133d session late January](#). The decision, together with two other ILOAT judgments in which high moral damages were awarded, is yet again a display of the lack of legal protection and democracy at the EPO in the Battistelli era.



Last year, the ILOAT had already ruled that Battistelli abused his power in July 2013 by restricting the rights of staff members to strike (case [4430](#)), see also [this blogpost](#). At the time the ILOAT ruled that Circular No. 347, regulating the restrictions, was unlawful. This time Circular No. 355 was quashed by the ILOAT, which contained implementing rules for a “social democracy” reform introduced by the Administrative Council in decision CA/D 2/14 on 28 March 2014. Below some central considerations of the ILOAT:

“7. (...) Before its amendment, Article 35 provided that the regulations regarding the election of representatives to a local section (broadly the same as the new Local Staff Committee) were to be determined by a general meeting of the permanent employees of the place of employment for which the particular local section was constituted (Article 35(6)(a)). The Article created a similar mechanism for the adoption of regulations by the staff for the election of members of the Central Staff Committee: Article 35(6)(b).

The amendments effected by decision CA/D 2/14 removed from the staff the role of determining regulations for conducting elections and provided the ballot be conducted by the Office (Article 35(5)(a)), and invested in the President a power “[to] determine the detailed conditions relating to the Staff Committee elections” (Article 35(5)(c)).

8. There is a consistent line of case law of the Tribunal which makes clear, in a variety of ways, that organisations should not interfere in the affairs of a staff association or union (however described) and the association or union must have the concomitant right to conduct its own affairs and regulate its own activities (...). It also includes the right to freely elect their own representatives. (...)

10. (...) The regime in place before decision CA/D 2/14 for the conduct of elections respected the right of staff to freely associate and the new regime did not.”

The ILOAT decided the amendments introduced in article 35 will be quashed but without retroactive effect, and that “Clause 6 of Article 35 of the Service Regulations in force before decision CA/D 2/14, will apply, mutatis mutandis, to the future election of staff representatives for the Central Staff Committee and Local Staff Committees (...).”

Although case 4482 has consequences for the whole organisation, there were decisions in cases of two EPO staff members which deserve attention as well as they show the treatment some staff members suffered after they came into conflict with the management.

Single parent

The ILOAT was particularly critical in case 4491, concerning a EPO staff member who had challenged the decision to dismiss her with immediate effect for serious misconduct. Between 1 July 2013 and 27 May 2016 she “took more than 200 days of parental leave. The allowance she received was calculated at the higher rate based on her declaration that she was a single parent.”

The EPO came to the conclusion that she was not, and that she had unduly received a higher allowance on the basis of her declaration, which was estimated at 3658 euros. The women, when confronted with the allegations, declared she had not knowingly breached the rules “and emphasized that, as soon as the matter was raised during the interview, she withdrew her request for parental leave at single parent rate. She offered to reimburse the amount that was allegedly unduly paid to her.”

To no avail: she was initially suspended and “By letter of 7 September 2017 the President of the Office informed the complainant that her behaviour amounted to serious misconduct” and that he had decided to dismiss her. “The complainant was informed that this decision would take effect immediately and that she remained excluded from entering the EPO premises.”

Now what was the situation? As the ILOAT explains, the “complainant and her ex-husband were, on her account, living in contiguous semidetached residences (one owned by her and the other by her ex-husband) though they created access at two points from one to the other” for the benefit of their three children. But did that mean the woman was not a single parent and wilfully committed fraud? The ILOAT comes to a completely different conclusion. Some of the findings of the tribunal:

“6. Underpinning these allegations was the Report of the Investigative Unit of 22 May 2017 (the

Investigation Report). On a fair reading of the Report, insofar as it concerns the claim for and payment of parental leave, it manifests a distortion of the evidence favouring the allegation of misconduct. (...)

7. Similarly, paragraph 102 contained the observation that: “[The complainant] admits that she was living in the same house as her former husband”. This is a distortion of what the complainant was saying. The expression “same house” involves an unfair synthesis of the complainant’s explanation of her living circumstances. (...) The complainant provided a detailed and credible explanation concerning the ownership of each of the residences supported by extrinsic evidence. No simplistic admission as referred to in the Investigation Report was made by the complainant.”

“13. (...) “The discussion (...) commenced with what was described in the letter as the “main facts” which the Disciplinary Committee had established concerning the complainant’s family situation. This included that the complainant and her ex-husband had planned and created a family and had been “continuously residing together” in Germany and subsequently the Netherlands. This is said to have been established by paragraph 66 of the opinion of the Disciplinary Committee.

While that paragraph does refer to the creation, in the Netherlands, of internal access points between two houses, no finding of fact was made by the Committee that the complainant and her ex-husband had been residing together. The letter does not identify any other basis on which this factual conclusion might be founded and it was completely at odds with what the complainant had repeatedly said, including in paragraph 58 of her request for review, which provides a credible explanation of her circumstances. They were that she had no intention to own a common property with her ex-husband and raise their children together but rather wanted to ensure that, within the applicable law, she had emergency support and access to their father for her children.

For the President to have reached this conclusion about “residing together”, he must have been satisfied what the complainant was saying was a lie and that by reference to other unspecified evidence he was satisfied, at least inferentially, beyond reasonable doubt the two individuals were residing together. It is difficult to see how this conclusion can be justified, let alone at the standard of beyond reasonable doubt. (...)”

