

## 11. Deputies General Synod

### 11.1 REPORT: DEPUTIES STUDY CO, ART 31 – APPEAL PROCEDURE (Artt 202, 219, 231)

- A. The Synod continues in camera.
- B. Rev CA Jansen tables the Report.
- C. Point 8 (resolution of an appeal) are refer to an ad hoc commission to advise the meeting on further procedure for dealing with Appeal. Further give attention to the bottle neck caused by the current procedure between the last Regional Synod before a General Synod. Commission: drr RM van der Merwe (s), GJ Meijer, JH Howell, rev PA Coetzee with advisor prof J Smit.
- D. Rev PA Coetzee tables the Report of the ad hoc commission.
- E. **Decision:** Recommendation ad hoc commission: Follow proposed procedure point 8 as contained in Report point 3 with replacement of 8.4 with “8.4 The relevant meeting must express itself on the working method with Deputies” and in 8.5 the replacement of the words “the findings or proposed decision” with “working method”.
- F. **Decision:** Deal with matter of “bottle neck” when dealing with Report.

#### G. REPORT

##### 1. Mandate

- 1.1 Acta 2012:29, 5.2 ...The Deputies: Study are tasked to compile a precise and descriptive Appeal procedure, in consideration of approved Appeal procedures as well as studies on Appeal procedures undertaken by churches with which the GKSA is in ecumenical unity, for recommendation at the next Synod.

**Decision: Noted.**

##### 2. Matters that the Synod take note of

- 2.1 The numbering was altered in the proposed procedure to facilitate reference thereto by the Deputies: Appeal at the different major assemblies. From 2.2.1 to 2.2.7 the cursive numbering relates to the proposed Appeal procedure.
- 2.2 The following Synod decisions were taken into account in the proposed procedure (pt 3):
  - 2.2.1 Synod 1936 indicated certain shortcomings in the Commission’s Report, but two important matters were approved, viz. the three principles CO, art 31 referring to and that an appellant is obliged to give notice of the intent to appeal 6 weeks after receiving written notification of a decision (Acta 1936:167-169; *Appeal Procedure, items 1.6, 4.1-4.4*).
  - 2.2.2 Synod 1939 accepted three principles for Appeal (see 1.3) and instituted certain regulations on procedure (Acta 1939:144-145). These principles are:
    - 2.2.2.1 with the infringement of rights (*Appeal Procedure, Item 2.2*);
    - 2.2.2.2 the majority rules (*Appeal Procedure, Item 8.3*); and
    - 2.2.2.3 church decisions are binding, except when in conflict with God’s Word or the articles of the Church Order (cf. CO, art 31; *Appeal Procedure, Item 1.2 and 2.2*).
  - 2.2.3 Synod 1973 heeded a point of discussion wherein the reply of the Appellant and Respondent is added to the procedure (Acta 1973:191; *Appeal Procedure, Item 7.5.1–7.5.7 & 7.5.14*).

- 2.2.4 General Synod 1984 stipulated that calling for a National Synod on a General Synod is only permissible in reference to Scripture, the Confession and the Church Order or upon decision of the General Synod (Acta General Synod 1984:31-32, art 22; *Appeal Procedure, Item 2.2*).
- 2.2.5 Synod 1985 heeded a Point of Discussion to add a procedural point in terms of the period for submission of an Appeal (Acta 1985:524-525; *Appeal Procedure, Item 5.6 and 6.1*).
- 2.2.6 Synod 1991 heeded a Point of Discussion by tasking a commission/deputies to first judge and advise the Synod on the Receptiveness of Appeals and Petitions (Acta 1991:539-540; *Appeal Procedure, Item 7.2*).
- 2.2.7 Synod 1997 heeded the Point of Discussion that regulates the responsibility of the Appellant in terms of witnesses/testimony (Acta 1997:545-546; *Appeal Procedure, Item 7.5.2-7.5.7*).
- 2.3 The studies the Gereformeerde Kerken (V) conducted in 2005 were also considered. No other studies, from churches with which the GKSA has ecumenical unity, could be obtained or found.
- 2.4 Enquiries since 2012 indicate that most Classes and Regional Synods don't understand the content and impact of the approved Point of Discussion (Acta 2012:27, Item 11.3).
- 2.5 Synod 2012 (Acta 2012:521, Item 3.16.3) did not carry out the approved Point of Discussion on the appointment of Deputies for Appeal, correctly.

**Decision: Points 2.1 to 2.5 noted.**

### **3. Matters that the Synod decide on**

#### **3.1 *Appeal Procedure***

#### **APPEAL PROCEDURE IN ACCORDANCE WITH CHURCH ORDER, ARTICLE 31,**

##### **1. Basic guidelines for Appeals**

- 1.1 An Appeal only pertains to the decision being appealed and not any associated considerations or matters.
- 1.2 The aim of an Appeal is solely to resolve possible injustice in consequence of the relevant decision, in accordance with the Word of God or the Church Order.
- 1.3 All possible steps must be taken to guard against bias in the appeal procedure.
- 1.4 No individual may judge his own cause.
- 1.5 All sides of the matter must be presented and heard.
- 1.6 Although all technical, formal and procedural requirements on Appeals must be complied with, Appeals are judged on substantive and not merely formal grounds.

