

11.2 REPORT DEPUTIES NATIONAL SYNOD – PROCEDURE FOR DEALING WITH APPEALS (Artt 13, 186)

- A. Rev CA Jansen delivers the Report.
- B. **Decision:** The Report is referred to the Commission Church Polity Matters.
- C. Dr WC Opperman reports on behalf of the Commission Church Polity Matters.

D. REPORT

1. Matters taken note of by Synod

1.1 Commission

Acta 2006:44, 2.3: *“To present a workable method that at the same time would honour justice-related principles of Church Order and Scriptural views with regard to Appeals outside Synod’s normal times of meeting in order to deal with them and finalise them.”*

Decision: Noted.

1.2 Method of Work

1.2.1 Resolutions of previous Synods were reviewed.

1.2.2 Dr GJ Meijer’s thesis was used, “Appèl met die oog op regsherstel” [*Appeal with a view to restoring justice*]. Websites that were consulted included those of the Gereformeerde Kerken Vrijgemaakt [*Reformed Churches Freed*] (Rapporte “Appèlzaken naar KO, art 31” [*Reports Cases of Appeal to CO, art 31*]), Christelijk Gereformeerde Kerken [*Christian Reformed Churches*] and Nederlandse Gereformeerde Kerk [*Reformed Church of the Netherlands*]. In his thesis Dr GJ Meijer paid attention to several churches’ Procedures of Appeal.

1.2.3 This Report is divided in the following way:

1.2.3.1 Review of resolutions previous Synods

1.2.3.2 Principles/Fundamental aspects (matters/cases considered and judged by meeting)

1.2.3.3 Elements of importance with regard to Appeal Procedures (matters considered and judged by meeting)

1.2.3.4 Practical considerations when dealing with and finalising Appeals (matters considered and judged by meeting)

1.2.3.5 Proposal (matters considered and judged by meeting)

1.3 Previous Synods

1.3.1 Synod 1933 approved of a Point of Description requesting for a Committee to be appointed to arrange the processing of Appeals (Acta, 1933:45)

1.3.2 Synod 1936 identified certain shortcomings in the Committee’s Report. However, two important matters did reach approved resolution, *i.e.* three principles pointed out by CO, art 31 and that an appellant must supply written notice of intention to Appeal within 6 weeks after receiving written notice of a ruling (Acta 1936:167-169)

1.3.3 Synod 1939 accepted three principles concerning Appeal (see 1.3) and provided arrangements with regard to procedure (Acta 1939:144 & 145)

1.3.4 Synod 1973 passed consequence to a Point of Description in order to add that appellants and defendants are granted the right to present a counterplea/reply (Acta 1973:191)

1.3.5 Synod 1985 passed consequence to a Point of Description in order to add procedure arrangements with regard to time of submission of an Appeal (Acta 1985:524-525)

1.3.6 Synod 1991 passed consequence, in a specific manner, to a Point of Description to allow for a Committee/Deputy to consider and judge the receptivity of Appeals and Petitions of Protest beforehand and to advise Synod accordingly (Acta 1991:539-540)

1.3.7 Synod 1997 passed consequence to a Point of Description according to which the appellant’s responsibilities with regard to witnesses/testimony are explained (Acta 1997:545-546) (also compare Meijer, 2006:227-233)

Decision: Points 1.2 to 1.3.7 noted.

