

# **Newsletter by independent Staff Committee member Anette Koch**

## **Number 4, May 2012**

By this newsletter I would like to inform you of topics on which I have recently worked as a staff representative, and which may be of interest to you. The newsletter only reflects my own views and does not necessarily correspond to official Staff Committee policy.

Please feel free to send me your comments and questions: [akoch@epo.org](mailto:akoch@epo.org) or [akoch@polar.xs4all.nl](mailto:akoch@polar.xs4all.nl), or to phone me at -3828. Please share my newsletter with colleagues who recently joined and who are not on my mailing list yet.

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### Fire safety at our EPO site

When you will have read this article, you will understand my advice to take any evacuation alarm seriously in future, and to immediately follow the instruction to leave the building.

Please don't get me wrong: At present it seems that our fire alarm installations work well. That's the good news, but I'm afraid there is not much good news otherwise in this article. Please don't panic either, as panic is unhealthy and does usually not help to overcome the danger.

However, as you might know from your own experience or from colleagues, in the Shell building the alarm installations did not always work in the past during fire exercises. There were also issues regarding the certification of the alarm installations of the tower which are 16 years old - so old that spare parts to replace any broken components are not produced any more. This as such is worrying, as it could happen in future that necessary repair works of the fire installations could not take place due to missing spare parts.

To investigate the technical aspects of fire safety in more detail a fire safety work group was created as a

subgroup of the LOHSEC<sup>1</sup>. An external consultancy company (DGMR) was asked to investigate into the topic of the fire stability of the EPO main building ("tower") at our site. Their report of November 2010 is owned by the Technical Services and was not shared with the whole local Staff Committee even until today, presumably because the contents was considered "too negative" by the building management. This as such is a reason for concern as well, as it shows an obvious lack of transparency and does not help to build trust in the Administration.

Nevertheless the report by DGMR was presented by the consultants to the fire safety subgroup, and this [presentation](#) as well as the [minutes](#) of a recent meeting of the fire safety subgroup which I hereby share with you were made available to the whole committee two weeks ago. I would like to summarise the results as follows:

- The requirements of the Dutch building code ("Bouwbesluit 2003") are not sufficient for the safe evacuation of the main building, as they refer to buildings lower than 70 m which is not the case for the tower.
- DGMR came to the conclusion that a safe evacuation of the whole tower would require 29 minutes, provided the time between the detection of a fire and the activation of the evacuation alarm is only two minutes.
- Though the issue of the resistance to collapse of the

structure of the building during a fire was also investigated by DGMR, the result as such was not published in the report, according to the Occupational Safety Expert..

- However, from the measures recommended by DGMR aiming at an increase of the fire resistance to at least 90 minutes, it can be concluded that it must be less than 90 minutes now and "most probably around 60 minutes".
- Due to the lack of compartmentalisation of the tower reported by DGMR and the so called "chimney effect" (i.e. the tendency of hotter and therefore lighter gases to move upward in a chimney or in this case, in a tall building), the fire resistance of the building structure must be expected to be maximum 90 minutes - or less.
- DGMR recommended extensive measures to improve the fire resistance of the building, among others:
- a change of procedure to cut down the evacuation time for particularly the tower by abandoning the human checks of a potential fire prior to the activation of the evacuation alarm (simplest measure);
- a replacement of one of the four fire detection systems of the tower by a new system and to use the components of the replaced system as spare parts, in case of necessary futures repair works;

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<sup>1</sup> Local Occupational Health, Safety and Ergonomics Committee

- a subdivision of the building into compartments, each of them not exceeding 2000 square metres, which can be closed from each other in case of a fire, to prevent or delay further spread of the fire.
- The costs for all measures could reach as much as 2 million euros on the whole.

Until today none of these measures has been implemented. Only recently the management changed the procedure prior to the activation of the evacuation alarm - however, not by entirely abandoning the human checks as recommended by DGMR, but only by doubling the security officers who are responsible for inspecting an alleged fire, when they receive a fire alarm on their beeper: there are two external security officers now instead of one (one until 25th of April 2012), one of them being responsible for the 15th to 26th floor and being based on the 25th floor, the other one being responsible for the lower floors (and based close to the porters' lodge).

As the reason for not implementing this recommendation the management mentions that seven fake fire alarms per year would be too expensive for the EPO, and that we have to live with the current change of procedure.

It is worrying that our management seems to give preference to a financial arguments above our safety, though the costs for the about 7 fake alarms on average per year must be negligible compared with many other costs incurred by the Office, and would certainly be

negligible compared with potential damages in case of a major fire.

In any case, the compartmentalisation as recommended by DGMR would certainly be a much more expensive investment.

