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Equal Treatment and the ILO Administrative Tribunal

„Patere Legem quam Ipse Tulisti”

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List of Abbreviations

Art.	Article
CAS	Court of Arbitration for Sport
CERN	European Organization for Nuclear Research
ECHR	European Charter of Human Rights
ECtHR	European Court of Human Rights
EPO	European Patent Organization
ESA	European Space Agency
ESO	European Southern Observatory
EU	European Union
Eurocontroll	European Organization for the Safety of Air navigation
FAO	Food and Agriculture Organization of the United Nations
HQ	Headquarters
IAEA	International Atomic Energy Agency
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
IFAD	International Fund for Agricultural Development
ILO	International Labour Organisation
ILOAT	International Labour Organisation Administrative Tribunal

INTERPOL	International Criminal Police Organization
IOM	International Organization for Migration
IPI	International Patent Institute
ITU	International Telecommunications Union
OPCW	Organization for Prohibition of Chemical Weapons
PAHO	Pan-American Health Organization
PACS	Pacte Civil de Solidarité (Civil Solidarity Contract)
Q & A	Questions and answers
TRIBLEX	Case-law database of International Labour Organization Administrative Tribunal
UIBPIP	United International Bureau for the Protection of Intellectual Property
UN	United Nations
UNAT	United Nations Administrative Tribunal
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNICEF	United Nations International Children' Fund
UNIDO	United Nations International Development Organization
UPU	Universal Postal Union
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Tourism Organization

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Motto: "Contrary to the urban myth:

Decent work does not start here."

(Inscription on Staff Union's

Blackboard, ILO HQ, Geneva)

Introduction

First of all, let me give you a brief explanation of the title with regard to our subject. Thereafter, I intend to describe the main topic of the present thesis and finally, the methodology used will be dealt with.

Patere legem, quam ipse tulisti – the Latin proverb literarily means: "Submit to the law you yourself proposed". Equal treatment in the workplace constitutes the scope of the present thesis, which concept is highly promoted by the ILO and other international organizations. These organisations themselves are concerned with equal treatment cases, as well as by prosecuting them on behalf of their civil servants. The above-mentioned cases fall into the jurisdiction of the ILO Administrative Tribunal, affecting more than fifty various organizations. Therefore, it seems to be self-evident that the examination of the practice of the ILOAT may provide us with an extensive cross-section of the de facto status of equal treatment at international organizations, with special regard to the ILO, since its judgments might inform us about the organizations involved as well as about the ILO itself within which the Tribunal operates.

In our minds, the issue arose as to whether the ILO Administrative Tribunal is truly concerned with the notion of equal treatment, and does the Tribunal possess sufficient assets and appropriate background to be able to promote this idea through its decisions.

The research strategy of the thesis is a multiple-case study. Our approach is a systematic and genuine examination covering all of the equal-treatment cases accessible in the ILO TRIBLEX database. Due to the number of relevant decisions, we focused on the records in which the – alleged – unequal treatment stemmed from a well-defined attribute such as age or sexual orientation. Therefore, the thesis has dealt with other judgments based on other issues only on a statistical basis. These latter cases rest on the "general" opinion of the complainants that they were discriminated against or harassed during their employment, without expressly explaining the possible reasons for the bias.

Obviously, the present thesis cannot function without sound foundations in the field of equal treatment theories and the recent changes in international organisations. It is important to state unequivocally that the research of the above-mentioned topics does not intend to be the limit of coverage of the present paper. Thus, methodologically, we restricted ourselves to positive fact finding and to the retention of the normative assessment for the main subject of the thesis.

Similarly, it seems to be inevitable that we must look to the procedural rules and regulations of the Tribunal. However, as this thesis concentrates on the substantive law, we nevertheless try to critically sum up the relevant literature concerning procedures as well.

According to the interdisciplinary approach of Tilburg University, the present thesis intends to align itself with this idea and, apart from the law, we will refer to the basics of diversity management and we will also apply the appropriate statistical survey on the relevant case law of the ILOAT.

Although a thorough examination of case studies and selected literature constitutes the main method of the present thesis, we also highly capitalized on the study trip to ILO Headquarters in Geneva in March 2010. In the course of this study week, the author had the opportunity to conduct interviews and pose questions in writing to affected experts, as well as do research in the ILO Library. It is true that, on the one hand, the interviews and Q&A's were quite frank, and the author is expected to respect the participants' wish to withhold their identity or position in exchange for their cooperation, the information thus gleaned was invaluable. Even considering these limitations, we nevertheless express our thanks for their assistance.

Part I. Equal Treatment: Main Principles

§ 1. Differentiation and Discrimination

In dealing with equal treatment theories, it is useful initially to refer to Aristotle's classical statement, which says that like cases should be treated alike and unlike cases unlike, in proportion to their unlikeness[1]. Consequently, like cases should not be treated differently and unlike cases should not be treated the same way. According to this theory, both unequal treatment of like cases and equal treatment of unlike cases go against the grain of the Aristotelian principle. In the event of such cases, we talk about discrimination or differentiation, depending on the existence of objective justification.

