

# Governing Body

341st bis Session, Geneva, 21 May 2021

Programme, Financial and Administrative Section

PFA

Personnel Questions Segment

**Date:** 18 May 2021

**Original:** English

Fourth item on the agenda

## Matters relating to the Administrative Tribunal of the ILO

### Withdrawal of the recognition of the Tribunal's jurisdiction by the Universal Postal Union

1. By letter dated 29 April 2021 and received on 4 May 2021 (see Appendix I), the Director-General of the Universal Postal Union (UPU) informed the Director-General that by decisions adopted respectively on 23 April and 5 July 2018, the UPU Council of Administration and the Management Board of its Provident Scheme had decided, for the various reasons set forth in those decisions, to formally withdraw their recognition of the jurisdiction of the ILO Administrative Tribunal (ILOAT) and to recognize the jurisdiction of the United Nations Appeals Tribunal (UNAT), with effect from the receipt of the aforementioned written notification by the ILO. The UPU Director-General indicated that there are three complaints concerning the UPU currently pending before the Tribunal (AT 5-5381, AT 5-5423 and AT 5-5500). The Director-General confirmed, in this connection, the intention of the UPU to execute promptly and in good faith any Tribunal judgment rendered under such residual jurisdiction, and to pay any outstanding costs due to the Tribunal. The UPU Director-General requested that the ILO Governing Body take due note of the withdrawal of recognition of jurisdiction as referred to in his letter, and that it instruct the ILOAT Registrar to reject any cases filed with the Tribunal after the date of receipt of the withdrawal notification.
2. Upon acknowledging receipt of the above letter, the Office requested additional information on the reasons that led UPU to discontinue the acceptance of the jurisdiction of the Tribunal and also on any consultations with staff representative bodies prior to

the withdrawal decision. By letter dated 12 May, the UPU provided clarifications on these points (see Appendix II).

3. The UPU recognized the jurisdiction of the Tribunal in 1965 <sup>1</sup> with effect from 1 January 1966. The UPU currently employs 256 staff. In the 55 years of Tribunal membership, the UPU has been the subject of 75 judgments rendered by the Tribunal.
4. The Statute of the Tribunal in its article II(5) and the Annex sets out the conditions for the admission of an international organization but is currently silent on the conditions of withdrawal. While the recognition of the Tribunal's jurisdiction is in essence a unilateral declaration by an international organization which can be unilaterally revoked, a withdrawal from the Tribunal's membership needs to be however confirmed by the Governing Body to become effective.
5. In this connection, it is recalled that the at its 341st Session (March 2021), the Governing Body approved the draft resolution appended to document GB.341/PFA/15/1 concerning amendments to the Tribunal's Statute and to its Annex, for possible adoption by the International Labour Conference at its 109th Session (2021) relating inter alia to the procedure according to which an international organization that has recognized the jurisdiction of the Tribunal may revoke its declaration of acceptance.

## Draft decision

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### 6. The Governing Body:

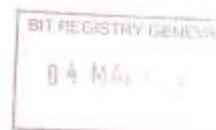
- (a) **took note of the decision of the Universal Postal Union (UPU) and its Provident Scheme to discontinue its recognition of the jurisdiction of the Administrative Tribunal;**
- (b) **confirmed that the UPU and its Provident Scheme will no longer be subject to the competence of the Tribunal with effect from the date of this decision; and**
- (c) **requested the Director-General to follow-up with the UPU regarding the payment of any outstanding costs.**

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<sup>1</sup> GB.163/F.A./D.17/2.

## Appendix I

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Berne, 29 April 2021

**Subject: Withdrawal of recognition of jurisdiction of the Administrative Tribunal of the International Labour Organization by the Universal Postal Union and its Provident Scheme**

Dear Mr Ryder,

I hereby take this opportunity to inform you that, in accordance with the decisions respectively adopted by the Council of Administration of the Universal Postal Union (UPU) on 23 April 2018 (during its 2018.1 session) and by the Management Board of the UPU Provident Scheme on 5 July 2018 (during its 96th session), the UPU and its Provident Scheme decided, for the various reasons set forth in those decisions, to formally withdraw the recognition of the jurisdiction of the Administrative Tribunal of the International Labour Organization (ILOAT or Tribunal) and to recognize the jurisdiction of the United Nations Appeals Tribunal (UNAT).

I may note that the aforementioned recognition of the jurisdiction of the UNAT shall take immediate effect following receipt, by the International Labour Organization (ILO), of the present notification.

In that regard, I may further confirm that three complaints concerning the UPU are currently pending before the ILOAT: cases AT 5-5500, AT 5-5423 and AT 5-5381. The UPU confirms its intention to execute promptly and in good faith any judgment rendered by the ILOAT within the framework of this residual jurisdiction, and to pay any outstanding costs due to the Tribunal.

