

# **Fundamental and Social Rights Protection within the EPO**

## **Executive Summary**

International organisations (IOs), including the EPO, have legal systems that derive from 50-year-old models and consequently fail to provide adequate protection for fundamental and social rights since key development in these areas took place after the international organisations were established. SUEPO is involved, with staff associations and unions of other IOs, in striving for reform and modernisation of the legal protection of international civil servants. We believe that such improvements, as well as offering more security for staff, contribute to optimal functioning of the organisation. This paper introduces the topics of legal protection and fundamental and social rights. References and links to further information are provided at the end of the document.

## **Background**

To many staff it may appear that fundamental rights protection is only of interest to a limited number of staff who have legal disputes with the Office and the ILO-AT. In fact the lack of proper fundamental rights protection within the EPO affects all staff.

You may have heard stories in the office of cases of rights abuse, harassment, assault etc, and these are serious matters, but fundamental rights are not just about having a proper judicial system to deal with such problems. The issue of fundamental rights covers topics such as human dignity, recognition of SUEPO, participation and collective bargaining rights, the right to a safe working environment, as well as the right to effective protection from illegal and criminal acts.

The EPC vests a lot of power in the hands of the Council and the President. Ensuring fundamental rights are properly protected is about helping to ensure that this power is used ethically and in the manner for which it was intended. The current models on which international organisations are based have not changed substantially since the 1950s, and do not adequately reflect the social and legal developments in the member states. This deficit is beginning to be recognised and addressed. For example, the European Court of Human Rights made it clear in a recent decision that a member state's duty to protect fundamental rights continues even after it has transferred competences to another party and that this duty cannot be derogated by other agreements. It ruled that the mere fact that a body is Supranational (like the EPO) is not grounds to exclude application of the European Convention on Human Rights (ECHR) since this would undermine the purpose of the Convention. The German Constitutional Court (BVerfG) has also ruled that Germany has a continuing obligation to ensure effective fundamental rights protection within the EPO.

The decisions mentioned above indicate basic principles that should apply, but responsibility for application of fundamental rights remains with the member states. Such protection, for example as guaranteed by the ECHR, does not exist within the EPO. The statement about fundamental rights that forms a foreword to the EPO codex<sup>1</sup> has limited legal effect, and is not binding in any way since it does not indicate which rights are protected. Without a clear catalogue of rights, an effective judiciary, and a clear body of case law, human rights become theoretical and illusory.

Further to this the question arises as to how other important social and employment legislation applies to the EPO. For example, the EU Directive on Health and Safety at work is binding on the EU states, but not the EPO. The European Social Charter, which was intended to protect and develop social rights, is binding on the member states, but not the EPO. Criminal law, which is in part intended to protect individual rights, cannot be applied directly within the EPO.

The model by which the EPO was established was intended to guarantee functional independence; for this purpose and no other, the EPO was granted privileges and immunities. SUEPO holds the view that using (or simply allowing) these immunities to prevent the application of fundamental and social rights is an abuse of the powers granted to the EPO.

### **SUEPO's activities**

SUEPO has been working on these matters for some time now, and roughly three years ago a central working group was established for this purpose. Recent developments suggest that this will become a high profile topic, not just within the EPO, but in the international community in general. At a recent meeting in Geneva views were expressed and work presented from a number of staff associations and leading academics and legal practitioners. An address was made by the President of the Sierra Leone War Crimes Tribunal denouncing the lack of proper human rights protection within international organisations.

SUEPO has made a significant contribution to this work and will continue to do so. We believe that standards of accountability and fundamental rights protection which are consistent with those within the member states are essential to ensure continued support and good functioning of international organisations in general. In line with this, we are striving to ensure the continued development of the EPO into a model international public service.

The Legal Studies Working Group is in the process of publishing a series of guides and further information on these matters. The first of these are intended as information about fundamental rights aspects when making applications to the ILO-AT. User Guide I covers the applicability of human rights to the EPO and provide summary information on which Human Rights should be protected. User Guide II provides advice for an applicant as to how he/she can present as case such that fundamental rights are respected, and to prepare his case for application to a constitutional instrument like the ECHR should the ILO-AT fail to provide adequate protection. They are intended as supplements to the basic guide about how to file an Internal Appeal called DuraLex.

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<sup>1</sup>“ The Administrative Council and the President of the Office note that when reviewing the law applied to EPO staff the ILO Tribunal considers not only the legal provisions in force at the European Patent organisation , but also general legal principles, **including human rights**. The Administrative Council also noted with approval the president’s declaration that the office adheres to the said legal principles and provisions”.

All of the documents referred to above can be found on the web site **rights.suepo.org** under the topic "SUEPO Publications" which can be accessed by clicking the Docs/Projects button on the left hand side. This site has been set up to provide further information and links of interest on these matters. If you have any questions or comments you can address these directly to the Legal Studies Working Group via [lswg-contact@suepo.org](mailto:lswg-contact@suepo.org), or contact your local staff representation.

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