

## REPORT OF THE STANDING COMMITTEE ON LEGAL QUESTIONS

Chair	Andrès Orias (WMO Geneva)
Rapporteur	Jean-Pol Matheys (CERN Geneva)
FICSA President	Diab El-Tabari (UNRWA/ASA Lebanon)
FICSA General Secretary	Gemma Vestal (WHO/HQ Geneva)
Members, FICSA Executive Committee	Gaston Jordan (ICAO Montreal) Jason Sigurdson (UNAIDS Washington DC)

### Participants

AP-in-FAO	Roberto Bonafede Juan José Coy Girón
CERN	Ghislain Roy Isabelle Mardirossian
IARC	Cécile Le Duc  Ray Reynolds
IMO	Tamara Vassilissin Gisela Vieira
ITU	Henri-Louis Dufour Christian Gerlier
UNESCO	Maria Helena Capelli Miguel Amani El-Sheikh
UNFCCC	Melita Kolundzic Stabile
UNGSC	Ezio Capriola Vito Musa

UNWTO	Maria Teresa Fernandez
UPU	Birahim Fall Stéphane Vuillemin
WHO/AFRO Brazzaville	Lusamba Kabamba
WHO/EMRO Cairo	Ata Nour
WHO/SEARO	Ritesh K. Singh

### **Guest**

CCISUA	Catherine Comte Tiberghien
NATO	Andie Hill Hassink Wilhelmus

### **Introduction**

1. The Standing Committee (SC) adopted the following agenda:

#### **Adoption of the agenda (Agenda item 1)**

1. Adoption of the agenda
2. Election of the rapporteur
3. Update on pending issues:
  - (a) Rule 14 – Credentials of delegates (FICSA/C/71/LEGAL/CRP.4)
  - (b) Legal aspects of whistle-blower protection
  - (c) Clarification on the use of the legal defence fund
4. Update on legal actions relating to the compensation review (FICSA/C/71/LEGAL/2)
5. Update on the legal defence case of three ICO staff, financially supported by FICSA in 2014
6. Update on the status of the UPU appeals (FICSA/C/71/LEGAL/3/Rev.1)
7. Update on current litigation regarding post adjustment
8. Proposed revision of Articles 30 and 32 (FICSA/C/71/LEGAL/1/Rev.1)
9. Update on recent ILOAT cases of relevance to staff representatives
10. Requests for workshops on legal matters
11. FICSA resolution on harassment (FICSA/C/71/HRM/3/Rev.1)
12. Matters brought forward by other Standing Committees
13. FICSA legal personality
14. Other business
15. Nomination of Standing Committee officers and core group members

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

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

## **Update on pending issues (Agenda item 3)**

### *(a) Rule 14 -- Credentials of delegates (FICSA/C/71/LEGAL/CRP.4)*

3. The SC reviewed FICSA/C/71/LEGAL/CRP.4 and agreed to a few clarifications, which were included in a revised version of the document to be provided for information at plenary.

### *(b) Legal aspects of whistle-blower protection*

4. Considering that the situation at WIPO had been discussed in detail earlier during the Council, again the SC did not address the matter.

5. Following a query by the representative of UNWTO, it was agreed that the SC would provide information and advice on the better practices for implementing whistle-blower protection, including the possibility for different organizations to share resources (e.g. ethics officer, social workers – as was done between WMO and ITU).

6. The SC noted that, for FICSA, it was important that all common system organizations establish a reporting mechanism and an effective protection of whistle-blowers. The following main principles from the legal point of view were recalled, in collaboration with the HRM-WG on whistle-blowing:

- Obligation to report suspected wrongdoing
- Reporting mechanism (Ethics officer, investigation office, HR officer)
- Provisions for avoiding conflicts of interest
- Confidentiality and anonymity
- Effective protection measures against retaliation
- Remedies (disciplinary measures or other sanctions).

### *(c) Clarification on the use of the legal defence fund*

7. In the absence of Mr Joel Lahaye (CERN), who was going to present information on this issue, the SC agreed, after a brief explanation by the Chair, that the Executive Committee should circulate the existing document on the topic to the membership.

