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116th Session of the ILOAT

Summary

The 116th Session of the ***Administrative Tribunal of the International Labour Organisation (ILOAT****; herein after "Tribunal") pronounced 61 Judgements on 05.02.2014. 12 Judgements concerned the EPO, all but one were rejected. This paper discusses the EPO cases and highlights interesting results from the non-EPO cases. This paper also addresses the capacity problems and consequences of some of the precedents announced by the Tribunal. Three judgments are commented in more detail than usual: One because of the failure to examine the facts and simply rely on the internal advisory bodies, another because it reduces the case-load of the Tribunal by further limiting the rights of appeal, and one because of its alarming claim that "***The Tribunal is ill equipped to act as a trial court"**.*

Introduction

The 116th session was presided over by Mr Barbagallo (Italy). All seven Tribunal Judges participated in the 116th session (a full list of the members of the Tribunal can be found here).

The President opened the session presentation with an introductory statement. He noted that the session had dealt with 122 cases, this being the highest ever dealt with in a single session. He also referred to the backlogs and the need for the contribution of all parties to address the problems. He stated that better alternative dispute resolution mechanisms would help and would also promote a better internal working environment. The Tribunal secretariat has organised an additional session to held in the last week of February. A provisional list of cases has been designated for this extra session and the parties contacted and requested to consider if settlements are possible.

As stated by the Tribunal President, the session dealt with 122 cases in 61 Judgements. According to information available to SUEPO the duration of this session was three weeks, the same as previous sessions. The reason that the session has dealt with so many cases became clear with the announcement of Judgement no 3291. It was not the result of increased capacity or efficiency of the Tribunal but mainly results from this single judgement in which 56 EPO cases were dismissed. This ruling is discussed in the section "Summary of EPO Cases".

Attached to the paper version of the Judgements distributed after the session, were 8 withdrawals: (3 ILO, 3 Eurocontrol, 1 UNESCO and 1 EPO case). No information is given with regard to the content of these cases. As usual, the Tribunal did not hold hearings. As SUEPO (and others) have stated before, hearings are an essential element of a fair trial[1]. It has been clear for some years that the Tribunal no longer holds hearings.

The delays for this session in months are:

	Min	Max	Average
EPO cases	12	56	39
Other orgs	16	41	31
All cases	12	56	32

This reflects a further increase in delays from those of the previous session. EPO cases continue to experience greater delays than other organisations.[2]

[1] ECHR Judgement Miller v Sweden see p29-37

[2] For further information see Justice System Report

According to the Tribunal, the ILOAT is "not" a trial court for staff grievances!

Before addressing the other cases Judgement No. 3287 deserves special mention. In consideration 13 the Tribunal reiterated statements from a previous Judgement, that it "**should not become, de facto, a trial court for staff grievances, and [must] ensure that it continues as a final appellate tribunal. The Tribunal is ill equipped to act as a trial court, and its workload could, potentially, become intolerable or unmanageable if its role were not confined in this way**" (Consideration 13). This statement is surprising: in fact the ILOAT is the first and only truly judicial instance available to staff. Internal appeal boards are not courts, they are advisory bodies which do not meet key criteria to be considered judicial. Such boards follow quasi-judicial procedures but they are only advisory, their opinion does not bind the organisation. In addition, it is typical for the organisation to appoint the majority of the members to these bodies. For these and other reasons internal appeal bodies cannot be considered as first instance courts as suggested by the ILOAT, they provide administrative review only. **The ILOAT is the first and last judicial instance available to staff**.

The statements of the Tribunal provide further evidence that the Tribunal does not appear to consider is should independently ascertain the facts or investigate the case, but rather rely on the internal appeal bodies. There appear to be no grounds for the claim that the Tribunal is an appellate court. The requirement to exhaust internal means of challenging a decision or act (Article VII(1) ILOAT Statute), does not lead to the conclusion that the Tribunal is an appellate court. This claim appears to have developed since the UN Justice System reform, in which the UNAT was changed into an appellate Tribunal, no such reform has taken place for the ILOAT.

