



Seventeenth session

The Hague, 5-12 December 2018

Report on reclassification matters at the Court***I. Background**

1. September 2017: The Committee on Budget and Finance (“the Committee”) considered the proposed programme budget for 2018 and recommended the Assembly of States Parties (“the Assembly”) not to approve any requested reclassifications awaiting a Court-wide review of the current policy on reclassifications.

2. December 2017: At its sixteenth session, the Assembly requested the Court to conduct a Court-wide review of the current policy on reclassifications and to report the outcome to the Committee at its thirtieth session (April 2018), and to the Assembly at its seventeenth session (December 2018).¹

3. April 2018: The Committee considered the “Report of the Court on Human Resources Management”, in which the Court explained that the following principles and processes are currently in place:

(a) The Court follows the UN common system standards for the classification of posts according to the nature of the duties and responsibilities.

(b) Any upward reclassification of a post triggers a competitive recruitment process and approval of the Assembly is sought for all reclassifications, with the exception of General Service posts at the GS-OL level or below.

(c) Reclassification requests are holistically examined by the Classification Advisory Board, which, when the request is supported, recommends heads of Organs to outsource the determination of the classification of a post to an external expert before it is submitted to the Committee and the Assembly for final approval.

(d) The Court also presented the draft of the Administrative Instruction (AI) on the classification and reclassification of posts, outlining the above principles and processes.

4. April 2018: The Court provided a detailed “Response to the Committee’s query and ASP requests on the Court-wide review of the policy on the reclassification of posts and to provide the latest version of the draft Administrative Instruction on the Classification and Re-classification of Posts”, in which it, *inter alia*, stated that “mindful of the critical requirement to ensure continuity in the Court’s operational needs and respect of the recognised principle of equal pay for work of equal value,” it drew “the Committee’s attention to outstanding reclassification requests of 2017 (representing 12 posts) not approved by the Assembly, for its consideration within the 2019 proposed budget” (“Outstanding Requests”). In this regard, the Court recommended that “pending the

* Previously issued as CBF/31/4.

¹ ICC-ASP/16/Res.1, M. 5.

Assembly approval of these Outstanding Requests, the posts associated shall remain at their approved level. Managers shall ensure that the incumbents are performing the duties and responsibilities at the approved level and not at a higher level function. [...] In cases where there is a critical need to ensure continuity in operational needs, and hence the maintenance of the duties and responsibilities at the higher level function, alternative solutions for compensation should be explored, such as granting a special post allowance, in light of the principle of equal pay for work of equal value, as recognised in the case law of the ILO's Administrative Tribunal." [emphasis added]

5. May 2018: after analysing, *inter alia*, the draft AI, the Committee in its report (ICC-ASP/17/5), recommended the following (at para. 87):

(a) Submission of a new draft AI to the Committee at its thirty-first session, including the following:

(i) The undertaking of functions and responsibilities of an existing vacant post are not grounds for reclassification;

(ii) The Classification Advisory Board should include staff representation, such as the Staff Union;

(iii) The role of the Committee in the process is clearly stated, taking into account that it is the independent advisory body of the Assembly for these matters, while the Assembly has the final decision on approval of such matters; and

(iv) Timely and fully documented submission of reclassification requests to the Committee prior to its first meeting each year.

(b) The Committee decided to carefully review all requests for reclassification in the context of the 2019 proposed programme budget, in light of the proposed changes to the AI.

6. As submitted to the Committee, litigation is already underway with respect to some of these positions. Those staff and their legal representatives are awaiting the outcome of the reclassification consideration. Further litigation from those occupying posts which were assessed as eligible for reclassification by the Classification Advisory Board in 2017 can be expected.

II. Proposed way forward

7. The Court:

(a) is submitting an updated draft AI on the classification and reclassification of posts to the Committee incorporating the recommendations in paragraph 5;

(b) will include in the Proposed Programme Budget for 2019 only those requests that were considered by the Classification Advisory Board in 2017 and that are supported by the respective Principals, excluding any requests already renounced by an organ;

(c) once the AI is promulgated, will implement the framework established by the AI Court-wide to any future posts eligible for reclassification as of the Proposed Programme Budget for 2020.

(d) Pending the Assembly approval of these Outstanding Requests, the posts associated shall remain at their approved level and functions managed as outlined in the Court's previous response to the Committee² (see paragraph 4).

² CBF30-18S01.