

Case no:	2023/033	Joint cases:	---
Date of opinion:	09/26/2024	Date of decision:	05/15/2025
Reference(s):	Art. 71 SR Art. 3 Circ 411 Art. 20 CA/D 4/21	Category:	Salary/Allowances/Payments
Keyword 1:	Education allowance Direct education costs Education and childcare allowance reform 2021	Keyword 2:	GCC Consultation General duty of care
Keyword 3:	Admissibility of appeal General decision	Keyword 4:	Discrimination/Equal treatment Expatriates
Keyword 5:	General duty of care Duty to inform		
Subject matter:	<p><i>Subject matter</i></p> <p>The Appellant challenged the non-reimbursement of education costs under the rules introduced by the Childcare and Education Allowance Reform as passed in Administrative Council Decision CA/D 4/21 and implemented by Circulars No. 301 and No. 411 in 2021. The Appellant also disputed the reform in general.</p> <p>The Appellant's request to reimburse exam fees at the school of his child as direct education costs under Article 71(5) ServRegs was rejected by the Office. This was the subject of his appeal.</p> <p><i>Formal legality</i></p> <p>The Appeals Committee <b>unanimously</b> stated a formal flaw in the consultation of the General Consultative Committee (GCC) on the reform. The wording of the preparatory Document CA/7/21 was substantively changed after the GCC consultation and the GCC was not re-consulted. In particular the term “comprising” was changed into “namely” to describe the components of direct educational costs.</p> <p>For the <b>majority</b> of the Appeals Committee, the flaw was not such as to require re-consultation or annulment of the decision. The <b>minority</b> concluded that the new rules could not be applied to the Appellant and recommended that the challenged decision be set aside and the rules in force before the reform be applied.</p> <p>The Appeals Committee did not find any further flaw in the procedure. In particular, there was no evidence that the Office had acted in bad faith when consulting the GCC.</p> <p><i>Scope of the Appeals Committee’s assessment</i></p> <p>The Appeals Committee assessed the lawfulness of the challenged rules only insofar as the Appellant was individually concerned (reference made to ILOAT Judgments No. 4793 (2024) and No. 3540 (2015)).</p> <p><i>Substantive legality</i></p> <p>The Appeals Committee did not find any violation of general principles of law in the context of the present appeal.</p> <p>It considered that the Office did not violate the <u>principle of equal treatment</u> with regard to expatriates. It took note of ILOAT Judgment No. 2870 issued in 2010 which found that the former education allowance mainly supporting expatriates was lawful. In the Appeals Committee’s view this judgment reflects the status quo at the time and does not bind the Office for the future. The Office sufficiently demonstrated the need for a change. In particular, the Appeals Committee considers that a fairer distribution of education benefits to all staff including nationals of the country of their duty station is a legitimate</p>		

aim.

The Appellant has not shown that non-reimbursement of the costs in dispute has a disproportionate adverse effect on him and that his situation as expatriate is so particular that the costs should be reimbursed unlike for nationals.

It was noted that expatriate status staff members is still taken into account by the Office, with the payment of an expatriation allowance under Article 72 ServRegs or granting of home leave for some expatriates.

For similar reasons, the Appeals Committee found that the reform did not breach the Appellant's acquired rights. The reform has not abolished the granting of education benefits. It merely amended the conditions. The Office still supports staff in the education and care for their children. The basic costs are still covered by the new rules. The essential terms of the Appellant's employment have not been impaired. The mere fact that reimbursement is lower than before does not violate acquired rights (reference made to ILOAT Judgments No. 4195, No. 4381 and No. 4465).

The Appellant's legitimate expectations were not violated. Firstly, the Appellant has failed to identify any specific assurance or promise made on the part of the Office to maintain the previous system of education benefits. Secondly, the Appellant is wrong to claim that he can rely on the annulled legal provisions of the former system of education (reference made to ILOAT Judgments No. 3256 and No. 3680).

Neither did the Appeals Committee find any breach of the Office's duty of care towards the Appellant. He had not shown that the reform caused an immediate and significant financial burden for him (reference made to ILOAT Judgment No. 4465). The Office issued numerous intranet announcements to staff concerning the education allowance reform before and after the Administrative Council's decision. The legal changes were published in the online version of the Codex. The Appellant must have been aware that the rules on education allowance had been changed. Staff members are expected to keep themselves informed about the rules which are applied to them (reference made to ILOAT Judgments No. 4777 and No. 4242). In case of doubt the Appellant could have asked the Office for clarification and further information.

The Appellant has not substantiated that the Office had interfered with his private life or restricted his freedom of choice regarding the education of his children.

#### *Implementation of the new rules – individual situation of the Appellant*

The main question was whether the exam fee was to be considered as direct or indirect education costs. The Appeals Committee on the basis of the wording of Article 71(5) ServRegs and Article 3(1) Circular No. 411, and its general knowledge, **unanimously** concluded that the exam fees were direct education costs as the payment of these costs was necessary for full-time attendance and was required for such attendance. Taking an exam is an indispensable part of the education because it confirms the level/degree at the end of the educational cycle. Therefore, the examination costs fall within the scope of the concept of "tuition fees".

The Appeals Committee **unanimously** held that the Office should have paid the exam fees under Article 71(5) ServRegs. The **majority** recommended that the exam fees

should be reimbursed to the Appellant as direct costs under Article 71(5) ServRegs.

The **minority** joined this recommendation with the reservation that the minority had already recommended in that Opinion that the challenged decision be annulled and the former rules be applied to the case due to the irregular GCC consultations.

#### *Recommendations*

The **majority** recommended reimbursing 50% of the reasonable legal costs incurred by the Appellant upon production of relevant documentation for expenses incurred. The **minority** of the Appeals Committee recommended full reimbursement of such costs.

The Appeals Committee was **unanimously** in its recommendation that the registration fee be refunded.

The Appeals Committee **unanimously** recommended clarifying the regulatory framework with respect to which costs are reimbursable as direct education costs.