In view of the extensive measures needed for improving the fire safety of the tower, one wonders whether it would not be cheaper to rent an office building for the whole period in which the new building will be under construction and the tower be torn down eventually, also in view of the expected high, maybe partly unbearable noise levels, especially during the three months of piling works and during the months in which the tower will be demolished eventually.

At least those who would suffer most from the noise and vibrations during construction works should have the opportunity to work in another building temporarily, including a building rented elsewhere in the surroundings of our site (e.g. close to the Bogaard).

Our management should be aware of the fact that there is a lot of cheap empty office space around us in the The Hague area in this time of financial crisis, and sometimes companies are even offered the first year of the renting period for free, as it has become extremely difficult to rent out office space and owners sometimes get desperate!

Unfortunately the majority of the local staff committee as well as the local SUEPO committee have been very reluctant to take any further measures to protect our safety in

case of a fire at our site. Until now they did not bother to inform you, though some members (not me) were aware of this issue since November 2010.

Personally I felt it is my ethical duty to inform staff of the situation as being.

(Just for your information: After the elections in June I may not have the possibility to inform you anymore, if both the management and SUEPO prevent my re-election by conducting the elections electronically on an obscure external server owned by a private company, this company being paid by the administration and apparently trusted by SUEPO The Hague, cf. my announcement below.)

#### Short note on AoCs

Those of you concerned by the AoCs might be interested in the following information:

The term for the PDs to submit their cluster proposal on AoCs in their cluster has been extended from 1 May to 1 July(!). The cluster proposal should contain

- (i) an analysis of the various proposals/scenarios for AoCs,
- (ii) a proper reasoning for each AoC why a specific scenario was preferred over other proposed ones (most likely unfortunately: those proposed by you), and
- (iii) a cost-benefit analysis for each AoC (something better than provided on

the spreadsheets until now...).

The PDs should also share this document with the examiners concerned, so that you have the possibility to comment once more and to appeal from the decision taken, if you disagree with it, and if VP1 supports your PD and goes ahead with it, without further amendments. If you are not properly consulted by the PD, this is also a reason for appeal, of course. The cluster proposals should also reveal whether or not the staff complement has been properly observed for the different EPO sites, or whether the balance is further shifted in favour of Munich and Berlin.

I would like to call on the management once more to listen to the examiners' proposals, technical arguments, objections and complaints on AoCs. Please take them seriously and follow my colleagues' advice, unless you have good counter-arguments and are willing and able to share them with my colleagues.

This should be self evident normally, but unfortunately decisions are often far from transparent in the Office. Technical expertise should be respected, not disregarded without counter-arguments.

The long and winding road" to legal protection, if any in future, of EPO staff's dignity

In my first newsletter I had summarised the history around Circular no. 286 and emphasised

that the Staff Committees currently hold the view that Circular no. 286 is legally still in force . Until now there is at least no ILOAT case law contradicting this point of view.

Nevertheless the management insists to design a successor of Circular no. 286. Of course our idea is to reach at least the same standards of legal protection from attacks on staff's dignity as was provided by Circular no. 286.

Though the atmosphere in the working group has been pleasant and constructive, the CSC nominees' proposals were mainly not taken on board without any reasoning.

I personally have problems with the proposals by the Administration, most of these concerns being shared by most, if not all CSC nominees in the working group. Among others, I would like to see the following requirements to the formal procedure fulfilled:

- (i) sufficient mechanisms for granting independence, impartiality and professionalism of the formal investigation (among others by a provision analogous to Article 111 ServRegs for Into another Appeals Committee);
- (ii) a definition which primarily focuses on the infringement on a person's dignity, without strictly linking the effects of the (alleged) infringement on the complainant to the (alleged) culpability of the perpetrator in every case, as it often turns out to be too difficult to prove the perpetrator's malicious intent or serious negligence;

- (iii) contact points for the procedure in both DG4 and the staff representation, instead of a single contact point in DG4 only (as currently intended by the management);
- (iv) empowerment of both parties to effectively participate in the informal and formal procedures, especially with regard to support for all official languages, to gender diversity of the formal investigators and confidential councillors, and to full opportunities to call witnesses, to react to their and the counterparty's statements and to challenge the evidence provided by the counterparty.

In particular, I share the concerns of other CSC nominees in the working group about the intended allocation of the formal investigation of dignity complaints in Internal Audit. Internal Auditors are skilled in quality audits, but do not have any in-depth legal or psychological skills for resolving inter-human conflicts or conducting or supervising the formal dignity procedure. Though some of them could be sent to a short-term professional training to acquire some of these skills, they could not be expected to reach the same level of profound professional competence as experienced and acknowledged external professionals , e.g. human rights lawyers, judges or criminal prosecutors, preferably either at the end of their careers and maybe part-time continuing their former tasks, or on pension, but still able and willing to work, even with high

commitment, either as staff of a dedicated small unit (for instance called Internal Dignity Board) in the Office, or under a long-term contract.

