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Brussels 20 December 2018

TO:
ILO Governing Board,
Office of Legal Services

SUBJECT : USF Letter ILOAT Reform / Ref. „TRIB.002.001.008"
Subject: Reform of ILOAT, Letter Mr G. Politakis to USF, 22nd November 2018

Dear Mr Politakis,

The opportunity given to USF to keep contributing to the highly relevant current discussions of the future of the ILOAT is much appreciated.

USF obviously shares the view that administrations should not be in a position to influence the governing body of the ILO, depriving the potential opponents, the staff, of the same possibility to express their views.

Considering the discussions and complaints around the legal situation of international employees, it is not exaggerated to claim that the whole issue is still in a serious crisis.

The draft document GB.334/PFA/12/1 calls for the following USF comments.

Withdrawal of an organization from the ILOAT jurisdiction

USF fully shares the serious concern that recent ILOAT decisions which seemed to be unpopular within the boards of some international organisations may have been the real reason for some organisations to consider dissociating from the jurisdiction of ILOAT and seek other "solutions". Whatever the angle of consideration, providing the ILO with clear and honest feedback on an organisation's wish to dissociate is important and should be imposed (draft Art.IX). The full and faithful execution of all judgments rendered by the Tribunal even after a separation is obviously a must.

It should not be forgotten that while administrations may be dissatisfied with ILOAT decisions, complainants hit by measures as hard as dismissals find it unacceptable that their cases are treated many years after the dismissal, due to the excessive length of the procedures. Upgrade of the manpower and means

made available to the ILOAT would be the right answer, supplemented by priority rules, to be applied for instance to dismissal cases.

Exhaustion of internal remedies

USF wishes to draw the attention to a new threat to the legal system supervised by the ILOAT. USF agrees in principle on the added value of internal review mechanisms. However, it is also important that such internal mechanisms be compatible with the Tribunal's jurisdiction. Internal cases kept in loops through inadequate internal rules are close to put a real threat on the principle of access to justice. All cases brought before national constitutional courts ended with conclusions around the assumption that ILOAT provides access to justice and therefore Art.6 ECHR constraints are met. Internal cases kept in non-ending loops deprive the individual of a final decision and in effect of legal redress, whatever the internal procedures primarily aimed at (perhaps easing the burden of the ILOAT or improve amicable solution paths). In the attachment to this letter you will find a recent recommendation of the Parliamentary Assembly of the Council of Europe that also draws the attention to Art.6 ECHR requirements.

Internal conflict resolution mechanisms that blur the notion of "final act" of an appointing authority must be rejected as incompatible with the jurisdiction of the ILOAT (in fact they would be incompatible with any jurisdiction). This possibility of rejection should be enshrined by making such internal mechanisms subject to approval by the ILO before introduction and subject to assessment by the ILOAT on their application, with no restriction to the admissibility of such cases. This issue may need to be enshrined in the ILOAT statute: the corollary of the obligation of the individual to exhaust internal appeal procedures must be that such internal appeal procedures are never allowed to blur the notion of "final act" and that the application of these internal appeal obligations is under ILOAT jurisdiction without exception. The large variety of partially overlapping internal exhaustion offered also puts a threat on the access to justice.

The Article VII of the ILOAT Statute as currently worded does not reflect this need:

"A complaint shall not be receivable unless the decision impugned is a final decision

and the person concerned has exhausted such other means of redress as are open to her or

him under the applicable Staff Regulations". Article VII may need to be revisited so as to include obligations of the employer and establish the competence of the ILOAT to rule on the lawfulness of internal procedures that would unduly delay the constitution of a final act. The exhaustion obligation should also be limited to procedures where both parties agree on its launch.

Yours sincerely,

Dr. Bernd Loescher
USF President