



Governing Body

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Programme, Financial and Administrative Section
Personnel Segment

PFA

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TWELFTH ITEM ON THE AGENDA

Matters relating to the Administrative Tribunal of the ILO

Proposed amendments to the Statute of the Tribunal

Purpose of the document

As requested by the Governing Body at its 325th Session (November 2015), this paper contains proposals for amendments to the Tribunal's Statute and Annex relating to article XII. It also proposes amendments providing for the possibility of filing requests for interpretation, execution or review of judgments as well as certain amendments of an editorial nature (see draft decision in paragraph 15).

Relevant strategic objective: None.

Policy implications: None.

Legal implications: Possible amendments to the Tribunal's Statute and Annex subject to adoption by the International Labour Conference.

Financial implications: None.

Follow-up action required: None.

Author unit: Office of the Legal Adviser (JUR).

Related documents: GB.325/PFA/9/1(Rev.).

1. At its 325th Session (November 2015), the Governing Body had before it a paper analysing the workload and effectiveness of the ILO Administrative Tribunal in the light of the growing membership of the Tribunal and, in particular, the constant flow of complaints filed against the European Patent Organization (EPO). The paper also identified areas for possible improvements in the functioning of the Tribunal based on consultations with the judges of the Tribunal, member organizations and staff associations concerned. The Governing Body concluded, *inter alia*, that while the reasons for the ILO to open the jurisdiction of the Administrative Tribunal to other organizations remained valid today, the conditions in the Tribunal's Statute pertaining to the acceptance of new organizations could be reviewed in order to ensure that member organizations had effective internal remedies compatible with the Tribunal's role as a final adjudicatory mechanism. It also considered that urgent consideration should be given to repealing article XII of the Statute – as being contrary to the present-day principle of equality of access to courts – along with the formalization of the procedure for the review of judgments developed in the Tribunal's case law. Accordingly, it requested the Director-General to prepare draft amendments to the Tribunal's Statute relating to article XII and the conditions of admission of new organizations for consideration at its next session.¹ In preparing the draft amendments, the Office has consulted the Tribunal, the international organizations which have recognized its jurisdiction and their staff associations.
2. In accordance with its article XI, the Statute of the Tribunal may be amended by the International Labour Conference. Accordingly, a draft Conference resolution is proposed in the appendix.

Proposed repeal of common article XII of the Statute and its Annex

3. In its current wording, article XII of the Tribunal's Statute provides that the ILO Governing Body may challenge a decision of the Tribunal before the International Court of Justice – by way of request for an advisory opinion – on grounds that the Tribunal wrongly confirmed its jurisdiction or that its decision was vitiated by a fundamental procedural flaw. Under article XII of the Annex to the Tribunal's Statute and in accordance with agreements concluded with the United Nations, the executive boards of 11 United Nations specialized agencies and the International Atomic Energy Agency (IAEA) that have recognized the Tribunal's jurisdiction have the same possibility. Given that the review procedure is open only to defendant organizations and not to aggrieved staff members, it is generally recognized today that article XII of the Statute and article XII of the Annex fail to meet the overriding principle of equality of access to courts and tribunals. The proviso has been vividly criticized by the International Court of Justice as anachronistic in the last advisory opinion delivered following a request for review of a judgment of the ILO Administrative Tribunal² while the Tribunal expressed similar concerns in Judgment No. 3003 of 2011.

¹ GB.325/PFA/9/1(Rev.) and GB.325/PFA/PV/Draft, para. 67(b). The Governing Body also requested the Director-General to initiate without delay discussions with the EPO, in consultation with the Tribunal as required, in order to identify a solution to the difficulties caused by the number of complaints generated within the EPO and which threaten the ability of the Tribunal to serve all other organizations, and to report to the Governing Body at its next session. This report on the progress of those discussions is in GB.326/PFA/12/2.

² *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*, Advisory Opinion of 1 February 2012, I.C.J. Reports 2012, para. 44, p. 29.

4. It is recalled that a similar provision was removed in 1995 from the Statute of the former United Nations Administrative Tribunal as it was not found to be “a constructive or useful element in the adjudication of staff disputes within the Organization”.³ It also should be noted that all member organizations and staff associations among those who have provided comments on the proposed amendments have expressed unqualified support for the proposed deletion of article XII.
5. It is therefore considered that the ILO should take prompt action to repeal article XII of the Tribunal’s Statute and article XII of the Annex with a view to bringing them up to date.