Our original proposals in the working group have been to have the formal investigation conducted by either an external investigator (like under Circular no. 286) with certain requirements to his/her qualification and impartiality<sup>2</sup> as well as to our involvement as staff representatives in their nomination, or by an internal dignity court with full independence - the latter proposal was mentioned, because the management expressed their preference for a fully internal formal procedure.

Until now the management disregarded both proposals by the CSC nominees in the working group, without providing counter-arguments.

In my view, the unit in which the formal procedures are conducted should at least be another "zero" unit, i.e. located directly under the President in the hierarchy, though I would personally prefer a fully independent dignity court. The further down in the hierarchy the unit is, the less likely it becomes that it will attract the highly qualified professionals needed for the formal investigation, professionals with an independent mindset like, for instance, judges, and who will not

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<sup>2</sup> minimum size of their company (to be defined), acting under a national code of conduct or certification, no contract staff in their company, preferably having worked on behalf of other employees' organisations also, like staff unions under national law

easily seek or take instructions from the hierarchy.

Especially in gender-related cases, i.e. formal complaints related to discrimination or sexual harassment, it is paramount that the complainant is entitled to address a confidential councillor of their own gender, and to have the formal investigation conducted by an investigator of their own gender, meaning that at least two investigators, one of each gender, has to be available. These rights have to be explicitly mentioned in the new circular.

Moreover, it is crucial that both parties have the choice of at least one out of two preferred official languages, i.e., none of the parties should be obliged to have the procedure conducted in their weakest official language.

Both parties must have the procedural rights to be heard themselves by the investigator, to have the witnesses according to their proposals heard by the investigator (in case of a dignity court also: to cross-examine witnesses), and the right to react to the statements by the other party and the evidence provided (e.g. from written minutes of the hearings, to be anonymised, if needed for protection of the witnesses).

The formal investigators should have the procedural power to summon both parties as well as any departments of the Office to provide specific documents or evidence of importance to the procedure within a specific time.

One confidential councillor per site nominated by the staff committee does not fulfill the requirements of gender diversity.

The management suggests two confidential councillors nominated by the management and the staff committees in a joint process, however, such joint nomination may not work in a situation of extensive conflict with the management and may then block the whole procedure. Yet we need a procedure which also works in situations of conflict with the management.

Due to the sensitivity of the issues and the lack of trust in a situation in which somebody feels his/her dignity infringed by a manager (which unfortunately applies in the majority of the cases), it is highly unlikely that the confidential councillor acting on behalf of the Administration or even one nominated in a joint process by staff representatives and Administration would be consulted at an early stage.

For this reason, Administration-nominated confidential councillors cannot fully be counted as such. We need two confidential councillors, one of each gender, nominated by the staff committee at each EPO site to give the informal procedure of conflict resolution a better chance to succeed at an early stage of a conflict at which it can potentially still be de-escalated without major losses on either side.

Sufficient budget and resources must be provided by the Office to the new policy, because lack of them were the major problems during the phase in which Circular no. 286 was also considered in place by the management.

Personally I could not recommend a formal procedure of significantly lower legal and professional standards than those in Circular no. 286 to staff and would feel obliged to advise against it. Better to have no procedure, and to address directly to Internal Appeals and/or the ILOAT than having an unsuitable procedure in place. Though hopes start fading, I still keep some hope currently that we will arrive at an acceptable solution for the new policy.

*Should you currently experience any attacks on your dignity yourself, please do not hesitate to contact me, or another Staff Committee member of your trust.*

#### Staff-reporting, PAX and promotion: some addenditional information

The legal backbone of our Staff reporting procedure is Circular no. 246, cf. page 51 of the current electronic version of our Service Regulations. Your staff report should not only be fully clear in its wording, but as you learn from the INTRODUCTION of the Circular, it should also evaluate your performance fairly and objectively.

Therefore, in case you do not feel assessed properly compared with your peers in terms of your box markings, or in case your staff report contains any negative comments which you perceive as unfounded, please feel free to ask the reporting officer, normally your line manager, for the reasoning for the decision taken by him. In some cases it can be recommendable not to react immediately, to avoid a direct

escalation during the stage of "first shock" of taking note of your report. You might also wish to ask a local staff committee member or a conciliation expert of your trust to accompany you for a conversation with your manager.