##### **2. Nature of an Appeal**

- 2.1 An Appeal can be lodged, in accordance with CO, art 31 against a specific decision or action of a Church Council, a Classis or a Regional Synod. The Appeal must go from a minor to a major assembly.
- 2.2 An Appeal can only be lodged when a decision is in conflict with –
  - 2.2.1 the Word of God; and/or
  - 2.2.2 a stipulation of the Church Order and the appellant has been wronged by the decision or action.
- 2.3 The alleged injustice must relate to a church issue, as contained in CO, art 30 which directly affects the appellant.
- 2.4 The Appeal must be to the glory of God, to the establishment of the church of Jesus Christ and the restoration of justice.

### **3. Deputies: Appeal**

- 3.1 Every major assembly appoints, in accordance with CO, art 49 at least six and at most eight Deputies for Appeal as well as a suitable number of alternates from the ranks of the minor assemblies that constitute the relevant major assembly.
- 3.2 The Deputies are appointed from members who possess the appropriate knowledge including, but not limited to, on church law.
- 3.3 The Deputies may contract individuals with such expertise from the GKSA, to the degree to which it will promote judgement in the relevant appeal.
- 3.4 Every major assembly budgets for the expenditure of these deputies.

### **4. Notification of Appeal**

- 4.1 Alleged injustice must be addressed as speedily as possible. The appellant is to give written notice of his intent to appeal, within six weeks of reasonably learning of a decision of a church assembly that he wishes to appeal.
- 4.2 Such notification is to be addressed to the Scribe of the Church Council of the Deputies for Correspondence of the assembly *against* which an Appeal is lodged as well as the Deputies for Correspondence and the Scribe of the Deputies for Appeal of the assembly *to whom* is being appealed.
- 4.3 The Scribe of the Deputies for Correspondence of the assembly whose decision is being appealed is to acknowledge within 14 calendar days or as speedily as reasonably possible receipt of such notification of Appeal and provide, as speedily as possible, the relevant information and documentation the appellant requested on the matter under appeal.

### **5. Grounds for an Appeal**

- 5.1 The appellant must reference the official redaction of the decision, against which he is appealing, in his appeal documentation.
- 5.2 The appellant is to clearly set out the grounds for the alleged injustice in his own words.
- 5.3 If an Appeal pertains to a judgement of a major assembly, the appellant is to indicate the original cause of the alleged injustice.
- 5.4 The appellant is to provide a clear breakdown of the desired action of the major assembly.
- 5.5 If an Appeal does not comply with the requirements of the set procedure, the Deputies for Appeal may offer the appellant the opportunity to rectify this, within a set period of time, and also offer the appellant any necessary assistance.
- 5.6 The parties are to make all relevant documentation available, upon the request of the Deputies, whether it be in digital or hardcopy form. The Deputies have the authority to set deadlines for compliance with such requests.

### **6. Submission of an Appeal**

- 6.1 The appellant is to provide the requested number of copies of the Appeal and Addenda, where applicable, to the Scribe/Deputies of the relevant minor assembly and the Deputies for Appeal. He is also to forward it electronically, if possible.
- 6.2 The appellant bears the costs associated with the appeal, except for that of the relevant Deputies for Appeal.

## **7. Judgement of an Appeal**

### **7.1 *Constituting of Deputies: Appeal***

7.1.1 When Deputies are convened to hear an Appeal, it must first be unanimously established that every participating Deputy is impartial in the matter.

7.1.2 If it should appear in any way that a Deputy has a stake in a matter under appeal, it would impede impartial judgement and an impartial alternate is to be called upon to participate in judgement of the Appeal.

### **7.2 *Impartiality***

7.2.1 Subsequent to the above constitution, the Deputies must first determine the admissibility of the Appeal in terms of the following measures:

7.2.1.1 The decision under Appeal is to be cited verbatim, indicating its official redaction.

7.2.1.2 The grounds for the Appeal is to be clearly set out and comply with the requirements stated in 5.1 above.

7.2.1.3 Notice of the Appeal must be given within the set time period, as stipulated in item 4.1.

### **7.3 *Parties***

The appellant/s and respondent/s of the dispute are seen as the parties that were/are involved in the original petition. If a judgement of a major assembly is being appealed, then this assembly is not party to the dispute.

### **7.4 *Confidentiality***

7.4.1 The Deputies are to determine the degree of confidentiality, to accord the Appeals process and documents, according to the nature of the matter.

7.4.2 The requests for confidentiality around testimony must be treated with the greatest of care, for the sake of justice.

### **7.5 *Hearing an Appeal***

Hearing an Appeal, found to be admissible, occurs as follows:

7.5.1 The appellant receives the opportunity to personally or with the aid of a representative present and substantiate his Appeal, together with any written testimony.

7.5.2 Then the representative of the assembly, whose decision is under appeal, receives the opportunity to respond to the Appeal and explain the grounds refuting the Appeal.