“15. The next admission was said to be that the complainant confirmed that her ex-husband “was participating in the caretaking and upbringing of [the] children as ‘[he] was babysitting them’ from time to time”. No such admission was made. (...) To the contrary, the complainant was seeking to demonstrate how very little the ex-husband actually did.”

“20. In the present case, beginning with the Investigation Report and concluding with the impugned decision of the President, there has been a clear reluctance, or indeed refusal, to accept what the complainant said was true. (...)”

“23. (...) no specific moral damage is established (...) beyond the manifest moral damage, involving considerable personal distress, occasioned to the complainant by her being investigated, charged with fraudulent misconduct, found to have engaged in that misconduct and ultimately dismissed. Those moral damages are assessed in the sum of 30,000 euros.”

The ILOAT decided the employee had to be reinstated with immediate effect and was also entitled to costs assessed in the sum of 8000 euros.

Cases 4488, 4489 and 4490

In three other cases, all concerning a former staff member, the ILOAT decided she should receive a total amount of 68.000 euros in moral damages, plus 200.000 euros in material damages “less any amount already paid and less any income the complainant received from other employment in the period 1 August 2014 to 1 February 2017.”



Just like decision 4491, the three judgments 4488, 4489 and 4490 show the lack of interest and respect of Battistelli when it came to treating staff members correctly and with respect.

Case 4488 focuses on a decision in 2012 of the former EPO president to transfer a staff member to a lower grade post. She appealed and the Internal Appeals Committee “unanimously found that the level of duties assigned to the Senior Advisor post did not correspond to the requirements for an A6 grade post as laid down in the job description of the Service Regulations. Consequently, it found the decision to transfer the complainant unlawful in that it did not sufficiently respect the complainant’s dignity. A majority recommended to set aside the decision and refer the case back to the Office, and to award her 25,000 euros in moral damages as well as costs. A minority recommended to set aside the decision, to reinstate the complainant in a “proper” A6 post, and to award her 35,000 euros in moral damages as well as costs.”

Even if the Appeals Committee supported her, president Battistelli ignored this: “By a letter of 12 August 2014 the complainant was informed of the decision not to follow the opinion of the Internal Appeals Committee and to reject her appeal as unfounded. The Administration explained that the decision to transfer her was justified by the overriding interests of the EPO and that the generic job description did not exclude the possibility to assign an A6 employee to a post whose duties are not listed in the generic description. In its view, what mattered was that the duties assigned did correspond fully to an A6 level, which in its view was the case.”

By that time Battistelli had already announced (7 April 2014) that the A6 position the staff member had held would cease to exist. Three weeks later, at the end of April, she had submitted a letter of resignation “based on the state of her health.”

In its decision 4488, the ILOAT judged that the assessment made by the Internal Appeals Committee should have been followed and awarded moral damages in the sum of 35,000 euros to the former staff member. “This is a reasonable and appropriate figure. The complainant is entitled to costs for these proceedings, in which she represented herself, which the Tribunal assesses in the sum of 1,000 euros.”

Case 4490

In case 4490 the complainant challenged the amount of damages awarded for the unlawful decision not to renew her contract as a Principal Director and to reinstate her in a lower-level post instead. The ILOAT judged the EPO had to pay her 200.000 euros in material damages “less any amount already paid and less any income the complainant received from other employment in the period 1 August 2014 to 1 February 2017” – the date of her pension. This was far higher than what had been paid earlier by the EPO, who was also ordered to pay 20.000 euros in moral damages and 1000

euros in costs. Just one quote from the ILOAT's decision:

“18. (...) It is tolerably clear from the terms of the complainant's letter of resignation of 29 April 2014 and the contemporaneous medical certificate from her treating physician (the contents of neither, as they related to the effect of events on the complainant, were challenged by the EPO) that the decision to abolish her post and not to renew her Principal Director contract had a serious and negative effect on the complainant's health and well-being culminating in her resignation.”

Case 4489 centered on one specific issue in the disrespectful treatment the staff member had to endure: the unwillingness of Battistelli to endorse and sign two very positive performance management reports she received for 2011 and part of 2012.

“10. (...) The complainant was a senior member of staff and the President's refusal to complete the reporting process was arbitrary. That refusal persisted after he transferred the complainant to another position over her opposition and in the period leading up to a decision not to renew her contract. The moral injury caused to the complainant by the President's arbitrarily refusing to complete the reporting process, is obvious.”

Conclusion

Years after the departure of president Battistelli at the EPO, the ILOAT cases keep unveiling details about the climate of fear and harassment under his presidency which have been so often described by staff members. Although he was succeeded in July 2018 by António Campinos, one of Battistelli's closest allies Elodie Bergot, who used to be Battistelli's principal director for human resources, is currently chief corporate policies officer. Some have linked the recently announced [reshuffle at the EPO](#), in which Bergot will apparently face a considerable loss of influence, to the ILOAT decisions.

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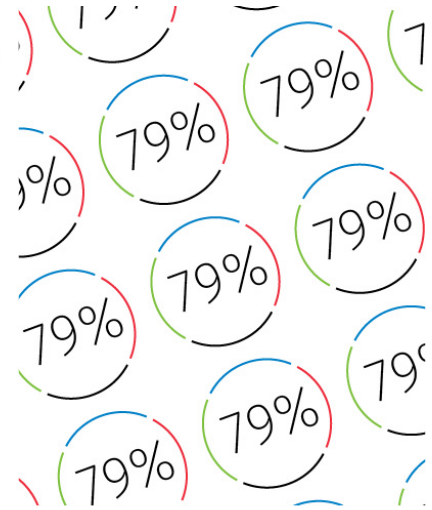
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