In the absence of objective justification, we define the action as „discrimination" whereas the existence of objective justification results in "differentiation". Since differentiation is always objective, the possibility of advancing justification is not against the law. Subject to European Union law, a differentiation is possible in industrial relations if a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate[2]. Moreover, security of state reasons and affirmative action cases constitute further exceptions[3]. The latter cases may cause reverse discrimination, and that area of case law will be discussed in the third paragraph of this Part.

On the other hand, we can hardly consider discrimination homogeneous. In accordance with the different levels of approaches of equality principles, we can distinguish between direct and indirect discrimination. Discrimination is direct when the discriminator openly classifies it on the basis of a forbidden criterion. In these, "on its face" discrimination cases, no proof of intention is required since the mere fact of classification on the ground of an illegal standard

[1] cited in: Ben-Israel, Foubert, *Equality and Prohibition of Discrimination in Employment,* In: Blanpain (ed.), *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* (Kluwer Law, The Netherlands, 2007) p. 377-418

[2] Council Directive 76/207/EEC

[3] Ben-Israel, Foubert, *Equality and Prohibition of Discrimination in Employment,* In: Blanpain (ed.), *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* (Kluwer Law, The Netherlands, 2007) p. 377-418

satisfies a practice which is against the law. Indirect discrimination covers both seemingly neutral treatments towards groups with preference or like treatment of legally unlike cases[4].

§ 2. Equal Treatment, Equal Results and Equal Opportunities

Among various equality notions and principles, equal treatment seems to be the most neutral. Equal treatment or equal results in other words, concentrates on procedural fairness and does not deal with factual inequalities. Moreover, equal results focus on the outcome. In other words, in spite of the way in which they are achieved, the results represent the value in the eyes of the supporters of this theory. By contrast, though on the one hand equal opportunities have a more elevated ambition, notably to ensure equality from a legal point of view as well as in reality, on the other hand this school prefers equality at the beginnings (among candidates) and usually does not ensure the same measure during the whole process. Another way of saying it would be that equal opportunities deal mostly with the initial stage, while equal results deals with the final one[5].

In practice, the equal treatment doctrine leads to equal outcomes or results, whereas neutral practices surface more commonly in other fields. We have to comment that quite often the above-mentioned notions are applied in an inconsequential way, so this paper has decided to use equal treatment as the most neutral notion.

§ 3. Legal Rules and Case Law on Equality

Equal treatment principles have been introduced normatively in international law roughly six decades ago. In ILO's Declaration of Philadelphia, the principle is proclaimed explicitly as a

[4] Ben-Israel, Foubert, *Equality and Prohibition of Discrimination in Employment,* In: Blanpain (ed.), *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* (Kluwer Law, The Netherlands, 2007) p. 377-418

[5] Ben-Israel, Foubert, *Equality and Prohibition of Discrimination in Employment,* In: Blanpain (ed.), *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* (Kluwer Law, The Netherlands, 2007) p. 377-418

fundamental one. The prohibition of discrimination was incorporated into Convention No. 111 on employment and occupational discrimination.

Concerning national employment discrimination law, the United States was the innovator and the developer of the theories, which were then copied by the European Union and other countries[6]. The uniform anti-discrimination regulations characterise the American system as Title VII of the Civil Rights Act of 1964, which prohibits all forms of discriminatory practices, including discrimination against majority group members who are not traditionally the typical victims of discrimination. Reportedly, though, this monolithic set of principles does not work well in the courts' everyday practice due to the courts' efforts to uniformitize all of the cases. Moreover, not to ratify the relevant ILO Convention on employment and occupational discrimination is a highly controversial policy by the United States.

From the very beginning, equal treatment has been a substantial part of EU legislation[7]. The original Treaty of Rome already contained a provision[8] concerning equal treatment on the basis of sex with regard to equal pay. Furthermore, the principle has become an inseparable part of later declarations, such as the Community Charter and the Charter of Fundamental Rights of the Union. During the first few decades, equal treatment meant only the exclusion of sex discrimination.

Among a large number of related decisions[9] of the European Court of Justice, we will initially refer to the *Defrenne-case*[10]. In this famous case, the Court declared that if men and women receive unequal pay for equal work it is deemed to be direct discrimination. By contrast, along with the *Jenkins-decision*[11], the ECJ set out the limits of direct and indirect discrimination, stating that paying part-time workers less than what is paid to full-time workers did not constitute (indirect) discrimination, even though the majority of part-time workers were women. In *Kalanke*[12], the Court discounted national rules because they ensured an absolute and unconditional priority for women in the course of appointment and promotion while in public service. We can find a virtually opposite decision in the *Marshall-case*[13], in which the

