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			
	The Appellant challenged the non-reimbursement of education costs under the rule introduced by the Childcare and Education Allowance Reform as passed in Administrative Council Decision CA/D 4/21 and implemented by Circulars No. 301 No. 411 in 2021. The Appellant also disputed the reform in general. 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 subject of his appeal. <i>Formal legality</i> The Appeals Committee unanimously stated a formal flaw in the consultation of the General Consultative Committee (GCC) on the reform. The wording of the prepara Document CA/7/21 was substantively changed after the GCC consultation and the was not re-consulted. In particular the term "comprising" was changed into "namel			
	describe the components of direct educational costs. For the majority of the Appeals Committee, the flaw was not such as to require re- consultation or annulment of the decision. The minority 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.			
	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 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 <u>acquired rights</u>. 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 <u>legitimate expectations</u> 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 <u>duty of care</u> 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

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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. <i>Recommendations</i>
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.
Allows in part
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.

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:	introduced by the Childcare an Administrative Council Decisio No. 411 in 2021. The Appellan The Appellant's request to rein Hague (BSN) as direct educat of his appeal. <i>Receivability of the appeal</i> The Appeals Committee unan general decisions as irreceiva underlying general decision w may only request that the gen <i>Formal legality</i> The Appeals Committee unan General Consultative Committee CA Document was substantive not re-consulted. In particular describe the components of d	imously stated in the term "compri- irect educational compared by the term the term intermediated by the term the term intermediated by the term the term the term intermediated by the term the term the term the term the term the term intermation the term term term term term term term ter	d implemented by Circulars No. 301 and he reform in general. sees charged by the British School at The jected by the Office. This was the subject ered the claim to set aside the challenged n appellants may contest the legality of an an implementing individual decision, they be applied to their individual case. a formal flaw in the consultation of the e reform. The wording of the preparatory r the GCC consultation and the GCC was sing" was changed into "namely" to costs. The Appeals Committee did not ular, there was no evidence that the Office		
	the Appellant was individually 4793 (2024) and No. 3540 (20 <i>Substantive legality</i>	ssed the lawfulne concerned (refe 115)).	nt ess of the challenged rules only insofar as rence made to ILOAT Judgments No. ion 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

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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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Case no:	2023/007	Joint cases:	
Date of	09/26/2024	Date of	 05/15/2025
opinion:	09/20/2024	decision:	03/13/2023
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:	introduced by the Childcare an Administrative Council Decision No. 411 in 2021. The Appellant The Appellant's request to reim Hague (BSN) as direct education of his appeal. <i>Receivability of the appeal</i> The Appeals Committee unani general decisions as irreceivab underlying general decision wh may only request that the general <i>Formal legality</i> The Appeals Committee unani General Consultative Committee CA Document was substantive not re-consulted. In particular t describe the components of dir The Appeals Committee did no was no evidence that the Office <i>Scope of the Appeals Committee</i> <i>Scope of the Appeals Committee</i> the Appeals Committee assess the Appellant was individually of 4793 (2024) and No. 3540 (207 <i>Substantive legality</i> The Appeals Committee did no context of the present appeal. It considered that the Office did expatriates. It took note of ILO/ the former education allowance Committee's view this judgmer Office for the future. The Office particular, the Appeals Commit	reform 2021 Direct education costs British School TH the non-reimbursement of education costs under the rules e and Education Allowance Reform as passed in cision CA/D 4/21 and implemented by Circulars No. 301 a illant also disputed the reform in general. reimburse certain fees charged by the British School at T ucation costs was rejected by the Office. This was the sub invable. Even though appellants may contest the legality of n when challenging an implementing individual decision, 1 general decision not be applied to their individual case. Inanimously stated a formal flaw in the consultation of the mittee (GCC) on the reform. The wording of the preparato tively changed after the GCC consultation and the GCC tively changed after the GCC consultation and the GCC of direct educational costs. d not find any further flaw in the procedure. In particular, 1 Diffice had acted in bad faith when consulting the GCC. Inmittee's assessment seessed the lawfulness of the challenged rules only insofa ally concerned (reference made to ILOAT Judgments No. (2015)). d not find any violation of general principles of law in the eal. e did not violate the principle of equal treatment with rega ILOAT Judgment No. 2870 issued in 2010 which found the ance mainly supporting expatriates was lawful. In the App iment reflects the status quo at the time and does not bino office sufficiently demonstrated the need for a change. In mmittee considers that a fairer distribution of education g nationals of the country of their duty station is a legitime	

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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.

