

## **Practical Legal Tips for International Civil Servants**

While I have witnessed over the course of my career the improvement of many aspects of the internal justice systems of IOs, it is still my opinion that international civil servants, because of the immunity of their employers, even today still do not enjoy access to justice systems that are a reasonable equivalent to those found in host states (as required by the European Court of Human Rights in a series of judgments that have addressed this issue since its adjudication of the seminal cases of *Beer v Regan* and *Waite v Kennedy* against the European Space Agency in 1989).

Despite some progress in challenging the immunity of IOs in various national courts systems, the reality is that international civil servants such as those working at IOM still enjoy less legal protection today than even employees of diplomatic missions. While litigators like myself will continue to challenge the absolute immunity enjoyed by IOs in most national legal systems, success is not assured, and it will take time before any such success is achieved.

So what can be done in the interim? I can offer three suggestions borne out of my more than two and a half decades fighting IO administrations for the benefit of my clients—two require collective action, but one is something that every international civil servant can do to protect themselves against an adverse employment action. Here they are—please note the following reflect my personal opinion based on my own experiences, and do not necessarily represent the views of GSAC:

### **Collective Bargaining**

The ILO's Conventions N°.'s 98, 151 and 154 promote collective bargaining for public employees, but no IO that I am aware of today including IOM enjoys true collective bargaining (the ILO had a relatively robust form of collective bargaining in 1999-2003, but it was too successful in protecting staff rights, and was subsequently pared back to what is now in my opinion an empty shell of its former self). The best and quickest way that international civil servants will ever be able to remedy the biases and conflicts in their organisations' internal justice systems to ensure a level playing field that is the reasonable equivalent of national court systems is through real collective bargaining.

IOs, particularly those that are specialized agencies of the United Nations, are generally bound by the ILO Conventions, and should not impede the efforts of their staff to engage in collective bargaining. Each and every IO staff association, with the assent and support of its members, should seek a collective bargaining agreement from its administration without delay. Perhaps if more organisations had had such agreements today, the recent reduction in the Geneva organisations' benefits might not have happened, or the adverse and abrupt reduction in salary felt by international civil servants in Geneva could have been delayed or reduced through collective bargaining<sup>1</sup>.

In 2020, there is no valid reason why IOs do not have collective bargaining agreements with their staff other than a desire to perpetuate inequality in wages, lower and less persistent employment security, and lower staff morale.

### **Access to Recognized Unions**

While I currently represent a number of staff associations in various IOs around the world including those at IOM, WTO and WIPO, and applaud and support their incredible efforts to advocate on behalf of their members about conditions of service and in employment disputes, the reality is that most staff representatives serve at the pleasure of the Administration officials with whom they

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<sup>1</sup> Fortunately, the cuts were reversed last year by the ILOAT.

interact on behalf of their members, and if one were to advocate too strongly, one cannot dismiss the possibility that the Administration interlocutors might not look so kindly on the staff representative in matters relating to their own personal employment status—that is a simple reality.

In the world outside IOs, unions employ permanent negotiators and officials who are paid by and serve at the pleasure of their union members, not the administration officials with whom they are negotiating. This eliminates any suggestion of conflict of interest on the part of the union officials who do not have to worry about calibrating the force of their intervention with an administration on behalf of a fellow union member, lest it come back to adversely affect their own employment status. This fear has been enforced in recent years where staff representatives have been dismissed from a number of IOs solely on account of their staff representational activities. This would likely have a chilling effect on others who might not want to make the ultimate sacrifice in the careers out of solidarity, and nor should staff representatives be forced into such a Hobson's choice.

ILO Conventions N°.s 87, 98, 135, 141 and 151 all militate in favour of international civil servants being allowed to join or associate with existing independent unions, or to form their own that focus on conditions of employment in the international civil service in particular duty stations across a number of IOs.

There is no doubt that IO members states will likely not take kindly to such a development, nor to collective bargaining for international civil servants, but again, in 2020, there should be no legal impediment to such arrangements, and any opposition can only be seen as a desire on the part of members states and IO administrations to not deal fairly and openly with its staff, which staff many IOs publicly proclaim to be their most important asset.

### **Personal Legal Insurance**

While some IO staff associations provide legal insurance to their staff to address various employment disputes that arise in the course of their IO employment, many either do not provide such coverage, or else the coverage is limited which amount is often insufficient to see a legal appeal through to the end (particularly if an appeal is required to the ILOAT or the UNAT), or such coverage is otherwise limited only to cases that have a good chance of success, or does not apply to cases where a staff member is accused of misconduct, or has been subjected to harassment, until there is an internal investigation and final administrative decision taken.

Therefore, I strongly recommend that each and every international civil servant, invest in their own personal legal insurance policy (in Geneva, such policies generally cost CHF 300-400 per year) which are offered by a number of insurance companies.

With the minimum hourly rate of lawyers in Geneva as suggested by the Geneva Bar Association equal to CHF 400, the cost of such policies is relatively negligible. And with appeals generally often requiring 30-40 hours or more of a lawyer's time, international civil servants who do not have such a legal insurance policy often find an appeal cost-prohibitive. Even if one might never intend to file an administrative appeal, I have had many clients come through my door who were forced to engage a lawyer to deal with a disciplinary charge that they never expected, and which because of the nature and complexity of disciplinary procedures, and the potential sanction at stake often including possible dismissal, they were forced to defend themselves out of pocket at great cost and hardship. Again, given the recent practice of at least one IO to dismiss staff (at least 4 as of the present date that the author is aware of) who negligently clock their time or absences, without an adequate insurance policy in place to mount a competent defense of the charges, many simply give up and accept a clear miscarriage of justice rather than pay legal fees out of pocket.

Most importantly, as an international civil servant taking out such a policy, be certain to get in writing a representation from the agent that any work-related disputes will be covered by the policy even though the local national law is not applicable as the employer is immune from national law as an international organisation. I have had several clients who thought they had such coverage only to see it denied as the policy only covered disputes brought in local courts, under national law, which is not the case for most IOs.

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