



Report of the 240th meeting of the GAC on 30.05.2012 in Vienna

Summary

The 240th meeting of the GAC (General Advisory Committee) was the third GAC meeting of 2012. The agenda comprised a single document concerning reform of the internal appeal system.

Introduction

As with the previous two meetings this year, the current meeting was originally scheduled to last two days. However, since the agenda only comprised a single document, the first day of the meeting was cancelled. The meeting was thus, again, a one day meeting.

As we have reported earlier, despite the fact that the senior managers of the Office tend to have the busiest agendas, in 2012 the President "put the MAC in the GAC", with the result that all vice-Presidents who were in place at the start of the year are either members or Chairman of the GAC. Whilst VP1, VP2 and VP3 have clearly made an effort to be available for all the regularly scheduled GAC meetings, we have to report that VP5 has not been present at any of the meetings. At each meeting, he was deputised by a Principal Director from his DG.

Content of proposal for reform of the internal appeal system

The proposal comprises a complete overhaul of the form and content of the current regulations concerning the Office's internal appeal system. That is to say, Articles 106 - 113 ServRegs have all been substantially modified, and a number of implementing rules (which are generally placed in Part 1a of the Codex) have been added. It is claimed that the reform has three main aims. Preventing

litigation by dialogue; streamlining litigation and enhancing the independence and empowerment of the Appeals Committee.

In a number of cases, the changes are editorial or merely comprise moving text from one place to another. This may make the system more confusing for staff for a time, until they understand fully some of the changes. One example of this is that the Internal Appeals Committee (IAC) will become its own registry. This has the effect that appeals will have to be filed with the IAC, and not with the President. In its core, the proposal comprises four main new items.

Firstly, the introduction of a new review procedure, carried out by the department responsible for the decision in question. This review is in most cases compulsory before an internal appeal can be filed. Indeed, only if the outcome of this review does not give satisfaction can an appeal be filed. The review has to be carried out rather quickly - within two months of filing of the request for reviews of Presidential decisions; within two months following the next meeting of the Council for Council decisions.

Secondly, the Council's Appeals Committee is scrapped, with no replacement. That means that, apparently, following the above review procedure, appeals against Council decisions should go directly to the Administrative Tribunal of the ILO (ATILO). The GAC was

presented with a letter from AMBA (the Association of Members of the Boards of Appeal), who strongly objected to this. The Boards of Appeal are affected by this since the Council is their appointing authority and so they consider that they will lose an instance.

Thirdly, the list of items excluded from the internal appeal procedure is getting longer and longer. According to the proposal, the list will include decisions following consultation of the Medical or Disciplinary committees, decisions concerning requests to carry on working beyond the age of 65 and decisions to refuse a staff member's request to perform part time home working. All these decisions must also be appealed directly to the ATILO.

Fourthly, until now, the President's nominees as member or Chairman of the IAC had to be sent to the GAC for opinion. This requirement has also been removed from the proposal.

In addition to these fundamental changes, there are a number of further changes which may appear merely stylistic or editorial but which will in fact affect staff. One example is that a staff member will no longer be able to challenge "acts" that affect him, only "decisions"¹. In the GAC, the administration's expert explained that in their analysis, changing "act" to "decision" would mainly have the effect of preventing appeals against attacks on a staff member's dignity! Several times during the meeting, it was explained that it was not the intention to reduce further the rights of staff. Quite the contrary. However, the members of the GAC nominated by the President could not provide any convincing reasons to explain the contradiction between the intention of not affecting the rights of staff and this change of wording.

The CSC has already published, in a paper entitled "Internal Appeal Reform - The bits the President "forgot" to mention"² " what it considers the deficiencies in the proposal to be.

Tenor of discussions in the GAC

For multiple reasons, the discussions were

extremely dissatisfactory.

It is clear Tribunal case law that the Office is obliged to provide all necessary information that the GAC requires in order to help it to arrive at a reasoned opinion.³ For example, when the Office considers a particular piece of information essential to arrive at the proposal that will be discussed at the GAC it is mandatory that this information reaches the GAC. The Tribunal has clearly ruled that, if the Office does not provide this information, then the consultation is faulty since the GAC is not in a position to formulate a reasoned opinion. Under these conditions, if an appeal is filed, they will quash the decision under appeal.

In the current case, the document itself talks of an "in-depth analysis of the causes and nature of internal appeals and a benchmark with other international organisations" that have served to develop the current proposal in the hope to improve the situation at the Office. The administration's expert in the meeting also referred to the fact that a benchmarking had been performed. However, even though we requested them in the meeting, neither of these two documents was provided to the GAC for information.

We have been made aware by our representatives in the working group that worked on the current topic of previous drafts, dated December 2011 and March 2012, that were substantially different to the current proposal. Both of these, but in particular the draft of December 2011 came far closer to accommodating the concerns expressed by the Staff Committee (see earlier referenced paper) than the document finally presented to the GAC for opinion. The GAC was neither informed of these previous drafts nor of the reasons that led to abandon them in favour of the current proposal.