2. Matters to be judged by Synod

2.1 Principles pertaining to Appeal

- 2.1.1 Synod 1939 (Acta, 1939:144 & 145) put forth 3 principles for Appeal, pertaining to the following:
 - 2.1.1.1 violation of justice/rights
 - 2.1.1.2 decisions and resolutions determined by majority
 - 2.1.1.3 validity of decisions and resolutions by church unless contradictory to the Word of God
- 2.1.2 The principles (fundamental aspects) embrace the following:
 - 2.1.2.1 Justice and Rights: Violation of justice/rights does not merely apply to a personal level (Visser, 199:141-142), but certainly also to the level of God's Kingdom as well as to injustice/violated justice in the congregation/church (Bouwman, 1970b:24, 41 & 42; Meijer, 2006: 121-123). In church God's right in Christ is the most important, as also revealed in the body (church) of Christ.
 - 2.1.2.2 Sin and reconciliation: violation of justice/rights cannot but contain elements of conflict (compare Meijer, 2006:125). As soon as conflict has to be dealt with Scriptural teachings on sin (Rom 3:10-17; Ps 51:7) as well as relevant confessions (Belgian Confessions, art 15) are of paramount importance and must be taken into account. It is, therefore, essential for forgiveness and reconciliation to occupy a central position when approaching issues of conflict (compare 2 Cor 5:19 & 20). When reconciliation has taken place justice and relevant rights have been taken good care of.
 - 2.1.2.3 Honour of God: What must enjoy priority is that which is important to God and according to God's Word – God's interests overrule personal interests. The honour of God must be sought when problems with injustice/violation of justice surface and have to be addressed (Meijer, 2006:127). God's honour is being served by the fruit of the Spirit (Gal 5:22). This specifically entails that thoughts, words and what we do should be according to the Word of God (HC, 47:122).
 - 2.1.2.4 Community and unity in faith and love: An appeal that is driven by reconciliation and bent on restoring justice is in search of the establishment of community and unity in faith and in love. Scripture's focus is also on "the cloak as well" and the "second mile" (Matt 5:41), on "consider others better than yourself" (Phil 2:3), on keeping "the interests of others" in mind (Phil 2:4).

Decision: Points 2.1 to 2.1.2.4 noted.

2.2 Important elements – Appeal Procedure

- 2.2.1 Appellant – according to CO, art 31 the Appellant is someone who lodges an appeal to a higher authority when the verdict or ruling of a church meeting is perceived as unjust. The basic ground for an Appeal is injustice.
 - 2.2.1.1 The motive: according to Scripture the honour of God should be sought in everything. This would include the acknowledgement that no person standing before God can be regarded as righteous (Rom 3:10–17). In cases of Appeal, therefore, the fruit of the Spirit must be revealed (Gal 5:22).
 - 2.2.1.2 The purpose and aim: the eventual aim must be reconciliation, or restoration/healing through Christ's reconciliation. Reconciliation is (vertical) to the honour of God, and (horizontal) towards establishment of a community of faith and the well-being of the Appellant (compare Meijer, 2006:129).
- 2.2.2 The Parties - in all situations of conflict at least two parties are involved. These would be the two parties encountering differences. It is, however, possible for a "third" party to be involved (Meijer, 2006:132) when an Appeal involves more than merely the two parties that experience the difference or differences (for example a dispute about another person).
- 2.2.3 The Judge: The supreme Judge is God in Jesus Christ. Churches and church meetings that have been called to pass judgement are directly in service of Christ (Du Plooy 1979:131). According to CO, art 31 church meetings are required to come to

conclusive decision and to pass judgement, and this must be done in the Name of Jesus Christ.

- 2.2.4 Restoring justice: An Appeal is lodged in a case of injustice (compare 2.2.1). Within the efforts to restore violated justice, the reconciliation of Christ is central and the decisive factor (compare 2.2.1.2). It is, therefore, necessary to allow for scope for alternative ways of settling a dispute (Meijer, 2006:198-206). Such ways and means are listed below:
 - 2.2.4.1 Arbitration (1 Cor 6:5): an arbiter from among own ranks would serve as an alternative way of settling a dispute between two parties in the event of office-bearers not being in the position to do so.
 - 2.2.4.2 Mediation: parties endeavour to settle a conflict among them by incorporating an independent third (mediator). The parties focus on reconciliation in Christ. The advantage is that both parties desire to find a solution and work together to accomplish it.
 - 2.2.4.3 Advice: advice obtained from an independent third person (or persons) can be accepted by the parties involved in order to reach an agreement. Church-related advice contains a lesser degree of formal and prescriptive specifications (as would be with an Appeal) and will enhance speedy solution of the dispute.
 - 2.2.4.4 Individuals with wisdom and insight: a few members of a church meeting are selected to seek settlement of the dispute *in loco*. This would allow for a conversation of reconciliation to be conducted.
 - 2.2.4.5 Church visitation – CO, art 44: Ministers of Visitation can perform an important task in the settling of disputes and can assist in prevention of a possible further compounding of the conflict.
 - 2.2.4.6 Conclusion: alternative ways must be used as far as the situation would allow for such possibilities to be incorporated, especially prior to launching an Appeal. It is unnecessary for all conflict to lead to the road of formal jurisdiction. It should, however, be kept in mind that alternative ways cannot be allowed to impair, or stand in the way of, the valid passing of judgement.