**The Committee recommends that the Executive Committee circulate to the membership the existing guidelines on the use of the FICSA Legal Defence Fund.**

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

8. As extensive information had already been provided on the issue at an earlier stage during the Council, in particular at the meetings for the heads of delegations, the Standing Committee on Professional Salaries and Allowances and in document FICSA/C/71/LEGAL/2, the Committee did not enter into a comprehensive discussion on the item.

9. The General Secretary, Ms Gemma Vestal (WHO/HQ Geneva), however, indicated that it was somewhat disappointing that following a call for information on the various appeals introduced in the member organizations, so little response had been received. She also indicated that, as many staff members had discovered with shock that they could no longer lodge appeals because the relevant time limits had passed, it appeared necessary to train staff at large on basic legal matters.

10. On the heels of the first remark by the General Secretary, the CCISUA representative, Ms. Catherine Comte Tiberghien, indicated that communication on such issues as the compensation review had to be improved. The fact that there were so many different parameters at play in respect of the elements of the employment conditions made it very difficult for staff to understand how they would be affected. That view was widely shared. WHO even went so far as to say that in respect of the current set of changes, management had won the communications battle (many staff members had drawn conclusions that “*this does not have much impact on me*”). The upcoming review of GS compensation should offer an opportunity for taking lessons learned into consideration. However, as they were not legal matters, the Committee did not see it fit to make recommendations thereon.

11. Particular interest was shown in finding out whether the UN Secretary-General would appeal against a favourable decision for the staff by the UNDT. Indeed, subsequent to the delivery of Judgement UNDT 2017/098, on 15 January 2018, the three staff federations had sent a collective letter to the UN Secretary-General urging him not to lodge an appeal against the aforementioned UNDT judgement but to notify the International Civil Service Commission (ICSC) instead of his intention to respect the collective wisdom of the three judges on the panel and urge the Commission to rethink its approach in a more modern and productivity-focused way.

#### **Update on the legal defence case of three ICO staff (Agenda item 5)**

12. The FICSA General Secretary reported that internal means of appeal, with a sound mechanism had been established in ICO. FICSA had thus attained its objective in the matter, even if three individual cases were still pending solution. In respect of a request to provide financial support to the staff members concerned who had lodged appeals with local courts, it was recalled that FICSA had never agreed to such support.

#### **Update on the status of the UPU appeals (Agenda item 6)**

13. The SC was informed by the UPU representative of the outcome of the three appeals against dismissal. Even though the Tribunal had reinstated only one of the three appellants, all three cases had resulted in moral and material damages, awarded in respect of procedural flaws by the UPU.

14. Regarding the appeal against a decision to suspend a staff representative without pay for strong inappropriate remarks, it was recalled that staff representatives were role models and, as such, should maintain the highest standards of conduct at all times. The Tribunal did not quash the decision by the Secretary-General, but the complainant was awarded damages on account of UPU having failed to abide by its own procedures in failing to communicate the fact-finding investigation report to the appellant during the internal procedure.

#### **Update on current litigation regarding post adjustment (Agenda item 7)**

15. As the issue had been discussed at length earlier in the Council, the General Secretary merely provided the SC with a brief summary of recent developments.

#### **Proposed revision of Articles 30 and 32 (Agenda item 8)**

16. In recent years, the Executive Committee had had to apply Article 32 of the FICSA Statutes in order to replace officers who had been compelled to resign owing to circumstances beyond their control. Sometimes, that occurred so late in the year that the new Executive Committee member was unable to assume his/her responsibilities to the full extent.

17. In consultation with the SC, the Executive Committee had thus proposed amending Article 32 as indicated in FICSA/C/71/LEGAL/1/Rev.1. Furthermore, in aligning the proposed amendment to Article 32, it was found necessary to modify Article 30 slightly. The SC deemed the changes appropriate.

**The Committee recommends that Council approve the modifications to the Statutes as indicated in FICSA/C/71/LEGAL/1/Rev.1.**

#### **Update on recent ILOAT cases of relevance to staff representatives (Agenda item 9)**

18. Mr. Matheys presented points worth noting in the most recent ILO Administrative Tribunal (ILOAT) judgements (those of its 125<sup>th</sup> session). A full presentation was given in document FICSA/C/71/LEGAL/CRP.5.

