



What if the European Patent Office were to torture ?

Trade Unions

The Supreme Court of the Netherlands [De Hoge Raad] cannot resolve the conflict at the European Patent Office on its own. Mediation may offer a solution.

Eppo König

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On Friday, one of the most senior Judges in the Netherlands issued a very unusual appeal to the European Patent Office in Rijswijk and its staff unions: make a serious attempt at mediation. This was the suggestion which came from Floris Bakels, Vice-President of the Supreme Court [*De Hoge Raad*], in the courtroom.

A day earlier, EPO staff had held a demonstration in The Hague to protest against the atmosphere of "intimidation" and the dismissal of union members at the European Patent Office (EPO), which with 2700 employees is the largest international organization in the Netherlands.

Three suicides

In 2013, an employee committed suicide by jumping out of the office in Rijswijk. In Germany there were two further suicides at the EPO. Since then the staff union SUEPO and the staff committee have called for an independent investigation. The French President Benoît Battistelli does not want this. In an interview with the NRC, he said, *"Well, first of all suicides are always personal tragedies. I think it is not appropriate to instrumentalise these incidents for tactical purposes against the President and the management. This man [...] had just been given a permanent contract. We do not know what caused him to do this." "The Labor Inspectorate in the Netherlands has no reason to intervene in such a case. We are not a Dutch institution."*

The EPO, which examines national patent applications and grants European patents, is accused by the staff unions of conducting a reign of terror that has driven some of its employees to suicide. The French President of the EPO, Benoît Battistelli, for his part speaks of "sabotage" of his reform policy.

The call for mediation was remarkable for a number of reasons. "Ordinary" judges often suggest mediation, but the Supreme Court normally only examines whether lower courts have done their job properly and delivers final judgments. The call for mediation goes further: it effectively means the recognition of staff unions as social partners.



The call is complicated by an additional "strain factor" because Guillaume Minnoye, the Flemish Vice President of the EPO and director in Rijswijk was in the audience. On Nieuwsuur [*a current affairs programme on Dutch television*] the night before Minnoye had predicted that the EPO would disregard an adverse ruling of the Supreme Court.

Inviolability

The ruling of the Court, which will probably come after the summer, will not bring any immediate solution to the conflict. The Supreme Court may answer an important question: how far does the legal immunity of the EPO as an international organization extend? This question is relevant not only for the EPO, but also for about thirty other international organizations in the Netherlands, such as the European Commission and the International Criminal Court.

The Appeal Court of The Hague ruled last year that the EPO must recognise its staff unions. E-mails from the unions must not be blocked, the unions must be consulted on working conditions and President Battistelli should not prevent strikes.

But the EPO disregarded this ruling, because it would not be bound by national legislation. The EPO has 38 member states and has offices in the Netherlands, Germany, Austria and Belgium. All 7,000 employees should be subject to the same laws and regulations, according to the EPO.

The Netherlands wants to be a good host for international organizations and thus the State has sided with the EPO. The government acted in a Janus-faced manner this week. On Thursday the government announced an independent investigation into the working conditions at the EPO in Rijswijk. A day later the attorney for the State stood before the Supreme Court and pleaded that the office is immune.

Both parties bring extreme examples to prove their case. The EPO refers to the mothers of Srebrenica. The mothers of murdered Muslim men may not sue the United Nations because the UN as an international organization is immune.

The lawyer for the staff unions went further. The EPO deploys detectives to investigate staff and to interrogate them without a lawyer, he said. What if the EPO now permits them to engage in torture? Could the state now still claim that the EPO has immunity?

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<https://www.nrc.nl/handelsblad/2016/01/30/wat-als-het-octrooibureau-martelt-1586149>