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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 FROM 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 215 EX/5.IV.INF).

1. This detailed report demonstrates, unfortunately, that UNESCO's internal justice system lacks effectiveness. While the Administration can boast that it has won a majority of cases before the International Labour Organization Administrative Tribunal (hereinafter "ILOAT"), the amounts of money at stake when it has been found at fault is significant in relation to UNESCO's budget. The Organization must therefore show greater concern for justice if it is to manage effectively the resources allocated to it by the Member States. It is also regrettable to note that this document makes no mention of the responsibilities of those behind decisions that have generated conflicts and litigation. The responsibility is multi-layered, starting with the relationship between supervisors and their supervisees, going through Administration and the Bureau of Human Resources Management (HRM), as far as the processing of cases submitted to the Appeals Board.

Evolution between 1 January 2019 and 15 July 2022

2. Regarding in particular the information provided about ILOAT judgments, if we compare the data provided in 2018 (document 206 EX/5.III.INF) with the current data, the findings are alarming. Indeed, the amount of compensation and costs due by the Organization as a result of ILOAT judgments between 2019 and July 2022 is greater than the amount of compensation and costs due during the 2010–2018 period. The Organization thus had to pay \$ 893,472 between 2010 and 2018 (which amounts to an annual average of \$ 99,275), whereas since 2019, it has paid \$ 978,337 (which amounts to an annual average of \$ 273,024).



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Compensation and costs in US dollars	
Period	Total
Between 2010 and 2018	\$ 893,472
Between 2019 and July 2022	\$ 978,337

3. In addition, figures show that appellants prevailed or partially prevailed in 12 (or 41%) of the 29 judgments concerning UNESCO handed down by ILOAT. This high percentage is identical to the 2010–2018 period. This can only raise questions about the effectiveness of the measures put in place by the Administration to prevent disputes and litigation.

4. In paragraph 6 of document 215 EX/5.IV.INF, it says that the number of complaints before the ILOAT remains “relatively low” in comparison with the number of appeals before the Appeals Board. However, it is important to understand the reasons behind this.

5. On the one hand, as the Administration admits in paragraph 19 that the Secretariat assesses the level of risk of each case pending before the Appeals Board and, where the risk of the Organization being sanctioned by the ILOAT is considered high, the Secretariat explores the possibility of amicable settlement. It should be noted that these amicable settlements nevertheless entail considerable costs for the Organization and in the interests of transparency it would be desirable for the Administration to publish the number of cases and amounts of compensation paid in this context.

6. On the other hand, we cannot ignore the fact that many colleagues choose not to appeal to the ILOAT because it is a very long and costly procedure in practical terms and very distressing in mental and psychological terms. This appeal procedure adds to an already gruelling internal procedure.

7. Thus, in addition to the “low” number of complaints before the ILOAT, we need to add the appeals made to the Appeals Board and the number of amicable settlements in order to have an overview of the real number of disputes between staff members and the Administration. This would highlight the internal failures that unfortunately continue to result in excessive and unnecessary costs for the Organization.

8. What is more, we regret the Administration’s inappropriate use of the term “success rate” when referring to cases in which the Organization has won before the ILOAT (see paragraph 7). It goes without saying that any case that comes before the ILOAT involving UNESCO staff members constitutes a failure because it proves the existence of flaws in personnel management.

Overview of grounds and costs of ILOAT judgments

9. At a time when budget constraints are once again being flagged, it is more urgent than ever that those responsible for “poor decisions” be held accountable. When one sees that the Organization was condemned to pay \$421,233 for a single case of disciplinary action, one has to wonder who made the errors in judgment or assessment that led to this failure and whether there were any measures taken against the people responsible – and this applies throughout the decision-making chain. Account must be taken not only of the supervisor responsible for mismanagement, but also of the decision-making staff who endorse that misconduct.

10. It is surprising to note that one of the ILOAT decisions reveals that a staff member was dismissed on the pretext of unsatisfactory service, without the Administration taking into account the essential facts, in particular the supervisor’s failure to meet his obligations to interview the appellant. This ILOAT decision therefore reflects the clear supervisory mismanagement of a team. It is obvious

that, by agreeing to go before the administrative tribunal to defend its position, the Administration has assumed the professional misconduct of a supervisor, which was obvious from the case file. This failure points to the persistence of a culture of impunity that ignores the mismanagement by supervisors, especially when it affects staff. While HRM is to be commended for increasing management training for supervisors, it is unfortunate that it does not apply sanctions when the standards upheld in such training are not applied in practice, as revealed by the ILOAT judgment.

