



COMMUNICATION 16/19

FICSA interventions on ICSC agenda item 8 ILOAT judgments

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

Geneva, 31 July 2019

From: Brett Fitzgerald, FICSA President

Dear Colleagues,

To keep you updated on the on-going discussions at the 89th session of the ICSC regarding the recent ILOAT judgement No. 4134 relevant to the pay cut in Geneva, please see below two interventions made by FICSA on this matter.

We will keep you informed on any further developments.

FICSA's first intervention on agenda item 8: ILOAT judgment

Mr. Chairman, Distinguished Delegates and Colleagues,

Aside from the considerations contained in Judgment No. 4134 which specifies that, “*On any reasonable view, the General Assembly did not consider and act on a recommendation in adopting its Resolution 72/255 in December 2017*”, FICSA is of the view that there are two main issues on which the ILOAT drew its conclusions. The first one is the ILOAT’s conclusion that while an international organization is free to choose a methodology or system of standard of reference for determining salary adjustments, it must be a methodology which ensures that the results are stable, foreseeable and clearly understood or transparent. We believe that this consideration is currently being addressed within the ICSC Task Force which is reviewing the post adjustment methodology.

We believe that this leaves us with only one remaining consideration on which the ILOAT decided. In fact, as stated by the ICSC itself, the gap closure measure is used to create a

margin of error that may result from determining salaries exclusively on the basis of a single cost-of-living survey producing negative results. The ILOAT found that, in the present case, no explanation was provided as to why 5 per cent was appropriate up to and including 2015 and yet no longer appropriate in 2016 and 2017. The reduction of the threshold percentage to 3 per cent was not substantiated nor transparent.

Mr. Chairman,

You mentioned yesterday that the ICSC does not agree with the ILOAT judgment, although you did not mention which element of that judgment the Commission was not in agreement with.

While everyone can have a view as to whether we agree or disagree with some or all elements of the ILOAT judgment, given the fact that the ILOAT judgment is final with no right to appeal, I believe that everyone, regardless of their personal or collective views, understands the requirement to respect the judgment of the highest judicial body available.

The Commission is already reviewing the post adjustment methodology which, when completed, will be expected to produce a methodology which ensures that the results are stable, foreseeable and clearly understood or transparent. Therefore, this element of the judgment is in the process of being addressed.

This leaves us with only the element of the ILOAT judgment relative to the gap closure measure which had been, until 2015, at 5% as it had always been determined that 5% was the appropriate margin for error which could result for determining salaries exclusively on the basis of a single cost-of-living survey producing negative results.

In FICSA's view, we believe that there could be a very simple way in which all concerns could possibly be addressed, whether directly or indirectly, not only in Geneva but also for Rome and Madrid. The ICSC could simply decide to reinstate the 5% gap closure measure retroactively for all duty stations.

If such a decision were taken by the ICSC to retroactively reinstate the 5% gap closure measure for all duty stations, and a new pay index is calculated retroactively for Geneva, Rome and Madrid, it would perhaps no longer be necessary to await an unknown outcome of the UNAT, staff performing equal work in specific duty stations would once again receive equal pay and, above all, it would preserve the principles on which the UN common system was founded. I would plead with all parties to find an amicable solution to this issue this week.

FICSA's second intervention on the ILOAT judgment

Mr. Chair,

We would like to express our full support to the ICSC's mandate and statute and respect the Commission's prerogative in taking decisions in line with its mandate, and in the best interest of the common system, its staff and organizations.

In our intervention of earlier this morning, FICSA expressed its wish to work with all stakeholders to identify an appropriate solution. We are concerned by some of the comments made in the afternoon threatening some organizations to leave the UN Common System when some of these organizations have indeed already implemented the Commission's decision. It is only due to the ILOAT judgment that some Geneva-based organizations are now legally obliged to revise their earlier decisions in which they had implemented the ICSC decisions.

However, the situation calls for us to look at the ILOAT judgment from different perspectives. As previously mentioned, ILOAT judgement 4134 goes beyond Geneva. The views of the Tribunal regarding the Commission's decision to discontinue the gap closure measure may lead to further legal appeals if the Commission does not take this opportunity to address the situation at this session.

Mr. Chair, the negative impact of the results of the cost-of-living surveys for Geneva, Rome and Madrid could have been minimized if the Commission had agreed to reinstate the 5% gap closure measure to protect staff salaries against sharp decreases.

Mr. Chair, today we heard numerous interventions from representatives of the Specialized Agencies in Geneva and other European duty stations appealing to you to use your prerogative in considering your decision regarding the gap closure measure.

Mr. Chair, we all jointly hold a responsibility to strengthen and maintain the UN common system and count on your wisdom and understanding to help us all get out of this crisis, which, in the end, will make all of us stronger for a better future.