The emphasis given to these statements by the Tribunal does however provide insight into the views of the Tribunal and may be the reason behind the continued failure of the Tribunal to hold oral hearings, and it's tendency to rely on the internal appeals bodies rather than independently investigate the cases. It also seems from these statements that the Tribunal is fully aware of the problems, but rather than address them and ensure it has the resources to fulfil its role, the Tribunal claims that it is not able to fulfil this function, implying that it is not its role.

Summary of EPO cases

Right to Appeal General Decisions

Judgement 3291 dealt with 56 cases against the EPO. All were rejected. The Tribunal did not address the substance of the cases since the issue was whether the referral of the appeals from the AC to the President was "legal" and therefore whether the internal means of redress were exhausted. As noted by the Tribunal the applicants have not lost their right of appeal, since all these cases remain pending in the appeal process before the IAC. When announcing this Judgement Mr Barbagallo paused to reinforce the point; he stated that the Tribunal considers this a key decision.

In effect, the Tribunal has now ruled that **staff cannot challenge decisions until "it directly affects him/her"**.

We assume that the reason for this decision is to reduce the backlog; unfortunately it does so in a way that further limits the rights of EPO staff. This decision appears to be seeking a solution for a jurisdictional ambiguity created by the EPO and the ILOAT, but at the cost of staff.

The jurisdictional problem arose when the EPO created a second appeals board (the ACAC). The regulations require that an appeal must be filed to the authority which had taken the decision being challenged[3]. The wording was clear, but the EPO often argued that the appeal should have been filed to the other body, and were therefore not receivable. The confusion caused led to inconsistent case law at the ILOAT. As a result, the only safe option was to file with both bodies.

[3] Art 107 prior to 1 Jan 2013, Arts 109/110 from 1 Jan 2013.

The ILOAT has now clarified the matter, but in a way that results in a further limitation to the right to appeal! According to the Tribunal it will no longer be possible to challenge a general decision until it has been applied to that person or body directly. What this means for rights which will have a direct effect at some time in the future is unclear and worrying.

The decision also seems short sighted: the backlogs in the internal appeals at the EPO are much higher than those at the tribunal, and many of the cases which have been referred back to the EPO in this decision have been pending for more than 2-3 years. According to Tribunal case law, unreasonable delay may "exhaust" the internal process; meaning cases can be filed directly with the ILOAT. It is therefore to be expected that the cases will return to the Tribunal in the future; which could be within the next 12 months.

However, not everything is lost: The Tribunal has clarified (again) that staff can challenge the underlying legality of an act or decision when appealing its "application". This means that the Tribunal will retain the authority to examine the legality of decisions taken by the Council, but only once they have been applied by the President. For many cases, waiting until the President applies a decision will make little difference, but, in some cases, it is unclear when a decision can be challenged. For example changes to social security provisions or pension regulations, which may only directly affect an individual much later, e.g. when on retirement.

Medical Committee matters and Invalidity

Judgement Nos. 3300 3301 and 3302 address a dispute regarding invalidity and occupational disease.

In Judgement 3300 the staff member claims that his disability results from an occupational disease. On this basis he claimed that he should not be required to pay pension contributions. This issue was raised in Judgement 3056 which referred the matter back to the EPO to have the issues assessed by the Medical Committee. The outcome of the process was not in favour of the applicant. He claimed the procedure was flawed since it had based its findings on his current state of health rather than the period when his invalidity was decided. The Tribunal did not agree and rejected the complaint as unfounded.

Judgement 3301 deals with 5 cases by the same applicant regarding the failure of the EPO to provide documents. The Tribunal found that they were not decisions following the Consultation of a medical Committee within the meaning of Articles 107-109 Serv Regs. This being the case, the complainant was required to exhaust the internal appeal process before filing a complaint to the Tribunal. The tribunal also considered the complaints to be an abuse of process because: the 5 cases were essentially identical; they contained offensive terminology and; they were clearly irreceivable. An award of costs against the complainant[4] was not made because the cases were joined and dismissed under the summary procedure.

