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Item 5 of the provisional agenda

**REPORT BY THE DIRECTOR-GENERAL ON THE JUDGMENTS
CONCERNING UNESCO ISSUED BY THE INTERNATIONAL LABOUR ORGANIZATION
ADMINISTRATIVE TRIBUNAL (ILOAT)**

ADDENDUM

COMMENTS OF THE INTERNATIONAL STAFF ASSOCIATION OF UNESCO (ISAU)

SUMMARY

Pursuant to item 9.2.7 of the UNESCO Human Resources Manual, the International Staff Association of UNESCO (ISAU) submits its comments on human resources issues (document 220 EX/5.IV.INF).

1. We note with satisfaction the significant drop in costs incurred by appeals before the International Labour Organization Administrative Tribunal (ILOAT). However, it is still regrettable that the Director-General's report fails to address the accountability and responsibility of those behind the decisions which led to these disputes. We are surprised that ILOAT's condemnations of the Organization have not given rise to any administrative investigations. It is incomprehensible that UNESCO should not seek to investigate internally the causes of the behaviours leading to condemnation, which are always ultimately those of individuals. This shortcoming tends to perpetuate a culture of impunity, which leads to the concealment of errors and violations or of poor decisions taken by supervisors, particularly when they affect staff and, consequently, UNESCO's effectiveness. It is important for Management to ensure UNESCO's overall transparency, integrity, accountability and effectiveness by taking concrete and transparent measures in the interests of the Organization.
2. The establishment of administrative investigations following ILOAT decisions would strengthen the internal system for the settlement of disputes between UNESCO and its staff. In that connection, it bears recalling that recourse to the ILOAT is, in and of itself, only the final stage in a process corresponding to the various components of UNESCO's internal justice system (administrative review,



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Appeals Board, amicable dispute resolution). Thus, the document presented by the Director-General is also a report on any blocks or deadlocks encountered in our internal process.

Data transparency

3. The report indicates a high percentage of cases dismissed by the ILOAT. However, this overall finding should not lead to the conclusion that all the complaints dismissed were unfounded. Indeed, procedural inadmissibility, particularly that which is due to the expiry of appeal deadlines, is one of the main reasons for dismissal. It would therefore be essential to obtain more data in order to assess accurately the Administration's progress and shortcomings in the settlement of staff disputes. This would also contribute to greater transparency within the Organization.

4. We wish to point out that the following information, essential to a more accurate and in-depth analysis of this matter, is missing:

- The total number of appeals submitted to the Appeals Board, specifying their grounds, over the period from 16 July 2022 to 15 July 2024 (and not just the number of appeals examined);
- The grounds for dismissal of claims before the Appeals Board;
- The number of recommendations made by the Appeals Board in favour of and against appellants;
- The grounds for dismissal of claims before the ILOAT.

5. ISAU insists on the need for this information because without these key data, the presentation of the Administration's document could lead the reader to believe, mistakenly, that staff are excessively quarrelsome, which the number of complaints dismissed is supposed to demonstrate. ISAU believes that, on the contrary, access to the aforementioned data would provide a more nuanced and accurate picture of the situation. We wish to point out that our demand for more complete information stems directly from the recommendation of the Joint Inspection Unit (JIU) as to the need for "the systematic collection of data and regular reporting thereon", which "are indispensable for improving the administration of justice in the United Nations system organizations" ([JIU/REP/2023/2](#), page v). It is therefore necessary that the Appeals Board publish a detailed report.

