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Amending Internal Appeal Procedures to Ensure/Enhance Due Process

The internal recourse mechanisms of International Organisations are often criticized for lacking many due process elements a modern judiciary usually provides. Thus, while their purpose is to resolve conflicts, in practice they are mostly not suited to be efficient for this task.

But while an internal justice reform similar to the one undertaken within the United Nations Secretariat (since 2009) seems yet out of reach for most International Organisations of the common system (with exception of the very few agencies which have recognized the competence of the new UN Tribunals), slightly less sweeping changes could be implemented by amending the appeal rules and other provisions regulating the procedure of the various internal recourse mechanisms.

In order to improve the due process rights of staff members in the existing system, staff could for example be given the possibility to be assisted by legal counsel, because while the Administration will invariably assign a legal officer trained in international civil service law to defend against the appeal, it cannot be expected from a staff member to apprehend all the complexity of the subject. This is quite a critical aspect, as the ILOAT may dismiss any legal claims which have not been formally pursued (overlooked) in the internal recourse mechanism.

Justice delayed is justice denied. The length of the internal procedure should be regulated more precisely too, as the internal peer review body often has no set deadline for submitting its report and recommendations, and the administration often uses the possibility to request time-extensions leading to lengthy procedures to the detriment of the staff member.

The internal peer review body should also be competent to order the suspension of the administrative decision in cases of particular urgency and the standards for granting such suspension should be lowered or, better yet, suspension should be granted in certain cases (dismissal for example) until the internal appeal procedure is completed. Moreover, the review body should have increased powers and be able to summon witnesses and request evidence from both parties while improving the anonymity of those summoned so as to encourage participation, openness and prevent retaliation.

Finally, an important change could consist in giving the internal review body the power to render an immediately enforceable judgment. The Head of the Organisation would not be able to dismiss it as a mere recommendation as current rules provide, and this would at least confer the impression that justice is served. This measure would not set a precedent, as a few International Organisations exist with internal recourse mechanisms, which have been granted the competence to render judgments (former WEU, IMF, OAS). If the staff member is unsatisfied with the judgment, he/she should be allowed appeal to the ILOAT.

These are but just a few examples of amendments to the rules and other provisions regulating the procedures of the internal recourse mechanisms that could be proposed and implemented by Staff Associations/Unions in order to improve the efficiency, transparency and professionalism of the internal justice system of International Organisations.

The ILO Administrative Tribunal will hold its 114th session from 29 October to 16 November 2012 where it will rule on some 50 appeals. It will publish the judgments on Wednesday 6 February 2013.

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