Decision: Points 2.2 to 2.2.4.6 noted.

2.3 Practical Considerations

- 2.3.1 Problem: Two problems that surface during the processing of an Appeal are related to limited time and lack of know-how. It will happen that much meeting time is devoted to hearing out the presentation of Appeal and counterplea by Appellant and Defendant. At the same time only a few of the representatives really have sufficient background knowledge about the history of the conflict (that might have been continuing for weeks or months on end) and the remaining representatives have to gather the necessary information in very short a time. It could consequently happen that responsible passing of judgement could be affected. It is the task of representatives, as servants of Christ, to deliver sound passing of judgement.
- 2.3.2 In the RC(F) and PCN alternative procedures have been put into place. What appears to be feasible are the recommendations related to Appeal Deputies as in their Report, November 2004. In as far as distance between places is concerned there are, however, significant geographical differences between the Netherlands and South Africa, and practical implementation of the same in SA would suffer the negative influence of such distance-related difficulties.
- 2.3.3 Practical procedure for Appeal to General Synod: to be considered are the following:
 - 2.3.3.1 Deputy Groups
 - 2.3.3.1.1 Within he GKSA three groups of Deputies are appointed (CO, art 49). These groups include (1) a group for Regional Synods Eastern Regions, Randvaal and Pretoria; (2) a group for Regional Synods Free State, Kwazulu Natal and Southern Cape; and (3) a group for Regional Synods North West and Bosveld.
 - 2.3.3.1.2 Each Group of Deputies consists of 6 primi and 6 secundi. It is preferable that each group should include at least 2 jurists (who also serve as elders) and 2 ministers who have sound knowledge of Church Polity.

- 2.3.3.1.3 General Synod appoints the conveners and scribes of the Deputy Groups.
- 2.3.3.1.4 If a member of a Deputy Group had already been involved regarding a certain case, one of the *secundi* is to be appointed as replacement.
- 2.3.3.1.5 Expenses for travelling and accommodation will be the responsibility of the GKSA (within the limits of tariffs agreed upon).
- 2.3.3.2 Submission of Appeal
 - 2.3.3.2.1 The Appellant remains primarily responsible for submitting the Appeal in accordance with decisions taken by the various Synods.
 - 2.3.3.2.2 Petitions of Protest must meet the requirements agreed upon.
 - 2.3.3.2.3 Appellants submit the Appeal to the Calling Church Council of the General Synod per e-mail and in writing (two copies), as well as to the scribe of the Deputy Group involved doing so per e-mail and in writing (seven copies). The Deputy Group would then furnish the Appellant with advice if all the requirements accompanying a Petition of Protest had not been met and would allow a fixed time for completing the documents for re-submission.
 - 2.3.3.2.4 The Appellant notifies the church meeting involved about the Appeal in order to convey the information of disagreement with decisions taken/ruling of the church meeting involved.
 - 2.3.3.2.5 Expenses for travelling and accommodation remain the responsibility of both parties that are part of the dispute.
- 2.3.3.3 Deputy Group's activities
 - 2.3.3.3.1 The Deputy Group is authorised to utilise alternative ways to settle the dispute (compare 2.2.4).
 - 2.3.3.3.2 The Deputy Group investigates the Petition of Protest to determine whether it is ready to be received and accepted.
 - 2.3.3.3.3 The Deputy Group involved takes note of the Petition of Protest as soon as possible and proceed with preparations for presentation to and by General Synod.
 - 2.3.3.3.4 The parties in the dispute are those that had been involved originally in the issue of difference. Such parties will provide the Deputy Group with all the necessary documentation that have bearing on the dispute. The Deputies will see to it that the parties are fully aware of such information as has been brought to table from both sides. Should the documents be confidential, the responsibility will rest on the Deputy Group to make the documents available to one or both of the parties (if requested) or to merely sketch the character of the confidential document.
 - 2.3.3.3.5 The Deputy Group will arrange for a hearing of both parties as soon as possible (*audi alteram partem*). Parties are being heard in each other's presence. Other persons involved in the process and case as such, e.g. members of church, Ministers of Visitation and certain individuals, may also be heard by the Deputy Group.
 - 2.3.3.3.6 Parties in the dispute have the right to obtain assistance from the Deputy Group by means of written or spoken contact.
 - 2.3.3.3.7 The Deputy Group may incorporate expert advice, on condition that the essential confidentiality be maintained
 - 2.3.3.3.8 Parties in the dispute are provided with the Minutes/Reports on all discussions that had taken place during the Deputy Group meeting.
 - 2.3.3.3.9 The Deputy Group draws up a Report containing a concept decision. The latter must reflect the motivation for the decision as well as recommended interventions and approaches to restore rights and bring about reconciliation. The Report must be submitted two weeks prior to the commencement of the General Synod proceedings (at the Administration Bureau, Deputy Agenda) and the Deputy Programming would then recommend the manner of dealing with the matter/case. The Deputy Programming conveys the relevant information in good time to all parties concerned with the dispute.