6. In view of this pressing objective to improve the justice system within the United Nations, and therefore within UNESCO, we must stress how deeply regrettable it is that the Administration should continue to use equivocal language in its reports on ILOAT decisions, speaking of "success rate" or even cases "won" by the Administration to qualify judgments unfavourable to staff members. As staff representatives, we are distressed by this tone, and as civil servants, we would like to point out that an administrative report is not a sports report. In this case, there is no reason to rejoice or boast about victories, because the fact of a dispute reaching the ILOAT, after having gone through the entire internal justice system, in itself evidences both a failure of internal dialogue and difficulty encountered by the Administration, which has been unable to prevent the dispute from erupting. Moreover, the report indicates (para. 6) that "the number of complaints currently pending before the ILOAT, as at 15 July 2024, is 34" and that "the number of appeals pending before the Appeals Board, as at 15 July 2024, is 44". These numbers show that there is still considerable potential for improvement in the way the Administration handles disputes. Generally speaking, the tone and presentation of the Administration's document can lead us to believe that the Administration attaches greater importance to emerging "victorious" from these judgments than to working on conflict reduction and prevention before resorting to the ILOAT.

Infringement of due process

7. It is important to stress that there is a profound imbalance between the Administration and staff members in terms of legal assistance. The Administration has at its disposal the Office of International Standards and Legal Affairs, which is staffed by legal professionals with relevant legal expertise in international law and a thorough command of legal procedures. Staff members, for their part, lack access to any legal assistance within UNESCO apart from the staff associations, which themselves lack the resources to provide the necessary legal assistance. As a result, appellants are often obliged to retain lawyers' services at their own expense.

8. This imbalance is all the more unfair in that staff members are still prohibited from being represented before the Appeals Board by a person external to the Organization¹. In this respect, it is imperative that the JIU's recommendation to "remove all restrictions regarding legal representation of their staff in internal justice processes, with the aim of allowing staff to choose their legal counsel freely and without restriction" be implemented as soon as possible ([JIU/REP/2023/2](#) - Recommendation 7).

9. In reality, UNESCO's so-called "successes" are often a consequence of how difficult it is for staff members to defend themselves effectively, given the complexity of the procedures involved. The JIU review highlighted the fact that "a significant number of cases are dismissed on grounds of receivability, that is, for failure to comply with the basic procedural requirements for an application to be considered and reviewed on its merits" ([JIU/REP/2023/2](#), page v). Consequently, violations on the part of the Administration (irregular reclassifications, failure to investigate cases of harassment, non-renewal of contracts, wrongful dismissals, and so on) may not be examined for strictly procedural reasons. Here again, official statistics on the admissibility of claims would serve as "an important indicator of possible procedural barriers to accessing justice, which warrant further examination" ([JIU/REP/2023/2](#), page v).

10. Beyond the legal aspects, it is important to stress that dispute resolution has a financial and psychological cost for complainants. The lack of legal assistance often remains a deterrent for staff. All these faults help to create and maintain a climate of distrust and mistrust within the Organization, which runs counter to both the principles of good management and those of the rule of law, without which an administration cannot function effectively. ISAU therefore calls for: the establishment of a legal-assistance service for staff, such as, for example an office of staff legal assistance, like that which exists for the United Nations Secretariat; and the allocation of a budget to enable the staff associations to recruit legal advisers, following the example of the Organisation for Economic Co-operation and Development (OECD).

Amicable settlements

11. Although the number of amicable settlements is given in the report, it is regrettable that the Administration did not deem it necessary to provide more details on this matter. It would have been useful if it had specified the reasons for the amicable settlements mentioned in the report and had specified the stage at which the amicable settlements were reached (before the case had been brought before the Appeals Board, on the Board's recommendation [before the hearing], or following the decision of the Director-General [after the hearing]).

12. Here again, the matter of responsibility is not addressed, which raises questions about how lessons are learned from bad decisions and about the accountability of those involved. Indeed, even when a conflict has been resolved, the consequences for those responsible remain unclear.

¹ Article 28 of the Statutes of the Appeals Board: Neither Party shall have the right to external legal representation before the Board. The Appellant may designate a staff member to represent him or her in the Board proceedings.

Costs associated with the settlement of disputes

13. It is particularly problematic that a large part of the costs is linked to inaction on the part of the Administration and to the same errors highlighted in previous reports (notably, non-compliance and excessive delays). Greater efficiency and better management should make it possible to avoid these expenses.

