



Governing Body

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Programme, Financial and Administrative Section

PFA

Personnel Segment

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Other personnel matters: Recent developments concerning the determination of the post adjustment by the International Civil Service Commission

▶ Background

1. At its 337th Session (October–November 2019), the Office informed the Governing Body ¹ of the legal challenge of the decision to implement the revised post adjustment as determined by the International Civil Service Commission (ICSC) for all Geneva-based staff in the professional and higher categories effective April 2018, including [Judgment No. 4134](#) with respect to staff complaints filed against the ILO, delivered by the ILO Administrative Tribunal on 3 July 2019, and the measures taken for the prompt and full execution of that judgment. A figure illustrating the chronology of events is provided in Appendix II.
2. At its 338th Session (March 2020), the Office informed the Governing Body ² that the United Nations (UN) General Assembly expressed concern over the inconsistencies in the application of the 2016 post adjustment results in Geneva and urged the member organizations of the UN common system to cooperate fully with the ICSC in line with its Statute to restore consistency and unity of the post adjustment system as a matter of priority as early as practicable.

¹ GB.337/PFA/INF/2.

² GB.338/PFA/INF/6.

Concretely, in resolution 74/255A, the General Assembly reaffirmed the authority of the ICSC to “continue to take decisions on the number of post adjustment multiplier points per duty station, under article 11(c) of its statute” while in resolution 74/255B, it urged the organizations of the UN common system to “uphold the unified post adjustment for the Geneva duty station under article 11(c) of the statute as a matter of priority”.

3. In this respect, the Office informed the Governing Body that the two resolutions were inconsistent with Judgment No. 4134 – final and non-appealable for the ILO – according to which the decision of the Director-General to implement the ICSC determination on the Geneva post adjustment multiplier (PAM) had been put aside since the Tribunal found the determination to be unlawful as the ICSC lacks authority under article 10(b) of its Statute to take final decisions in this matter as its Statute grants such authority exclusively to the General Assembly.
4. The Tribunal further ruled that if the General Assembly wished to grant this decision-making power to the ICSC, it would need to amend the Statute of the ICSC in accordance with its article 30. Noting that in the above-referenced resolutions the General Assembly did not indicate any intention to amend the relevant provisions of the ICSC Statute and maintained that the ICSC had the power to decide the amounts of post adjustments, the Office further informed the Governing Body that the litigious situation that the ILO experienced in the last two years was likely to repeat itself in the near future. Thereafter, the ICSC decided to suspend cost-of-living surveys during the peak of the COVID-19 pandemic and took special measures which were applied across the UN system accordingly.
5. At its 341st Session (March 2021), the Governing Body had before it another Office report ³ indicating that in its latest resolution, the General Assembly had reaffirmed the authority of the ICSC to continue to establish PAMs for duty stations in the UN common system under article 11(c) of the ICSC Statute. In that context, the General Assembly expressed concern at the continued application of two concurrent PAMs at the Geneva duty station and urged the member organizations of the UN common system to cooperate fully with the ICSC in line with its Statute to restore consistency and unity of the post adjustment system as a matter of priority.
6. The General Assembly further reiterated to the executive heads and governing bodies of the UN common system that failure to fully respect post adjustment decisions taken by the ICSC under article 11(c) of its Statute could prejudice claims to enjoy the benefits of participation in the common system and jeopardize organizations’ participation in the United Nations Joint Staff Pension Fund. In that respect, the General Assembly requested the Secretary-General to consult with the United Nations Joint Staff Pension Board to review whether all participating organizations are observing the common system of salaries and include the results of this review in his next report to the General Assembly.
7. In March 2021, the Governing Body was also provided with comprehensive information on the report of the UN Secretary-General on the jurisdictional set-up of the UN common system which had been requested by the General Assembly in January 2020 after considering the ICSC report for 2019 which had drawn its attention to the judgments delivered by the Tribunal in July 2019 on ICSC determinations concerning PAMs for the Geneva duty station. ⁴

³ GB.341/PFA/INF/6.

⁴ GB.341/PFA/INF/8.

