Dutch courts have no jurisdiction in European Patent Organisation dispute

The Supreme Court ruled the 20th of January that the European Patent Organisation (EPOrg) is entitled to invoke its immunity from jurisdiction in a dispute with trade unions. Consequently, the Dutch courts have no jurisdiction in the dispute between EPOrg and two trade unions, Vakbondsunie van het Europees Octrooibureau (VEOB) and Staff Union of the European Patent Office (SUEPO). The Supreme Court quashed the previous judgments in the case by the interim relief judge and The Hague Appeal Court.

EPOrg is an international organisation with 38 member states and has its headquarters in Munich. One of its organs, the European Patent Office, is also headquartered in Munich and has a branch in Rijswijk, the Netherlands. VEOB is a trade union for staff of the European Patent Office. Membership of VEOB is open to staff and former staff of the Rijswijk branch. SUEPO is an umbrella trade union for EPOrg staff.

According to the unions, by introducing new provisions on strike action in the Service Regulations for staff, EPOrg has unduly restricted the right to strike and hampered the unions in their work. The unions also believe that EPOrg is wrong to stop them from taking part in collective bargaining. The trade unions initiated interim injunction proceedings against EPOrg at The Hague district court, claiming that the provisions should be repealed. EPOrg’s principal argument was to rely on the Protocol on Privileges and Immunities of the European Patent Organisation, claiming that the Dutch courts are not competent to hear the dispute because EPOrg has jurisdictional immunity.

The interim relief judge of The Hague district court dismissed EPOrg’s plea of immunity from jurisdiction (ECLI:NL:RBDHA:2014:420). The Hague Appeal Court also ruled (ECLI:NL:GHDHA:2015:255) that EPOrg was not entitled to rely on jurisdictional immunity and ordered it to give the trade unions unrestricted access to EPOrg’s email system, refrain from applying the provisions on strike action in the Service Regulations, and admit the trade unions to collective bargaining.

The Minister of Foreign Affairs intervened because in his opinion the Appeal Court’s judgment was incompatible with the Dutch State’s obligations under international law requiring it to comply with agreements on the immunity of international organisations. EPOrg
lodged an appeal in cassation with the Supreme Court against The Hague Appeal Court judgment. The State of the Netherlands was permitted to join the cassation proceedings on the side of EPOrg.

According to the European Court of Human Rights (ECtHR), granting jurisdictional immunity to an international organisation constitutes a limitation of the right of access to a court as referred to in article 6 of the Convention for the Protection of Human Rights and Fundamental Freedom Rights (ECHR). This limitation is acceptable provided that litigants have a reasonable alternative means of protecting their rights effectively.

The Supreme Court found that such alternative means exist. The rights of VEOB and SUEPO are sufficiently protected by the internal dispute settlement procedure provided for by EPOrg, under which individual employees and staff representatives can ultimately take their complaint to the Administrative Tribunal of the International Labour Organization in Geneva. According to the Supreme Court, this means that the essence of their right of access to a court has not been impaired.