14. It goes without saying that, beyond the compensation amounts paid by the Organization, dispute management entails substantial costs associated with the preparation of the Administration's defence, regardless of the outcome of a dispute. These hidden expenses, on which we do not have information, are a major drain on the Organization's resources. It is therefore imperative that UNESCO adopt a proactive approach to conflict prevention: one which respects staff rights and aims to anticipate and defuse contentious situations. Such an approach would not only reduce the financial and human costs associated with disputes, but also enhance the Organization's effectiveness and reputation as a transparent, accountable institution capable of fostering a climate of trust within its walls.



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**REPORT BY THE DIRECTOR-GENERAL ON THE JUDGMENTS
CONCERNING UNESCO ISSUED BY THE INTERNATIONAL LABOUR ORGANIZATION
ADMINISTRATIVE TRIBUNAL (ILOAT)**

SUMMARY

Further to 215 EX/Decision 5.IV.A, this document aims at providing the Executive Board with information on judgments of the Administrative Tribunal of the International Labour Organization concerning UNESCO and on in-house amicable financial settlements for the period from 16 July 2022 to 15 July 2024.



Job: 202403006

Introduction

1. UNESCO recognizes the jurisdiction of the Administrative Tribunal of the International Labour Organization (“the ILOAT” or “the Administrative Tribunal”) to consider complaints alleging non-observance of the terms of appointment of officials and of the provisions of the Staff Regulations, after exhaustion of the internal remedies available in the Organization.

2. It is recalled that, under UNESCO’s legal framework, a staff member who wishes to contest an administrative decision may submit a request for administrative review, on which the Director-General makes a ruling. If the staff member wishes to pursue his or her recourse upon receipt of a ruling on the request or in the absence of any ruling within a prescribed time-limit, he or she may lodge an appeal with the Appeals Board, which is a body composed of five members, namely a Chairperson appointed by the Executive Board, two members appointed by the Director-General and two members appointed by the Chairperson from a list of staff members elected every two years by all UNESCO staff. After its consideration, the Appeals Board produces a report advising the Director-General on what action he or she should take on the case. The decision by the Director-General is subject to further appeal before the ILOAT. Judgments of the ILOAT are final and without appeal.

3. Further to 215 EX/Decision 5.IV.A,¹ this document presents the results, figures and grounds of the judgments issued by the ILOAT between 16 July 2022 and 15 July 2024 (from the Administrative Tribunal’s 135th session to its 138th session). The information contained in this document concerning the Administrative Tribunal is based on its judgments, which are publicly available on the ILOAT website (<https://www.ilo.org/tribunal/lang--en/index.htm>). Moreover, as requested by the Executive Board, this document presents the number of in-house amicable financial statements in case of disputes and their cost to the Organization during the same reporting period.

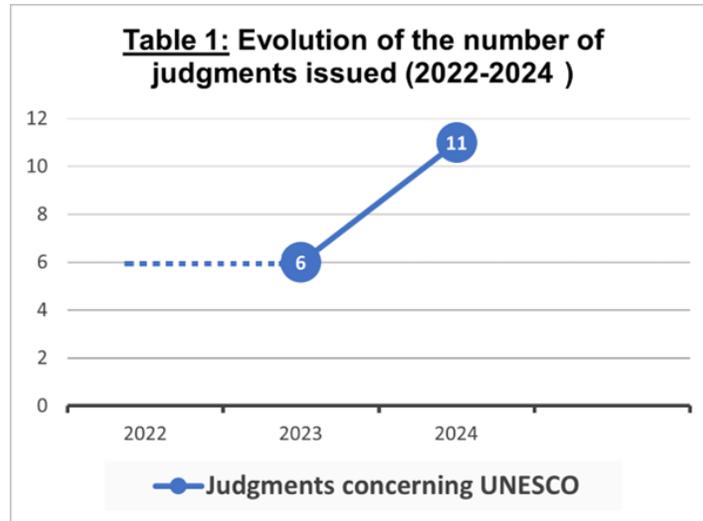
Judgments issued by the ILOAT

Evolution between 16 July 2022 and 15 July 2024

4. In the period concerned, the ILOAT has issued a total of 17 judgments concerning UNESCO, 13 of which were in favour of the Organization and two partly in favour (the latter meaning that the impugned decision was upheld by the Administrative Tribunal, which nevertheless awarded compensation on other grounds). The ILOAT found against the Organization in two judgments.

