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## PARLIAMENTARY INQUIRY

From Dr Gabriela Moser, Member of Parliament, and colleagues

To the Federal Minister for Transport, Innovation and Technology (BMVIT)

Concerning the matter of Ex-Patent Office Director Rödler - further minimization of damage

On July 28, 2016, under the headline "*Former Patent Office Boss Wanted 152,000 Euros and Lost at Supreme Court*" the daily newspaper *Der Standard* reported on the outcome of the employment law dispute between ex-Patent Office Director Friedrich Rödler and his former employer BMVIT, which was initiated following massive criticism from the Austrian Court of Audit and the Green Party:

***Friedrich Rödler is unsuccessful with a lawsuit against his ex-employer and has to make do with his civil servant pension***

*Vienna - Friedrich Rödler is unsuccessful with a lawsuit against his former employer. The former head of the Patent Office, who retired last year, had demanded € 152,567.83 euros. His grounds: He was stripped of his second salary at the end of 2013, which he had 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 (BMVIT), 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 BMVIT in 2004, which, in addition to the salary as head of the Patent Office, also provided for remuneration for **serv.ip** activities, including a severance entitlement and pension provision.*

***Serv.ip** disputed the claims. The management of this partially autonomous division was, by virtue of the law, one of the duties of the President of the Patent Office. Consequently, a separate claim to remuneration did not exist. There was no legal basis for the previous employment contract, and it was also null and void because it contradicted the Staffing Act and the contract template based on it, according to the reasons [given by the Court].*

*Rödler was nevertheless able to assert his claims at the Vienna Labor and Social Court, but during the appeal procedure the tide turned in favour of **serv.ip**.*

*The Vienna Higher Regional Court saw no basis for employing the patent office president. The Supreme Court has now agreed. According to the decision, the Patent Act does not constitute an appropriate legal basis for the conclusion of such an employment contract.*

*The Patent Office and Rödler's legal representative did not want to comment on the ruling.*

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

In view of the fact that the Supreme Court states:

- that there is no separate claim to remuneration for Rödler's second function as **serv.ip** managing director,
- that there was no legal basis for the previous employment contract,
- that the previous employment contract is null and void because it does not comply with the Public Service Vacancies Act (*Stellenbesetzungsgesetz*) and the contract template based on it,
- that the Patent Act does not constitute a suitable legal basis for the conclusion of such an employment contract,

in order to further minimize the damage to the Patent Office, the general public and the state budget, the sum already wrongfully paid to Dr. Rödler between 2004 and 2013 - which is estimated to be an amount of several hundred thousand euros - should be reclaimed.

**The undersigned parliamentary delegates therefore submit the following**

**QUESTIONS:**

1. On the basis of the findings now made by the Supreme Court concerning the unlawfulness of the **serv.ip** managing director contract and on the invalidity of a separate claim to remuneration for the second function of the Patent Office Director as **serv.ip** managing director, have you reclaimed from the former Director of the Patent Office the sums wrongly paid out until 2013 or ordered their recovery?
2. If yes, when and how did you request or order the reclamation?
3. If not, why not?
4. On the basis of the findings now made by the Supreme Court on the unlawfulness of the **serv.ip** managing director's contract and on the non-existent separate claim to remuneration for his second function as **serv.ip** managing director, will you now reclaim from the former Director of the Patent Office the sums wrongly paid out until 2013 or order their recovery?
5. If yes, when?
6. If not, why not?

**Original text in German at:**

[https://www.parlament.gv.at/PAKT/VHG/XXV/J/J\\_10103/fname\\_555806.pdf](https://www.parlament.gv.at/PAKT/VHG/XXV/J/J_10103/fname_555806.pdf)