#### **Opinion IAC:**

Allows in part

#### **Decision Appointing Authority:**

Allows in part. The appointing authority followed the Appeals Committee's majority and unanimous opinion to find the appeal partly irreceivable, allowed in part (in so far as it related to exam fees) and unfounded for the remainder. However, the appointing authority departed from the ApC's unanimous finding that there was a formal flaw in the GCC consultation on CA/D 4/21. Indeed the appointing authority considered that words should be given their obvious and ordinary meaning rather than a specific meaning deriving from an unrelated field of law. In that context, it could not be supported that the document was substantively changed after the GCC consultation.

#### **Decision ILOAT:**

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No ILOAT decision available

Case no:	2023/024	Joint cases:	---
Date of opinion:	09/26/2024	Date of decision:	05/15/2025
Reference(s):	Art. 71 (5) SR Art. 71 (6) SR Art. 3 Circ 411 Art. 1 ff. CA/D 4/21	Category:	Salary/Allowances/Payments
Keyword 1:	Admissibility of appeal General decision	Keyword 2:	GCC Consultation Discrimination/Equal treatment
Keyword 3:	General duty of care Duty to inform	Keyword 4:	Education allowance Education and childcare allowance reform 2021 Direct education costs British School TH
Keyword 5:	Discrimination/Equal treatment		
Subject matter:	<p><i>Subject matter</i></p> <p>The Appellant challenged the non-reimbursement of education costs under the rules introduced by the Childcare and Education Allowance Reform as passed in Administrative Council Decision CA/D 4/21 and implemented by Circulars No. 301 and No. 411 in 2021. The Appellant also disputed the reform in general. The Appellant's request to reimburse certain fees charged by the British School at The Hague (BSN) as direct education costs was rejected by the Office. This was the subject of his appeal.</p> <p><i>Receivability of the appeal</i></p> <p>The Appeals Committee <b>unanimously</b> considered the claim to set aside the challenged general decisions as irreceivable. Even though appellants may contest the legality of an underlying general decision when challenging an implementing individual decision, they may only request that the general decision not be applied to their individual case.</p> <p><i>Formal legality</i></p> <p>The Appeals Committee <b>unanimously</b> stated a formal flaw in the consultation of the General Consultative Committee (GCC) on the reform. The wording of the preparatory CA Document was substantively changed after the GCC consultation and the GCC was not re-consulted. In particular the term “comprising” was changed into “namely” to describe the components of direct educational costs. The Appeals Committee did not find any further flaw in the procedure. In particular, there was no evidence that the Office had acted in bad faith when consulting the GCC.</p> <p><i>Scope of the Appeals Committee’s assessment</i></p> <p>The Appeals Committee assessed the lawfulness of the challenged rules only insofar as the Appellant was individually concerned (reference made to ILOAT Judgments No. 4793 (2024) and No. 3540 (2015)).</p> <p><i>Substantive legality</i></p> <p>The Appeals Committee did not find any violation of general principles of law in the context of the present appeal.</p> <p>It considered that the Office did not violate the principle of equal treatment with regard to expatriates. It took note of ILOAT Judgment No. 2870 issued in 2010 which found that the former education allowance mainly supporting expatriates was lawful. In the Appeals Committee’s view this judgment reflects the status quo at the time and does not bind the Office for the future. The Office sufficiently demonstrated the need for a change. In particular, the Appeals Committee considers that a fairer distribution of education benefits to all staff including nationals of the country of their duty station is a legitimate aim.</p> <p>The abolition of Article 120a ServRegs did not lead to a violation of the principle of equal treatment in the Appellant’s case. The Appeals Committee noted that the European School at The Hague is an Accredited European School offering an international education at all educational cycles and the European Baccalaureate like the European</p>		

School Munich. The abolition of Article 120a ServRegs was meant to provide for a fairer distribution of educational benefits among staff and to bring them in line with those provided by other international organisations.

The Appellant has not shown that non-reimbursement of the costs in dispute has a disproportionate adverse effect on her and that her situation as expatriate is so particular that the costs should be reimbursed. It was noted that the expatriate status of staff members is still taken into account by the Office, with the payment of an expatriation allowance under Article 72 ServRegs or granting of home leave for some expatriates.

For similar reasons the Appeals Committee found that the reform did not breach the Appellant's acquired rights. The reform hasn't abolished the granting of education benefits. It merely amended the conditions. The Office still supports staff in the education and care for their children. The basic costs are still covered by the new rules. The essential terms of the Appellant's employment have not been impaired. The mere fact that reimbursement is lower than before does not violate acquired rights (reference made to ILOAT Judgments No. 4195, No. 4381 and No. 4465).

The Appellant's legitimate expectations were not violated. Firstly, the Appellant has failed to identify any specific assurance or promise made on the part of the Office to maintain the previous system of education benefits. Secondly, the Appellant is wrong to claim that she can rely on the annulled legal provisions of the former system of education (reference made to ILOAT Judgments No. 3256 and No. 3680).

Neither did the Appeals Committee find any breach of the Office's duty of care towards the Appellant. She had not shown that the reform caused an immediate and significant financial burden for her (reference made to ILOAT Judgment No. 4465). The Office issued numerous intranet announcements to staff concerning the education allowance reform before and after the Administrative Council's decision. The legal changes were published in the online version of the Codex. The Appellant must have been aware that the rules on education allowance had been changed. Staff members are expected to keep themselves informed about the rules which are applied to them (reference made to ILOAT Judgments No. 4777 and No. 4242). In case of doubt the Appellant could have asked the Office for clarification and further information.

The Appellant has not substantiated that the Office had interfered with her private life or restricted his freedom of choice regarding the education of her child. The Office did not interfere with the Appellant's individual contractual relationship with the BSN. It discussed with the BSN the implementation of the new regime in general to facilitate the reimbursement procedure.

#### *Implementation of the new rules*

The main question was whether the claimed costs were to be considered as direct or indirect education costs. The Appeals Committee on the basis of the wording of Article 20(1) CA/D 4/21, Article 71(5) ServRegs and Article 3(1) Circular No. 411 and its general knowledge, concluded that the claimed fees should be partly considered as direct education costs (tuition fees). In particular compulsory day trips and in-school activity days are part of a school's educational programme and regular tuition. They can be distinguished from typical school trips which involve costs for travelling, board and lodging. The latter cannot be considered as part of regular tuition.

The **minority** observed that Article 3(1) (ii) Circular No. 411 unlawfully restricts the term "tuition fees" as decided by the Administrative Council since it introduced an additional criterion ("invoiced by the educational institution").