5. Table 1 shows the total number of judgments per year since 16 July 2022. No judgments concerning UNESCO were issued in 2022, after 16 July. The Administrative Tribunal issued 6 judgments concerning UNESCO in 2023, and 11 judgments concerning UNESCO in 2024 (as at 15 July 2024).

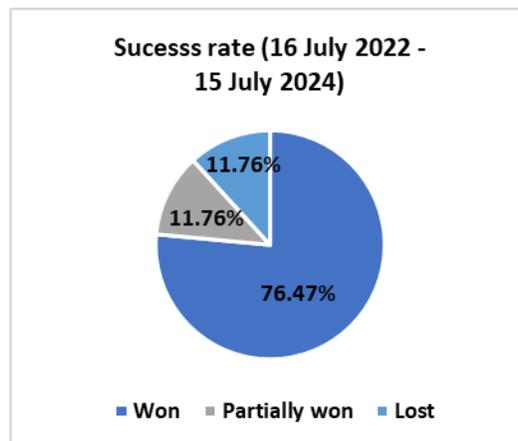
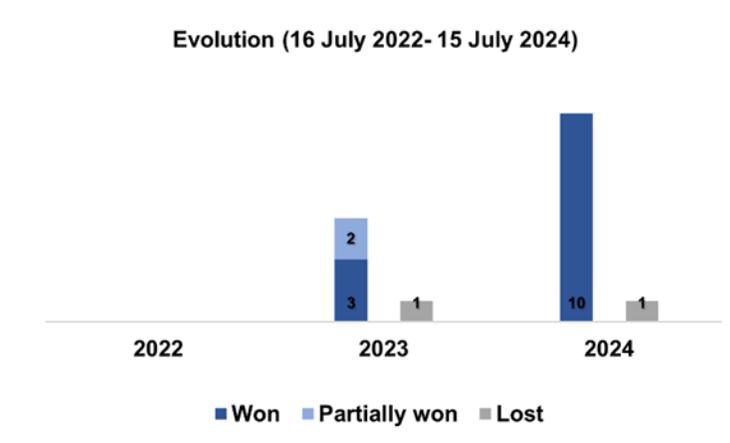
¹ 215 EX/Decision 5.IV.A: “7. *Invites* the Director-General to report once per biennium in the report on human resources issues, on the judgments concerning UNESCO issued by the International Labour Organization Administrative Tribunal (ILOAT) and measures taken to incorporate the principles from those judgments in the administrative procedures, together with the detailed cost incurred by UNESCO (as in document 215 EX/5.IV INF); *also invites* the Director-General to report in the same report about the number of in-house amicable financial settlements in case of disputes, and their cost to the Organization”.



6. The number of complaints currently pending before the ILOAT, as at 15 July 2024, is 34. The number of appeals pending before the Appeals Board, as at 15 July 2024, is 44.

7. Table 2 shows the evolution of UNESCO’s success rate before the ILOAT, with reference to the number of judgments during the period concerned.

Table 2: Evolution of the number of judgments and success rate (as of 15 July 2024)



8. Figures show that, in 2023, UNESCO prevailed or partially prevailed in 83.33% of the judgments and lost in 16.67%. In 2024 (as at 15 July), UNESCO prevailed in 90.91% of the judgments and lost in 9.09% of the cases.