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	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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Case no:	2023/006	Joint cases:	
Date of	09/26/2024	Date of	05/15/2025
opinion:		decision:	
Reference(s):	Art. 71 (5) SR	Category:	Salary/Allowances/Payments
	Art. 71 (6) SR Art. 3 Circ 411		
	Art. 1 ff. CA/D 4/21		
Keyword 1:	Admissibility of appeal	Keyword 2:	GCC
	General decision		Consultation
	L		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			
Subject matter:	Subject matter		
	The Appellant challenged the r introduced by the Childcare an		ent of education costs under the rules
			implemented by Circulars No. 301 and
	No. 411 in 2021. The Appellant	also disputed th	e reform in general.
			es charged by the British School at The ected by the Office. This was the subject
	of his appeal.	on costs was reje	ected by the Office. This was the subject
	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. <i>Formal legality</i> 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. <i>Scope of the Appeals Committee is assessment</i> 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)).		
	context of the present appeal. It considered that the Office did expatriates. It took note of ILO, the former education allowance Committee's view this judgmer Office for the future. The Office particular, the Appeals Commit benefits to all staff including na aim.	d not violate the p AT Judgment No e mainly supporti at reflects the sta sufficiently dem tee considers tha tionals of the cou	on of general principles of law in the principle of equal treatment with regard to . 2870 issued in 2010 which found that ing expatriates was lawful. In the Appeals tus quo at the time and does not bind the onstrated the need for a change. In at a fairer distribution of education untry of their duty station is a legitimate
	treatment in the Appellant's cas	se. The Appeals	ead to a violation of the principle of equal Committee noted that the European n School offering an international

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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

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	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 easonable legal costs incurred by the Appellant upon production of relevant documentation for expenses incurred.
	The Appeals Committee unanimously recommended clarifying the regulatory ramework 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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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		
Keyword 5:	Discrimination/Equal treatment Expatriates		reform 2021		
	Expatriates Subject matter The Appellant challenged the non-reimbursement of education costs under introduced by the Childcare and Education Allowance Reform as passed in Administrative Council Decision CA/D 4/21 and implemented by Circulars I No. 411 in 2021. The Appellant also disputed the reform in general. The Appellant's request to reimburse the administrative fee for daily supervadditional fee for the school association as direct education costs under Ar ServRegs was rejected by the Office. This was the subject of her appeal. <i>Formal legality</i> The Appeals Committee unanimously stated a formal flaw in the consultation General Consultative Committee (GCC) on the reform. The wording of the Document CA/7/21 was substantively changed after the GCC consultation was not re-consulted. In particular the term "comprising" was changed into describe the components of direct educational costs. For the majority of the Appeals Committee, the flaw was not such as to re- consultation or annulment of the decision. The minority concluded that the could not be applied to the Appellant and recommended that the challenge set aside and the rules in force before the reform be applied. The Appeals Committee is assessment The Appeals Committee's assessment The Appeals Committee assessed the lawfulness of the challenged rules o the Appeals Committee is assessent (reference made to ILOAT Judgm 4793 (2024) and No. 3540 (2015)). Substantive legality The Appeals Committee did not find any violation of general principles of la context of the present appeal.		d implemented by Circulars No. 301 and he reform in general. histrative fee for daily supervision and an ect education costs under Article 71(5) the subject of her appeal. a formal flaw in the consultation of the e reform. The wording of the preparatory l after the GCC consultation and the GCC mprising" was changed into "namely" to costs. e flaw was not such as to require re- minority concluded that the new rules mmended that the challenged decision be rm be applied. r flaw in the procedure. In particular, there ad faith when consulting the GCC. t ess of the challenged rules only insofar as rence made to ILOAT Judgments No. on of general principles of law in the <u>principle of equal treatment</u> with regard to 0. 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				

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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 <u>acquired rights</u>. 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 <u>legitimate expectations</u> 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 <u>duty of care</u> 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 partDecision
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---