#### *Recommendations*

The Appeals Committee **unanimously** recommended partly rejecting the appeal as irreceivable and reimbursing the registration fee in full.

The Appeals Committee **by a majority** recommended setting aside the challenged decision and reimbursing to the Appellant 50% of the claimed costs for the academic year 202/2023 as direct education costs under the new rules and rejecting the appeal as unfounded for the remainder. It recommended reimbursing 50% of the reasonable legal costs incurred by the Appellant upon production of relevant documentation for expenses incurred.

The **minority** of the Appeals Committee recommended setting aside the challenged decision and applying the former rules to the Appellant and reimbursing the reasonable legal costs incurred by the Appellant upon production of relevant documentation for expenses incurred.

The Appeals Committee **unanimously** recommended clarifying the regulatory framework with respect to which costs are reimbursable as direct education costs. The Committee **unanimously** recommended that in such circumstances the Office pays the undisputed part of the education costs forthwith without asking the staff member to amend their request, so that staff can promptly pay invoiced school fees. The Committee **unanimously** recommended that salary pay slips should contain clear information and explain under which Article or measure education costs are reimbursed.

**Opinion IAC:**

Allows in part

**Decision  
Appointing  
Authority:**

Rejects. The appointing authority followed the Appeals Committee's majority and unanimous opinion to find the appeal partly irreceivable and unfounded for the remainder. The appointing authority departed from the Appeals Committee's majority opinion to partly allow the appeal in relation to the non-reimbursement of school trip fees and maintains its position that school trip fees are indirect education costs. Further, the appointing authority departed from the ApC's unanimous finding that there was a formal flaw in the GCC consultation on CA/D 4/21. Indeed the appointing authority considered that words should be given their obvious and ordinary meaning rather than a specific meaning deriving from an unrelated field of law. In that context, it could not be supported that the document was substantively changed after the GCC consultation.

**Decision  
ILOAT:**

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No ILOAT decision available

Case no:	2023/007	Joint cases:	---
Date of opinion:	09/26/2024	Date of decision:	05/15/2025
Reference(s):	Art. 71 (5) SR Art. 71 (6) SR Art. 3 Circ 411 Art. 1 ff. CA/D 4/21	Category:	Salary/Allowances/Payments
Keyword 1:	Admissibility of appeal General decision	Keyword 2:	GCC Consultation Discrimination/Equal treatment
Keyword 3:	General duty of care Duty to inform	Keyword 4:	Education allowance Education and childcare allowance reform 2021 Direct education costs British School TH
Keyword 5:	Discrimination/Equal treatment Expatriates		
Subject matter:	<p><i>Subject matter</i></p> <p>The Appellant challenged the non-reimbursement of education costs under the rules introduced by the Childcare and Education Allowance Reform as passed in Administrative Council Decision CA/D 4/21 and implemented by Circulars No. 301 and No. 411 in 2021. The Appellant also disputed the reform in general. The Appellant's request to reimburse certain fees charged by the British School at The Hague (BSN) as direct education costs was rejected by the Office. This was the subject of his appeal.</p> <p><i>Receivability of the appeal</i></p> <p>The Appeals Committee <b>unanimously</b> considered the claim to set side the challenged general decisions as irreceivable. Even though appellants may contest the legality of an underlying general decision when challenging an implementing individual decision, they may only request that the general decision not be applied to their individual case.</p> <p><i>Formal legality</i></p> <p>The Appeals Committee <b>unanimously</b> stated a formal flaw in the consultation of the General Consultative Committee (GCC) on the reform. The wording of the preparatory CA Document was substantively changed after the GCC consultation and the GCC was not re-consulted. In particular the term “comprising” was changed into “namely” to describe the components of direct educational costs.</p> <p>The Appeals Committee did not find any further flaw in the procedure. In particular, there was no evidence that the Office had acted in bad faith when consulting the GCC.</p> <p><i>Scope of the Appeals Committee’s assessment</i></p> <p>The Appeals Committee assessed the lawfulness of the challenged rules only insofar as the Appellant was individually concerned (reference made to ILOAT Judgments No. 4793 (2024) and No. 3540 (2015)).</p> <p><i>Substantive legality</i></p> <p>The Appeals Committee did not find any violation of general principles of law in the context of the present appeal.</p> <p>It considered that the Office did not violate the principle of equal treatment with regard to expatriates. It took note of ILOAT Judgment No. 2870 issued in 2010 which found that the former education allowance mainly supporting expatriates was lawful. In the Appeals Committee’s view this judgment reflects the status quo at the time and does not bind the Office for the future. The Office sufficiently demonstrated the need for a change. In particular, the Appeals Committee considers that a fairer distribution of education benefits to all staff including nationals of the country of their duty station is a legitimate aim.</p> <p>The abolition of Article 120a ServRegs did not lead to a violation of the principle of equal treatment in the Appellant’s case. The Appeals Committee noted that the European School at The Hague is an Accredited European School offering an international</p>		

education at all educational cycles and the European Baccalaureate like the European School Munich. The abolition of Article 120a ServRegs was meant to provide for a fairer distribution of educational benefits among staff and to bring them in line with those provided by other international organisations. The Appellant has not shown that non-reimbursement of the costs in dispute has a disproportionate adverse effect on him and that his situation as expatriate is so particular that the costs should be reimbursed. It was noted that the expatriate status of staff members is still taken into account by the Office, with the payment of an expatriation allowance under Article 72 ServRegs or granting of home leave for some expatriates.

For similar reasons the Appeals Committee found that the reform did not breach the Appellant's acquired rights. The reform hasn't abolished the granting of education benefits. It merely amended the conditions. The Office still supports staff in the education and care for their children. The basic costs are still covered by the new rules. The essential terms of the Appellant's employment have not been impaired. The mere fact that reimbursement is lower than before does not violate acquired rights (reference made to ILOAT Judgments No. 4195, No. 4381 and No. 4465).

The Appellant's legitimate expectations were not violated. Firstly, the Appellant has failed to identify any specific assurance or promise made on the part of the Office to maintain the previous system of education benefits. Secondly, the Appellant is wrong to claim that he can rely on the annulled legal provisions of the former system of education (reference made to ILOAT Judgments No. 3256 and No. 3680).