9. In 2023, the cases disposed of by the Administrative Tribunal were three cases of reclassification of post, one case of non-confirmation of a project appointment at the end of the probationary period, one case concerning a transfer, and one case regarding payment of final emoluments and release of pension documents. In 2024, the cases disposed of by the Administrative Tribunal were two cases concerning modification of functions assigned to the staff member, two cases concerning an alleged right to carry firearms, one case concerning an alleged conflict of interest in the context of an investigation, one case concerning the closure of a complaint of harassment following the preliminary evaluation, one case rejecting a complaint of harassment following an investigation, one case of non-renewal of appointment, one case concerning the rejection of a request for payment of alleged overtime, one case concerning the change of the staff member's immediate supervisor, and one case concerning the rejection of a request for payment of compensation for the time required for dressing/undressing of service uniform.

10. By way of comparison, in the same reporting period, the UNESCO Appeals Board has examined a total of 50 cases. Following the recommendations of the Appeals Board, the Director-General took final decisions by which the position of the Organization was confirmed in 45 of those cases (90%), it was partially confirmed in two cases (4%), and it was modified in favour of the Appellant in three cases (6%).

Overview of grounds and costs of ILOAT judgments

11. The present section focuses on those judgments in which the Administrative Tribunal has awarded compensation against the Organization (namely, two cases in which the ILOAT has ruled that the impugned administrative decisions were unlawful and two cases in which the impugned decisions were upheld but compensation was awarded on other grounds). These four cases arise from administrative decisions taken in 2004, 2013, 2017 and 2018.

12. Table 3 presents the main areas in which the Administrative Tribunal has awarded compensation in the reporting period, as well as the amount of compensation and costs.

**Table 3: Level of compensation and costs – ILOAT judgments
(in US Dollars) from 16 July 2022 to 15 July 2024**

	Compensation and costs in US \$ Dollars						Total
	2022 ²	Number of cases	2023	Number of cases	2024	Number of cases	
<i>Transfer</i>	-	-	\$16,949.00	1	-	-	\$16,949.00
<i>Reclassification of post</i>	-	-	\$26,432.00	2	-	-	\$26,432.00
<i>Closure of preliminary investigation (harassment)</i>	-	-	-	-	\$16,340.00	1	\$16,340.00
Total	\$0.00	0	\$43,381.00	3	\$16,340.00	1	\$59,721.00

² For the year 2022, the table only includes the judgments issued as from 16 July.

13. Table 4 indicates the grounds on which the Administrative Tribunal has ruled against the Organization or awarded a payment of compensation.

Table 4: Breakdown of adverse decisions by grounds from 16 July 2022 to 15 July 2024

Grounds for compensation awarded by the ILOAT	Number of occurrences	Percentage
Non-compliance with UNESCO rules and procedures	1	25%
Lack of a decision following an Appeals Board's recommendation	1	25%
Excessive delay in administrative action and appeal proceedings	1	25%
Error of law in the preliminary evaluation of a harassment complaint	1	25%

Amount of awards

14. Following is a description of the cases in which compensation has been afforded by the Administrative Tribunal during the period concerned.

