



COMMUNICATION 7/19/ENG

ILO Administrative Tribunal judgment on “Geneva salary cut cases”

To: Chairs, Member Associations/Unions
Members of the Executive Committee
Chairs and Vice-Chairs of Standing Committees
Members with Associate Status
Associations with Consultative Status
FUNSAs

Geneva, 3 July 2019

From: Brett Fitzgerald, President

Dear Colleagues,

This afternoon the ILO Administrative Tribunal (ILOAT) delivered its judgments on the cases which were concluded during its 128th session, including the cases known as the “Geneva salary cut cases” on which this message will be focused.

Allow me to firstly congratulate each and every one of you who has in any way been involved in the long campaign to seek transparency and justice relative to the earlier decisions of the International Civil Service Commission, subsequently implemented by the UN common system organizations in Geneva in 2018, which reduced your take home pay on the basis of the ICSC’s 2016 cost-of-living survey. Today, justice was served.

In delivering its judgments today, the ILOAT representative read short summaries and the judgments pertaining to the cases which were grouped together per organization. Those organizations which are subject to the ILOAT jurisdiction and in which staff had filed appeals against the pay cut include ILO, IOM, ITU, WHO and WIPO.

In summarizing these cases the Tribunal expressed the following considerations:

The complainants challenged the decisions of their respective Executive Heads to apply to their salaries the new post adjustment multiplier determined by the International Civil Service Commission (ICSC) on the basis of its 2016 cost-of-living survey, with the result that their salaries were reduced. The exact month in 2018 when organizations first applied the new multiplier to their staff in the Professional and higher categories varied slightly depending on the organization.

Some of the principles which governed the ILOAT's consideration of such cases include the following: an international organization is free to choose a methodology, system or standard of reference for determining salary adjustments for its staff provided that it meets all the principles of international civil service law and provided that it is a methodology which ensures that the results are stable, foreseeable and clearly understood or transparent.

The complainants had questioned whether the ICSC had the power to determine, by decision, the outcome of its conclusions about the post adjustment index and its effect on the salaries of Geneva-based Professional and higher category staff, or whether the ICSC only had the power to make a recommendation thereon to the UN General Assembly. It was noted that UN GA Resolution 72/255 reveals that the GA had proceeded on the assumption that there had already been a decision on this matter by the ICSC. It is not apparent that the GA exercised any discretionary decision-making power whether to act on a recommendation but assumed that the decision had already been made. Accordingly, the ILOAT considered that the actions of the organizations to reduce the salaries of the complainants/staff based on the ICSC's decisions were legally flawed and should be set aside.

The ILOAT also considered that the ICSC's reduction of the gap closure measure from 5 per cent down to 3 per cent was itself legally flawed. In fact, the ICSC did not provide in its reports anything which explains in statistical, mathematical, methodological or otherwise scientific terms why the reduction from 5 per cent to 3 per cent was necessary or desirable or justified.

ILOAT Decisions

The complainants' payslips as of the date the organizations implemented this ICSC decision and all subsequent payslips to date regarding the revised post adjustment for the duty station of Geneva are set aside.

The organizations shall provide the complainants with new revised payslips with a [*higher*] post adjustment multiplier which is not based on the revised [*lower*] post adjustment index resulting from the 2016 cost-of-living survey.

The organizations shall pay each complainant an amount equivalent to the difference between the remuneration actually paid to them during that period and the amount they should have been paid for the same period, with interest at the rate of 5 per cent per annum from due dates until the date of final payment.

All of the ILOAT's judgments are now available in the TRIBLEX database in an anonymized version

at: https://www.ilo.org/dyn/triblex/triblexmain.showList?p_lang=en&p_session_id=128

The video recording of the first part of this afternoon's session relative to these cases can be found at: <https://www.youtube.com/watch?v=37-DProGucc&feature=youtu.be>

FICSA would like to express its warm appreciation to all staff who globally devoted time and energy in support of the unprecedented collective actions leading up to these appeals, for it

is through your worldwide level of support and coordinated actions that you not only won your legal appeals today but also that FICSA, together with the HR Network, were able to obtain the creation of a Contact Group to review the consultative process and working arrangements in the Commission. A special note of thanks goes to Ms. Gemma Vestal who, in her former role as FICSA General Secretary, had kindly taken on the role of coordinating this unprecedented number of appeals across several different organizations.

This has truly been a shining example of what can be done when we all work together.

Congratulations to you all!

You are warmly encouraged to share this information with your colleagues.