

ABSTRACT

Fomin P.V. Internal system of justice of international intergovernmental organizations. – Qualification scholarly paper: a manuscript.

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The thesis is devoted to the complex research of the issues concerning the organizational and legal basis of internal system of justice of international intergovernmental organizations (hereinafter – IGOs). The paper describes the formation and development of the internal justice system of IGOs. It is stated that the establishment of the Administrative tribunal of the League of Nations was due to the need to resolve disputes between staff and administration of the organization, endowed with immunity from jurisdiction, arising from improper implementation or violation of the conditions of appointment and internal acts which determined the procedure for international civil service. Attention is paid to the issue of reforming the UN internal justice system, focusing on the existing shortcomings of the UN internal dispute resolution system, which existed until 2009.

The purpose and tasks of the internal justice system of the IGO are highlighted. It is stated that the functioning of internal mechanisms for resolving disputes between staff and the IGO administration performs a number of tasks, including: observance of human rights of staff in the field of labor guaranteed by international human rights treaties (Universal Declaration of Human Rights 1948, International Covenant on Economic, Social and cultural rights of 1966, etc.) and domestic legislation of states; creating conditions for the effective exercise of the right to a fair trial; providing an environment for the smooth and efficient operation of the organization, etc. It is noted that international civil servants, unlike other persons whose labor rights have been violated by the employer, are deprived of the right to apply to existing universal and regional control mechanisms in the field of human rights, which was confirmed by the European Court of Human Rights which determined the absence of its jurisdiction *ratione personae* concerning complaints

against individual decisions taken by the competent body of an international organization (Boivin v. 34 Council of Europe member states; Lopez Cifuentes v. Spain; Beygo v. 46 Council of Europe member states; Connolly v. 15 European Union member states, etc.). The decisions of Administrative tribunals of the IGOs (UN, ILO, OECD) on the observance of the rights of staff in the field of labor and social security are described.

The informal level of the internal justice system of the UN has been characterized; it is stated that the informal level of dispute settlement between staff and the UN administration is represented by the Office of the United Nations Ombudsman and Mediation Services. The emphasis is placed on resolving disputes through recourse to the informal mechanisms of the UN internal justice system based on the principles of confidentiality, voluntariness, efficiency and impartiality. It is stated that the staff (current or former) may apply to the Ombudsman or mediation services before they apply to the UN Dispute Tribunal (hereinafter – UNDT) or at any time during the proceedings, on their own initiative or at the suggestion of the Tribunal (case "Ular v. Secretary-General of the United Nations").

It is noted that within the UN there is also a number of other mechanisms for resolving internal disputes related to the service, including contacting the head of the unit or the department, the Human Resources Service; the Ethics Office (UN, UNDP, UNHCR, UNICEF, UNOPS, UNFPA); staff associations; personnel consultant, etc.

It is emphasized that the Office of Staff Legal Assistance (hereinafter – OSLA) plays an important role in providing legal advice and representation to UN staff who wish to appeal an administrative decision or who are subject to disciplinary proceedings. The OSLA is independent and not affiliated with personnel unions, the Ombudsman and other United Nations divisions involved in the settlement of labor disputes. It is concluded that the use of informal mechanisms of the internal justice system should be preceded by the recourse to formal bodies, which aims to reduce the number of formal procedures, which are featured by longer proceedings and formalization of the process.

It has been outlined that the provisions of UN internal acts (Statutes, regulations, rules and regulations on personnel, etc.), which regulate the procedure for filing an application to the mechanisms of the UN internal justice system to protect rights from violations by the administration of the Organization and the procedure for their consideration, do not address the possibility of applying for freelancers (consultants, individual contractors, free staff, non-Secretariat officials, trainees and volunteers, etc.) who are widely involved by the UN. Restricting freelancers from having access to formal mechanisms for filing their complaints is an important structural shortcoming, as they are deprived of the right to a fair trial guaranteed by international human rights treaties. In view of this, a pilot project has been set up within the United Nations to provide the freelance staff with direct access to informal dispute resolution services.

The organizational and legal structure of the formal level of the UN internal justice system, which is represented by the UN Dispute Tribunal, the UN Appeals Tribunal (hereinafter – UNAT) and the Management Evaluation Group, has been highlighted.

The procedure for conducting a management evaluation is analyzed, which is an objective review of the contested decision by the Management Evaluation Group in the Office of the Under-Secretary-General for Management Strategy, policy and control and the Management Evaluation Group of the Department of Management. It is emphasized that in most cases the management evaluation is a mandatory step prior to recourse to the UNDT, except where the contested decision involves disciplinary or non-disciplinary action in accordance with Rule 10.2 of the UN Staff Rules after the disciplinary proceedings or if the decision was adopted on the recommendation of technical bodies.

It is noted that the UNDT, consisting of five judges, has the competence to consider and solve cases on applications submitted by any current or former staff member or any person who files claims on behalf of an incapacitated or deceased UN staff member against the Secretary General as the chief administrative officer of the United Nations: to appeal against an administrative decision which is unlikely to

be in accordance with the terms of the appointment or employment contract; to appeal against an administrative decision on any disciplinary action. The peculiarities of submitting an application to the UNDT through the eFiling portal, the procedure for reviewing and appealing the decision of the Tribunal are described. The emphasis is placed on the issue of representation of the applicants' interests in the proceedings by OSLA lawyers, volunteer lawyers and private lawyers.

The organizational and legal structure of the UNAT, which is a second-instance court and, within its special jurisdiction, considers appeals against decisions of the UNDT, the Dispute tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and the Standing Committee which acts on behalf of the board the United Nations Joint Staff Fund and those organizations, institutions and structural units that recognize the jurisdiction of the UNAT. The grounds for appealing the decisions of the above mentioned bodies are highlighted, including: exceeding the limits of jurisdiction or competence; making a mistake on the issue of law; procedural or factual error, etc.

The status of judges of UN tribunals has been analyzed; it is stated that such persons must have high moral qualities; have experience of judicial activity in the field of administrative law or equivalent activity within one or more national legal systems; demonstrate and uphold high standards of judicial conduct and strengthen faith in the integrity of the administration of justice at the United Nations; be independent and impartial in making decisions, etc. The emphasis is placed on the fact that the UN has a Mechanism for addressing complaints regarding alleged misconduct or incapacity of the judges of the UNDT and UNAT.

The focus is on resolving labor disputes within specialized UN agencies (ILO, IMF, WB). It is stated that the ILO Administrative tribunal, which has become the "successor" of the League of Nations Tribunal, may extend its jurisdiction to other international intergovernmental and non-governmental organizations. It is emphasized that the administrative tribunals established in the system of international financial organizations of the United Nations are single-level and make decisions that are not subject to further appeal.

The organizational and legal mechanism of the internal justice system of international regional organizations (CoE, NATO, OAS, OSCE) has been revealed. It is concluded that such mechanisms for resolving disputes between staff and administration have a two-tier structure, which includes the possibility of internal review of the administrative decision and appeal to the official body, whose decisions are final.

Key words: guarantees, protection mechanisms, international civil service, international intergovernmental organizations, organizational and legal basis, human rights, personnel, justice, tribunal, labor relations.