Judgement No 3302 deals with 30 cases from the same applicant. The issues were pending before the Internal Appeals process. The applicant had written to the President asking that the appeals process was concluded before a given deadline. Following the failure of the Office to meet this request the complainant filed directly with the ILOAT.

The Tribunal stated that "**the delays in dealing with these internal appeals is excessive by any standards**" which would "**ordinarily justify an award of damages"**, however it rejected the complaints for not having exhausted the internal appeal process. The Tribunal claims that the complainant's actions in filing multiple appeals contributed to the delay. Furthermore, exhaustion of internal means for excessive delay **cannot be justified simply on the fact that the complainant has set a deadline to the EPO**. It was also stated that the manner in which the complainant has prepared the complaints and the arguments he presents is an abuse of Tribunal's process. The cases were dismissed under the summary procedure.

[4] Note: the ILOAT Statute does not provide for costs or damages to be awarded against complainants. All costs are to be borne by the defendant organisations. In this case the Tribunal has not taken such action but if it had, it would be contrary to its Statute.

This case is important, since it demonstrates the increasing distance the ILOAT is taking from its previous rulings regarding “reasonable time” of the internal appeal process. In earlier judgements 1344, 1684 and 1969 the Tribunal ruled that the cases were receivable on the grounds that the internal appeal process had not been concluded within a reasonable time. In these cases the time was between 12 and 20 months delay. In Judgement No. 2196 The Tribunal stated: "Precedent says that the requirement to exhaust the internal remedies cannot have the effect of paralysing the exercise of the complainants' rights. Complainants may therefore go straight to the Tribunal where the competent bodies are not able to decide on an issue within a **reasonable time**, depending on the circumstances [...]."
The current Judgement deviates significantly from this standard, suggesting that all that can be expected for unreasonable delay in the internal appeal process is an award of moral damages. In this case the delay in question is over 4 years. How the Tribunal has concluded that this delay results from the complainant is not clear, but this decision does not bode well for those with pending appeals and anticipated internal delays in excess of 5-7 years.

Disciplinary process and standard of proof

Judgement No. 3297 deals with the case of an ex staff member who was dismissed on the suspicion that he was involved in forging official documents. The claimant has denied the charges and was acquitted by a national court which addressed the same charges. The NL court criticised the investigation and concluded that whilst there was circumstantial evidence that was consistent with the staff member’s involvement, alternative scenarios cast doubt on this and he was acquitted.

However, the ILOAT confirmed the findings of the Disciplinary Committee and the IAC; it applied a standard of proof which is quoted in the judgement as “**The Tribunal will not require absolute proof, which is almost impossible to provide on such a matter. ...** All that is required is **... a set of precise and concurring presumptions of the complainant’s guilt**”.

Contrary to the summary provided in the Judgement, the staff member did provide evidence which contradicted several elements of the “presumptions” provided by the EPO. The Tribunal appears to have taken the circumstantial evidence provided by the EPO as somehow convincing, but the circumstantial evidence provided by the staff member appears to have been ignored.

There were also some important errors in the ILOAT summary of facts, for example, that the NL court had erred in concluding that the staff member worked in an open office, whereas he had his own office. In fact what was stated by the NL Court was that there was an open office atmosphere where people walked freely between each other’s offices. There are also major inconsistencies between the findings of the Disciplinary Committee and that of the IAC, which were not commented by the Tribunal.

One fact that the Tribunal seems to have completely ignored is that the Service Regulations require that, where criminal proceedings are pending against the staff member for the same matter, a final decision in the disciplinary proceeding may only be taken once the criminal proceedings were concluded (Article 92(5)). This is at least a formal error, and one which could have resulted in the Disciplinary Committee and the IAC coming to quite different conclusions regarding the reliability of the evidence provided by the EPO. Why the ILOAT has ignored this important procedural violation is not clear.

