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## NEWSFLASH

### THE ATILO SETS ASIDE THE DISCIPLINARY MEASURES WHICH BATTISTELLI INFLICTED ON ELS HARDON, ION BRUMME & MALIKA WEAVER

The ATILO has handed down a number of Judgments on 26 June, in the course of its 126<sup>th</sup> session. This is a session on which the EPO Administration will not look with undiluted pleasure. To put it bluntly, it is disastrous for the President [REDACTED] [REDACTED] and PD43 [REDACTED] [REDACTED]

Out of 75 Judgments, 17 concerned the EPO. Of those 17, the Tribunal ruled against the complainants in “only” 10 cases – a clear disappointment for the Office, used to rates of success of 90% and higher.

#### **Complaints allowed: Judgments 4052, 4047, 4043, 4042, 4051**

These are all crucial.

- In Judgment 4043 and 4042, the disciplinary sanctions which the President dished out on Ion Brumme and Malika Weaver, were set aside because they were found innocent of all charges. A few interesting considerations by the Tribunal:

*Her conduct was, in the circumstances, reasonable conduct for a staff union representative seeking to protect the resources of SUEPO that were to be used, in part, to fund the legal assistance given to Mr C. It did not and could not constitute misconduct let alone serious misconduct. Both the Disciplinary Committee and the President erred in law in characterising her conduct in this way.*

The Tribunal criticized the Office’s acts against the SUEPO officials in Munich, who were acting within their mandate, to safeguard the Union interests in matters that had nothing to do with the EPO. In more legal words, the Tribunal told PD43 that such matters were none of her business.

And:

*The mere fact that the sender of a letter or other communication states that the communication is confidential does not, of itself and irrespective of the contents of the communication, result in an obligation for the recipient to keep that communication confidential.*

Here, the Tribunal shot down PD43's pretension that any communication from the Administration must be kept confidential just because she says so. The Tribunal recognized SUEPO's freedom of expression, which is bound only by law and not by managerial whim.

- In Judgment 4052, disciplinary measures were set aside because the investigation and the following disciplinary proceedings were not carried out in accordance with Resolution CA/26/16. **The President was heavily criticized for having disobeyed the instructions of the Council.**
- In Judgment 4047 the disciplinary sanction which the President dished out on Els Hardon was set aside because the correct standard of proof had not been used. We approve of this slap on the President's wrist, but we are not too happy about the second part of the order. We had hoped for an exoneration as in Ion and Malika's case, but the Tribunal considered that case may require reassessment by the DC – yet another – this time applying the law correctly. To be followed.
- In Judgment 4051, continuing a trend, the Tribunal quashed the dismissal of a colleague who was sacked (while ill) for alleged misconduct that could have been due to illness, as testified by a medical expert – an opinion which the President refused to follow.

Besides ruling against the President's autocratic stance, the Tribunal ruled that the DC's decision to deny the hearing of witnesses was illegal because at the relevant time this was an absolute right and not a matter of discretion by the DC. The Tribunal also criticized the former Chair of the Disciplinary Committee's propensity for giving very short notices for procedural steps.

Petitions for interpretation / execution: Judgments 3989, 3986

- These cases are noteworthy because of the questions which the EPO put to the Tribunal. The complainants were former colleagues who were dismissed for alleged misconduct, whereas the evidence showed that the origin of their behaviour may be an illness. They had already sought and obtained relief: the dismissal decisions being quashed and the cases remitted for fresh re-evaluation by the Disciplinary Committee with proper focus on the medical matters, and if necessary ordering new medical examinations under its own supervisions.

The Office "sought guidance" as to whether, instead of the Disciplinary Committee, the matter of ordering new medical examinations could be left to the Administration. The Tribunal's answer was a resounding "no". When it orders something to go through and by a special body, such as the Disciplinary Committee, it means that body and not the Administration.

The Tribunal further declined to assist the EPO by indicating whether it would be acceptable to make certain decisions. This is what the Tribunal admonished:

*It is not for the Tribunal to advise the parties with any particularity about what they should do or refrain from doing and whether a proposed course of conduct is in conformity with, or violates, provisions in the Service Regulations. In the event that either party, **and the EPO in particular** because it is amenable to proceedings against it*

*in a further complaint or other proceedings, behaves unlawfully, the conduct is open to review.*

A bon entendeur.

**Complaints dismissed: Judgments 4055, 4053, 4050, 4049, 4048, 4046, 4045, 4044, 4041, 3983**

Only one of these judgments stands out for its collective importance: that of our colleague Michael Lund (case 4050), punished for having followed his conscience when having to act in a highly dysfunctional appeals committee. We will read the judgment carefully and draw the necessary conclusions.

We are grateful for the clear signals from the Tribunal in respect of egregious abuses, but we feel caution is in order. More cases are pending, most prominently that of Laurent Prunier, dismissed in 2016 and whose case is not yet up for being treated by the Tribunal (it will be at the earliest in Q4 2018, possibly later). Also we are not happy with the results of the cases of Aurélien and Michael to whom go our thoughts.