At the beginning of the meeting we were informed that one of the members nominated by the President had a private appointment in Munich and would like to leave by 14:00. At that time (i.e. at the beginning of the meeting), all present considered that this seemed reasonable. However, we also made it clear

¹ However, this may be contrary to the Tribunal case law. See Judgment 2626 at

http://www.ilo.org/dyn/triblex/triblexmain.detail?p_lang=en&p_judgment_no=2626&p_language_code=EN

² See <http://www.epostaff.org/archive/sc12031cp.pdf>

³ See for example Judgment 2857 at

http://www.ilo.org/dyn/triblex/triblexmain.fullText?p_lang=en&p_judgment_no=2857&p_language_code=EN&p_word=contributions%20death%20invalidity

that such discussions often turn out to differ from expectations. The GAC made every effort to meet this member's wishes, even going without a lunch break. Despite these efforts by all concerned, the expectation that discussions would be over in time for the meeting to end at 14:00 turned out to be unrealistic.

When the Chairman realised that it was going to be difficult to finish the discussions by 14:00 sharp he instructed the members appointed by the President only to take note of our comments and questions and even asked them at least in three occasions not to answer our questions. We found this attitude simply intolerable. We understand that the members nominated by the President may not always be in a position to give an answer. We understand that they may simply listen to our comments and take notes, in particular, if there is little political will to amend a proposal. However, we cannot accept that the Chairman cuts short their attempts to answer our questions. This is especially so if the reason for this is that a member, who could have been deputised, must leave an orderly summoned meeting three hours before its scheduled end. We also cannot accept that the other members (and in particular the other vice-Presidents present) positively went along with this and refused to answer any further questions.

We informed the President that we found this attitude disrespectful of the GAC and the administration's own expert, who we understand would have been more than willing for the discussions to go on for longer. Worse, in this particular case, it is also damaging both for the interests of the Office and of its staff, because consultation on a topic of importance for both staff and the Office was cut short in this manner.

We appreciate that there are important points of divergence between the positions of the Administration and of the Staff Committee with respect to the proposal, but appreciate that the members of the GAC nominated by the President gave indications during the meeting that there might be room for coming closer at least with respect to the issue of sending appeals filed against decisions of the Administrative Council to the Internal Appeals Committee of the Office. Indeed, at the end of the meeting, PD 4.3 announced that our comments would probably lead to substantial amendments to the document. However, owing

to the artificial time pressure created during the second half of the meeting, there was neither time for the President's nominees to make concrete proposals as to how to take our comments on board nor for us to suggest amendments or explore possibilities for further contacts on this issue. In any case, any substantial amendment to the current document would necessarily result in a proposal that is different from the current proposal. In such cases, the ATILO case law is also very clear that renewed consultation of the GAC is required.

Conclusions

For the reasons set out above, the way in which the 240th meeting of the GAC was conducted made a mockery of the consultation process.

Accordingly, we considered that we could not give a reasoned opinion on the proposal. We do not know the details of the procedure that led to the proposal. We were deprived of the opportunity to get answers to our questions. We did not have the time to explore with the members nominated by the President where could there be room for approaching the different positions. We were informed that the proposal could be changed substantially after the meeting but were not told in how far and with which intention.

We thus provided the President with a reasoned text setting out why we were not in a position to provide a reasoned opinion on the proposal. However, we also informed the President that, during the meeting, we had made it clear that we have a number of objections and concerns regarding the content of the proposal in as far as we understood it, and provided a list of these points, which are also as set out above.

Closing comments

The reason for "putting the MAC in the GAC" was given as being to "strengthen" the GAC. From the three meetings this year, it is clear that this aim has not yet been fulfilled. Indeed, the 240th meeting was a clear example of how the GAC should not function. In our opinion, all the members of the GAC should have as their first priority to discuss the proposals in all necessary depth. This means that the Administration has to make a serious effort to

provide all information necessary to arrive at an educated reasoned opinion. Moreover, the Chairman has the duty to facilitate the discussions and to encourage both parties to find common positions wherever possible. The members appointed by the President should be clear and open as to their position with regard to our comments and proposals. This is especially so for proposals, as with the current case, which are of great importance to both staff and the Office.

We also resented attempts made in the 240th meeting by various members nominated by the President (and VP1 in particular) to suggest that we were not doing our job properly. In particular, we reject the suggestion that the proposal being discussed in the GAC was prepared in a working group with CSC participation and so by doing other than simply giving a positive opinion on the proposal we were not doing our job properly. The implication being that agreement had been reached with the CSC (and the CSC's nominees) as to the content of the proposal and thus we had a duty to go along with it. However, from our discussions with the CSC nominees in the working group it is clear that there never was agreement on any of the draft proposals presented to the working group by the administration. Moreover, it is clear from these discussions that the current proposal, presented by the administration towards the end of the process, is significantly further away from what would be acceptable to the CSC than the earlier proposals of December 2011 or March 2012. For example, removing the possibility to file internal appeals against Council decisions was only removed from this final version of the document. Other solutions for reform of the procedure for appealing Council decisions were comprised in the earlier documents. Also, the earlier documents still required the President to send his IAC nominees to the GAC for opinion.

In the past, membership of the GAC has changed incrementally. That is to say, most of the members and deputies on both sides have been re-nominated the following year. The relatively few exceptions have generally been caused e.g. by retirement or taking up of other duties in the Office. This year, however, saw whole scale changes amongst the members nominated by the President. In fact, apart from one deputy member from last year who is now a full member, there is no overlap at all in the

12 nominations the President made as member or deputy member. Like any other group, the GAC has over the past decades established a manner of working generally accepted by all involved. It is possible that the problems that the GAC has experienced so far this year are a result of the almost complete lack of experience amongst the members nominated by the President. This makes it even more bizarre that we are continually told by some of them that we don't know what our job as GAC member is.

The members of the GAC nominated by the CSC.