Neither did the Appeals Committee find any breach of the Office's duty of care towards the Appellant. He had not shown that the reform caused an immediate and significant financial burden for him (reference made to ILOAT Judgment No. 4465). The Office issued numerous intranet announcements to staff concerning the education allowance reform before and after the Administrative Council's decision. The legal changes were published in the online version of the Codex. The Appellant must have been aware that the rules on education allowance had been changed. Staff members are expected to keep themselves informed about the rules which are applied to them (reference made to ILOAT Judgments No. 4777 and No. 4242). In case of doubt the Appellant could have asked the Office for clarification and further information.

The Appellant has not substantiated that the Office had interfered with his private life or restricted his freedom of choice regarding the education of his children. The Office did not interfere with the Appellant's individual contractual relationship with the BSN. It discussed with the BSN the implementation of the new regime in general to facilitate the reimbursement procedure. *Implementation of the new rules*

The main question was whether the claimed costs were to be considered as direct or indirect education costs. The Appeals Committee on the basis of the wording of Article 20(1) CA/D 4/21, Article 71(5) ServRegs and Article 3(1) Circular No. 411 and its general knowledge, concluded that the claimed fees should be partly considered as direct education costs (tuition fees). In particular compulsory day trips and in-school activity days are part of a school's educational programme and regular tuition. They can be distinguished from typical school trips which involve costs for travelling, board and lodging. The latter cannot be considered as part of regular tuition. Exams are closely linked to tuition. They confirm the level/degree at the end of an educational cycle.

The **minority** observed that Article 3(1) (ii) Circular No. 411 unlawfully restricts the term "tuition fees" as decided by the Administrative Council since it introduced an additional criterion ("invoiced by the educational institution").

#### *Recommendations*

The Appeals Committee **unanimously** recommended partly rejecting the appeal as irreceivable and reimbursing the registration fee in full.

The Appeals Committee **by a majority** recommended setting aside the challenged decision and reimbursing to the Appellant 50% of the claimed costs for the academic year 2022/2023 as direct education costs under the new rules and rejecting the appeal as unfounded for the remainder. It recommended reimbursing 50% of the reasonable legal costs incurred by the Appellant upon production of relevant documentation for expenses incurred.



The **minority** of the Appeals Committee recommended setting aside the challenged decision and applying the former rules to the Appellant. It recommended reimbursing the reasonable legal costs incurred by the Appellant upon production of relevant documentation for expenses incurred.

The Appeals Committee **unanimously** recommended clarifying the regulatory framework with respect to which costs are reimbursable as direct education costs.

The Committee **unanimously** recommended that in such circumstances the Office pays the undisputed part of the education costs forthwith without asking the staff member to amend their request, so that staff can promptly pay invoiced school fees.

The Committee **unanimously** recommended that salary pay slips should contain clear information and explain under which Article or measure education costs are reimbursed.

**Opinion IAC:**

Allows in part

**Decision  
Appointing  
Authority:**

Allows in part. The appointing authority followed the Appeals Committee's majority and unanimous opinion to find the appeal partly irreceivable, allowed in part (in so far as it related to exam fees) and unfounded for the remainder. The appointing authority departed from the Appeals Committee's majority opinion to partly allow the appeal in relation to the non-reimbursement of school trip fees and maintains its position that school trip fees are indirect education costs. Further, the appointing authority departed from the ApC's unanimous finding that there was a formal flaw in the GCC consultation on CA/D 4/21. Indeed the appointing authority considered that words should be given their obvious and ordinary meaning rather than a specific meaning deriving from an unrelated field of law. In that context, it could not be supported that the document was substantively changed after the GCC consultation.

**Decision  
ILOAT:**

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No ILOAT decision available

<b>Case no:</b>	2023/006	<b>Joint cases:</b>	---
<b>Date of opinion:</b>	09/26/2024	<b>Date of decision:</b>	05/15/2025
<b>Reference(s):</b>	Art. 71 (5) SR Art. 71 (6) SR Art. 3 Circ 411 Art. 1 ff. CA/D 4/21	<b>Category:</b>	Salary/Allowances/Payments
<b>Keyword 1:</b>	<b>Admissibility of appeal</b> General decision	<b>Keyword 2:</b>	<b>GCC</b> Consultation Discrimination/Equal treatment
<b>Keyword 3:</b>	<b>General duty of care</b> Duty to inform	<b>Keyword 4:</b>	<b>Education allowance</b> Education and childcare allowance reform 2021 Direct education costs British School TH
<b>Keyword 5:</b>	<b>Discrimination/Equal treatment</b> Expatriates		

**Subject matter:***Subject matter*

The Appellant challenged the non-reimbursement of education costs under the rules introduced by the Childcare and Education Allowance Reform as passed in Administrative Council Decision CA/D 4/21 and implemented by Circulars No. 301 and No. 411 in 2021. The Appellant also disputed the reform in general. The Appellant's request to reimburse certain fees charged by the British School at The Hague (BSN) as direct education costs was rejected by the Office. This was the subject of his appeal.

*Receivability of the appeal*

The Appeals Committee **unanimously** considered the claim to set aside the challenged general decisions as irreceivable. Even though appellants may contest the legality of an underlying general decision when challenging an implementing individual decision, they may only request that the general decision not be applied to their individual case.

*Formal legality*

The Appeals Committee **unanimously** stated a formal flaw in the consultation of the General Consultative Committee (GCC) on the reform. The wording of the preparatory CA Document was substantively changed after the GCC consultation and the GCC was not re-consulted. In particular the term "comprising" was changed into "namely" to describe the components of direct educational costs. The Appeals Committee did not find any further flaw in the procedure. In particular, there was no evidence that the Office had acted in bad faith when consulting the GCC.

*Scope of the Appeals Committee's assessment*

The Appeals Committee assessed the lawfulness of the challenged rules only insofar as the Appellant was individually concerned (reference made to ILOAT Judgments No. 4793 (2024) and No. 3540 (2015)).

*Substantive legality*

The Appeals Committee did not find any violation of general principles of law in the context of the present appeal.