Dismissal is a very serious measure which can destroy the livelihood of an individual. It should only be applied where there is convincing evidence. Even if the standard of proof is not the same as that applied in criminal proceedings, it must be stricter that that applied in the current case, which essentially reverses the presumption of innocence. It also seems unfair, that the EPO can fully investigate it’s hypothesis regarding the events, but that the staff member has limited means to investigate any counter hypothesis. Other evidence may exist which would exonerate the staff member, but without the resources available to the EPO, the staff member has no means of demonstrating this.

That the staff member's computer was used does not result in the conclusion that the staff member was the person using the computer for these activities. That a time difference of "only" 30 seconds was exhibited between alleged official functions and alleged illegal acts using a computer is not a sufficient proof, it is possible that a person abusing the staff members computer could have undertaken the alleged "official functions" to provide a cover story in case he was caught using the complainants computer; or alternatively that the perpetrator waited until the staff member left his office for some time, for example to go to the canteen. Neither the Disciplinary Committee nor the ILOAT appear to have addressed these possibilities, which would put the presumption of guilt into considerable doubt. We can only advise staff to be very careful, and to protect access to their computers, locking their screens whenever leaving their offices.

Career, Staff Reporting and Promotion

Judgments 3248 and 3249 relate to the earlier Judgment 3151. In essence the complainant impugned the President's decision to endorse the first recommendation of the IAC that a new version of his staff report for 2002-2003 should be drawn up by re-evaluating each aspect of his performance or, alternatively, and subject to the complainant's approval, by using the version of the staff report established for the previous reporting period, i.e. 2000-2001, as a basis for the 2002-2003 evaluation. It also recommended that the new staff report should be submitted to the Promotion Board to determine whether the complainant's date of promotion should be earlier than 1 July 2004.

The tribunal found that the issues raised in Judgement 3248 were essentially the same as in Judgement 3151 and dismissed the case as res judicata.

In Judgement 3249, the complainant argued that that the third version of his staff report shares some unchanged ratings with his first and second versions. The Tribunal ruled that he had misinterpreted the IAC's recommendation to mean that the new (third) version of the staff report should have different ratings for each category. The complaint was therefore dismissed as unfounded.

In Judgement 3256, a staff member claimed that he should be entitled to promotion to A4 on the grounds that the rule regarding promotion at Age 50 was in force at his time of recruitment and was an acquired right. The Tribunal disagreed and stated that this was not a core element of the employment contract, but a discretionary provision that had been lawfully abolished. The case was therefore rejected. This judgement confirms the practice of the Tribunal to grant very wide discretion to organisations in respect of promotion issues.

In Judgement No. 3268, the Tribunal again reiterated that it will only intervene in staff reporting in exceptional circumstances, however in the current case it found that:

"***The restraint which the Tribunal must exercise when it is called upon to examine a staff report (see consideration 9, above) does not mean that it can disregard the fact that the comment accompanying the complainant's productivity rating considerably detracts from the marking "good" and that the countersigning officer's comments underscore that effect. A reader might well infer from those comments that the complainant, whose human, technical and professional abilities were highlighted in other sections of the report, was remiss in that he neglected his core tasks to some extent in favour of additional activities.***" [5]
The Tribunal ordered correction of the staff report and awarded damages and costs in the order of 5K Euro.

Judgement 3273 was filed by a B-Grade staff member seeking reclassification of his post. He claimed that the job evaluation procedure was flawed and had reached the wrong conclusions. The Tribunal rejected the arguments regarding procedure and followed the majority opinion of the review board. The complaint was therefore rejected.
Judgement No. 3283 deals with the case of a former B-Grade staff member who was promoted to A2. The complainant disputes the date of his later promotion from A2 to A3 claiming that his B-Grade experience must count towards his seniority in A2. The Tribunal agreed with the EPO that former experience in

[5] JN 3268 Consideration 12

B-Grades would not be considered for later A-Grade promotions and relied on the wording of Section III.C of circular 271. The case was rejected as unfounded.

