



## **Report of the 244th meeting of the GAC on 01.10.2012 in Vienna**

### **Summary**

*The 244<sup>th</sup> meeting of the GAC (General Advisory Committee) was the seventh GAC meeting of 2012. The agenda comprised a single document on the reform of the internal appeal system.*

### **Introduction**

The 244th meeting was an additional, extraordinary, meeting called to discuss a single document concerning reform of the internal appeal system. This topic was originally discussed in the 240th meeting.

The background to the proposal is that the administration considers that the current number of internal appeals filed each year is too high, in that the average duration of the internal appeal proceedings is excessive. This, of course, we can only agree with. For more details on the background of this topic, we refer to our report of the 240th meeting of the GAC. Following that meeting, several meetings took place between representatives of the administration and of the CSC in order to see if agreement could be achieved on the various points of contention which existed in the document submitted to the 240th meeting.

Before the meeting, we were provided with two letters, one from the CSC to the President and the other from members of AMBA (the Association of Members of the Boards of Appeal) to the Chairman of the GAC. From these it was obvious that, even if some progress towards consensus had been made, some points of contention still remained.

### **Comparison to previous proposal**

The previous proposal foresaw to remove the possibility to appeal acts negatively affecting an individual. Rather, only decisions could be

appealed. The new version retains the possibility to appeal acts. This is important especially in the case of conflicts, where an individual may be affected not by an explicit decision but by inappropriate behaviour. It is thus a step in the right direction to retain the possibility to contest via the appeals route such acts.

Previously, it was proposed to scrap the Appeals Committee of the Administrative Council. Disputed Council decisions would then only be the subject of a (cursory) review procedure. If the outcome of this was not satisfactory, then the individual had to file a complaint directly with the Administrative Tribunal of the ILO. Now, however, it is foreseen that disputes concerning appointment by the Administrative Council may, following a review procedure, indeed be appealed in front of an Appeals Committee. It is also foreseen that the Council may, at its discretion, allow other disputes against Council decisions to be considered not only in a review procedure, but also by an Appeals Committee.

However, the new proposal shares with the previous one the fact that the Appeals Committee of the Administrative Council is suppressed. Rather, appeals against Council decisions are dealt with by an enlarged Appeals Committee with, in addition to the usual four members when dealing with appeals against decisions of the President, two additional members, one of whom is nominated by the Council.

AMBA, in its previously mentioned letter, considered that the independence of the Boards of Appeal could be negatively impacted by the proposed change to the Appeals Committee. Accordingly, they stated that they could not support the change. From our side, we wondered what the point of this change was. Currently, the EPO has two different Appeals Committees. One each for disputes arising from decisions from the two respective appointing authorities at the Office. That is to say, an Appeals Committee of the President and an Appeals Committee of the Council. The proposal now foresees to replace these by a single committee - which would, however, be constituted (and thus presumably function) differently depending on which appointing authority took the decision. We thus failed to see the point of suppressing a committee in order to, in effect, replace it with another. Moreover, it is unclear under what circumstances the Council may decide that a decision not relating to appointment may be heard by the Appeals Committee.

The other changes proposed in the earlier version of the document are, in essence, maintained.

That is to say, generally, before filing an appeal an individual must submit the dispute to a review procedure, to be carried out by the appointing authority which took the disputed decision.

Also, the list of items which may not be appealed internally, but which must be taken directly to the ATILLO, continues to grow. The proposal foresees that the list should include decisions taken after consultation of the Medical Committee; decisions on requests to carry on working after reaching the age of sixty-five; decisions taken after consultation of the Disciplinary Committee; and decisions concerning Part Time Home Working.

In our opinion, there is nothing objectionable about the principle of reviewing decisions in order to avoid litigation. However, there is nothing currently preventing such reviews, e.g. after an individual has made a request for an individual decision, or in the two months before an appeal has to be registered, or indeed at anytime up until the Appeals Committee deals with the case, which may be a number of years.

In any case, if a review procedure is to be

worth the effort, it will require a change of mentality amongst the decision makers at the Office. In particular, it will require an open mind to reconsider decisions being disputed. If such a change can be achieved, then the problems relating to number of disputes and length of proceedings will cease to exist, without any changes to the regulations.

We are also extremely concerned about increasing the number of items excluded from internal appeal, which must be argued directly in front of the ATILLO. This is particularly so given that (see SUEPO report of the 113th session of the Tribunal) the Tribunal is of the opinion that it is being swamped by cases from the Office. The Tribunal considers itself to be an appellate court. Thus, generally, there should have been internal appeal proceedings before a complaint is filed with the Tribunal. Direct filing of complaints without an internal procedure should, in the Tribunal's opinion, only occur under exceptional, rather than systemic, circumstances. As a result, the Tribunal seems to consider that the Office is in breach of the agreement by which Office staff (and rightful claimants) have access to the Tribunal. Indeed, it seems that the Tribunal has ordered a study of this with the intention of possibly withdrawing this access.

Moreover, even if we can understand the logic of excluding cases following consultation of the Medical Committee from internal appeal, we consider this to be unwise. The Internal Appeals Committee does a good job considering procedural points. An examination of recent sessions of the Tribunal reveals that the Office very often loses cases filed after consultation of the Medical Committee for formal reasons. It seems to us that the number of cases filed with the Tribunal could thus be reduced if decisions following consultation of the Medical Committee could, indeed, be considered by the Appeals Committee.

Even though the number of cases against other excluded decisions has up until now been low, similar considerations also apply to the other excluded decisions.

### **Conclusions**

From the above it should be clear that a number of the significant objections to the previous proposal apply also to the new version. In addition, although arguably a step

in the right direction, the new constitution of the Appeals Committee for dealing with appeals against Council decisions leads to new problems.

For the above reasons, we gave a negative opinion on the proposal. Since many of the points we had made following the 240th meeting were still relevant, we also referred to this, as well as the letters from the CSC and AMBA.

We also recommended that, as a first step, rather than changing the regulations, the administration should:

Firstly, encourage a change in the attitude of the decision maker, who should better substantiate decisions that have a negative effect on staff, properly communicate these decisions and be ready to enter into an open and constructive dialogue with an appellant

whenever a decision is challenged with an internal appeal; and

Secondly, invest in properly functioning Internal Appeals Committees, of the President and of the Administrative Council, that have the capacity and are provided with the necessary resources to accomplish their tasks and deal with their workload.

Only if these measures failed to have a significant effect in reducing the number of disputes should the Office consider changes to the regulations.

The members nominated by the President gave a positive opinion on the proposal.

The members of the GAC nominated by the CSC.