2.3.3.4 Processing and finalisation by General Synod

- 2.3.3.4.1 When the Appeal is being presented at least two members of the Deputy Group involved must be present to deliver and explain the Report. These members may supply the Synod with further advice.
- 2.3.3.4.2 The parties involved in the dispute are granted the opportunity to elucidate their case (by doing so the chance to reply – having word for the second time around – is excluded). If Synod should accept it this way, it would mean that the decision of Synod 1973 would have to be withdrawn.
- 2.3.3.4.3 Representatives of a Regional Synod (and minor assembly within the resort of the Regional Synod involved) do not form part of the course of action for the Appeal. In the event of General Synod deciding to proceed *in camera* with the Appeal, such members of Synod that are or had been involved in the legal course of the Appeal would first leave the Synod before the particular case is continued with. The same applies to parties involved in the dispute (after their opportunity to elucidate their cases).
- 2.3.3.4.4 Decision and Resolution of General Synod should include the following:
- (i) Decision of Minor Assembly – origin of dispute
 - (ii) Summary of complaints/issues of disagreement filed by the Appellant
 - (iii) Summary of Minor Assembly's defence
 - (iv) Justification of grounds on which General Synod's decision hinges
 - (v) A clear passing of judgement by General Synod on the Petition of Protest
 - (vi) Where necessary, an indication of the legal consequences of General Synod's decision
 - (vii) Guidance towards the road of reconciliation and restoration of justice
- The decision is made available in writing to the parties involved in the dispute, not later than fourteen (14) days following adjournment of General Synod.
- 2.3.3.4.5 Should there be circumstances over and above the arrangements mentioned here, each General Synod must make an appropriate decision.

Decision: Points 2.3 to 2.3.3.4.5 noted.

3. Matters/Cases about which Synod must decide

Deputies recommend the following:

- 3.1 That alternative ways of settling disputes be emphasised (compare 2.2.4).
- 3.2 That 2.3.3 is approved as practical procedure in dealing with an Appeal.
- 3.3 That the decision of Synod 1973 (Acta 191, art 66) be withdrawn.

4. Findings of the Commission

- 4.1 The Commission recommends that Synod notes the Report as a whole with thanks to the Deputies.
- 4.2 Synod appoints deputies to undertake a thorough study of the following aspects:
 - 4.2.1 attention to dispute resolution as reconciliation task of the local church and of greater assemblies
 - 4.2.2 the distinction between dealing with appeal procedures on the one hand and on the other dissention/disputes and inter-personal clashes, and the manner in which it must be dealt with in the church
 - 4.2.3 the establishment of mechanisms to ensure that appeals are limited to essential matters
 - 4.2.4 how appeals should be distinguished from petitions of protest
 - 4.2.5 the essential differences between legal processes in church and state and
 - 4.2.6 the possibility of dispensing with appeals outside the full assembly of Synod, e.g. by a *Synodus Contracta*.
- 4.3 The Study deputies may make use of available expertise in this field as well as research on appeal procedures of churches with which the GKSA are in ecumenical unity.

Decision: Approved – amendments have been made already – Deputies Acta.