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Institutionalised injustice

Dear colleagues,

You may wonder why on earth the CSC is publishing now two documents dated October 2016 relating to the internal justice system of the EPO (a presentation and an open letter to PD43). Well, there is a simple explanation for this.

The internal Appeal Committee (ApC) has recently found that the Office was wrong in refusing the publication of the two documents. The President of the Office has finally decided to follow the unanimous opinion of the ApC. As a result, almost four years later, the documents can be published on the Intranet at last!

The Appeals Committee will publish in-house abstracts from the final decision and from the opinion of the ApC. In the present case of censorship, we consider it legitimate to inform you without further delay about basic principles of freedom of speech, as unanimously confirmed by the ApC:

- Freedom of speech is part and parcel of freedom of association. Those freedoms are not absolute or unconditional. It is therefore not illegitimate for an Organisation to prevent publications containing incorrect information, or statements impairing the dignity of international civil service or grossly abusing freedom of speech. However, this exercise has its limits.
- As regards factual correctness, taking an overall view of the presentation objected to by the Administration, the ApC found it impossible to accept that two deviations from actual official figures were grave enough to be capable of justifying refusal of publication.
- Staff representatives may criticise the Office's policies and actions, even sharply, as long as the language used is not injurious or defamatory, albeit robust. This is rather to be seen as a manifestation of the political jousting between management and staff bodies that is part and parcel of the life of a healthy International Organisation.
- It is essential for staff members to have knowledge of the various positions discussed between the Administration and the Staff Committee on matters of general interest for staff. This ensures that the Administration can be exposed to a degree of accountability to staff for policy decisions affecting them.

The ApC unanimously concluded that censorship was neither appropriate nor proportionate and that the refusal to publish both documents was tainted by illegality.

In addition it also found aggravating circumstances in the way how the Office handled the CSC requests, by delaying a response and then failing to respond altogether. The ApC also had “some difficulty in understanding” the Administration when it then raised a receivability objection with no serious arguments at the appeal stage.

The case illustrates the incontrovertible fact that the delays in the internal justice system make judicial redress of abuse of power by the Administration an illusory exercise in many cases, especially in cases of censorship. This is why we usually also make our publications available to the two unions for them to publish them as well, if they so wish. However, to be fair, the current President of the Office has been much more liberal than his predecessor as far as publications by the Staff Committee(s) are concerned.

The Central Staff Committee