Proposed amendment to article VI of the Statute

6. With the exception of the review procedure under common article XII of the Statute and the Annex, the Tribunal’s Statute does not make provision for any appellate remedies. In fact, article VI of the Tribunal’s Statute specifically provides that judgments shall be final and without appeal. Consequently, as established by the Tribunal’s case law, judgments are immediately operative (see, for instance, Judgment No. 82, under 6) and must be executed fully and correctly, as ruled (see Judgment No. 3394, under 9 and 10).
7. The Tribunal’s case law has nevertheless recognized the ability of both parties to the proceedings to submit applications for interpretation, when the operative part of a judgment gives rise to uncertainty or ambiguity about its meaning or import (see, for instance, Judgment No. 802, under 4). Similarly, as confirmed by a constant line of precedent, any serious difficulty concerning the execution of a judgment can validly be brought before the Tribunal by means of an application for execution (see, in particular, Judgment No. 2178, under 4).
8. Furthermore, the Tribunal has accepted that the final and binding nature of judgments does not impede the exercise of a limited power of review, in order to allow for any “errors arising through accident or inadvertence” to be corrected (see, in particular, Judgment No. 570, under 1). Such power of review is exercised by the Tribunal only in exceptional circumstances and on strictly limited grounds, such as failure to take account of material facts, a material error involving no exercise of judgment, an omission to rule on a claim, or the discovery of new facts which the complainant was unable to rely on in the original proceedings while such pleas must be likely to have a bearing on the outcome of the case (see, in particular, Judgment No. 3561, under 3).
9. Consequently, in line with the statutes of several other international administrative tribunals,⁴ which specifically provide for the review of judgments and for application for their interpretation or execution, and also in view of the lack of review procedure resulting from the proposed repeal of article XII of the Statute and its Annex, it is proposed to formalize the Tribunal’s practice in this regard by introducing the following additional sentence into article VI, paragraph 1, of the Statute:

“The Tribunal shall nevertheless consider applications for interpretation, execution or review of a judgment.”

³ A/RES/50/54.

⁴ See, for instance, International Monetary Fund (IMF) Administrative Tribunal, articles XVI and XVII; Statute of the World Bank Administrative Tribunal, article XIII; Statute of the African Development Bank Administrative Tribunal, article XII, paras 3 and 4; Statute of the Asian Development Bank Administrative Tribunal, article XI.

10. While welcoming the introduction into the Tribunal's Statute of an express reference to the possibility for filing applications for revision, interpretation or execution of judgments, most member organizations have pointed out that the exact conditions for accepting applications for the review, interpretation or execution of judgments should be clearly spelled out to minimize a risk of an increased Tribunal workload. Having solicited the views of the Tribunal on this point, it is understood that detailed modalities for the filing of such applications for interpretation, execution or review of judgments may be either specified in the Tribunal's Rules or further developed through the Tribunal's case law.

Proposed amendment to the Annex to the Statute

11. Article II(5) of the Tribunal's Statute allows for the recognition of the jurisdiction of the Tribunal by international organizations which meet the criteria set out in the Annex to the Statute and whose recognition is approved by the Governing Body. Concretely, in order to be able to recognize the jurisdiction of the Tribunal, an international organization must either be intergovernmental in character, or fulfil the following conditions:
 - (a) it must be clearly international in character, having regard to its membership, structure and scope of activity;
 - (b) it must not be required to apply any national law in its relations with its officials, and must enjoy immunity from legal process as evidenced by a headquarters agreement concluded with the host country; and
 - (c) it must be endowed with functions of a permanent nature at the international level and offer, in the opinion of the Governing Body, sufficient guarantees as to its institutional capacity to carry out such functions as well as guarantees of compliance with the Tribunal's judgments.
12. While these conditions for admission of international organizations remain valid, it is considered that they should be reviewed to ensure that such organizations have effective internal remedies compatible with the Tribunal's role as a final adjudicatory instance. The Tribunal has indeed considered that it was "ill-equipped to act as a trial court [of staff grievances] and its workload could, potentially, become intolerable or unmanageable if its role was not confined [to that of a final appellate tribunal]" (see Judgment No. 3222, under 10). In fact, the lack of internal means of redress in some organizations has been identified by the Tribunal as a contributing factor to its increasing workload. Moreover, the Tribunal's case law often stresses the desirability of internal appeal procedures which not only make the Tribunal's task easier but also substantially reduce its workload by bringing a satisfactory and less expensive resolution to many disputes at an early stage (see, for instance, Judgment No. 2312, under 5).
13. While the consultations with the Tribunal have been conclusive on this issue to the effect that a new provision should be inserted into the Annex to the Tribunal's Statute requiring that every organization recognizing the Tribunal's jurisdiction have effective internal means of redress, the member organizations which provided observations on the proposed amendment all expressed concerns about the ill-defined nature of such provision and indicated that further consultations were needed to carefully address the question of admission to membership. In view of tight timelines, it is believed that decision on this point should be deferred to provide ample opportunity for further discussions. The Office will report on this aspect in due course.