It considered that the Office did not violate the principle of equal treatment with regard to expatriates. It took note of ILOAT Judgment No. 2870 issued in 2010 which found that the former education allowance mainly supporting expatriates was lawful. In the Appeals Committee's view this judgment reflects the status quo at the time and does not bind the Office for the future. The Office sufficiently demonstrated the need for a change. In particular, the Appeals Committee considers that a fairer distribution of education benefits to all staff including nationals of the country of their duty station is a legitimate aim.

The abolition of Article 120a ServRegs did not lead to a violation of the principle of equal treatment in the Appellant's case. The Appeals Committee noted that the European School at The Hague is an Accredited European School offering an international

education at all educational cycles and the European Baccalaureate like the European School Munich. The abolition of Article 120a ServRegs was meant to provide for a fairer distribution of educational benefits among staff and to bring them in line with those provided by other international organisations.

The Appellant has not shown that non-reimbursement of the costs in dispute has a disproportionate adverse effect on him and that his situation as expatriate is so particular that the costs should be reimbursed. It was noted that the expatriate status of staff members is still taken into account by the Office, with the payment of an expatriation allowance under Article 72 ServRegs or granting of home leave for some expatriates.

For similar reasons the Appeals Committee found that the reform did not breach the Appellant's acquired rights. The reform hasn't abolished the granting of education benefits. It merely amended the conditions. The Office still supports staff in the education and care for their children. The basic costs are still covered by the new rules. The essential terms of the Appellant's employment have not been impaired. The mere fact that reimbursement is lower than before does not violate acquired rights (reference made to ILOAT Judgments No. 4195, No. 4381 and No. 4465).

The Appellant's legitimate expectations were not violated. Firstly, the Appellant has failed to identify any specific assurance or promise made on the part of the Office to maintain the previous system of education benefits. Secondly, the Appellant is wrong to claim that he can rely on the annulled legal provisions of the former system of education (reference made to ILOAT Judgments No. 3256 and No. 3680).

Neither did the Appeals Committee find any breach of the Office's duty of care towards the Appellant. He had not shown that the reform caused an immediate and significant financial burden for him (reference made to ILOAT Judgment No. 4465). The Office issued numerous intranet announcements to staff concerning the education allowance reform before and after the Administrative Council's decision. The legal changes were published in the online version of the Codex. The Appellant must have been aware that the rules on education allowance had been changed. Staff members are expected to keep themselves informed about the rules which are applied to them (reference made to ILOAT Judgments No. 4777 and No. 4242). In case of doubt the Appellant could have asked the Office for clarification and further information.

The Appellant has not substantiated that the Office had interfered with his private life or restricted his freedom of choice regarding the education of his children. The Office did not interfere with the Appellant's individual contractual relationship with the BSN. It discussed with the BSN the implementation of the new regime in general to facilitate the reimbursement procedure.

#### *Implementation of the new rules*

The main question was whether the claimed costs – charged for different compulsory school activities including school trips and in-school activity days – were to be considered as direct or indirect education costs. The Appeals Committee on the basis of the wording of Article 20(1) CA/D 4/21, Article 71(5) ServRegs and Article 3(1) Circular No. 411 and its general knowledge, concluded that the claimed fees should be partly considered as direct education costs (tuition fees). In particular compulsory day trips and in-school activity days are part of a school's educational programme and regular tuition. They can be distinguished from typical school trips which involve costs for travelling, board and lodging. The latter cannot be considered as part of regular tuition.

The **minority** observed that Article 3(1) (ii) Circular No. 411 unlawfully restricts the term "tuition fees" as decided by the Administrative Council since it introduced an additional criterion ("invoiced by the educational institution").

#### *Recommendations*

The Appeals Committee **unanimously** recommended partly rejecting the appeal as irreceivable and reimbursing the registration fee in full.

The Appeals Committee **by a majority** recommended setting aside the challenged decision and reimbursing to the Appellant 50% of the claimed costs for the academic year 2022/2023 as direct education costs under the new rules and rejecting the appeal as unfounded for the remainder. It recommended reimbursing 50% of the reasonable

legal costs incurred by the Appellant upon production of relevant documentation for expenses incurred.

The **minority** of the Appeals Committee recommended setting aside the challenged decision and applying the former rules to the Appellant and reimbursing the reasonable legal costs incurred by the Appellant upon production of relevant documentation for expenses incurred.

The Appeals Committee **unanimously** recommended clarifying the regulatory framework with respect to which costs are reimbursable as direct education costs.

The Committee **unanimously** recommended that in such circumstances the Office pays the undisputed part of the education costs forthwith without asking the staff member to amend their request, so that staff can promptly pay invoiced school fees.

The Committee **unanimously** recommended that salary pay slips should contain clear information and explain under which Article or measure education costs are reimbursed.

**Opinion IAC:**

Allows in part

**Decision  
Appointing  
Authority:**

Rejects. The appointing authority followed the Appeals Committee's majority and unanimous opinion to find the appeal partly irreceivable and unfounded for the remainder. The appointing authority departed from the Appeals Committee's majority opinion to partly allow the appeal in relation to the non-reimbursement of school trip fees and maintains its position that school trip fees are indirect education costs. Further, the appointing authority departed from the ApC's unanimous finding that there was a formal flaw in the GCC consultation on CA/D 4/21. Indeed the appointing authority considered that words should be given their obvious and ordinary meaning rather than a specific meaning deriving from an unrelated field of law. In that context, it could not be supported that the document was substantively changed after the GCC consultation.