11. The fact that in 33.3% of cases the ILOAT ruled against the Organization because of non-compliance with UNESCO's rules and procedures confirms what ISAU has been condemning in its spoken and written comments for years: the Bureau of Human Resources Management does not follow its own rules. Table 3 of document 215 EX/5.IV.INF clearly shows that most of the compensation paid was for non-renewal of appointment (30%) and disciplinary measures (59%). The Administration must therefore pay particular attention to these two areas, and refrain from making hasty decisions of non-renewal of appointment or taking disciplinary measures that are too severe, in order to avoid repeating the same mistakes.

Remedial actions from the Secretariat

12. Furthermore, contrary to what the Administration states in paragraph 17 of document 215 EX/5.IV.INF, we do not see how the new performance management policy has improved the situation and reduced disputes over performance evaluation. We still regret the revision of the policy that was put in place in 2020 and its replacement with a policy that lacks transparency and clarity. Depriving staff members of remedies can only lead to a deterioration in the working conditions of staff and an increase in litigation and subsequent expense to the Organization.

13. In this regard, we ask the Administration to review its policy, particularly on the abolition of the Review Panel and the Reports Board and the refusal to notify staff members of the recommendations made by reclassification experts following desk audits. Moreover, we deplore decisions not to reclassify posts despite favourable recommendations by the reclassification experts. These types of situations and decisions generate frustrations, tensions and disputes that may easily be avoided. We regret that our criticisms and proposals on these subjects are not taken into account. Recalling the magnitude of the amounts that the Organization has been condemned to pay and their sharp increase since 2019, we must alert the Administration to the caution it must take in decision-making on personnel matters and recommend that there be greater transparency in all procedures.

14. While ISAU supports the request to allocate adequate human and financial resources, we believe that greater efforts must be made in terms of accountability and transparency, which implies better consultation with the staff associations. As noted above, there is still a widespread culture of impunity for supervisors whose mismanagement of staff is never identified or punished as such. Worse still, it seems that the Administration, in order not to punish and repudiate clear misconduct, prefers to incur substantial expenditure in amicable settlements or payment of compensation following ILOAT judgments, expenditure which damages UNESCO's reputation and effectiveness.



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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 214 EX/Decision 5.III.A, this document aims at providing the Executive Board with information on judgments of the International Labour Organization Administrative Tribunal concerning UNESCO for the period from 1 January 2019 to 15 July 2022.



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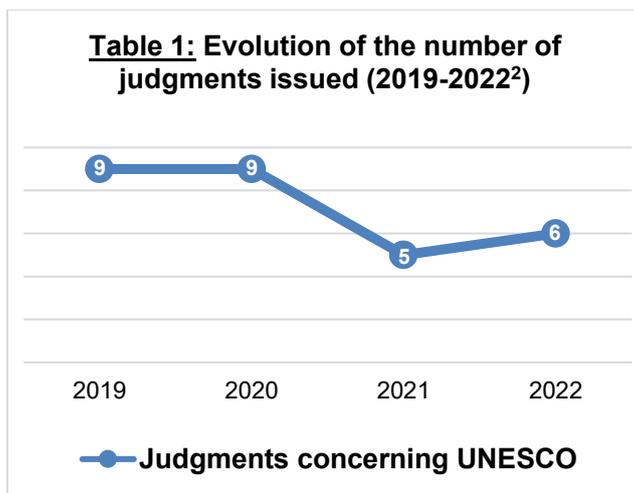
Introduction

1. UNESCO recognizes the jurisdiction of the Administrative Tribunal of the International Labour Organization (ILOAT or 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 214 EX/Decision 5.III.A¹, this document presents the results, figures and grounds of the judgments issued by the ILOAT between 1 January 2019 and 15 July 2022 (from the Administrative Tribunal's 127th session to its 134th session). The information contained in this document concerning ILOAT cases is based on the judgments of the Administrative Tribunal, which are publicly available (see: <https://www.ilo.org/tribunal/lang--en/index.htm>).

Evolution between 1 January 2019 and 15 July 2022

4. In the period concerned, the ILOAT has issued a total of 29 judgments concerning UNESCO, 17 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 the remaining 10 judgments.
5. Table 1 shows the total number of judgments per year since 2019. Nine judgments were issued in 2019, nine in 2020, five in 2021, and six in 2022 (as at 15 July).

¹ 214 EX/Decision 5.III.A: "5. Requests the Director-General to provide to the 215th session information on judgements and costs incurred by UNESCO in ILOAT since March 2019 as was provided in document 206 EX/5.III.INF". Given that the judgments issued by the ILOAT in February 2019 were not included in the previous report, the Secretariat included them as part of this report, for the sake of completeness.



