

COMMUNICATION

Legal Study:

***ICSC Operational Rules adopted at the
100th Session***

31/25

Geneva

27 November 2025

To: All FICSA Members

From: Cristina Pierini – General Secretary

Dear FICSA Members,

We are pleased to share with you a legal study made for the benefit of International Civil Servants on the following topic:

Lawfulness of the ICSC Decision to adopt operational rules and the ICAO Decision

FICSA has mandated Dr Laurence C. Fauth, Attorney-at-Law, to provide an opinion on the lawfulness of the ICSC decision adopting operational rules for implementation of the salary survey conducted in Montreal and the lawfulness of its application by ICAO, and to provide an overview of the appeal processes and general litigation strategy.

Background Taken from Terms of Reference

The report of the salary survey for Montreal that was conducted in April 2024 should have been presented at the 99th ICSC session for consideration by the Commission.

However, considering the overwhelmingly positive outcome, the organizations in Montreal requested the ICSC to postpone the discussion of this agenda item 7 of the 99th ICSC Session: “Conditions of service of the General Service and other locally recruited categories: survey of best prevailing conditions of employment in Montreal ICSC/99/R.7” to the 100th session.

During that session, the ICSC included in the report two operational rules that could affect the implementation of the next salary survey results.

You can find the [complete study here](#)

Please direct any feedback or questions to ficsa@un.org

.../...

Annex

Questions and Answers addressed to Dr. Fauth

II. Background Taken from Terms of Reference

Para. 6. On 29 August 2025, applying operational rule 2, ICAO in Montreal implemented* a **6.44** per cent increase (two times the interim adjustment applicable as of the survey reference date) to the salary scales, instead of the actual result of **17.23** per cent. Despite that the operational rule itself states that a factor of 3 times will apply if external data is used, this was not applied by ICAO.

* **Question:** From our point of view, they should have applied the 3 times rule and not the 2 times rule. Could this also be challenged?

Reply: This is an alternative legal argument that can be raised in the appeal, i.e., either the full increase or the 3 times rule should have been implemented. Another option is to simply argue the 3 times rule should have been applied (although I would not recommend letting the other argument go if an appeal is lodged).

III. Lawfulness of ICSC Decision to Adopt Operational Rules and ICAO Decision

A. Injury

Para. 9. It is estimated that the full 17.23 % would already be implemented by 2025 if the 3 times factor were applied; under the 2 times factor in operational rule 2 the final 7.79 % is carried to 2026, subject to the threshold test, and therefore may go beyond 2026. A G-5, Step 1 staff member, for example, will therefore lose approximately **CAD 5,194** by the time the 7.79% balance is applied in April 2026.

Question: We will need to review the figures.

Reply: The estimates would have to be confirmed, preferably by a financial or accounting expert, with an Excel sheet detailing the monthly and total loss.

Para. 23. There are other grounds for showing that the exercise of discretion in the decision-making process in this case was unlawful. The methodology allows for changes in the implementation of the results based on “financial restrictions,” but there is no evidence that the SG ever considered such issues or commissioned a detailed audit or other type of financial** report on budgetary constraints that may have presented circumstances to justify applying a phased implementation.

Question: ** In art. 109, different reasons are mentioned to justify the establishment of a different effective date. And it is not just financial restrictions, but also “administrative convenience, prior understanding with staff representatives and financial restrictions”. In the ICAO HR Global Announcement, they didn’t mention anything as the reason to take this decision, but in a later stage, they could use them. For financial restrictions, it is clear that ICAO SG should have shown any evidence as budget or

financial reports. But what about the “administrative convenience”? Could you please provide anything in the case that ICAO SG could use this as a justification?

Reply: If this new argument is raised by ICAO during the appeal procedure, it can be challenged on the basis that it is new and was not raised previously and therefore raised in breach of good faith. The facts used to prove administrative convenience, if provided by ICAO, can also be challenged, ie, by showing them to be false or irrational, etc.

IV. Conclusion

Para- 42. The following summary of arguments can be asserted to challenge the exercise of discretion in both judicial fora**:

Question: ** Also, could you please let us know when the clock starts ticking for challenging the case? Is it the date of the letter from the SG – 29 August? Is it when the staff member receives the first payslip in September with some salary advances reflecting the increases? Or in October, with the payslip including the final calculations?

Reply: The UNAT did not directly deal with this issue in its PAM judgments since the parties did not contest the issue – the UNDT had held that an “individualized decision was made in relation to each applicant as the change in PAM to their salary was implemented in their August 2017 pay-slip.”

The clock starts ticking in my view when the staff member receives the payment in September (or October?) with the implementation of the increase as indicated in the notice of 29 August. Most organizations pay at the end of the month, and I hope this is the case for ICAO – otherwise, the appeal will likely be time-barred.