**Decision  
ILOAT:**

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No ILOAT decision available

Case no:	2022/055	Joint cases:	---
Date of opinion:	09/26/2024	Date of decision:	05/15/2025
Reference(s):	Art. 71 SR Art. 3 Circ 411 Art. 1 ff. CA/D 4/21	Category:	Salary/Allowances/Payments
Keyword 1:	Admissibility of appeal General decision	Keyword 2:	GCC Consultation Discrimination/Equal treatment
Keyword 3:	General duty of care Duty to inform	Keyword 4:	Education allowance Direct education costs Education and childcare allowance reform 2021
Keyword 5:	Discrimination/Equal treatment Expatriates		
Subject matter:	<p><i>Subject matter</i></p> <p>The Appellant challenged the non-reimbursement of education costs under the rules introduced by the Childcare and Education Allowance Reform as passed in Administrative Council Decision CA/D 4/21 and implemented by Circulars No. 301 and No. 411 in 2021. The Appellant also disputed the reform in general.</p> <p>The Appellant's request to reimburse the administrative fee for daily supervision and an additional fee for the school association as direct education costs under Article 71(5) ServRegs was rejected by the Office. This was the subject of her appeal.</p> <p><i>Formal legality</i></p> <p>The Appeals Committee <b>unanimously</b> stated a formal flaw in the consultation of the General Consultative Committee (GCC) on the reform. The wording of the preparatory Document CA/7/21 was substantively changed after the GCC consultation and the GCC was not re-consulted. In particular the term “comprising” was changed into “namely” to describe the components of direct educational costs.</p> <p>For the <b>majority</b> of the Appeals Committee, the flaw was not such as to require re-consultation or annulment of the decision. The <b>minority</b> concluded that the new rules could not be applied to the Appellant and recommended that the challenged decision be set aside and the rules in force before the reform be applied.</p> <p>The Appeals Committee did not find any further flaw in the procedure. In particular, there was no evidence that the Office had acted in bad faith when consulting the GCC.</p> <p><i>Scope of the Appeals Committee’s assessment</i></p> <p>The Appeals Committee assessed the lawfulness of the challenged rules only insofar as the Appellant was individually concerned (reference made to ILOAT Judgments No. 4793 (2024) and No. 3540 (2015)).</p> <p><i>Substantive legality</i></p> <p>The Appeals Committee did not find any violation of general principles of law in the context of the present appeal.</p> <p>It considered that the Office did not violate the <u>principle of equal treatment</u> with regard to expatriates. It took note of ILOAT Judgment No. 2870 issued in 2010 which found that the former education allowance mainly supporting expatriates was lawful. In the Appeals Committee’s view this judgment reflects the status quo at the time and does not bind the Office for the future. The Office sufficiently demonstrated the need for a change. In particular, the Appeals Committee considers that a fairer distribution of education</p>		

benefits to all staff including nationals of the country of their duty station is a legitimate aim.

The Appellant has not shown that non-reimbursement of the costs in dispute has a disproportionate adverse effect on her and that her situation is so particular that the costs should be reimbursed unlike for national or other staff members.

It was noted that expatriate status staff members is still taken into account by the Office, with the payment of an expatriation allowance under Article 72 ServRegs or granting of home leave for some expatriates.

For similar reasons, the Appeals Committee found that the reform did not breach the Appellant's acquired rights. The reform has not abolished the granting of education benefits. It merely amended the conditions. The Office still supports staff in the education and care for their children. The basic costs are still covered by the new rules. The essential terms of the Appellant's employment have not been impaired. The mere fact that reimbursement is lower than before does not violate acquired rights (reference made to ILOAT Judgments No. 4195, No. 4381 and No. 4465).

The Appellant's legitimate expectations were not violated. Firstly, the Appellant has failed to identify any specific assurance or promise made on the part of the Office to maintain the previous system of education benefits. Secondly, the Appellant is wrong to claim that she can rely on the annulled legal provisions of the former system of education (reference made to ILOAT Judgments No. 3256 and No. 3680).

Neither did the Appeals Committee find any breach of the Office's duty of care towards the Appellant. She had not shown that the reform caused an immediate and significant financial burden for her (reference made to ILOAT Judgment No. 4465). The Office issued numerous intranet announcements to staff concerning the education allowance reform before and after the Administrative Council's decision. The legal changes were published in the online version of the Codex. The Appellant must have been aware that the rules on education allowance had been changed. Staff members are expected to keep themselves informed about the rules which are applied to them (reference made to ILOAT Judgments No. 4777 and No. 4242). In case of doubt the Appellant could have asked the Office for clarification and further information.

The Appellant has not substantiated that the Office had interfered with her private life or restricted her freedom of choice regarding the education of her children.

#### *Implementation of the new rules – individual situation of the Appellant*

With respect to the application of the new rules, the main issue was whether the claimed costs for an administrative fee for daily supervision and a fee for the school association should be considered as direct or indirect education costs.

The Appeals Committee **unanimously** concluded that the fee paid to the school association was an indirect education cost and that the Office had correctly applied Article 3(1)(ii) of the Circular No. 411. This is because the said provision required the fee to be invoiced by the school and the fee was invoiced by a school association which was a separate legal entity from the school.

The **majority**, therefore, dismissed this claim as unfounded.

However, the **minority** considered that Article 3(1)(ii) of Circular No. 411 went beyond the purpose of Article 71(5) ServRegs by narrowing the definition of the tuition fee. In particular, it introduced a new condition that the tuition fee must be invoiced by the school as such. In the present case, the fee paid to the school association was transferred in full to the Appellant's child's school in order to enable it to have bilingual teachers and to comply with regional law. It was clear that this money would only be used for tuition fees. In this context, the minority recommended that the said Article 3(1)(ii) of Circular No. 411 should not be applied to the Appellant's situation, considering that the Circular was a mere implementing measure of a provision of the Service Regulations and it could not add new restrictions.

As regards the administrative fee, it was paid to cover the registration costs for the daily supervision at the school. The school's curriculum mixed teaching with supervision by bilingual teachers including the core hours. The supervision during the core hours was part of the school's timetable until 16.00 and was obligatory to register the child at school. The Office's argument that the supervision was also used for after-school care (outside the core hours) and that after-school care was an indirect education cost was not relevant for the application of Article 3(1)(i) of the Circular No. 411. Therefore, the Appeals Committee was of the **unanimous** opinion that the Office wrongly applied Article 3(1)(i) of the Circular No. 411.

The Appeals Committee was divided in its assessment of the implications of this finding.

The **majority** recommended to set aside the challenged decision and to reimburse the administrative costs as direct education costs, together with interest.

The **minority** concluded that in view of the procedural flaw the new rules could not be applied to the Appellant and recommended that the challenged decision be set aside and instead the rules in force before the reform be applied, together with interest.

The Appeals Committee **unanimously** recommended clarifying the regulatory framework with respect to which costs are reimbursable as direct education costs.

#### *Ancillary claims*

The Appeals Committee **unanimously** recommended a refund of the appeal registration fee.

