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Dutch Supreme Court upholds immunity EPO in conflict with trade unions

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The European Patent Office can invoke its immunity from jurisdiction of Dutch courts in its conflict with the EPO trade unions SUEPO and VEOB. The highest court in The Netherlands, the Hoge Raad, has ruled so today. The Supreme Court set aside a decision of the so-called Gerechtshof, which had ruled to the contrary in 2015.

The SUEPO and the VEOB started legal proceedings against the EPO in the Netherlands (where one of its main premises is based), more than three years ago. They argued that the EPO violated the European Convention on Human Rights (ECHR) by limiting the workers' right to strike, by blocking mails from the trade unions and by refusing to recognize these. The EPO invoked its immunity from jurisdiction.

In 2015, the Dutch [Gerechtshof in The Hague](#) ruled that the EPO was violating the ECHR indeed and said that, regardless of the question whether the EPO is an autonomous international organization with its own legal order and staff policy, and which in principle enjoys immunity from the jurisdiction of Dutch courts, this autonomy cannot encompass/include the right to violate fundamental European rights (...) without offering parties such as the unions any legal remedy.

Today however, the [Hoge Raad](#) set aside this decision. It agreed with the Gerechtshof that under article 6 ECHR immunity of international organizations has to be 'proportional' as '...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'. But, contrary to the Gerechtshof, it concluded that is in not in violation of article 11 ECHR (concerning the right to form trade unions) if the SUEPO and the VEOB are not accepted as representatives of EPO workers in labor conflicts. The Hoge Raad ruled it is sufficient that EPO workers themselves can file a complaint internally and, if necessary, with the Administrative Tribunal of the International Labour Organisation (ILOAT).

The decision of the Supreme Court is a victory for EPO president Benoît Battistelli, who had said in 2015 that the judgment of the Gerechtshof was 'neither legally admissible nor practically enforceable'. At the time, Battistelli received support from the Dutch government, which announced that as the EPO was 'immune from

execution', there would be no action from the authorities in the Netherlands.

It is not likely at all that the decision will lessen the tensions between the trade unions and the EPO president however. Last year Battistelli, widely criticized for his dictatorial behaviour, fired several SUEPO union members, though he has always maintained their activism had nothing to do with it. Moreover, last June Battistelli pushed through a controversial reform of the Boards of Appeal, and he tried to intervene in judicial proceedings concerning the removal from office of a BoA-member. Increased pressure from (parts of) the EPO's Administrative Council, which is supposed to supervise Battistelli, nor external reports on the social situation at the EPO have led to improvements. After its most recent meeting in December 2016, the Administrative Council reported: 'Underlining the need to improve the social dialogue, the Council mandated its Chair to work together with the Board 28 and the Office on concrete proposals in the first half of 2017.'

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