6. It should be noted that the number of complaints before the ILOAT remains relatively low in comparison with the number of appeals before the Appeals Board. The number of complaints currently pending before the ILOAT as at 15 July 2022 is 16. The number of appeals pending before the Appeals Board as at 15 July 2022 is 74.

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 (2019-2022³)



8. Figures show that, in 2019, UNESCO prevailed in 33% of the judgments and partially prevailed in 11% of them. That year, however, remains an outlier since the Organization has since prevailed in the vast majority of cases. In 2020, UNESCO prevailed or partially prevailed in 78% of the cases and the trend continued in 2021 with 80% of the cases won. In 2022 (as at 15 July), UNESCO has prevailed in 67% of the cases.

9. In 2019, the cases disposed of by the Administrative Tribunal were three cases of non-renewal of appointment, one disciplinary measure, one case of performance evaluation, one harassment complaint, one case concerning a transfer, one case regarding matters of sick leave, and one case of defamatory allegations. In 2020, the cases included one request for review of a previous judgment, one case related to medical confidentiality, one disciplinary measure, one case regarding a service incurred accident, two cases of requests for special post allowance, one reclassification case, one case concerning the execution of a judgement and one case concerning the Voluntary Mutual

² For the year 2022, the table includes judgments issued as at 15 July.

³ For the year 2022, the table only includes the judgments until 15 July.

Agreed Separation Programme. The cases disposed of in 2021 were two reclassification cases, two requests for review of judgments, and one case of termination. Those in 2022 were two cases of non-renewal of appointment, one disciplinary measure, one case related to the closure of UNESCO's Commissary, one case on a request for special post allowance, and one reclassification case.

10. By way of comparison, in the same 2019-2022 period, the UNESCO Appeals Board has examined a total of 36 cases. The Organization has prevailed or partially prevailed in 34 of those cases, with a success rate of 94%, and lost in two cases (6%). It is worth noting that the overall trend during the period concerned is towards improvement and that, in 2022, the Organization has so far prevailed in 100% of cases (11) examined by the Appeals Board.

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, the 10 cases in which the ILOAT has ruled that the impugned administrative decision was unlawful and the two cases in which the impugned decision was upheld but compensation was awarded on other grounds. These 12 cases arise from administrative decisions taken between 2011 and 2016.

12. Table 3 presents the main areas in which the Administrative Tribunal has awarded compensation in these cases, as well as the amount of compensation and costs. The table shows that the highest amounts concerned administrative decisions related to disciplinary measures, followed by cases of non-renewal or termination of appointment.

Table 3: Level of compensation and costs – ILOAT judgments (in US Dollars) since 2019

	Compensation and costs in US \$ Dollars								Total
	2019	Number of cases	2020	Number of cases	2021	Number of cases	2022	Number of cases	
Non-Renewal	\$288,951	2		0		0	\$500	1	\$289,451
Disciplinary	\$155,992	1		0		0	\$421,233	1	\$577,227
Evaluation	\$5,540	1		0		0		0	\$5,541
Harassment complaint	\$11,984	1		0		0		0	\$11,985
Transfer	\$13,000	1		0		0		0	\$13,001
Execution of judgment		0	\$9,412	1		0		0	\$9,412
Service incurred accident		0	\$21,978	1		0		0	\$21,978
Voluntary Mutual Agreed Separation Programme		0	\$12,704	1		0		0	\$12,705
Termination		0		0	\$37,037	1		0	\$37,037
Total	\$475,467	6	\$44,094	3	\$37,037	1	\$421,733	2	\$978,337

13. Table 4 indicates the grounds on which the Administrative Tribunal has ruled against the Organization.

Table 4: Breakdown of adverse decisions by grounds

Grounds for compensation awarded by the ILOAT	Number of occurrences	Percentage
Non-compliance with UNESCO rules and procedures	4	33.3%
Breach of the duty of care	2	16.7%
Overlooked essential facts in non-renewal decision	1	8.3%
Delay in execution of judgment	1	8.3%
Disproportionate disciplinary measure	1	8.3%
Breach of disciplinary procedure	1	8.3%
Excessive delays in the appeals proceedings	1	8.3%
Others	1	8.3%

Amount of awards

14. Following is a description of the cases in which the most significant compensation has been afforded during the period concerned.

