

Dutch courts have no jurisdiction in European Patent Organisation dispute

5 **The European Patent Organisation can invoke jurisdiction immunity in a dispute with trade unions. That is the ruling issued by the Supreme Court today, and means the Dutch courts have no jurisdiction to examine disputes brought before them between the European Patent Organisation (EPOrg) and two trade unions: the Trade Union of the European Patent Office (VEOB) and the Staff Union of the European Patent Office (SUEPO). Previous rulings by the**
10 **court in preliminary relief proceedings and the Court of Appeal in The Hague have been set aside by the Supreme Court.**

15 EPOrg is an international organisation consisting of 38 participating member states and is based in Munich. One of the organs of EPOrg is the European Patent Office, which is based in Munich and also has an office in Rijswijk. VEOB is a trade union of the European Patent Office. Membership of VEOB is open to (former) employees of the European Patent Office at the Rijswijk office. SUEPO is an umbrella union for
20 EPOrg employees.

The unions are of the opinion that by implementing new provisions about strikes in the Service Regulations for EPOrg employees, EPOrg has seriously restricted the right to strike and impeded the work of the unions. The unions also believe that EPOrg is wrongly excluding them from collective negotiations. The unions instigated
25 preliminary relief proceedings against EPOrg at the law courts in The Hague and want the relevant provisions to be withdrawn.

EPOrg initially invoked the Protocol concerning EPOrg's privileges and immunities. According to EPOrg that immunity means the Dutch courts do not have jurisdiction to
30 examine this dispute.

The preliminary relief court at the law courts in The Hague (ECLI:NL:RBDHA:2014:420) rejected EPOrg's invoking of jurisdiction immunity. On appeal, the Appeal Court in The Hague (ECLI:NL:GHDHA:2015:255) also ruled that EPOrg could not invoke jurisdiction immunity. The Court of Appeal then ordered
35 EPOrg to allow the trade unions to have unhindered use of EPOrg's e-mail system, prohibited EPOrg from applying the strike provisions in the Service Regulations and ordered EPOrg to admit the trade unions to collective negotiations.

The Minister put a stop to this: according to him the ruling by the Court of Appeal was in conflict with the international law obligations of the Dutch State which has to
40 adhere to agreements about immunity of international organisations. EPOrg appealed to the Supreme Court against the ruling by the Court of Appeal in The Hague. The State of the Netherlands supported EPOrg's position in the cassation procedure as an intervener.

45 According to the European Court of Human Rights (ECtHR) the granting of
jurisdiction immunity to an international organisation represents a restriction of the
right to access a court in the sense of Article 6 of the European Convention for the
Protection of Human Rights and Fundamental Freedoms (ECHR). That restriction is
acceptable provided the person seeking justice has reasonable alternatives for
effectively protecting that person's rights.

50 According to the Supreme Court, those alternatives exist. The rights of VEOB and
SUEPO are adequately guaranteed by the existing internal disputes procedure at
EPOrg and the possibility for individual employees and staff representatives to
55 appeal to the Administrative Tribunal of the International Labour Organisation in
Geneva. According to the Supreme Court the right of access to the court is not
therefore fundamentally affected.