The **majority** recommended reimbursing 50% of the reasonable legal costs incurred by the Appellant upon production of relevant documentation for expenses incurred. The **minority** recommended a full reimbursement of such costs.

#### **Opinion IAC:**

Allows in part

#### **Decision Appointing Authority:**

Allows in part. The appointing authority followed the Appeals Committee's majority and unanimous opinion to find the appeal partly irreceivable, allowed in part (in so far as it related to administration fees) and unfounded for the remainder. However, the appointing authority departed from the ApC's unanimous finding that there was a formal flaw in the GCC consultation on CA/D 4/21. Indeed the appointing authority considered that words should be given their obvious and ordinary meaning rather than a specific meaning deriving from an unrelated field of law. In that context, it could not be supported that the document was substantively changed after the GCC consultation.

#### **Decision ILOAT:**

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No ILOAT decision available



<b>Case no:</b>	2022/047	<b>Joint cases:</b>	---
<b>Date of opinion:</b>	09/26/2024	<b>Date of decision:</b>	05/15/2025
<b>Reference(s):</b>	Art. 71 (7) SR Art. 71 (8) SR Art. 3 Circ 411 Art. 1 ff. CA/D 4/21	<b>Category:</b>	Salary/Allowances/Payments
<b>Keyword 1:</b>	<b>Admissibility of appeal</b> General decision	<b>Keyword 2:</b>	<b>GCC</b> Consultation Duty to give reasons
<b>Keyword 3:</b>	<b>Education allowance</b> Education and childcare allowance reform 2021 University studies Direct education costs	<b>Keyword 4:</b>	<b>General duty of care</b>
<b>Keyword 5:</b>	<b>Duty to give reasons</b>		

**Subject matter:***Subject matter*

The Appellant challenged the non-reimbursement of education costs under the rules introduced by the Childcare and Education Allowance Reform as passed in Administrative Council Decision CA/D 4/21 and implemented by Circulars No. 301 and No. 411 in 2021. The Appellant also disputed the reform in general. The Appellant's request to reimburse semester and exam fees charged by his child's University as direct education costs under Article 71(7) ServRegs was rejected by the Office. This was the subject of his appeal.

*Receivability of the appeal*

The Appeals Committee **unanimously** considered the claim to set aside the challenged general decisions as irreceivable. Even though appellants may contest the legality of an underlying general decision when challenging an implementing individual decision, they may only request that the general decision not be applied to their individual case.

*Formal legality*

The Appeals Committee **unanimously** stated a formal flaw in the consultation of the General Consultative Committee (GCC) on the reform. The wording of the preparatory CA Document was substantively changed after the GCC consultation and the GCC was not re-consulted. In particular the term "comprising" was changed into "namely" to describe the components of direct educational costs.

*Scope of the Appeals Committee's assessment*

The Appeals Committee assessed the lawfulness of the challenged rules only insofar as the Appellant was individually concerned (reference made to ILOAT Judgments No. 4793 (2024) and No. 3540 (2015)).

*Substantive legality*

The Appeals Committee did not find any breach of the Office's duty of care towards the Appellant. In particular, it gave sufficient explanations for its decision.

*Implementation of the new rules*

The main question was whether the claimed semester and exam fees charged by the University were to be considered as direct or indirect education costs. The Appeals Committee on the basis of the wording of the rules and its general knowledge, **unanimously** concluded that the exam fees and parts of the semester fees should be considered as direct education costs (tuition fees).

The documents provided by the Appellant showed that the claimed semester fees at least partly covered costs for the attendance of the University and the use of its services. As regards exam fees, the Appeals Committee considered that exams are an integral part of the University's programme and closely linked to tuition. In its view the rules in their current wording define tuition fees as to include also exam fees. If the EPO wanted exam fees to be excluded from reimbursement as direct education costs, this should have been explicitly mentioned in the rules.

The **minority** observed that Article 3(1) (ii) Circular No. 411 unlawfully restricts the term "tuition fees" as decided by the Administrative Council since it introduced an additional

criterion ("invoiced by the educational institution").

#### *Recommendations*

The Appeals Committee **unanimously** recommended partly rejecting the appeal as irreceivable and reimbursing the registration fee in full.

The Appeals Committee **by a majority** recommended setting aside the challenged decision and reimbursing to the Appellant the exam fees and parts of the semester fees as direct costs under the new rules and rejecting the appeal as unfounded for the remainder. It recommended reimbursing 50% of the reasonable legal costs incurred by the Appellant upon production of relevant documentation for expenses incurred.

The **minority** of the Appeals Committee recommended setting aside the challenged decision and applying the former rules to the Appellant and reimbursing the reasonable legal costs incurred by the Appellant upon production of relevant documentation for expenses incurred.

The Appeals Committee **unanimously** recommended clarifying the regulatory framework with respect to which costs are reimbursable as direct education costs.

#### **Opinion IAC:**

Allows in part

#### **Decision Appointing Authority:**

Allows in part. The appointing authority followed the Appeals Committee's majority and unanimous opinion to find the appeal partly irreceivable, allowed in part (in so far as it related to tuition fee elements of semester fees and exam fees) and unfounded for the remainder. The appointing authority departed from the ApC's unanimous finding that there was a formal flaw in the GCC consultation on CA/D 4/21. Indeed the appointing authority considered that words should be given their obvious and ordinary meaning rather than a specific meaning deriving from an unrelated field of law. In that context, it could not be supported that the document was substantively changed after the GCC consultation.

#### **Decision ILOAT:**

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No ILOAT decision available

<b>Case no:</b>	2022/035	<b>Joint cases:</b>	---
<b>Date of opinion:</b>	09/26/2024	<b>Date of decision:</b>	05/15/2025
<b>Reference(s):</b>	Art. 71 (7) SR Art. 71 (8) SR Art. 3 Circ 411 Art. 1 ff. CA/D 4/21	<b>Category:</b>	Salary/Allowances/Payments
<b>Keyword 1:</b>	<b>Admissibility of appeal</b> General decision	<b>Keyword 2:</b>	<b>GCC</b> Consultation General duty of care
<b>Keyword 3:</b>	<b>Education allowance</b> Education and childcare allowance reform 2021 Direct education costs University studies	<b>Keyword 4:</b>	<b>Discrimination/Equal treatment</b> Expatriates
<b>Keyword 5:</b>	<b>General duty of care</b> Duty to inform		

**Subject matter:***Subject matter*

The Appellant challenged the non-reimbursement of education costs under the rules introduced by the Childcare and Education Allowance Reform as passed in Administrative Council Decision CA/D 4/21 and implemented by Circulars No. 301 and No. 411 in 2021. The Appellant also disputed the reform in general. The Appellant's request to reimburse campus fees charged by his child's University as direct education costs under Article 71(7) ServRegs was rejected by the Office. This was the subject of his appeal.