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Case no:	2022/047	Joint cases:	
Date of opinion:	09/26/2024	Date of decision:	05/15/2025
Reference(s):	Art. 71 (7) SR	Category:	Salary/Allowances/Payments
	Art. 71 (8) SR Art. 3 Circ 411 Art. 1 ff. CA/D 4/21	eategery:	
Keyword 1:	Admissibility of appeal	Keyword 2:	GCC
	General decision		Consultation Duty to give reasons
Keyword 3:	Education allowance	Keyword 4:	General duty of care
-	Education and childcare allowance reform 2021 University studies Direct education costs		
Keyword 5:	Duty to give reasons		
Subject matter:	introduced by the Childcare an Administrative Council Decisio No. 411 in 2021. The Appellan The Appellant's request to rein University as direct education Office. This was the subject of <i>Receivability of the appeal</i> The Appeals Committee unan general decisions as irreceival underlying general decision wh may only request that the gene <i>Formal legality</i> The Appeals Committee unan General Consultative Committe CA Document was substantive not re-consulted. In particular to describe the components of di <i>Scope of the Appeals Committe</i> The Appeals Committee assess the Appellant was individually 4793 (2024) and No. 3540 (20) <i>Substantive legality</i> The Appeals Committee did no Appellant. In particular, it gave <i>Implementation of the new rule</i> The main question was whether University were to be consider Committee on the basis of the unanimously concluded that the considered as direct education	ad Education Allowa In CA/D 4/21 and in t also disputed the Inburse semester and costs under Article his appeal. imously considered ple. Even though and the challenging and eral decision not be imously stated a fer ee (GCC) on the re- ely changed after the the term "comprision rect educational co- tee's assessment es d the lawfulness concerned (referent 15)). ot find any breach of sufficient explanate es the claimed semt ed as direct or indition wording of the rule the exam fees and a costs (tuition fees e Appellant showed burget of the set of th	nplemented by Circulars No. 301 and reform in general. Ind exam fees charged by his child's 71(7) ServRegs was rejected by the ad the claim to set aside the challenged opellants may contest the legality of an implementing individual decision, they applied to their individual case. formal flaw in the consultation of the efform. The wording of the preparatory be GCC consultation and the GCC was og was changed into "namely" to sts. a of the challenged rules only insofar as ice made to ILOAT Judgments No. of the Office's duty of care towards the ions for its decision. ester and exam fees charged by the rect education costs. The Appeals as and its general knowledge, parts of the semester fees should be). d that the claimed semester fees at
	services. As regards exam fee integral part of the University's rules in their current wording d wanted exam fees to be exclud should have been explicitly me The minority observed that Ar	s, the Appeals Con programme and cl efine tuition fees a ded from reimburse entioned in the rule ticle 3(1) (ii) Circula	nmittee considered that exams are an losely linked to tuition. In its view the s to include also exam fees. If the EPO ement as direct education costs, this s. ar No. 411 unlawfully restricts the term
	"tuition fees" as decided by the	e Administrative Co	uncil since it introduced an additional

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criterion ("invoiced by the educational institution").

Recomn	nenda	tions

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	Allows in part. Th
Appointing	unanimous opini
Authority:	related to tuition

A 11

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

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Case no:	2022/035	Joint cases:		
Date of opinion:	09/26/2024	Date of decision:	05/15/2025	
Reference(s):	Art. 71 (7) SR Art. 71 (8) 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 General duty of care	
Keyword 3:	Education allowance Education and childcare allowance reform 2021 Direct education costs University studies	Keyword 4:	Discrimination/Equal treatment Expatriates	
Keyword 5:	General duty of care Duty to inform			
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 lescribe the components of direct educational costs. The Appeals Committee did not and 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)).			
	<i>Substantive legality</i> The Appeals Committee did n context of the present appeal.	peals Committee did not find any violation of general principles of law in the		
	to expatriates. It took note of I the former education allowand Committee's view this judgme Office for the future. The Offic particular, the Appeals Comm benefits to all staff including n aim. The Appellant has not shown disproportionate adverse effec particular that the costs should	LOAT Judgment N ce mainly supportinent reflects the state e sufficiently demo ittee considers that ationals of the cou that non-reimburse ct on him and that d be reimbursed u	principle of equal treatment with regard No. 2870 issued in 2010 which found that ng expatriates was lawful. In the Appeals thus quo at the time and does not bind the ponstrated the need for a change. In at a fairer distribution of education untry of their duty station is a legitimate ement of the costs in dispute has a his situation as expatriate is so nlike for nationals. It was noted that the nto account by the Office, with the	

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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: main03.internal.epo.org/projects/inap/inap_public.nsf/0/9F712EF869E6C0EAC1258C8C00238B55?OpenDocument

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: