

JUDGMENT OF THE DUTCH COURT OF APPEAL IN SUEPO v EPO: OUTCOME AND FOLLOW-UP

The Office has progressively and severely eroded a number of fundamental union rights. Having tried unsuccessfully to protect them through all other avenues, SUEPO The Hague (VEOB) and the EPO-wide umbrella organisation SUEPO Central (SUEPO) sought an injunction against the EPO with the Courts in The Hague.

The Judgment

The Dutch Court of Appeal has handed down its decision on 17 February 2015, finding the position of the EPO unlawful and unreasonable.

The EPO has claimed immunity, but the Court found that SUEPO did not have any access to internal means of dispute or to the ATILO to defend collective rights; the conflict resolution system being manifestly deficient in this respect, the Court asserted jurisdiction in compliance with Article 6 ECHR. The EPO also said that it was entitled to full autonomy in the internal organization. The Court held that while this may be correct generally speaking, the autonomy does not go so far as to contravene basic rights generally recognized throughout Europe, particularly if parties like SUEPO do not have any effective legal means to contest the contraventions.

Finding that Union rights had been violated, the Court ordered the European Patent Organisation to:

Immediately:

- Not apply certain provisions that restrict the right to strike

Within 7 days

- Provide unrestricted access to the internal email system;
- Lift all the filters blocking incoming mails from “@suepo.org”;
- Allow the use of mass email for union purposes;
- Cease and desist from threatening Union officials for making use of the same;

Within 14 days

- Allow SUEPO to conduct collective bargaining with the EPO.

Response of the EPO

The Court Bailiff served the judgment to the EPO on 19 February.

Although the judgment was addressed to the Organisation (not the Office as such, because only the former has legal personality), the President himself has, presumably without consulting the Council, hastily announced to the EPO staff that he will not obey the Court Order. His decision, however, has not (yet) been formally notified to SUEPO or its legal representatives.

Having lost the battle on immunity from *jurisdiction*, the EPO now invokes immunity from *execution*. However, immunity from execution is limited to cases that interfere with the property and estate of international organisations. Compliance with fundamental rights falls outside these categories. The Court of Appeal's judgment is correct in this regard; it can, and indeed must, be implemented.

To be followed

An independent Court of law has found that the EPO is violating certain fundamental rights. For this purpose, the Court has assessed the situation exclusively against general fundamental principles of law recognized by all European states; it did not consider domestic law at all.

The Court ordered relief that is nothing more than minimal, common-sense measures that can be summarized as an admonition to respect fundamental rights. Contrary to what the EPO asserts, this does not affect fundamentally its freedom of operation: it merely reasserts that an international organisation must operate within the boundaries of the rule of law.

The question is now whether member states can afford, politically and legally, to accept that one of their organisations manifestly operates outside the rule of law, and expressly wants to disregard an admonition to comply with fundamental principles of law.

- If they cannot accept such outcome, then through their delegates in the Administrative Council of the EPO, they must sort out once and for all the issue of governance (including suitable checks and balances) of the EPO.
- If they want to risk accepting such outcome, they must also accept the consequences – both in terms of image on the international scene, and of liability for any damage that may flow from their decision. Particularly exposed to such ignominy and liability are the host states – Germany, The Netherlands and, to a smaller extent, Austria – who all have an increased responsibility for the welfare of all their residents.

SUEPO understands and respect that the Administrative Council does not wish to micro-manage the Office, and that it prefers to leave the running of the Office to the President. However, this conflict is not, or is no longer, merely about management style. As the Court found, it is about fundamental rights. It falls within the remit and responsibility of the Administrative Council -- and of the Member States who are ultimately responsible -- to ensure that such rights are respected. SUEPO urges the Member States to discharge their responsibility at this critical time.

The Administrative Council will meet at the end of March. It is hoped that they will invest the time left to explore options for a permanent solution of this unsustainable situation.