Extension beyond age 65 for DG3 members

Judgement No. 3285 was an appeal by a Board of Appeal member against the rejection by the President of his request for extension beyond age 65. The claimant argued that the decision was flawed, inter-alia, because it was taken by the President and not the AC who are the appointing authority for Board members. The Tribunal rejected this argument and rejected the claims on substance since according to the Tribunal they are discretionary in nature.

Interesting findings from non-EPO cases

Re-assignment and non-renewal

Judgement Nos. 3290 and 3299, deal with reassignment and non-renewal of contract.

In 3290 despite concluding that the process was flawed and a finding in favour of the complainant, the Tribunal, failed to order reinstatement of the staff member "**In view of the passage of time**"[6]. The delay in question was the result of delays in the internal appeal process and the ILOAT (over 4 years in total).

Similarly, in Judgement No. 3299 regarding non-renewal of contract following 20 years of short term contracts. The Tribunal found in favour of the complainant, but again refused to order extension of the contract on the grounds that "**practical difficulties would arise given the effluxion of time**" [7]. In this case the complainant had filed an internal appeal on 19 June 2010 (3 ½ years delay).

These are clear examples of how the delays in access to justice and the unwillingness of the ILOAT to order specific performance result in failure to protect the rights of staff. The award of 30K USD in the first case and 40K SFR in the second is far less than the value of continued employment and is unlikely to discourage organisations from such behaviour.

An interesting comment in JN 3290 (see Consideration 23) regarding confidentiality was that the Tribunal rejected the Organisations claims that a report from an advisory panel was confidential, rather this should have been provided to the staff member. This could be important since organisations often claim confidentiality in such cases.

Equality of Treatment

Judgement No. 3298 deals with claims of unequal treatment with regard to non-local status for staff. The Tribunal set out its test for equality of treatment in consideration 21. **"... the critical question is whether there is a relevant difference warranting the different treatment involved. Even where there is a relevant difference, different treatment may breach the principle of equality if the different treatment is not appropriate and adapted to the difference." (See Judgment 2313, under 5.)"** The Tribunal concluded that the differences in treatment did not meet these criteria, it found in favour of the complainant and ordered the organisation to correct them.

Proportionality of Disciplinary Measures

Judgement No 3295 reiterates previous case law (2944 Consideration 50) that a disciplinary measure must not be "manifestly out of proportion" to the misconduct. The case was rejected since in the opinion of the Tribunal the test was satisfied in the current case.

[6] J No. 3290 Consideration 35
[7] J No 3299 Consideration 28

Probation and performance assessment

In Judgement 3252 (UNIDO) the Tribunal reiterated its case law regarding staff reports: "It is necessary to make clear that the Tribunal's role is not to adjudicate on the question of whether assessments made in appraisal reports are correct … Discretionary decisions of these types, involving assessment and evaluation, are entrusted to the responsible officers of the international organizations. ***These types of decisions can only be set aside if they involve some breach of a formal or procedural rule, there is a mistake of fact or law or some material has been overlooked, or a plainly mistaken conclusion has been drawn from the facts, or if there is a misuse of authority***."

Judgement No. 3264 against the ILO concerns delayed performance appraisals and a decision not to extend a contract despite the fact that the complainant was promoted at the end of the initial two-year period. The Tribunal held that „*It is clear that the Organization breached its obligation ... to complete a performance appraisal after the first 18 months of the probationary period.*" and that an organisation has a duty to "... act in good faith ... [and] give the complainant guidance and a meaningful opportunity to improve measured against objective standards." Procedural fairness was also criticised since the complainant had not been given essential documents which the ILO had relied on in its decision. The Tribunal found in favour of the complainant, and awarded moral damages. Again citing "**passage of time**" reinstatement / extension of contract was not ordered, but in this case the material damages (1 year salary) seem more consistent with the actual harm.

