

'What if the Patent Office uses torture?'

Trade Unions

The Supreme Court alone cannot solve the dispute within the European Patent Office. Mediation is needed.

- Eppo König

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On Friday, the Netherlands' highest court delivered a highly exceptional appeal to the European Patent Office in Rijswijk and its trade unions: make a serious attempt at mediation. This was announced by Vice President of the Supreme Court Floris Bakels, in the courtroom.

The day before, employees had held another protest march in The Hague against the atmosphere of 'intimidation' and the dismissal of trade union members at the Patent Office (EPO), which is the largest international organisation in the Netherlands with 2,700 employees.

The trade unions accuse the office, which reviews national patent applications and grants European patents, of a reign of terror that has driven a number of employees to suicide. The French President of the EPO, Benoît Battistelli, meanwhile speaks of "sabotage" of his reform policy.

The appeal for mediation was notable for several reasons. 'Ordinary' judges often refer to mediation, but the Supreme Court only assesses whether less senior judges have done their job correctly and makes definitive judgements. The appeal for mediation goes beyond this: it essentially recognises the trade unions as discussion partners.

The appeal was particularly loaded as Guillaume Minnoye, the Flemish Vice President of the EPO and Director of Rijswijk, was in the room. The previous evening, Minnoye has predicted in current affairs programme *Nieuwsuur* that the Patent Office will ignore an adverse ruling by the Supreme Court.

Immunity

The judgement, which will probably not be made until after the summer, will not bring an immediate resolution to the dispute. The Supreme Court can answer an important question, however: how far does the legal immunity of the EPO as an international organisation reach? This question is relevant not only for the Patent Office but also for around thirty other international organisations in the Netherlands, such as the European Commission, the International Criminal Court and the Court of Justice.

The Court of Justice in The Hague judged last year that the Patent Office had to recognise its trade unions. Emails from the union could no longer be blocked, the union could discuss working conditions and President Battistelli could not obstruct strikes.

But the Patent Office ignored this judgement, as it considers it is not bound by national law. The office consists of 38 Member States and has locations in the Netherlands, Germany, Austria and Belgium. The same laws and regulations must apply to all 7,000 employees, according to the office.

The Netherlands wants to be a good host to international organisations, so the State sided with the Patent Office. The government presented two faces this week, however. On Thursday, the cabinet announced an independent investigation into working conditions at the Patent Office in Rijswijk. A day later, the lawyer for the State stood before the Supreme Court to plead that the office is immune.

Both parties are using extreme examples to prove their point. The Patent Office refers to mothers from Srebrenica. The mothers of murdered Muslim men also cannot press charges against the United Nations, because the UN is immune as an international organisation.

The advocate for the unions went even further. The Patent Office is already using detectives to monitor employees and interrogating them without lawyers, he said. What if the office next used torture on them? Would the State say that the Patent Office has immunity then too?

Three suicides

In 2013, an employee committed suicide by jumping out of the office in Rijswijk. There were also two suicides at the Patent Office in Germany. The SUEPO trade union and the staff committee have since been calling for an independent investigation. The French President Benoît Battistelli doesn't want this. In an interview with NRC he said: "First of all, suicides are always personal tragedies. I don't think it's right to use these matters as a tactic against the President and the Management. This man [...] had just been given a permanent contract. We don't know what made him do it." "The Labour Inspectorate in the Netherlands has no reason to intervene in a case like this. We are not a Dutch agency."