8. On 19 March 2021, the United Nations Appeals Tribunal (UNAT) delivered its Judgment [No. 2021-UNAT-1107](#) on the appeals against the judgments of the United Nations Dispute Tribunal (UNDT) relating to the Geneva post adjustment cases. The appeals were dismissed and the UNDT judgments were affirmed. The UNAT recognized that its ruling was at odds with the judgments of the ILO Administrative Tribunal on the same questions but indicated that the two tribunals operate within fundamentally different structures (for instance, General Assembly resolutions limit significantly the UNAT's scope of judicial review but the same constraints do not apply to the ILO Administrative Tribunal).
9. Furthermore, the UNDT acknowledged that "the ICSC statute had been crafted with a different method of determining post adjustment in mind" and that "retaining in the ICSC statute references to elements of methodology that have been abolished is confusing and non-transparent and is partially responsible for the present disputes" (consideration 57). As regards the UNAT, it affirmed that "any possible amendment to the ICSC Statute [would be] simply a formality to adapt it to the custom" and also that "to bring clarity and to avoid future similar misconstructions, it is incumbent upon the competent authority to formally update the ICSC Statute to the current operational reality" (consideration 54 and footnote 50).
10. In December 2021, the Office was informed by the ICSC that it was planning to schedule the cost-of-living survey programme for full operation in 2022 and provided its annual report to the General Assembly accordingly. Consequently, at its 344th Session (March 2022), the Governing Body was informed ⁵ that:
 - the General Assembly had reaffirmed the authority of the ICSC to continue establishing PAMs for duty stations in the UN common system and underlined the importance of the effective and efficient implementation of the new cost-of-living surveys to re-establish a unified common system;
 - the Office was actively participating in the new round of surveys; and
 - the General Assembly had expressed concern at the continued application of two concurrent PAMs at the Geneva duty station and urged the member organizations of the UN common system to cooperate fully with the ICSC in line with its Statute and to apply a single multiplier per duty station after the cost-of-living surveys are completed in 2022.
11. At the same session, the Office submitted to the Governing Body a progress report on the review of the jurisdictional set-up of the UN common system. ⁶ At the present session the Governing Body has before it a document regarding the most recent report of the UN Secretary-General on this subject. ⁷

▶ Results of the 2021 cost-of-living surveys

12. In 2021, the ICSC launched a new round of cost-of-living surveys in all headquarters duty stations, including Geneva. The ILO actively participated in the survey process for Geneva, which was conducted from November 2021 to January 2022.

⁵ [GB.344/PFA/INF/7](#).

⁶ [GB.344/PFA/INF/9](#).

⁷ [GB.346/PFA/12](#).

13. At its 94th Session (July 2022) the ICSC approved the results of the 2021 baseline cost-of-living surveys, as recommended by the Advisory Committee on Post Adjustment Questions. It also determined that the results of all baseline cost-of-living surveys should be implemented as of 1 August 2022, taking into account inflation and exchange rate fluctuations between the survey date and the date of implementation of the results, in accordance with the new system of operational rules. However, the ICSC remained non-responsive to the calls for codifying the legal basis of its decisions, possibly through an amendment to its Statute, in light of the ILO Administrative Tribunal and UNAT judgments.
14. Given that the ILO remains bound to abide by the final and non-appealable judgments of the ILO Administrative Tribunal, the Office, in consultation with other Geneva-based specialized agencies that were the subject of similar judgments delivered in July 2019 by the same tribunal, decided that it was not in a position to implement the results of the survey. Any ICSC determination of PAMs made on the same legal basis that the Tribunal had found to be unlawful would give rise to new litigation and most likely another unfavourable judgment on the same legal grounds.
15. For those organizations that were applying the 2016 survey parameters, the results of the 2021 survey brought about an increase of approximately 2.3 per cent in net remuneration (based on August 2022 parameters). However, for those organizations subject to the ILO Administrative Tribunal jurisdiction, the survey resulted in a decrease of about 2 per cent in net remuneration, based on the same parameters.
16. In order to understand this difference, it is worth recalling that only those organizations that accept the jurisdiction of the UN tribunals, such as the United Nations Office at Geneva and the Office of the United Nations High Commissioner for Refugees, have been applying the results of the 2016 survey, which was contested before the ILO Administrative Tribunal, whereas specialized agencies under the jurisdiction of that Tribunal, such as the ILO, World Health Organization (WHO), World Intellectual Property Organization (WIPO) or the International Telecommunication Union (ITU), continue to apply the results of the 2010 survey in line with Judgment No. 4134. Accordingly, staff of the specialized agencies concerned, including the ILO, have received their pay based on a higher PAM since 2017, which, at the request of those agencies, has been calculated and provided by the ICSC on a monthly basis since August 2019.
17. On 19 August 2022, the Office informed the ICSC about the deadlocked situation it was facing and explained that the matter would be referred to its Governing Body to seek guidance on possible future action to address the difficulties identified by the Administrative Tribunal. The Office also requested on behalf of the other agencies concerned (namely WIPO, ITU, WHO, UNAIDS, IOM) to maintain the arrangements put in place since August 2019 and continue providing a monthly post adjustment index and the PAM for Geneva under the 2010 survey in order to enable the agencies concerned to calculate the applicable pay level accordingly.
18. On 22 August 2022, the ICSC responded that it was not in a position to continue providing the agencies concerned with PAMs based on the 2010 survey. In the light of that response, the Office, in consultation with the other specialized agencies concerned, addressed a new joint letter to the UN Secretary-General (with copy to the President of the General Assembly, the ICSC Chairman and the presidents of staff federations) explaining the unsustainable situation faced by the Geneva-based specialized agencies subject to the jurisdiction of the ILO Administrative Tribunal and reiterating the request to place on the agenda of the General Assembly an item regarding the amendment of articles 10 and 11 of the ICSC Statute as the only viable solution to the current deadlock.