- The highest amount the Organization was condemned to pay by the ILOAT (\$16,949) relates to a case of a former staff member who challenged a transfer decision taken in 2013. After the Complainant had informed the Organization that she had fallen pregnant and taking into account that she was posted in a non-family duty station, the Organization had arranged for the Complainant to be transferred to Headquarters. The Administrative Tribunal acknowledged that the Organization had informed the Complainant of the possibility of a transfer, allowing her to present her views. However, it also found that the Organization did not provide the staff member with sufficient advance notice when the decision became final and did not inform and consult her, prior to the transfer, on the specific duties that would be assigned to her in her new post. On these grounds, the Administrative Tribunal set aside the impugned decision and awarded the Complainant €15,000 for moral damages and €1,000 for costs.
- The second highest amount (\$16,520) concerned the case of a staff member who contested a 2004 decision concerning the reclassification date of her post. The Complainant filed an appeal before the Appeals Board requesting that the effective date of her promotion be set at a prior date. In 2017, the Appeals Board issued its Report and recommendation. However, no final decision was made on this Report since negotiations were pending on an agreed separation, which the Complainant later turned down. The Administrative Tribunal found that the Complaint was irreceivable unreceivable with respect to the Complainant's request for a retroactive post reclassification and that the latter had failed to establish that the contested decision was flawed, but awarded the Complainant €10,000 in compensation for the lack of a final decision on the Appeals Board's Report and €5,000 in costs.
- The third highest amount (\$16,340) relates to the case of a staff member who challenged the 2018 decision to close her complaint of harassment, following the preliminary evaluation made by the then-Ethics Advisor. The Administrative Tribunal set aside the contested decision on the grounds that, in view of the alleged facts and the existence of corroborating testimonies,

an investigation should have been opened. It did not consider it appropriate to refer the case back to the Organization and awarded the staff member moral damages in the amount of €15,000.

- The fourth highest amount (\$9,912) pertains to the case of a staff member who challenged a 2017 decision not to reclassify her post. The Administrative Tribunal dismissed as unfounded the staff member's arguments regarding the alleged irregularities in the reclassification procedure. However, it awarded the staff member €3,000 for moral injury because the Appeals Board had issued a corrected version of its Report, without providing a satisfactory explanation, €5,000 for delays in updating the staff member's job description and in conducting the internal appeal procedure, and €1,000 in costs.

In-house amicable financial settlements signed between 16 July 2022 and 15 July 2024

15. During the reporting period, UNESCO settled six cases for a total amount of \$98,177.

Remedial actions from the Secretariat

16. During the reporting period, the following remedial actions were implemented to cover gaps observed from ILOAT judgements.

- Staff members transferred to another duty station are consulted and given advance notice through the mobility programme. Decisions are notified by HRM as soon as they are final and an extended notice is being considered when spouse career, childcare or schooling is at stake.
- The new parental leave policy introduces specific timelines for the declaration of pregnancy to the Occupational Health Service for occupational health and safety purposes and to allow the Organization to exercise the duty of care and anticipate, plan and communicate on administrative measures. The new parental leave policy also introduces measures for childbearing staff members assigned to non-family and D and E duty stations. Thus, if childbearing staff members declare their pregnancy to OHS between the 16th and 20th week of pregnancy, the Organization will be able to inform them of the travel timelines and requirements out of the duty station by the end of the 31st week of pregnancy and subsequent remote work until the start of the parental leave.
- Excessive delays in updating job descriptions are being addressed through the creation of generic job descriptions. They will create an opportunity to update job descriptions. While updating job descriptions has merits, it could also trigger multiple, concurrent requests for reclassification, as responsibilities of posts have evolved towards concentration of responsibilities following post-2021 restructuring and decentralization of corporate functions.
- In September 2023, innovative strategies were introduced to enhance the Board's efficiency and effectiveness. By leveraging technology and implementing a digitized case management system, processes were streamlined and manual workloads were significantly reduced, thereby expediting case reviews. For the reporting period from 16 July 2022 to 15 July 2024, a review of six cases where an appeal had been filed and a final decision issued by the Director-General shows that the average resolution time is approximately nine months. Considering that the ILOAT has determined 22 months to be an excessive delay, this represents a marked improvement. However, this data should be interpreted with caution, as it does not present a complete picture. As at 15 July 2024, there are still 26 outstanding cases of which the appeal was filed during the reporting period. Until these cases are finalized, an accurate average resolution time cannot be determined. It is also important to note that delays

can sometimes be attributed to other factors, including instances where staff members have not been ready to bring their case to a hearing.

17. Considering the most recent ILOAT judgements, UNESCO proposes to settle claims, potentially at any stage before a decision is made by the Administrative Tribunal, when this appears to be in the best interest of the Organization.