

Second salary

Former head of Patent Office wanted € 152,000 euros and lost before the Supreme Court

Friedrich Rödler's lawsuit against his ex-employer is unsuccessful and he will have to make do with his civil servant's pension.

by Andreas Schnauder

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Photo caption: Rödler will have to make do with his civil servant pension.

Vienna - Friedrich Rödler has been unsuccessful in a lawsuit against his former employer. The former head of the Patent Office, who retired last year, had demanded € 152,567.83 euros.

His reasons: He had been stripped of his second salary at the end of 2013, which he received as managing director of a Patent Office company. The company in question was serv.ip (Service of industrial Property), which was to offer service and information services relating to industrial property protection on the market.

The Patent Office concluded service contracts with its own employees for these services. Rödler also had a dual function. After intense criticism by the Court of Audit, this practice was discontinued in 2013 by the responsible Ministry of Transport, and Rödler was supposed to make do with his salary as a civil servant. He then sued for the said sum consisting of salary and pension fund contributions for the period December 2013 to February 2015.

He based his claim on an agreement concluded with the Ministry of Transport in 2004, which, in addition to the salary as head of the patent office, also provided for remuneration for serv.ip activities including severance entitlement and pension provision. serv.ip disputed the claims. In accordance with the law, the management of this unit, which only enjoyed partial legal autonomy, was one of the duties of the Director of the Patent Office. Consequently, a separate claim to remuneration did not exist. There was no legal basis for the former employment contract. It was also null and void because it was in conflict with the Public Service Staffing Act and the contract template based on it, according to the reasons given by the court.

Rödler nevertheless managed to assert his claims before the Vienna Labour and Social Court, but the tide turned against him in the course of serv.ip's appeal: the Vienna Higher Regional Court saw no basis for the Patent Office Director's appointment [*as managing director of serv.ip*]. The Supreme Court has now agreed. According to the decision, the Patent Act does not provide an appropriate legal basis for the conclusion of such an employment contract.

The Patent Office and Rödler's legal representative declined to comment on the ruling.

By the way, serv.ip will soon be history. The unit is to be integrated into the Patent Office.

Original text in German at:

<https://www.derstandard.at/story/2000041910687/zweites-gehaltexpatentamtschef-wollte-152-000-und-verlor-vor-ogh>