

## REPORT OF THE STANDING COMMITTEE COMMITTEE ON LEGAL QUESTIONS

Chair	Andrès Orias (WMO Geneva)
Vice-Chair	Joël Lahaye (CERN Geneva)
Rapporteur	Jean-Pol Matheys (CERN Geneva)
FICSA General Secretary	Gemma Vestal (WHO/HQ Geneva)
Regional Representative	Jesus García Jiménez (ILO/ITC Turin)

### Participants

AP-in-FAO	Juan José Coy Girón Jean Risopoulos
FAO/WFP-UGSS	Paola Franceschelli Silvia Mariangeloni
IAEA	Nabil Sahab Lisa Villard
ICAO	Sanya Dehinde Ray Reynolds
IMO	Edwin Titi-Lartey Tamara Vassilissin Irene Waite
ITU	Henri-Louis Dufour Christian Gerlier
UNAIDS	Evelyn Jonazi Andrea Palazzi
UNESCO	Amani El-Sheikh
UNFCCC	Santhosh Thanjavur Prakasam

UNGSC	Paola De Mauro Vito Musa
UPU	Birahim Fall Franck Landauer Stéphane Vuillemin
WHO/AFRO Brazzaville	Simplice Ntsiba Christian Pethas-Magilad
WHO/EURO Copenhagen	Oleksandr Martynenko
WHO/HQ Geneva	Marina Appiah
WHO/SEARO New Delhi	Rajesh Mehta
WHO/WPRO Manila	Rodel Rodriguez

#### **Members with associate status**

CERN	Isabelle Mardrossian
IOM	Ivona Zakoska-Todorovska
OPCW	Erik Prein

#### **Federation with consultative status**

EMBL	Ayesha Asif Thomas Heinzmann
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#### **Adoption of the agenda (Agenda item 1)**

1. The Standing Committee on Legal Questions (SCLQ) approved the following agenda:
  1. Adoption of the agenda
  2. Election of the rapporteur
  3. FICSA's position on the proposed changes to the ILOAT Statute
  4. Update on legal actions relating to the compensation review (FICSA/C/72/PSA/1)
  5. Update on current litigation regarding post adjustment
  6. Update on recent ILOAT judgements of relevance to staff representatives
  7. Discussion on a possible legal insurance scheme for staff members in smaller organizations
  8. Requests for training
  9. Matters brought forward by other standing committees

10. Update on discussion on FICSA legal status
11. Other business
12. Nomination of Standing Committee officers and core group members

### **Election of rapporteur (Agenda item 2)**

2. The Standing Committee elected Jean-Pol Matheys (CERN) as rapporteur.

### **FICSA's position on the proposed changes to the ILOAT Statute (Agenda item 3)**

3. After providing a summary of the background, the Chair of Standing Committee (SC) on Legal Questions invited the General Secretary of FICSA, Gemma Vestal (WHO/HQ Geneva) to give an update on the matter. Ms. Vestal informed the Committee that: (a) three organizations had recently withdrawn<sup>1</sup> from the jurisdiction of the ILO Administrative Tribunal (ILOAT) (WMO, UPU and [CTA](#)), having expressed different reasons but apparently motivated by judgements detrimental to them; (b) the legal advisors of a number of organizations had written to their ILO counterpart to request significant changes to the proposed amendments to the Tribunal's Statute so as to allow swift withdrawals, with only minimal requirements being necessary; and (c) that, in addition to FICSA, only the Staff Associations of CERN and WHO had written to the ILO Legal Advisor with comments on the proposed amendments to the ILOAT Statute. In her view, the Federation had to find ways of avoiding further rapid and expeditious withdrawals; and at the same time, provide by 11 February 2019, the ILO Legal Advisor with comments on the letter by his counterparts, so as to allow them to be brought to the attention of the ILO Governing Body at its March 2019 session.

4. In reply to a question by UPU, Ms. Vestal further stressed that whether Member States agreed with executive heads regarding the withdrawal from the Tribunal's jurisdiction was a valid question.

5. The Chair added that it appeared that the consultative process with staff had not been adhered to, when the decisions to withdraw had been taken.

6. Mr. Matheys made a presentation (see document FICSA /C/72/LEGAL/CRP.3) covering the attempts by organizations to modify the Tribunal's Statute to their liking, the latest letter by legal advisors to their ILO counterpart and possible reactions by the Federation thereto. The SC agreed that the latter should be the basis of a letter by the Federation to the ILO Legal Advisor (J.G. Jimenez, J.-P. Matheys and G. Vestal volunteered to contribute to the drafting).

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<sup>1</sup> It was later noticed that organizations whose representative staff bodies were not FICSA members had also withdrawn, for instance AITIC and OTIF (as indicated in the corresponding [ILOAT notice](#)).