#### **Requests for workshops on legal matters (Agenda item 10)**

19. Given the widespread interest in such training, the usefulness of which had been highlighted by the General Secretary (see Agenda item 4 above), the SC agreed that a specific allocation of CHF 10,000 should be included in the FICSA budget. It was further agreed that on the basis of specific requests provided by members to the Chair soon after Council, the SC and the FICSA Secretariat would establish a list of priorities for 2018 by March 2018.

**The Committee recommends that the Council approve an allocation of CHF 10,000 for workshops to be held on legal matters in the course of 2018.**

### **FICSA resolution on harassment (Agenda item 11)**

20. The SC examined the draft resolution and did not see any legal issues or concerns therein that would have required changes to the text. It was however agreed that suggestions regarding operative paragraphs 3 (clarification regarding “support services”) and 5 (addition of a phrase to ensure that the review would be undertaken jointly with staff representatives) would be communicated for inclusion in the final draft.

### **Matters brought forward by other Standing Committees (Agenda item 12)**

21. The SC took note that no such matters had been received.

### **FICSA legal personality (Agenda item 13)**

22. The President of the Federation expressed his concerns over the apparent absence of a formalized legal personality for the Federation. Even though problems deriving there from had not yet materialized, he was of the opinion that the matter required urgent attention. Those concerns were shared by some Committee members, while others considered it was not a real problem and did not feel that the legal matter required any urgent attention. (The Federation was recognized by UN bodies and international organizations, this recognition should suffice.) Following an extended discussion, it was agreed by a majority of the SC members to establish an *ad hoc* working group to clarify the issue.

23. The SC appointed the following persons to the Working Group on FICSA’s legal personality:

Gisela Vieira de Araújo (IMO)  
 Andrés Orias-Bleichner (WMO)  
 Birahim Fall (UPU)  
 Lusamba Kabamba (WHO/AFRO Brazzaville)  
 Marina Appiah (WHO/HQ Geneva)  
 Gemma Vestal (WHO/HQ Geneva)  
 Vito Musa (UNGSC)  
 Isabelle Mardirossian (CERN)

24. The Working Group on FICSA’s legal personality remained open to additional interested persons. Those interested should contact the Chair or the FICSA Secretariat.

### **Other business (Agenda item 14)**

- *Efforts towards staff associations and unions acquiring locus standi before the ILOAT*

25. Recalling previous efforts in respect of that particular objective (see, for instance, FICSA/C/57/LEGAL/1 and Resolution 58/1) and having noted the interest expressed in the matter during the pre-Council Workshop on “*How to organize a collective appeal at the ILOAT*”, CERN proposed that the matter be taken-up once again. There was widespread support for the idea, and the Committee decided on the following recommendation.

**The Committee recommends that, under the coordination of SCLEG, FICSA members: (i) resume work on obtaining *locus standi* before the ILOAT for associations and unions (by, inter alia, re-establishing all relevant contacts and working actively with key external parties such as the EPO Staff Union, the ILO Staff Union, the ILO Legal Counsel and the Tribunal itself) and (ii) examine the possibility of launching similar efforts in respect of the UNDT and UNAT.**

26. The UNESCO representative raised the issue of persons working over extended periods for UNESCO sub-contractors. Since the SC could not entertain a discussion on the matter in the absence of substantive elements to analyze, it was agreed that the SC would examine the question in the course of 2018, on the basis of information provided by UNESCO.

27. The WIPO representative submitted a request that the FICSA Council consider the case of a former WIPO staff member, a well-known whistle-blower, being granted access to the FICSA Legal Defence Fund in order to cover her legal fees in respect of litigation with her former employer. The request was particular in that the staff member had been effectively blacklisted and barred from employment with UN agencies for the past 3 years. She was not in a position to finance any form of litigation. Not having had the time to discuss the request, but recognizing its merits, the SC agreed to communicate the matter to plenary for a decision.

**The Committee recommends that, given the special circumstances, the Executive Committee examine the possibility of granting financial support to a former WIPO staff member for legal proceedings.**

#### **Nomination of Standing Committee officers and core group members (Agenda item 15)**

28. Mr Andrés Orias-Bleichner (WMO) was nominated as Chair and Ms Gisela Vieira de Araújo (IMO) as First-Vice-Chair and Mr Joël Lahaye (CERN) as Second-Vice-Chair.

29. Continuing with the practice of previous sessions of the FICSA Council, the core group was open to all participants in the meeting.