Therefore, I respectfully request that the ILO Governing Body take due note of the withdrawal of recognition of jurisdiction as referred to herein, and instruct the ILOAT Registrar to reject any cases filed with the Tribunal after the date of receipt of this notification.

In conclusion, I would like to express, on behalf of the UPU and its Provident Scheme, my appreciation for the excellent support provided by the ILOAT Registry since 1965, as well as for the work undertaken by the Tribunal in reviewing and issuing rulings on cases concerning the UPU and its Provident Scheme through all these years.

Please accept, Mr Ryder, the expression of my sincere consideration.

Bishar A. HUSSEIN  
 Director General

## Appendix II

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Mr George Politakis  
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Berne, 12 May 2021

**Reference: 1500(DAJ)**

**Subject: Withdrawal of recognition of jurisdiction of the Administrative Tribunal of the International Labour Organization by the Universal Postal Union and its Provident Scheme – additional information**

Dear Mr Politakis, *GEON 66,*

Firstly I would like to take this opportunity to note, with appreciation, the letter received on 6 May 2021 from the Director-General of the International Labour Organization (ILO), acknowledging receipt of the notification of withdrawal, by the Universal Postal Union (UPU) and its Provident Scheme, of recognition of the jurisdiction of the Administrative Tribunal of the International Labour Organization (ILOAT or Tribunal), and confirming that the notification will be brought to the attention of the ILO Governing Body at its upcoming session scheduled for 21 May 2021. In that regard, I may also refer to your letter, received by the UPU on the same date, in which you request additional information on the reasons for the aforementioned withdrawal.

Further to your query, the following clarifications may be provided on the relevant decisions of the UPU Council of Administration (CA) and the Management Board of the UPU Provident Scheme (of which copies are enclosed for ease of reference) as referred to in the UPU's notification of 29 April 2021.

As you may be aware, the CA, during its April 2018 session, had expressed serious concerns in relation to certain Tribunal judgments involving the UPU (as well as the Tribunal's later decisions upholding the orders contained in those judgments), particularly in so far as they related to the sovereign attributions and authority of the CA under the UPU General Regulations and presented significant financial, legal, managerial and political consequences for the UPU and its operations.

I may also note that the UPU's decision to withdraw its recognition of the ILOAT's jurisdiction and to formally recognize that of the United Nations Appeals Tribunal (UNAT) was guided by several other important factors that took into consideration the limited size and structure of the UPU as well as the severe financial constraints faced by the organization and its Provident Scheme. These comprised, *inter alia*, (i) more flexible document submission modalities; (ii) shorter time frames for the review of submissions and adoption of decisions; (iii) the possibility of submitting *amicus curiae* briefs and applying for the revision of judgments; (iv) clearer scope of administrative and liability limitations in so far as Tribunal judgments are concerned; and (v) the possibility of sanctions in the event of manifest abuses of process.

I may equally confirm that the UPU Staff Association was duly informed of the process leading to the aforementioned withdrawal decision, and that its Committee expressed no specific objection to such a decision (as per the official statement of the Chair of the Staff Association during the aforementioned CA session, in which he conveyed a number of remarks concerning the post adjustment multiplier, the mandatory age of separation from service and the difficult financial situation faced by the Provident Scheme). As for the

dissenting opinion individually expressed by the representative of active staff members in the Management Board of the UPU Provident Scheme, I may further clarify that this representation is legally distinct from that exercised by the UPU Staff Association, as such an individual is designated through an election process that does not involve that body, and does not require that individual to be a member of the UPU Staff Association.

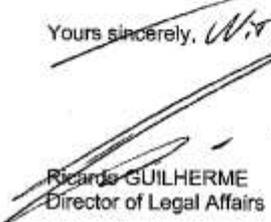
Moreover, I would take this opportunity to emphasize that the UPU Staff Association, through its representatives assigned to various internal UPU committees, will continue to be duly involved in the implementation of the aforementioned decision to recognize the jurisdiction of the UNAT, including within the context of the necessary adjustments to the UPU Staff Rules with a view to establishing a neutral first instance process for all staff members.

Finally, I may emphasize that the provision of the information and associated documentation through this letter and its annexes is without prejudice to the UPU's recognition of the jurisdiction of the UNAT taking immediate effect following the ILO's receipt of the UPU's notification of 29 April 2021.

I would therefore kindly reiterate the UPU's request for the ILO Governing Body to take due note of the notification of withdrawal referred to herein, and to instruct the ILOAT Registrar to reject any cases filed with the Tribunal after the date of receipt of the notification.

Please accept, Mr Politakis, the expression of my sincere consideration.

Yours sincerely, *With great regards,*



Ricardo GUILHERME  
Director of Legal Affairs