The Standing Committee on Legal Questions recommended that the FICSA Executive Committee write a letter to the ILO Legal Advisor by the given deadline to make the following points:

- (a) Regarding the withdrawal process: That constraints existed today and that they must apply in respect of a decision to withdraw, *inter alia*: (i) decisions could not be arbitrary; (ii) consulting staff as provided for by existing provisions was a requirement; and (iii) decisions to withdraw could be challenged if existing constraints were not respected.
- (b) Regarding the manner in which notification of withdrawals was given: That notification by the executive head was not problematic provided that: (i) the decision to withdraw had in effect been taken by the organization's governing body; (ii) the relevant Regulations had in effect been amended accordingly by the same; and (iii) those governing body decisions were communicated together with the withdrawal declaration.
- (c) Regarding the effectiveness of withdrawals: (i) That, to ensure legal stability and security, the possibility to challenge administrative decisions taken prior to a withdrawal decision by appealing to the ILOAT must be preserved, irrespective of the effectiveness period; and (ii) that the possibility of introducing requests for execution of ILOAT judgements must remain, irrespective of effectiveness period.
- (d) Regarding consultation with staff representatives: That consultation, concertation or negotiation with staff representatives, as provided for in the existing Regulatory texts of the withdrawing organization, is essential; and that, should it not be respected, the possibility to challenge the corresponding withdrawal decision (including before the ILOAT) had to be upheld.
- (e) Regarding the proposals advanced by member organizations: That the ILO had already examined them and had provided a valid rationale for not entertaining them further; and, that FICSA request that those proposals not be given further consideration.

#### Update on legal actions relating to the compensation review (Agenda item 4)

7. The SC took stock of a related document (FICSA/C/72/PSA/1) as well as a number of comments, *inter alia*: (a) that the UN Administrative Tribunal (UNAT) judgement seems to set aside acquired rights or, at least, significantly reducing their intrinsic value, a most worrying development; (b) that there were no further legal steps that could be taken beyond the judgements issued by established courts (UNAT and ILOAT) and that the matter could thus only be taken up at a political level; and (c) that the Federation had already made its concern known to the UN Secretary-General; thus there was no point in repeating such an action.

8. The SC identified a possible step towards action at a political level and, given the consensus, it was well worth taking.

**The Standing Committee recommended that the FICSA Executive Committee seek the opinion of a renowned scholar on the UNAT judgement, in particular its impact on acquired rights, with a view to possibly publishing it in an academic journal and using it in lobbying at a political level in a manner to be decided by the Executive Committee after analysis. For that purpose, the SC recommended the allocation of USD 5,000 in the 2019 budget.**

#### **Update on current litigation regarding post adjustment (Agenda item 5)**

9. Ms. Vestal pointed out that as some organizations in Geneva deferred to ILOAT whilst others deferred to UNAT, there was a real possibility that the two tribunals could issue conflicting judgements on the matter. It was hoped that the ILOAT would be the first to adjudicate and so pave the way for a compatible UNAT decision, thus avoiding a split in the common system.

10. Points already made at an earlier meeting of the Standing Committee on Professional Salaries and Allowances were repeated. It appeared that the matter was more suited to administrative, technical and political action rather than legal; the SC thus did not see any action it could take or recommend in respect of the issue at the present juncture.

#### **Discussion on a possible legal insurance scheme for staff members in smaller organizations (Agenda item 7)**

11. The Chair summarized the previous negotiations and proposals received from international insurances companies that had been presented to previous FICSA Councils and rejected by members owing to the excessive prices and insufficient benefits. FICSA thus decided to undertake an updated mapping in search of a satisfactory solution. The Chair invited Ms. Vestal to present the result of that inquiry.

12. Ms. Vestal gave a presentation (see document FICSA/C/72/LEGAL/CRP.2) highlighting the main points of the proposal. One of the advantages of the scheme was that no VAT would have to be paid. One of the limitations was the mandatory minimum number of staff members to be covered (600). The requirements presented were as follows:

- FICSA would assume the contract (each interested FICSA member association/union would pay the insurer through FICSA for the coverage, with FICSA forwarding the funds to the insurer);
- Individual premiums would be CHF 120 if between 600 and 1,000 staff were enrolled, and CHF 100 if more than 1,000 staff were enrolled; and
- Overall premium would be determined each year, based on the number of staff covered on 1 January; it would be payable quarterly.

13. In the discussion, practical questions were addressed, for instance: to be a beneficiary of the contractual coverage, staff did not need to work in Switzerland (only the insurance subscriber i.e. FICSA needed be in Switzerland); and every year FICSA would need to provide

a list of all individuals covered. Coverage entered into effect without any delay after payment of the fees (there was no waiting period).

