



136th session of the Administrative Council 26 & 27 June 2013 Does the Council respect fundamental rights?

This report intends to cover the salient points from the staff perspective.

The welcome

Management was obviously concerned about the planned demonstration and security was high, with extra security staff called in for the day. VP4 had decreed that no more than 30 staff should access the first floor and no more than 200 colleagues should be on the ground floor. The idea behind the demonstration was to meet delegations upstairs for some structured lobbying. That, regrettably, had been spoilt by management with the chosen layout, whereby the delegations could enter the Council room without having to pass by the demonstration. Only few delegations seemed interested in talking to staff. In any case, the demonstration was so clear that neither the delegations nor the EPO management could pretend that all is well in the EPO.

Institutional myopia

The first part of the meeting covered various reports. The AC was full of praise for President (and staff) for the Office's achievements. It was hard to recognise the EPO as seen by the staff in these discussions. What was stunning, is that very little reference was made to the demonstration. The President made a comment about the "special reception" and one delegation made a negative remark, but otherwise it was hard to believe the delegations were in the same building, this gave the atmosphere in the Council a surreal character. Day one ended with the now habitual C-session, where staff (and other observers) are not permitted to be present.

The President has shown himself to be very skilled in presenting his side of the story and placing any blame on others. From the limited feedback we have of the discussions during the C-Sessions it seems the President and his VPs were quite selective with the truth. It is in such discussions that the delegations form impressions, the practice also has the effect of limiting discussions on these topics in plenum, giving rise to the impression that the decisions of the Council are pre-cooked.

The President has consistently demonstrated the ability to ensure that all members of our supervisory body support his proposals, or at least prevent any opposition. In our view, the increasing practice of holding such closed sessions and the lack of transparency they represent, is not consistent with modern democratic practice.

In an exceptional confidential session the Council gave the President the mandate to conclude the contractual arrangements for the much needed new building in Rijswijk.

The social report and the Technologia survey

The last social report published by the EPO was in 1991. [CA/55/13](#) gives an overview of our employment conditions, demography and composition of the staff complement. The Council was very appreciative of the report, and requested that the practice is continued annually. It

was decided to make the report public.

However, it is to be noted that some key information that would be of interest to staff at least, is missing from the report, namely the President's actual income or the VPs' annual bonus. We also note the different standards of transparency are applied: staff salaries, allowances and pensions will now be in the public domain, but the Office's budget and cooperation costs and support to the member states are not.

The social report was considered by the Council Chairman the logical context to permit the Staff Committee to "briefly" present the recent [Technologia survey](#) to the Council. During this the Staff Committee made particular reference to those factors showing the social unrest in the EPO, including: the very low levels of trust in the senior managers; the clear support for the views and communications from the Staff Representation; the low level of confidence in the bona fide character of the Presidents "social dialogue". The President tried to play down the survey, claiming that questions were biased and that a 50% participation rate was not representative. Again we see the Presidents skills in practice: he failed to mention that the main messages from the survey are completely in line with previous EPO surveys including the 2010 Survey run by the Staff Committee. He failed to mention that a lot of the questions are identical. He suggested that the EPO will run its own survey which will not be "biased". Despite the clarity of some of the results, it seems the President and the Council continue to live in denial.

Staff well-being and regulating strikes

From comments made by the Chairman, the EPO and some delegations, it is clear that both these controversial proposals had been discussed in detail in the closed or private sessions. Despite this there was some dissent shown and several delegations registered concerns with the proposals CA/56/13 and CA/57/13.

In particular, they indicated that medical checks at home should be a last resort and be substantiated with reasons for the presumed abuse. Regarding the strike regulations they felt uneasy with the empowering of the President to legislate further by creating guidelines. Repeatedly, they sought reassurance that the proposals were in line with international conventions and legislation.

VP5 was asked to present the "legal report" on the strike regulations proposal. He referred to all the relevant documents including ILO Conventions and the ILO Committee on Freedom of Association, and then proceeded to selectively quote from these texts, in his view, showing that the proposal of the Office was completely in line with such texts. It is what he left out that is important. He failed to refer to the articles and decisions in the very same documents which show that the proposals of the Office are clearly not in line with norms defined by the ILO. This was a stunning and somewhat shocking performance. He concluded that, everything was legal and claimed that regulation was needed to ensure that ILO-AT judgments were properly implemented. It was also stated that medical visits at home were standard in Germany. This last point seemed to surprise the German delegation.

Mr Grossenbacher, former Chairman of the Council, stressed that Mr Lutz is a distinguished lawyer with an immaculate track record as judge and that he agreed with the conclusion rejecting the analysis of SUEPO.

It is clear from the analysis commissioned by SUEPO and from the documents cited by Mr Lutz, that the regulations are not consistent with fundamental rights. We find it hard to believe, given that ILO Conventions and decisions of the ILO Committee on Freedom of Association were cited by the EPO that they (and in particular Mr Lutz) are not aware of the discrepancies.

So, why not vote against?

All of the concerns raised in the discussions were not enough for the members of the Council to vote against the proposals. The changes to the Service Regulations proposed in CA/56/13 and CA/57/13 were passed without any negative votes. Some delegations abstained, others were not in the room when the vote was taken. In any case there is a big inconsistency between voiced concern and voting behaviour. Again, another success for the persuasion skills of Mr Battistelli.

With regard to the sick leave control proposal, we note that many of the concerns were ignored. Some delegations raised concerns about the proposals and asked for more time. One delegation even asked for specific changes. The President responded to this only in that he stated that there was a contradiction between claiming they needed more time and them making proposals for specific changes. The Irish delegation asked if it would be possible, at the request of the staff member, that sick leave control would take place at the practice of the Doctor and not at home. The President confirmed that this would be possible. This feature is not in the regulation.

Many of the delegations asked for (and received) confirmation that the regulations would be implemented in a manner which would not contravene fundamental rights. It remains to be seen how this can be resolved since in our view many of the violations are inherent in the regulations and obviously so.

The role of the Chairman

Mr Kongstad had a negative influence on the discussions on two points. One was by insisting on cutting the staff's intervention on the strike regulations short. The intervention was indeed lengthy, but it was necessary to respond to comments made by delegations and the inaccurate and incorrect statements made by the EPO. Because we were cut off, we could only partially make our point. We nevertheless noted that there had been no dialogue or negotiation on the strike rules; SUEPO (and other partners) had not been consulted at all; we referred to the letters and reports circulated showing clearly the discrepancies with fundamental rights and international norms. What we could not do, is make a detailed rebuttal of the misleading statements of the EPO, since The Chairman cut off the intervention. It is not clear if it would have made a difference, since as we have stated above, the outcome seemed to be pretty much a done deal before the discussion in the Council started.

The second incident was when on [CA/39/2013](#) VP5 (party) was allowed to introduce the point, but the Chairman of Munich's Staff Committee was not allowed to respond - because parties would not be heard.

Conclusions

It seems that despite some concerns and dissent from delegations, Mr Battistelli remains capable of gaining the support of the Council for his proposals. Discussion in the Council was limited and felt pre-cooked. We can only say that it is in our view inexplicable that the delegations have approved the proposals despite the Staff Committee and SUEPO demonstrating clear grounds for concern. Due care would have required a detailed report on the impact on fundamental rights, which they do not have. We understand that DG5 has such a report, which we believe is consistent with SUEPO's findings, but this was not made available to the Council. Nevertheless, the protection of fundamental rights is an obligation on the member states, and one which we feel, they have not met in this case.