

Counsel for Appellants: Robbie Leighton, OSLA

Counsel for Respondent: Susanne Malmström, Kathryn Alford, Jay Pozenel

¹ Annexes 1 & 2 to this Judgment set forth the names of the Appellants which were submitted by the Appellants' Counsel, the Office of Staff Legal Assistance.

² A list of Appellants was not included in this Judgment due to the discrepancy in the number claimed in the UNDT Judgment and the counsel notes provided to the Appeals Tribunal's Registry

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f)! In June 2017, an informal review team of senior statisticians requested by the Geneva Human Resources Group reviewed the survey to see if it was "fit for purpose" and concluded that due to serious calculation and systemic errors in the compilation of the results, the ICSC calculations could not be considered "sufficiently good quality to designate them fit for purpose" and the implementation did not always correspond with the approved methodology;8

g)! The ICSC thereafter engaged an independent consultant to re

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Submissions

The Appeals¹⁶

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17.! The Appellants argue that the UNDT erred in law in not finding that the ICSC's decision had been taken its Statute. The ICSC's power derives from its Statute, namely Articles 10(b) and 11(c), which grant it recommendatory authority on "scales of salaries and post adjustments" and decisory authority on classification of duty stations for the purpose of applying the post adjustment. Since the PAM decision did not involve the General Assembly, the ICSC acted outside its statutory authority. The ICSC Statute reflected a process that had ceased to be used after 1989,

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27.! The UNDT erred in fact and law in finding that the ICSC's decision making concerning the Gap Closure Measure, was a lawful exercise of regulat

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General Assembly in establishing compensation for the United Nations Common System. For decades the ICSC has exercised its au

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General

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borne by other staff in equivalent roles at different locations around the world and who are otherwise equally remunerated. So, not only may a staff member's

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PAM was calculated, this illegality would affect any calculation, regardless of whether it refers to the period before or after 2016.

57.! The second conclusion to be drawn from the legal framework cited above is that the very purpose of the establishment of the ICSC is to regulate the United Nations Salary System in order to co-ordinate the conditions of service within the Organisation. The institution of a common system for the United Nations personnel, relating to salaries, allowances and other conditions of service has the main purposes of avoiding serious discrepancies in terms of conditions of

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including downwards, once the circumstance which determines their payment disappears or changes.

- 67.! In the case at hand, the PAM is inherently changeable, depending on the circumstances of a certain time-period and place. Although the continued existence of the allowance might not be at stake, its nominal value or percentage amount is. This is what attracts its categorisation as "conditional compensation" rather than the notion of "acquired rights". The permanence of conditional compensation in terms of figure or amount is uncertain, since it derives from a myriad of elements that most significantly affect the cost-of-living of the Organisation's staff in a given location at a particular moment.
- 68.! This judgment should not be thought to express a con

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General Assembly; and this Appeals Tribunal is

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Judgment

71.! The appeals are dismissed and Judgment Nos. UNDT/2020/106, UNDT/2020/107, UNDT/2020/133 and UNDT/2020/154 are hereby affirmed.

Original and Authoritative Version: English

Dated this 19 day of March 2021.

Judge Halfeld, Presiding Juiz de Fora, Brazil Judge Colgan Auckland, New Zealand Judge Sandhu Vancouver, Canada

Judge Murphy Cape Town, South Africa Judge Raikos Athens, Greece

Judge Knierim Hamburg, Germany

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Entered in the Register on this 14 day of May 2021 in New York, United States.

Weicheng Lin, Registrar

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106.! Hecht de Alwis Sophie
107.! Held Stefanie
108.! Henderson Castro Carlos Humberto
109.! Hernandez Eleonora
110.! Hetland Jarle Henning
111.! Hlaing Thuta Phyo
112.! Howland Amanda
113.! Huang Xunyu Emilie
114.! Hubble Barnaby Guy

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ANNEX 2.

CARDENAS FISCHER **ETAL**. CASES

- 1.! Cardenas Fischer, Maria Cristina
- 2.! de Mesa,

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