

Kluwer Patent Blog

Trade union to EPO president Campinos: Quash unlawful strike restrictions

Kluwer Patent blogger · Wednesday, July 21st, 2021

In an open letter to EPO president António Campinos, trade union SUEPO has called for an execution of the recent judgments of the Administrative Tribunal of the International Labour Organization (ILOAT) concerning restrictions on the right to strike at the EPO.

In a series of judgments the ILOAT ruled that the legal framework which was introduced in 2013 by former president Benoit Battistelli and was intended to curb strikes, is unlawful (see [this earlier post](#)).



As the SUEPO writes: “The judges emphasised: It has long been recognised that staff of international organisations have a right to strike and that generally it is lawful to exercise that right. They ruled *inter alia*:

- Circular No. 347 (Circular on Strikes) is set aside.
- “Go slow” and “work to rule” are legitimate forms of industrial action protected by the ordinary conception of the right to strike.
- Imposing a minimum of 10% of employees who may call for a strike violates the right to strike.
- The requirement that the vote be conducted by the Office violates the right to strike.
- The time limit placed on the duration of strike violates the right to strike.
- Being on strike must not be stigmatised as an unauthorised absence from work. A salary deduction on this basis is unlawful.
- The deduction of 1/20 of salary for each day a member of staff is on strike is considered punitive and thus not lawful.

In your first official meeting with SUEPO representatives on 5 December 2018, the above rules for strike were on the agenda. You confirmed your readiness for looking at them together with us with the intention of settling pending cases and finding a *modus vivendi* reflecting a staff union’s prerogative for organising a strike. But to date nothing in this respect has happened!

It is true that the regulations were introduced under your predecessor. However, you have to accept the consequences of continuing to entrust the fate of the EPO to the advisors of the time. Thus, the

full responsibility for the serious loss of reputation caused for the EPO now lies solely with you.

What was once a model organisation for Europe has revealed itself as an institution that has breached the fundamental rights of its employees – for more than eight years. (...)

We request that you execute the judgments and that accordingly Circular 347 is *quashed ab initio*.

For the reason that all EPO staff was deprived of their right to strike with unjustified salary deductions, we request that the outcome of the judgments is applied to all. In particular, we request that,

1. Judgment 4430 be applied to all EPO staff who were deprived of their right to participate in the SUEPO strike of July 2013
2. Judgment 4433 be applied to all EPO staff who was considered on unauthorised absence for participating in the SUEPO strike of July 2013,
3. Judgments 4432 and 4434 be applied to all EPO staff active at the time of the events who were deprived of their right to vote in strike ballots
4. Judgment 4435 be applied to all EPO staff who had excessive strike deductions of 1/20th since 1 July 2013

(...) Finally, we urge you to propose to the Administrative Council the withdrawal of the decision CA/D 5/13 *ex tunc*. Such a decision in the upcoming meeting on 13 October 2021 could at least avoid another embarrassment for the Organisation in front of the Tribunal in Geneva.”

The June 2013 decision CA/D 5/13 of the EPO’s Administrative Council created a new Article 30a of the service regulations for EPO employees concerning the right to strike, and it amended Articles 63 and 65 concerning unauthorised absences and the payment of remuneration. It also authorised Battistelli to lay down further terms and conditions, which he did in the controversial Circular No. 347, that has now been declared unlawful by the ILOAT. Article 65 introduced the 1/20 method for calculating salary reductions in case of strikes, which was considered punitive by the ILOAT as it was different from the method of calculating salary deductions for other purposes (the 1/30 method).

The EPO hasn’t reacted to questions of Kluwer IP Law about the ILOAT judgments and the SUEPO’s open letter.

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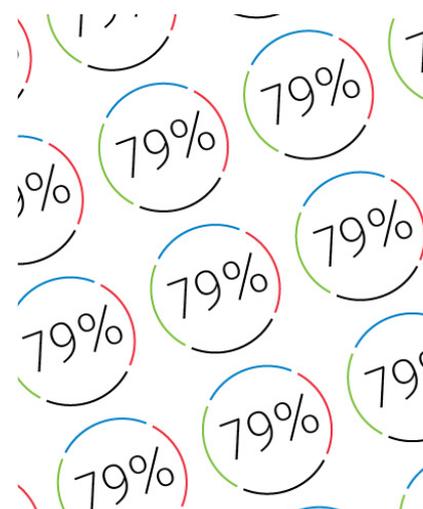
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