19. In the meantime, as a contingency measure and in full consultation with other Geneva-based specialized agencies concerned, the Office has decided to maintain the arrangements put in place since August 2019 and continue using the indices and operational rules in effect under the 2010 survey for Geneva. The post adjustment applicable to Geneva-based ILO staff's take-home pay has been calculated accordingly since the August 2022 payroll.

▶ Implications for the Office

20. The Office finds itself in a particularly challenging situation. While being fully cognizant of its responsibilities towards the common system in application of the respective agreements with the UN, the Office is legally bound to fully respect and execute in good faith the judgments of the Tribunal.
21. The Tribunal's judgment was primarily based on its determination that the ICSC lacked authority to establish PAMs under article 11(c) of its Statute. However, the affirmation of the authority of the ICSC in matters of PAMs, as repeated in the above-mentioned General Assembly's resolutions, does not take into account at all the finality (*res judicata*) of the above-mentioned judgment. It also does not take into account the judicial independence of the Tribunal which is not subject to the authority of the General Assembly.
22. Since Judgment No. 4134 was delivered, the Office pointed out to the ICSC on many occasions that, while remaining fully committed to the UN common system, its legal obligation is and remains the scrupulous execution of the relevant judgments of the ILO Administrative Tribunal. In this respect, the Office is now concerned that the ILO's situation has not received from the ICSC the attention required to seek possible solutions to the legal issue at stake.
23. The ILO has informed the ICSC that the legal flaw identified by the Tribunal could be addressed by amending articles 10 and 11 of the ICSC Statute. This would be procedurally simple and straightforward. In contrast, a failure to amend the ICSC Statute and thus perpetuating the status quo, puts decisions in respect of duty stations worldwide at risk of being legally challenged again, which is even more likely given the new ongoing surveys.
24. What renders the situation ultimately unsustainable is the fact that ever since Judgment No. 4134 was delivered, the ICSC has continued to issue numerous post adjustment determinations in duty stations other than Geneva that at times involve considerable pay decreases. To prevent the risk of further lengthy and costly litigation, the Office has taken the decision that, in accordance with Judgment No. 4134, it cannot implement those pay decreases, neither for headquarters duty stations, such as Geneva nor for any other duty station. Therefore, the ongoing stalemate is undermining the Office's ability to remain in full compliance with the rest of the UN common system.

▶ The way forward

25. In the absence of any action taken at the UN level to change the ICSC Statute, the Office, jointly with the other specialized agencies concerned has reiterated the request to the Secretary-General to assist with addressing the situation in a legally sound and definitive manner. Having closely consulted the other specialized agencies concerned, the Office is convinced that the amendment to the ICSC Statute is the only solution to address the current stalemate and

restore unity and coherence within the UN common system of salaries, allowances and other conditions of service.