The good news is that your reporting officer may not lower any of your box markings to less than "good", unless he has written an administrative warning letter under section A(6) of Circular no. 246 to you at the beginning of the reporting period, leaving you sufficient time and providing you with sufficient support and training means to improve your performance again until the end of the reporting period. If the reporting officer does not offer you sufficient measures to improve your performance (e.g. training) or sends his warning letter only in the second half of the reporting period, you are advised to contact a legal advisor of your local staff committee. There is ILOAT case law in which the obligation of an international organisation to inform staff of any unsatisfactory aspects of their performance in a timely manner so that steps can be taken to remedy the situation (ILOAT judgements no. 2529 and 2414). These are "fundamental aspects of the duty of an international organisation to act in good faith towards its staff members and to respect the dignity" (judgement no. 2414).

Whether or not your reporting officer refrains from lowering your box marking below "good", the warning letter should be removed from your personal file at the end of the reporting period to which it belongs (please check your

electronic file that this has been done indeed).

In case you write comments under section VIII of your staff report and a consultation procedure under section D. of Circular no. 246 follows (which is the normal course of action in case of comments by the staff member), please be aware that you cannot be obliged to attend a conciliation meeting. However, the Circular itself mentions a conciliation meeting as "highly desirable" - meaning that you should normally give it a try, maybe accompanied by a conciliation expert of your trust. Exceptions from this rule could be cases in which both the reporting and countersigning officers have already declared in writing during Procedure D that they are not willing to change your staff report at all, and in which attacks on the staff member's dignity have taken place as well.

Some healthy caution should be applied during the conciliation meeting, if you are faced with proposals by the mediator to resolve your conflict with the reporting officer: Please avoid to let yourself drag into any "deals" of which you are not convinced and which do not feel alright for you - those are usually the type of deals which you might regret later, as they might harm your legal position. In that context, please keep in mind that the mediators are appointed by the Administration, not by the Staff Committee.

Please check both your staff report and your line manager's PAX planning carefully to investigate whether you have received



sufficient time budget for your special tasks, and whether these time budgets have been correctly deduced from your core time. You find the legal basis for your PAX planning on the intranet (Home -> Organisation -> DG1 -> Special topics -> PAX).

To be eligible for promotion your staff report should be received by HR on 31-05-2012 at the latest, to be available to the Promotion Boards (Communiqué no. 7), meaning that the whole exercise of reporting interviews, and confirmation of receipt by yourself, with or without comments, and of your reporting and countersigning officers, again with or without comments, has to be finalised before.

Circulars 253 (for B&C careers) and 271 (A career) contain tables with the information of the upper limits of the periods for promotion for the "fast" and the "average" career. If you have an average career with a least "good" box markings, you should at least have been promoted when the upper limit for the corresponding period for promotion is reached and might wish to address your line manager, if this deadline has lapsed without your promotion having taken place.

Unfortunately our management does often not even seem to attempt to come to a fair assessment in staff reports, internal selection procedures or on promotions.

However, this problem is not rooted in our legal system for staff reporting, especially Circular no. 246, but in the negative management style in our institution

and is cultural or political in nature. This Office could be a so much better place, if staff were approached with trust and allowed to fully develop and grow in their profession. Unfortunately SUEPO The Hague does not focus much on the issues of (lack of) justice of promotion - partly maybe, because the tough and cumbersome negotiations on pensions seem to absorb most of its energy.

#### Announcement:

Please come to the General Assembly on 15/05/2012, 11 h, room Shell 1.2, especially if you are against electronic elections of the local staff committee, and please express your opinion clearly in the General Assembly, or by e-mail to the Staff Committee ([staffcomdh@epo.org](mailto:staffcomdh@epo.org), with a copy to me [akoch@epo.org](mailto:akoch@epo.org)).

Recently some former members of the election committee have expressed their intention to have the staff committee elections be conducted by an external company, with an obscure software and paid by the Administration (! you may draw your own conclusions from this...)

Electronic elections, especially on an external server, would imply a complete lack of democratic control and transparency as we have known them until now during

previous staff committee elections, namely by counting the votes in public internally at the end of the election day.

Electronic elections are prone to manipulation, their results would be subject to unnecessary suspicion and lack of democratic legitimacy of the new staff committee.

Those against electronic elections: please do not hesitate to express your opinion, or step forward as a candidate for the Election Committee to stop electronic elections. Let's continue to count in public (I volunteer to do so as well, if I am not re-elected).

Thank you very much in anticipation for your support without which I will certainly not be able to continue my work as a staff committee member beyond next month.

*Sole responsibility for the contents:  
Anette Koch, independent local Staff committee member, CSC nominee for dignity/conflict resolution policy*