Interlocutory order by the Tribunal

Judgement 3246 is interesting because is it one of a very limited number of cases were the Tribunal has ordered independent investigation of a medical issue. In J3145 the Tribunal ordered an independent medical examination to determine whether the complainant's health problems were work-related. Unfortunately the complainant did not meet with the appointed medical advisor and the Tribunal dismissed her complaint.

National Legislation?

Judgement No. 3260 concerns pension, matrimonial matters and national legislation. The Headquarters Agreement between the WTO and Switzerland excludes the application of Swiss legislation regarding occupational pensions. The complainant, a Canadian national, disputed a decision of a Swiss court to award part of his pension to his divorced spouse. He claimed that Swiss law did not apply. The Tribunal declined jurisdiction arguing that this was outside of the scope the staff regulations.

Staff Rep use of E-mail

Judgement 3258 concerns complaints of members of the ITU Staff Council in connection with [the ban on] sending or distributing of communications to all staff members [without prior authorisation], and is related to Judgement 3156. The complainants, who considered that they had suffered injury on account of violations of the rights of staff representatives, asked for compensation. The Tribunal consider that „By their very nature, such violations of the rights of staff representatives cannot, under any circumstances, give rise to any right to financial compensation in favour of an individual staff member or his or her successors in title." The complaints were therefore dismissed. This judgement again shows an inconsistency in the Tribunals case law since there are cases where such financial compensation has been awarded.

Assessment of Harassment

Judgement 3250 concerns the ILO and relates to allegations of institutional harassment and bias with respect to internal investigations. The Tribunal reiterated its case law stating that it was for the complainant to prove an investigation was tainted with bias. It also stated that "**The fact that the investigator was a staff member of HRD [human resources department] does not, in itself, show bias. It should be noted that there is no rule which stipulates that internal administrative investigations must be conducted by an outside investigator**." The ILO Staff Regulations did not define harassment or set out a procedure for the resolution of harassment grievances, except for the examination of sexual harassment grievances.

However, the Tribunal notes that „**intent is not a necessary element of harassment and, in this case, it is not a single episode which creates the problem, but instead it is the accumulation of repeated events which deeply and adversely affected the complainant's dignity and career objectives.**“ [8] ... “***Taken individually, the isolated incidents … can perhaps be considered as improper but managerially justified, but taken as a whole the effect is much more damaging to the complainant and can no longer be excused by administrative necessity***[9]“.

The Tribunal found with the complainant and awarded 50K SFR in damages.

The same complainant filed another related complaint against ILO **J3251)**, which concerns promotion. An interesting finding of the Tribunal is: “The complainant did not have any acquired right to the 2008 promotion exercise, promotions being considered … [were] ... an optional and exceptional discretionary measure which is subject to only limited review by the Tribunal“ (see Judgments 2668 …1500 … 1109 … and 1973).“

The complaint was dismissed.

General Comments

Time limits and other formal aspects

A number of cases were rejected summarily under Article 7 of the Tribunal Rules. The grounds included not filing in time (e.g. Judgements 3296, 3304), not exhausting internal means of redress (e.g. Judgements 3245, 3301, 3302, 3303) and not having a final decision. Complainants should take care to ensure they meet these formal criteria, the Tribunal is very strict on such aspects.

Awards of Costs against complainants

In a number of cases the Tribunal referred to awards of costs against complainants (e.g. Judgements 3292 consid 15, 3293 consid 15). Whilst costs were not awarded in these cases, the tribunal indicated that it considers itself to have this authority. However, there is no basis in the Tribunals statute for such awards, which states clearly that it is the defendant organisations which shall bear the costs of the proceedings. The defendant organisations also do not have the standing to make counter claims against the complainants, this again is not permitted in the statute of the Tribunal. SUEPO does not condone abuse of the Tribunal procedure, however, it considers an award of costs against complainants to be inconsistent with the Tribunal's Statute.