*Receivability of the appeal*

The Appeals Committee **unanimously** considered the claim to set aside the challenged general decisions as irreceivable. Even though appellants may contest the legality of an underlying general decision when challenging an implementing individual decision, they may only request that the general decision not be applied to their individual case.

*Formal legality*

The Appeals Committee **unanimously** stated a formal flaw in the consultation of the General Consultative Committee (GCC) on the reform. The wording of the preparatory CA Document was substantively changed after the GCC consultation and the GCC was not re-consulted. In particular the term "comprising" was changed into "namely" to describe the components of direct educational costs. The Appeals Committee did not find any further flaw in the procedure. In particular, there was no evidence that the Office had acted in bad faith when consulting the GCC.

*Scope of the Appeals Committee's assessment*

The Appeals Committee assessed the lawfulness of the challenged rules only insofar as the Appellant was individually concerned (reference made to ILOAT Judgments No. 4793 (2024) and No. 3540 (2015)).

*Substantive legality*

The Appeals Committee did not find any violation of general principles of law in the context of the present appeal.

It considered that the Office did not violate the principle of equal treatment with regard to expatriates. It took note of ILOAT Judgment No. 2870 issued in 2010 which found that the former education allowance mainly supporting expatriates was lawful. In the Appeals Committee's view this judgment reflects the status quo at the time and does not bind the Office for the future. The Office sufficiently demonstrated the need for a change. In particular, the Appeals Committee considers that a fairer distribution of education benefits to all staff including nationals of the country of their duty station is a legitimate aim.

The Appellant has not shown that non-reimbursement of the costs in dispute has a disproportionate adverse effect on him and that his situation as expatriate is so particular that the costs should be reimbursed unlike for nationals. It was noted that the expatriate status of staff members is still taken into account by the Office, with the

payment of an expatriation allowance under Article 72 ServRegs or granting of home leave for some expatriates.

For similar reasons the Appeals Committee found that the reform did not breach the Appellant's acquired rights. The reform hasn't abolished the granting of education benefits. It merely amended the conditions. The Office still supports staff in the education and care for their children. The basic costs are still covered by the new rules. The essential terms of the Appellant's employment have not been impaired. The mere fact that reimbursement is lower than before does not violate acquired rights (reference made to ILOAT Judgments No. 4195, No. 4381 and No. 4465).

The Appellant's legitimate expectations were not violated. Firstly, the Appellant has failed to identify any specific assurance or promise made on the part of the Office to maintain the previous system of education benefits. Secondly, the Appellant is wrong to claim that he can rely on the annulled legal provisions of the former system of education (reference made to ILOAT Judgments No. 3256 and No. 3680).

Neither did the Appeals Committee find any breach of the Office's duty of care towards the Appellant. He had not shown that the reform caused an immediate and significant financial burden for him (reference made to ILOAT Judgment No. 4465).

The Office issued numerous intranet announcements to staff concerning the education allowance reform before and after the Administrative Council's decision. The legal changes were published in the online version of the Codex. The Appellant must have been aware that the rules on education allowance had been changed. Staff members are expected to keep themselves informed about the rules which are applied to them (reference made to ILOAT Judgments No. 4777 and No. 4242). In case of doubt the Appellant could have asked the Office for clarification and further information.

The Appellant has not substantiated that the Office had interfered with his private life or restricted his freedom of choice regarding the education of his children.

#### *Implementation of the new rules*

The main question was whether the claimed campus fees – charged for living on the University campus – were to be considered as direct or indirect education costs. The Appeals Committee on the basis of the wording of Article 71(7) ServRegs and Article 3(1) Circular No. 411 and its general knowledge, concluded that in the particular circumstances the campus fees should be partly considered as direct education costs (tuition fees). It was of the view that they were part of the University's educational concept during the first two years of the studies.

The **minority** observed that Article 3(1) (ii) Circular No. 411 unlawfully restricts the term "tuition fees" as decided by the Administrative Council since it introduced an additional criterion ("invoiced by the educational institution").

#### *Recommendations*

The Appeals Committee **unanimously** recommended partly rejecting the appeal as irreceivable and reimbursing the registration fee in full.

The Appeals Committee **by a majority** recommended setting aside the challenged decision and reimbursing to the Appellant 50% of the campus fees for the academic year 2021/2022 as direct education costs under the new rules and rejecting the appeal as unfounded for the remainder. It recommended reimbursing 50% of the reasonable legal costs incurred by the Appellant upon production of relevant documentation for expenses incurred.

The **minority** of the Appeals Committee recommended setting aside the challenged decision and applying the former rules to the Appellant. It recommended reimbursing the reasonable legal costs incurred by the Appellant upon production of relevant documentation for expenses incurred.

The Appeals Committee **unanimously** recommended clarifying the regulatory framework with respect to which costs are reimbursable as direct education costs.

**Opinion IAC:** Allows in part

**Decision  
Appointing  
Authority:**

Rejects. The appointing authority followed the Appeals Committee's majority and unanimous opinion to find the appeal partly irreceivable and unfounded for the remainder. The appointing authority departed from the Appeals Committee's majority opinion to partly allow the appeal in relation to the non-reimbursement of campus fees and maintains its position that campus fees are indirect education costs. Further, the appointing authority departed from the ApC's unanimous finding that there was a formal flaw in the GCC consultation on CA/D 4/21. Indeed the appointing authority considered that words should be given their obvious and ordinary meaning rather than a specific meaning deriving from an unrelated field of law. In that context, it could not be supported that the document was substantively changed after the GCC consultation.

**Decision  
ILOAT:**

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No ILOAT decision available