14. Even though several SC participants expressed interest in such coverage, it appeared that it might be necessary to reach out to several FICSA members in order to obtain the minimum number of staff (600).

15. The SC requested the FICSA General Secretary to prepare a clear and brief informative summary, disseminate it among the members and thus obtain the necessary number of contributors to the insurance scheme, for the benefit of several staff associations/unions.

**The Standing Committee on Legal Questions recommended that the FICSA Executive Committee prepare an informative document presenting the offer of a collective legal insurance contract negotiated by FICSA for international officials for dissemination as soon as possible, with the aim of allowing staff associations/unions and individual members to decide whether to join and so obtain the minimum number required for the entry into force of the legal protection contract.**

#### **Update on recent ILOAT judgements of relevance to staff representatives (Agenda item 6)**

16. Mr. Matheys made a presentation covering judgements delivered by the ILOAT at its 126<sup>th</sup> and 3 judgements at its 127<sup>th</sup> session (end of November 2018) that were of particular interest (see document FICSA/C/72/LEGAL/CRP.4).

17. After a brief discussion on the possible link between some of the judgements and some of the withdrawals from the Tribunal's jurisdiction, as well as the apparent attitude of some administrations, the SC reaffirmed its recommendation regarding actions to be taken on proposed changes to the ILOAT Statute (see Agenda item 3 above).

18. In reply to a question as to what happened to appeals already submitted to the ILOAT in cases where the corresponding organization withdrew from the latter's jurisdiction, it was indicated that withdrawals generally included a provision that such cases still had to be decided by the ILOAT. It was however pointed out that that was not enough: To ensure proper legal stability and security, which was a basic requirement, FICSA should seek explicit provisions to the effect that any administrative decision taken before withdrawal could be challenged at ILOAT (see paragraph c) of the Recommendation under item 3 above).

#### **Requests for training (Agenda item 8)**

19. The following training requests were presented:

- The mechanics of lodging appeals; and
- Handling investigations into harassment and/or fraud.

20. The Chair recalled that, as a matter of course, FICSA members were always welcome to submit training requests to the Executive Committee.

### **Matters brought forward by other standing committees (Agenda item 9)**

21. Even though participants indicated that some matters dealt with in other standing committees or ad hoc committees required the attention of the SC, no formal requests had been received by the Chair while the SC was in session. However, a proposal had arrived thereafter, submitted by the Standing Committee on Conditions of Service in the Field, to consider the creation of an additional geographical region for the purposes of representation of the Federation in the Middle East and North Africa and Arab-speaking countries.

**The Standing Committee on Legal Questions recommended that the FICSA Executive Committee assess the proposal made by the Standing Committee on Conditions of Service in the Field and by virtue of the mandate conferred on it by Article 36 of the FICSA Statutes, pronounce itself and, if deemed appropriate, proceed to a postal vote during 2019 to settle the matter.**

### **Update on discussion on FICSA legal status (Agenda item 10)**

22. A task force on the legal status of FICSA had been established at the previous Council, but nothing had come out of it. The Chair reaffirmed that it was a delicate, but important topic: uncertainty in the matter was problematic. Ms. Vestal pointed out that the issue was related to privileges and immunities, and host-state agreements. Even if, at the moment, there were no significant problems, some could materialize at any time and they would have an impact on the Federation's work (as did the 8-month delay in publishing the Information Officer's post).

23. One delegate indicated problems that had been encountered by its association when trying to open a bank account. Clearly, such problems depended on the organization and the country of establishment; there was no one answer.

24. The Chair concluded the item by highlighting that the existence of FICSA was implicitly recognized by the permanent relationship with United Nations Secretary-General, the presence of the head and other officials of the Commission in FICSA Council sessions, as well as by the interaction with common system bodies. Therefore, he left the matter for consideration during his next term and suggested that the FICSA Executive Committee and the Standing Committee on Legal Questions seek concrete alternatives that would not jeopardize the individual legal responsibility and immunity from jurisdiction of FICSA officials.

### **Other business (Agenda item 11)**

25. No other business was raised.

### **Nomination of Standing Committee officers and core group members (Agenda item 12)**

26. At the suggestion of the Chair, the Committee decided that a core group of 6 persons at the most would be nominated, comprising persons committed to contributing and holding regular (quarterly) meetings or teleconferences.

27. The Standing Committee nominated Andrés Orias (WMO) as Chair, Joël Lahaye (CERN) as First-Vice-Chair and Gemma Vestal (WHO/HQ Geneva) as Second-Vice-Chair.
28. Birahim Fall (UPU) and Jean-Pol Matheys (CERN) were nominated core group members.
29. The Standing Committee further agreed that Mr. Matheys would coordinate the work on the ILOAT Statute questions, in direct liaison with the Executive Committee.