26. It is particularly important to recall that the advisability of updating the texts of articles 10 and 11 of the ICSC Statute has been clearly confirmed by both the UNDT and the UNAT in judgments UNDT/2020/130 and 2021-UNAT-1107.
27. Formally amending the ICSC Statute would enhance legal certainty and would satisfy the needs of all organizations concerned while preserving the rule of law. The proposed amendment would enable the agencies concerned to comply with the ILO Administrative Tribunal judgments by bringing the ICSC Statute into line with consistent and long-established practice. Updating articles 10 and 11 of the ICSC Statute may not give rise to any controversy as it would simply serve to codify the position of the General Assembly into the legal framework. In this connection, governments have a special institutional responsibility for facilitating an amendment to the ICSC Statute, which would explicitly spell out the decision-making power of the ICSC.
28. In view of the persistent uncertainty and serious institutional risks involved, it is proposed that the Governing Body decision take the form of a resolution setting out the parameters of the problem and making a solemn and strong appeal for coordinated breakthrough initiatives.

▶ Draft decision

29. **The Governing Body took note of the information provided by the Office regarding the ongoing stalemate with respect to the determination of post adjustment multipliers by the International Civil Service Commission and adopted the resolution appended to document GB.346/PFA/13(Rev.1).**

▶ Appendix I

Draft resolution concerning the determination of post adjustment by the International Civil Service Commission

The Governing Body of the International Labour Office,

Recalling Judgment No. 4134 in which the Administrative Tribunal of the ILO ruled that the International Civil Service Commission (ICSC) lacked the authority to take final decisions on post adjustment under article 11 of its Statute and set aside the Director-General's decision to implement the revised post adjustment multipliers determined by the ICSC on the basis of the 2016 cost-of-living survey,

Noting United Nations (UN) General Assembly resolutions 74/255A, 74/255B, 75/245 and 76/240 that reaffirm, in particular, the authority of the ICSC to establish post adjustment multipliers for duty stations in the UN common system,

Mindful of the importance of the cooperation between the UN and the ILO to develop common personnel standards, methods and arrangements and avoid serious discrepancies in the terms and conditions of employment set forth in article XI of the 1946 relationship agreement between the two organizations,

Emphasizing the ILO's commitment to the principle of the rule of law and its obligation to execute in good faith the judgments of the ILO Administrative Tribunal that are final and without appeal as well as its special responsibility as custodian and guarantor of the Tribunal's integrity and independence,

Recognizing the ILO's responsibilities under the UN common system arising from the acceptance of the ICSC Statute since 16 April 1975,

1. Expresses its serious concern about the continued application of two concurrent post adjustment multipliers at the Geneva duty station, which jeopardizes the sustainability of the UN common system of salaries;
2. Acknowledges the efforts of the Office, in consultation with other specialized agencies concerned, to raise awareness about the challenging situation and seek support and assistance from the UN and the ICSC;
3. Takes note of the joint letters of the Executive Heads of the ILO and other Geneva-based agencies dated 12 May 2020 and 30 September 2022, and addressed to the UN Secretary-General drawing his urgent attention to the difficulties encountered and recommending a constructive approach, including by amending the ICSC Statute so as to codify the intent of General Assembly resolutions;
4. Believes that updating the wording of articles 10 and 11 of the Statute to explicitly provide for the authority of the ICSC to determine post adjustment multipliers is the only viable solution that would enable the ILO and other specialized agencies concerned to comply with the final and non-appealable judgments of the Administrative Tribunal and honour their responsibilities both as employers and as members of the UN common system;
5. Considers particularly relevant that the need to formally update articles 10 and 11 of the ICSC Statute to bring clarity and avoid future misconstructions has been recognized by both the UNDT and the UNAT in judgments UNDT/2020/130 and 2021-UNAT-1107 respectively;

6. Calls upon ILO Member States to undertake all necessary steps, in coordination with their diplomatic representations at the UN as appropriate, for the current situation to be satisfactorily addressed and the possibility of amending the ICSC Statute be given due and prompt consideration;
7. Instructs the Director-General to pursue his efforts, as a matter of priority and in consultation with other specialized agencies concerned, to resolve the current stalemate and authorizes him to accept the amendment to articles 10 and 11 of the ICSC Statute as soon as it is adopted by the UN General Assembly;
8. Requests the Director-General to transmit a copy of this resolution to the UN Secretary-General, the President of the UN General Assembly, the Chairman of the ICSC and the executive heads of the specialized agencies concerned;
9. Decides to remain seized of this matter until it is definitively resolved and requests, in this respect, the Director-General to keep the Governing Body regularly informed of any progress made.

► Appendix II

Chronology of events