7.5.3 Once the Deputies have heard the testimony of both the appellant and relevant minor assembly, the Deputies confer *in camera* to determine the points of dispute that are to be considered and distribute such to the appellant and the representative of the relevant assembly, upon resumption of the meeting.

7.5.4 Should the appellant wish to call witnesses, to testify in substantiation of the identified points of disputes of the Appeal, either the appellant or his representative may lead such testimony.

7.5.5 During and subsequent to the testimony, the Deputies may question the appellant, a representative or witness to clarify certain points of testimony.

7.5.6 Once a witness has presented testimony for the appellant, the representative of the assembly whose decision is under appeal may question the witness for elaboration, elucidation and review of the accuracy of the testimony.

7.5.7 The appellant or his representative may redirect questions to the witness, subsequent to cross-examination, but only on matters that arose from cross-examination.

7.5.8 The same procedure applies to each witness called by the appellant, upon which the representative of the minor assembly, of which a decision is being appealed, may call witnesses.

7.5.9 The witnesses of the relevant assembly is questioned according to the same procedure, as set out in 7.5.4 to 7.5.7 above, in terms of cross-examination and redirect.

- 7.5.10 When all the witnesses of the relevant assembly have been heard, then the appellant or his representative has the opportunity to address the Deputies on the interpretation of the testimony and thereafter the representative of the relevant assembly is given the opportunity to do likewise.
- 7.5.11 A report is drawn up recounting the above events.
- 7.5.12 Should the Deputies deem it necessary, additional witnesses may be voluntarily called, during the session and in the presence of the appellant and the representative of the relevant assembly, to shed further light on the matter.
- 7.5.13 Once all testimony and arguments have been heard, the hearing is adjourned in order for the Deputies to confer and formulate a preliminary finding.
- 7.5.14 Upon resumption of the hearing, the Deputies inform the appellant and the representative of the relevant assembly of the preliminary finding and then affords the appellant and thereafter the representative of the relevant assembly the opportunity to comment thereon, whereto the appellant may respond. The Deputies indicate whether the response alters the preliminary finding in any way and have the authority to settle a dispute as such that it leads to the withdrawal of the Appeal.
- 7.5.15 Should the parties reconcile the dispute during the events, the Deputies declare the Appeal resolved.

#### 7.6 *Report*

The Deputies for Appeal draw up a final Report that contains the following:

- 7.6.1 A brief historical overview and summary of the content and course of the matter, *inter alia* an account of the decision/s or action of the minor assembly leading to the original dispute.
- 7.6.2 A summary of the grounds for Appeal of the appellant.
- 7.6.3 A summary of the minor assembly's response to the appeal tabled to the Deputies.
- 7.6.4 An overview on the procedure followed for the judgement of the Appeal.
- 7.6.5 The Deputies' finding in terms of an analysis and review of the grounds for the Appeal, the testimony given and the application of Scripture and/or the stipulations of the Church Order in this regard.
- 7.6.6 The recommended judgement in favour or rejection of the Appeal.
- 7.6.7 Where applicable, a detailing of the legal implications of the judgement.
- 7.6.8 Where applicable, recommendations for a pastoral route towards mitigation of the injustice or the erroneous perception of injustice.
- 7.6.9 Should the Deputies be unable to render a finding or judgement on the Appeal, for whatever reason, the Deputies then explains this to the relevant assembly that then deals with the Appeal in accordance with the majority advice offered by the relevant churches.

### **8. Resolution of an Appeal**

- 8.1 The Report of the Deputies for Appeals serves, just as any other Deputies' Report, at the next assembly.
- 8.2 Only the Report and recommendations of the Deputies, without any further elucidation by the appellant or the relevant minor assembly, are reviewed. Neither the appellant nor the representative are given the opportunity to speak.
- 8.3 Before the assembly confers and decides on the Deputies' Report, all parties involved in the decision made by the relevant minor assembly as well as the appellant (if present) leaves the assembly.
- 8.4 Should the relevant assembly approve the findings and recommended judgement, the Appeal is as such resolved.

8.5 Should the relevant assembly not approve the findings or the recommended judgement of the Deputies, the assembly must provide in the grounds for this as well as a motivated alternative judgement to the appellant and the relevant minor assembly in writing, failing which the findings and recommended judgement of the Deputies are deemed the findings and judgement of the relevant assembly.

**9. Unforeseen cases**

In cases for which procedure does not provide, the General Synod makes a ruling.

**Decision: Point 3.1 approved (amendments already added – Deputies Acta).**

3.2 The General Synod is to request Classes and Regional Synods to seek assistance and information from the Deputies and inform them of the new procedure.

**Decision: Approved.**

3.3 The following individuals are to be appointed as Deputies: Appeal of the General Synod:

Primj: Dr GJ Meijer (C), revs CA Jansen, HJP de Beer, drs H Goede, JH Howell, RM van der Merwe, prof F Venter and rev MP Fourie.

Secundi: Revs SD Snyman, SA Cilliers, PW Kurpershoek, AL Pelser, dr DJ de Kock, revs J Malan, AB van der Walt and PM Modise.

**Decision: Noted.**