Justice delayed is justice denied!

As described in the report on the 114th Session, the Tribunal had decided to treat a **maximum** of five EPO cases per session. It is clear now that this limit has been lifted, probably due to pressure from staff unions and related bodies, as well as interventions from third parties. The statement of the President of the Tribunal in the presentation of the 116th Session indicated that the Tribunal intends to take measures to address the backlogs. Other parties, (organisations and complainants) were also encouraged to address the backlogs. These comments are encouraging. However, the outcome of the 116th session shows that the increase in the number of cases handled does not result from increased capacity of the Tribunal, but rather a limitation to the right of appeal (see comments on Judgement 3291 above).

An additional session was held between the 17th and 21 Feb 2014m which resulted in 25 judgements on 28 cases, 11 of which were EPO cases. The announcement of the 117th Session will be 28th April.

These measures taken by the Tribunal will clearly have an effect on the backlogs, but it remains unclear whether the Tribunal will manage its workload and at the same time maintain reasonable standards of justice.

[8] JN 2350 Consideration 9
[9] JN 3250 Consideration 10

Since the Tribunal provides limited data on its internal functioning, it is usually only possible to make assessments based on the information given in the Judgements themselves. Despite this limitation, it is clear that the delays will remain over 3 years for the foreseeable future. When considering that these delays are additional to internal appeal procedures, the overall delay in access to justice is still excessive. (see SUEPO report on Justice for more details).

The Tribunal regularly criticises defendant organisations for delays in access to justice, but in practice this criticism seems to have limited effect. In part this is probably due to the limited awards against the organisations for failing to provide a timely appeal process, and an increasing practice of the Tribunal to limit itself to awarding moral damages for delays.

If there are **no consequences** for delays, defendant organisations have **no motive to change** their practices. **In general the organisations benefit significantly from the delays**, since it permits them to avoid any real accountability for their actions.

In this respect the actions of the Tribunal are contradictory. Whilst there is an increasing tendency to criticise the delays, the Tribunal still continues to refer cases back to the EPO even where the delays have already exceeded reasonable time limits. There is also a trend with the Tribunal to **refuse awards of specific performance due to the "passage of time"**[10] This is particularly problematic, since, the delays are caused by the organisations failure to treat the appeals in a timely manner.

Given these trends, it is becoming clear that access to justice cannot be guaranteed by either the internal means or the ILOAT. National courts are taking notice, and are considering the consequences of the lack of adequate protection particularly on the immunity of international organisations. One example is a recent decision where the immunity of the EPO was set aside by an NL Court. Although the delays at the ILOAT for EPO cases will certainly reduce from the 15 years cited in this judgement, the delays are still serious and will continue to be the subject of dispute between the EPO and its staff.

As already stated, the delays at the ILOAT itself are only part of the problem. The delays of the internal review process, are between 3 and 6 years for the EPO. Given current backlogs and the refusal of the EPO to provide necessary resources this is expected to increase to over 7 years in the near future. Even though such procedures are not judicial, they must be nevertheless be exhausted before applying to the ILOAT. As a result the expected future delays for access to justice remain in excess of 10 years for EPO staff.

SUEPO cannot accept such flagrant violations of fundamental rights and will continue to work hard to address these problems. Since the internal legal protection, particularly relating to fundamental rights, is inadequate, we hope that national courts will play their part in resolving the issues. If not the EPO will continue to operate in what is in effect a legal vacuum. Which given the purpose of the EPO can only be considered as a disgrace to the core European values upon which the EPO was founded.

For further session reports and general comments on the legal protection of staff see https://rights.suepo.org

The Executive Committee

[10] Judgement 3290 Consideration 35 "in view of the passage of time, reinstatement is not a viable option"