Editorial amendments

14. Moreover, it is proposed to introduce several amendments of a purely editorial nature to the English and French texts of the Statute of the Tribunal, with a view, in particular, to correcting errors, ensuring consistency in terminology and use of gender-inclusive language. It is also proposed to remove the two references to the ILO pension fund the assets of which were exhausted in 1998. Since then, the benefits of a decreasing number of beneficiaries are administered by the Office and are absorbed into the ILO's regular budget.⁵

Draft decision

15. *The Governing Body approves the appended draft resolution concerning amendments to the Tribunal's Statute and to its Annex, for possible adoption by the International Labour Conference at its 105th Session (June 2016).*

⁵ ILC, 85th Session, 1997, *Provisional Record* No. 14.

Appendix

Draft Conference resolution

The General Conference of the International Labour Organization,

Conscious of the need to repeal article XII of the Tribunal's Statute and article XII of its Annex in order to ensure equality of access to justice for employing institutions and officials alike;

Mindful of the need to expressly provide for the possibility of filing applications for the interpretation, execution or review of judgments in accordance with the Tribunal's case law;

Noting that a series of editorial amendments should be introduced into the Statute with a view, in particular, to correcting errors, ensuring consistency in terminology and use of gender-inclusive language;

Noting that the Governing Body of the International Labour Office has reviewed and endorsed the text of the draft amendments to the Tribunal's Statute and to the Annex;

adopts the following amendments to the Statute and to the Annex to the Statute of the Administrative Tribunal of the International Labour Organization:

STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL LABOUR ORGANIZATION

Adopted by the International Labour Conference on 9 October 1946 and amended by the Conference on 29 June 1949, 17 June 1986, 19 June 1992, 16 June 1998, and 11 June 2008 and ...

ARTICLE I

There is established by the present Statute a Tribunal to be known as the International Labour Organization Administrative Tribunal.

ARTICLE II

1. The Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case.

2. The Tribunal shall be competent to settle any dispute concerning the compensation provided for in cases of invalidity, injury or disease incurred by an official in the course of her or his employment and to fix finally the amount of compensation, if any, which is to be paid.

3. ~~[Deleted]The Tribunal shall be competent to hear any complaint of non-observance of the Staff Pensions Regulations or of rules made in virtue thereof in regard to an official or the wife, husband or children of an official, or in regard to any class of officials to which the said Regulations or the said rules apply.~~

4. The Tribunal shall be competent to hear disputes arising out of contracts to which the International Labour Organization is a party and which provide for the competence of the Tribunal in any case of dispute with regard to their execution.

5. The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other international organization meeting the standards set out in the Annex hereto which has addressed to the Director-General a declaration recognizing, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its ~~Rules of Procedure~~, and which is approved by the Governing Body.

6. The Tribunal shall be open:

- (a) to the official, even if her or his employment has ceased, and to any person on whom the official's rights have devolved on her or his death;
- (b) to any other person who can show that she or he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely.

7. Any dispute as to the competence of the Tribunal shall be decided by it., ~~subject to the provisions of article XII.~~

ARTICLE III

1. The Tribunal shall consist of seven judges who shall all be of different nationalities.

2. The judges shall be appointed for a period of three years by the International Labour Conference. ~~of the International Labour Organization.~~

3. A meeting of the Tribunal shall be composed of three judges or, in exceptional circumstances, five, to be designated by the President, or all seven.

ARTICLE IV

The Tribunal shall hold ordinary sessions at dates to be fixed by ~~the its~~ its Rules of ~~Court~~, subject to there being cases on its list and to such cases being, in the opinion of the President, of a character to justify holding the session. An extraordinary session may be convened at the request of the ~~Chairman~~ person of the Governing Body of the International Labour Office.

ARTICLE V

The Tribunal, at its discretion, may decide or decline to hold oral proceedings, including upon request of a party. The Tribunal shall decide in each case whether the oral proceedings before it or any part of them shall be public or *in camera*.

ARTICLE VI

1. The Tribunal shall take decisions by a majority vote. ~~Judgments shall be final and without appeal.~~ The Tribunal shall nevertheless consider applications for interpretation, execution or review of a judgment.

