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Dysfunctions within the Internal Appeals Committee

Dear colleagues,

We have [previously informed](#)¹ you that some serious problems have to be resolved before we can nominate staff representatives to the Internal Appeals Committee (IAC). This was the essential message in a letter we sent to the President on 3 October 2014.

Since then, some of you have asked us for more details so that you can better understand what our concerns are. Whilst normally we would have preferred to remain discrete, following the initiation of severe disciplinary procedures against our nominees, we now feel we have no option but to make full and frank disclosure of the root causes of this conflict.

The dysfunctions within the Internal Appeals Committee:

1. After having been defamed in public, the Staff Representation nominees Aurélien Pétiaud and Michael Lund are now as individual staff members facing the prospect of severe disciplinary proceeding² on disingenuous grounds. This is nothing but retaliation from the Administration, with the aim of further intimidating staff and their representatives to not carry out their special duties.
2. When the members of the IAC nominated by the Staff Representation indicated that they would not be available for a session of hearings, the sessions were held without them rather than either rescheduling them or calling on their nominated deputies. A later session in September was cancelled, even though the nominees were available and the CSC had indicated that new nominations, required through the introduction of “social democracy”, could not take place before the end of the session.
3. Under this new system, colleagues with considerable experience and legal expertise can no longer assist staff with their appeals unless they are also elected staff representatives. This means staff either have to contest their case alone against a whole team of lawyers defending the Office (clearly contrary to the principle of equality of arms), or staff representatives have to take over the task of assisting them. In this event, the elected staff representatives nominated to the IAC would be

¹ Open letter to the President, “Nominees to the IAC”: <http://www.epostaff.org/archive/sc14214cl.pdf>

² Public knowledge

confronted with a conflict of interest: being simultaneously “judge” and, even if not directly the appellant’s counsel, one of this counsel’s close associates³.

4. In a very underhanded and disingenuous way, VP4 and VP5 have [jointly attacked](#)⁴ the integrity of our representatives in the IAC by alleging both a conflict of interest and intent to sabotage the IAC. The President further supported these allegations in [Communiqué 61](#).
5. In the (now extremely) rare cases where the IAC finds unanimously in favour of the claimant, the President simply ignores the recommendation and decides against⁵ the claimant without reason.
6. In at least one case, the Office submitted an additional brief *after the IAC had already issued their opinion to the President*. Nevertheless, the IAC Chairman decided to include it in the file⁶.
7. Previously, the IAC sent its recommendation to both the appellant and the President at the same time. This practice was abolished in January 2013 although the IAC at least informed the appellants that the recommendation had been dispatched to the President. With the new Rules of Procedure introduced in 2014, now even the provision of this procedural information has been abolished. Consequently, the appellant does not know when the clock starts counting so that he can calculate when the period to deem an implied final rejection will be completed and he can file a complaint to the ILO-AT. Appellants are left in the dark as to the fate of their appeal⁷.
8. Certain appeals are subjected to summary proceedings because they are found to be “manifestly irreceivable by ... majority vote⁸”, based solely on the submissions of the Defendant⁹, i.e. without even hearing the claimant.
9. In other cases that are not deemed to be *manifestly* irreceivable, the parties are heard only on the issues of receivability. An opinion is issued (systematically in favour of the Office) on this point alone, without considering the merits¹⁰ of the appeal itself.
10. Secretarial support is offered only to the “majority” to formulate their opinion. The minority must write its own divergent opinions, normally within very tight deadlines. If they miss this deadline, the President will receive only the majority opinion signed by the Chair and the other members of the majority. These opinions sometimes include

³ Public knowledge

⁴ VP4 and VP5 Communiqué of 30.09.2014:

http://my.internal.epo.org/portal/private/epo/organisation/dg4/?WCM_GLOBAL_CONTEXT=/epo/intranet/organisation/dg4/vp4/announcements/2014/1412095173469_functioning_of_the_settlement_of_disputes_system

⁵ Public knowledge

⁶ See meeting of 11 August 2014 and relevant correspondence, all available from the IAC Chair’s [public calendar](#).

⁷ Public knowledge

⁸ New (hard to find) Rules of Procedure

⁹ See meeting of 7 October 2014 and relevant correspondence, all available from the IAC Chair’s [public calendar](#).

¹⁰ Reported to us by appellants

the majority's perceptions of the minority opinion, thereby abusing our nominees by name¹¹.

11. In at least one case, the Appellant's lawyer was surprised to receive only the majority opinion. When the lawyer enquired after the "missing" minority opinion, it transpired that although the minority opinion had been produced in good time, the IAC chair had not forwarded it to the President because it was "not in the appropriate form". We can only interpret this to mean that it was too critical; there is no formal requirement of "appropriate form"¹².
12. Similarly, the IAC annual report is now provided only to the President, although in the past it was always provided to both the President and the CSC. Since logically it should be provided to all parties who make up the IAC, i.e. both the Administration and the CSC who each nominate members, this can only be interpreted as another example of increasing partiality in the functioning of the IAC.
13. PD53 manages all the Office's legal teams pleading against appellants (D532). The current IAC Chair previously worked for many years under PD43's direct hierarchical line, but upon her nomination to the IAC, she was officially transferred to DG5 where she reports directly to VP5. Yet, when she also became Head of the IAC Secretariat (Dir. 0.4), it was PD53 who announced the appointment. Moreover, the IAC Chair's public calendar reveals she has had numerous meetings with PD53 (and PD43), but never once met with the Staff Representation. Interestingly, one of the topics of these discussions were the IAC minority opinions¹³. Such behaviour suggests there may be serious grounds to believe that PD 5.3 is trying to maintain an undue and unnecessary degree of informal influence on the actions of the IAC Chair.
14. IAC rules of procedure (RoP) have been elaborated by the IAC chair in collaboration with DG5¹⁴, but without either input or approval of the nominees of the staff representation (or of the Staff Representation itself). Moreover, these RoP are not to be readily found¹⁵ either on the intranet or in paper form, even though the IAC already relies on them to conduct their business.

It is beyond credibility that so many problems are just an unlucky coincidence, particularly when many have come about through changes to established practice greatly influenced by the introduction of "social democracy".

We believe this degradation in staff protection demonstrates an orchestrated campaign by Management to destroy the last bastion of our so-called internal justice. With all these problems yet to be resolved, we hope you understand why **it is impossible for the CSC to nominate representatives on the IAC.**

¹¹ This is a complaint we received from our nominees in the IAC.

¹² Attorney's name withheld for confidentiality reasons

¹³ See meeting of the Chair with PD53 on 16 June 2014

¹⁴ See the appointments between the chair of the IAC and PD53/staff of D532 on 29 April and 3 June 2014.

This information is available from the IAC Chair's public calendar.

¹⁵ LSC The Hague publication of 4 November 2014:

[http://main07.internal.epo.org/projects/babylon/acerep.nsf/0/BF58D43D60B94127C1257D8500455194/\\$FILE/Lost%20in%20the%20Net%20Change.pdf](http://main07.internal.epo.org/projects/babylon/acerep.nsf/0/BF58D43D60B94127C1257D8500455194/$FILE/Lost%20in%20the%20Net%20Change.pdf)

To nominate representatives in the present circumstances would not only be an utter waste of time and precious resources, it would also risk exposing our new representatives to severe retaliation in the event that they would be strong enough to speak out against the same or similar machinations which Aurélien and Michael so valiantly opposed.

In other words: Staff may be better served by us exposing the charade than by trying to flog a dead horse. We ask for your understanding.

With regret and consternation,

The Central Staff Committee