- The highest amount the Organization was condemned to pay by the ILOAT (\$421,233) relates to a case of a former staff member who challenged an administrative decision taken in 2016 to summarily dismiss him from service for serious misconduct. While the Tribunal acknowledged that the complainant was not beyond reproach and that he had engaged in misconduct, it considered that the contested disciplinary measure was disproportionate and based on erroneous considerations concerning the provisions that he had breached. The Tribunal found against the Organization and awarded material damages equivalent to three years' remuneration, as well as €40,000 compensation for moral damages and €3,000 in costs.
- The second highest amount (\$179,889) concerned a staff member who challenged her performance reports for the 2010-2011 biennium and the 2012 administrative decisions to defer her within-grade salary increment and not to renew her fixed-term appointment for unsatisfactory service. The Tribunal set aside the Organization's decision on the grounds that it had failed to apply its rules and procedures, and awarded material damages equivalent to two annual salary increases and all related allowances, as well as moral damages in the amount of €10,000 and €750 for costs.
- The third highest amount (\$155,992) relates to a case of a staff member who challenged the 2012 decision to terminate his appointment for misconduct. The Tribunal set aside the Organization's decision on the grounds that it considered that there was a breach of the complainant's rights in the disciplinary process and his right to an effective appeal, and awarded material damages equivalent to the salary and allowances of all kinds to which the complainant would have been entitled up until the date of expiry of his contract, as well as moral damages in the amount of €16,000 and €5,000 in costs.
- The fourth highest amount (\$109,062) pertains to a case of a staff member who challenged the Organization's decision taken in 2014 not to renew her fixed-term appointment for unsatisfactory performance. The Tribunal set aside the challenged decision on the grounds that the Organization disregarded essential facts of the case by overlooking the internal difficulties between the complainant and her supervisor, and awarded material damages equivalent to the salary and allowances of all kinds which the complainant would have received had her contract been renewed for a period of two years starting 1 November 2014, and the pension contributions that she would have had to pay during the same period, as well as moral damages in the amount of 1€0,000 and €5,000 in costs.

Remedial actions from the Secretariat

15. The four cases in which the most significant compensation has been afforded during the reporting period are related to performance evaluation and disciplinary proceedings.

16. Regarding the cases related to performance evaluation, the Secretariat has taken note of the Administrative Tribunal's position that, upon deciding whether or not to renew an appointment, certain circumstances such as the excessive workload, the lack of communication between employees and supervisors (no regular meeting or feedback) and previous satisfactory performance must be taken into account.

17. In this regard, a new performance management policy with a one-year cycle was introduced in January 2020 with a strong focus on constructive and frequent feedback with career and performance conversations, with the aim of motivating good performance and increasing engagement of staff. A performance management curriculum was also developed and launched in

December 2021 and made available to approximately 750 managers in UNESCO with the objectives: (i) to guide, support and enhance the skills of each supervisor, in order to bring consistency in performance management within the Organization; and (ii) to help supervisors recognise their role and contribution to effectively manage the performance of their supervisees.

18. As regards the disciplinary cases, the following lessons may be drawn from the ILOAT judgements: (i) the seriousness of the offence must be assessed in light of all relevant circumstances, taking into account aggravating and mitigating factors (the staff member's good faith and length of service may constitute mitigating factors); (ii) the sole lack of proportionality between the offence and the disciplinary sanction may result in the award of significant amounts of compensation for moral and material damages.

19. Bearing in mind this case law of the ILOAT, greater emphasis is being put on assessing the proportionality of the sanction, taking into account relevant circumstances and mitigating and aggravating factors, while ensuring that the sanctions taken respond to highest standard of accountability and integrity expected from staff members. In the meantime, the Secretariat pursues preventive actions notably through management and ethics training and raising awareness about ethical behaviour and the respect of Standards of Conduct. To reduce and prevent litigation, the Secretariat also puts emphasis on mediation and early conflict resolution, involving the Mediators, the Ethics Office, and the Staff Associations. Also, taking into account the eventuality of adverse ILOAT judgments, the Secretariat assesses systemically the level of risk of each case pending before the Appeal Board. For cases representing a high risk of being sanctioned by the ILOAT, attempts of amicable settlement are explored.

20. Finally, to ensure that cases are handled effectively and within the statutory timeframes, thus mitigating the risk of procedural flaws, adequate human resources need to be allocated, both at the Appeals Board and ILOAT stages and at the early stage of ensuring rules and procedure compliance and administrative review. This is not the case of the resources currently allocated to the handling of Appeals Board and ILOAT procedures and to ensuring compliance and conducting administrative reviews, which raises significant risks for the Organization.