2. The reasons for a judgment shall be stated. The judgment shall be communicated in writing to the Director-General of the International Labour Office and to the complainant.

3. Judgments shall be drawn up in a single copy, which shall be filed in the archives of the International Labour Office, where it shall be available for consultation by any person concerned.

ARTICLE VII

1. A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of ~~resisting redress~~ it as are open to her or him under the applicable Staff Regulations.

2. To be receivable, a complaint must also have been filed within ninety days after the complainant was notified of the decision impugned or, in the case of a decision affecting a class of officials, after the decision was published.

3. Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and her or his complaint shall be receivable in the same manner as a complaint against a final decision. The period of ninety days provided for by the last preceding paragraph shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration.

4. The filing of a complaint shall not involve suspension of the execution of the decision impugned.

ARTICLE VIII

In cases falling under article II, the Tribunal, if satisfied that the complaint was well founded, shall order the rescinding of the decision impugned or the performance of the obligation relied upon. If such rescinding of a decision or execution of an obligation is not possible or advisable, the Tribunal shall award the complainant compensation for the injury caused to her or him.

ARTICLE IX

1. The administrative arrangements necessary for the operation of the Tribunal shall be made by the International Labour Office in consultation with the Tribunal.

2. Expenses occasioned by sessions of the Tribunal shall be borne by the International Labour Office.

3. Any compensation awarded by the Tribunal shall be chargeable to the budget of the International Labour Organization.

ARTICLE X

1. Subject to the provisions of the present Statute, the Tribunal shall draw up its ~~Rules of Court~~ covering:

(a) the election of the President and Vice-President;

- (b) the convening and conduct of its sessions;
 - (c) the rules to be followed in presenting complaints and in the subsequent procedure including intervention in the proceedings before the Tribunal by persons whose rights as officials may be affected by the judgment;
 - (d) the procedure to be followed with regard to complaints and disputes submitted to the Tribunal by virtue of paragraphs 3 and 4 of article II ;
 - (e) and, generally, all matters relating to the operation of the Tribunal which are not settled by the present Statute.
2. The Tribunal may amend ~~the its~~ Rules of Court.

ARTICLE XI

~~The present Statute shall remain in force during the pleasure of the General Conference of the International Labour Organization. It may be amended, after consultation with the Tribunal, by the International Labour Conference or such other organ of the International Labour Organization as the Conference may determine.~~

ARTICLE XII

~~1. In any case in which the Governing Body of the International Labour Office or the Administrative Board of the Pensions Fund challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Governing Body, for an advisory opinion, to the International Court of Justice.~~

~~2. The opinion given by the Court shall be binding.~~

ANNEX TO THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL LABOUR ORGANIZATION

To be entitled to recognize the jurisdiction of the Administrative Tribunal of the International Labour Organization in accordance with paragraph 5 of article II of its Statute, an international organization must either be intergovernmental in character, or fulfil the following conditions:

- (a) it shall be clearly international in character, having regard to its membership, structure and scope of activity;
- (b) it shall not be required to apply any national law in its relations with its officials, and shall enjoy immunity from legal process as evidenced by a headquarters agreement concluded with the host country; and
- (c) it shall be endowed with functions of a permanent nature at the international level and offer, in the opinion of the Governing Body, sufficient guarantees as to its institutional capacity to carry out such functions as well as guarantees of compliance with the Tribunal's judgments.

The Statute of the Tribunal applies in its entirety to such international organizations subject to the following provisions which, in cases affecting any one of these organizations, are applicable as follows:

Article VI, paragraph 2

The reasons for a judgment shall be stated. The judgment shall be communicated in writing to the Director-General of the International Labour Office, to the ~~Director-General~~ executive head of the international organization against which the complaint is filed, and to the complainant.

Article VI, paragraph 3

Judgements shall be drawn up in two copies, of which one shall be filed in the archives of the International Labour Office and the other in the archives of the international organization against which the complaint is filed, where they shall be available for consultation by any person concerned.

Article IX, paragraph 2

Expenses occasioned by the sessions or hearings of the Administrative Tribunal shall be borne by the international organization against which the complaint is filed.

Article IX, paragraph 3

Any compensation awarded by the Tribunal shall be chargeable to the budget of the international organization against which the complaint is filed.

Article XII, paragraph 1

~~In any case in which the Executive Board of an international organization which has made the declaration specified in article II, paragraph 5, of the Statute of the Tribunal challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Executive Board concerned, for an advisory opinion, to the International Court of Justice.~~