



Objectively justified reasons for suspicion of partiality? – How to interpret the EPC –

The staff representation recently started an information series about the legal order of the EPC, see e.g. the staff representation's information on

- (a) [interferences with the Divisions](#)
- (b) [CASE](#)
- (c) [handwritten amendments](#)
- (d) [Pilot team managers in DG 1](#)

On these occasions, the staff representation regularly warned more than once that the common legal principles governing the EPC should not be ignored when planning or implementing administrative modifications. Otherwise, complicated legal issues of all types may arise, including illegal or illegitimate decisions by or procedures before the Divisions.

It is interesting to see that similar problems now become prominent for DG 3 already but this should not be a surprise since the common legal principles at stake should even more strictly apply to the second instance Boards because they are responsible for an entirely distinct judicial review of the Divisions' first instance decisions.

In interlocutory decision [R0019/12](#), the Chairman of the Enlarged Board of Appeal (at the same time Vice-President of DG 3, VP 3) had to be replaced by his alternate because a party's suspicion of partiality was found to be objectively justified since VP 3 was too closely involved in the Office's administration, e.g. in the MAC or in the GAC. On the other hand, whether VP 3 has personally shown any partiality, whether he lacked the required personal independence, or whether there were any other subjective partiality reasons, was found to be irrelevant under these circumstances since objectively justified reasons for suspicion are to be regarded sufficient for the exclusion. Certainly, the reasons of R0019/12 are not directly applicable to the Divisions but many of the legal arguments analogously apply to the first instance. The staff representation thus recommends careful consultation of R0019/12.

Very similar suspicion of partiality issues regarding all members of the Board arose in [T1938/09](#) and [T1676/08](#), even including gross objections to the judicial character of all procedures before DG 3 as such, and finally including proceedings which are at present pending before the German constitutional court.

Nevertheless, the EPO's administrative management (including the President and the Vice-Presidents) as well as the Administrative Council appear to go on with merely ignoring the observed issues, and prefer to derive far reaching powers from Articles 10 and 33 EPC, without considering the legitimate interpretations thereof which derive e.g. from [G0003/08](#), and which are based on the Vienna Convention on the Law of Treaties.

The staff representation thus rather regards this attitude as generally detrimental to the functioning of the EPO, *inter alia* detrimental to the quality and the legal validity of the Divisions' decisions, and thus doubts that the allocation of managerial functions to individual members of Divisions is consistent with Article 10(2) EPC or Rule 11(2) EPC, since the involved conflicts of interests will directly result in more issues of suspicion of partiality.

Your Central Staff Representation