[6] Blanpain, Bisom-Rapp, Corbett, Josephs, Zimmer, *The Global Workplace, Ch. 3 The United States* (Cambridge University Press, New York, 2007) p. 92-156
[7] Hendrickx, *EU Labour law* (Student handbook, 2008)
[8] EC Treaty Art. 119 (currently Art. 141)
[9] the cases are taken from Blanpain, Bisom-Rapp, Corbett, Josephs, Zimmer, *The Global Workplace, Ch. 7 The European Union* (Cambridge University Press, New York, 2007) p. 276-332,
[10] Case 43/75 *Defrenne v Société Anonyme Belge de Navigation Aérienne Sabena*
[11] Case 96/80 *Jenkins v Kingsgate Ltd*.
[12] Case 450/93 *Kalanke v Freie Hansestad Bremen*
[13] Case 409/95 *Marshall v Land Nordrhein Westfalen*

aforementioned (and later criticized) situation was similar to *Kalanke*. Although in both cases a female candidate was treated favourably over a male one, and both of the national rules stipulated that, in case of equality in educational and professional background, women must be treated with preference, provided that they are under-represented. In the two cases, the outcomes were different. The main distinction in the *Marshall-decision* stems from the "loophole" that, in spite of the requirement of favourable treatment toward women, the possibility of taking into account other points of view in reaching a decision is not prohibited. Therefore, the preference was not unconditional and absolute, and thus, the national regulation did not contradict European law.

The principle of the free movement of labour has significantly contributed to the development of equal treatment. As a consequence of this free movement, all kinds of discrimination on the basis of nationality are prohibited[14]. Furthermore, the movement of workers has increased significantly the respect for labour law and social security regulations[15].

Subsequently, the Amsterdam Treaty expanded the original concept, with the purpose of fighting against discrimination on the ground of racial or ethnic origin, religion or belief, disability, age or sexual orientation[16]. Since this article is not directly enforceable, two more directives were adopted, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Council Directive 2000/43EC), and the general framework for equal treatment in employment and occupation (Council Directive 2000/78EC)[17]. In the following, we deal only with employment related discrimination.

EU law equally prohibits direct and indirect discrimination. As an exception, in the event of genuine and determining occupational requirements, a proportionate and legitimate action is allowed even if it results in a difference of treatment. According to the Preamble of Regulation No. 1612/68, equality of treatment of workers is required to ensure that, in fact and by law, it is observed – with the exception of language abilities.

[14] EC Treaty Art. 12
[15] see Regulation No. 1612/68
[16] EC Treaty (new) Art. 6a
[17] Hendrickx, *EU Labour law* (Student handbook, 2008)

We can mention, although it is not the subject of the present thesis, since case law is often contradictory, it is important how the organizations deal with diversity issues in practice[18].

[18] for forther information please see: Kalev, Kelly, Dobbin, 'Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity policies' American Sociological Review 2006, Vol. 71,
Ely, Thomas, 'Cultural Diversity at Works: The Effects of Diversity Perspective on Work Group Processes and Outcomes' Administrative Science Quarterly, Jun 2001,
Milliken, Martins, 'Searching for Common Threads: Understanding the Multiple Effects of Diversity in Organizational Groups' Academy of Management Review, 1996, Vol. 21,
Kreitz, 'Best Practices for Managing Organizational Diversity' The Journal of Academian Librarianship, March 2008, Vol. 34,
Luijsters, van der Zee, Otten, 'Cultural Diversity in Organizations: Enhancing Identification by Valuing Differences' International Journal of Intercultural Relations 32 (2008)

Part II. International Organizations and the Administrative Tribunals

Chapter 1. Growing Responsibility of the International Organizations

§ 1. Transparency

For a long time, we have learned that architecture is a revealing expression of public philosophy[19]. During the last decades, public buildings have become transparent, suggesting and promoting a similar thought. In addition, we have also understood that physical spaces significantly determine the real level of the importance of employees (or departments) symbolized by the settings[20].

The ILO Administrative Tribunal is situated on the rez-de-chaussée in the Geneva Headquarters building. You descend the narrow stairs behind the elevator, cross a section packed with abandoned furniture and you will find yourself in the Tribunal's dim-lit subterranean corridor. Not even the majority of civil servants working in the building know exactly the location of ILOAT. Is there any link between the location and philosophy, or it is just a coincidence? Does the location refer to the transparency of the Tribunal? The author does not intend to deal with further connections between these two things, but only poses the question whether it is accidental or not. All in all, this thesis will examine the role of transparency and accountability in the international organizations and describe the substance of the transition within these players.

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[19] van Bijsterveld, *The Empty Throne* (Lemma publishers, Utrecht, 2002)

[20] „Every student of human institutions is familiar with the standard test by which the importance of the individual may be assessed. The number of doors to be passed, the number of his personal assistants, the number of his telephone receivers–these three figures, taken with the depth of his carpet in centimetres, have given us a simple formula that is reliable for most parts of the world. It is less widely known that the same sort of measurement is applicable, but in reverse, to the institution itself." C. Northcote Parkinson, *Parkinson's Law* (Houghton Mifflin, Boston, 1957). Obviously this source is a sarcastic and ironic one. Apart from the style, however, we do believe in most of its paragraphs.

It has been clear for some time that traditional constitutional law principles do not generally prevail at international organizations[21]. The reasons abound. Among others, these international entities are not elected by citizens who would, typically, not be subject to the actions of these organizations anyway. Therefore, legislative, executive and judicial powers are – at least partially – absent. Consequently, the traditional principles as legitimacy, ministerial responsibility or separation of powers do not primarily control the functions of the organizations.

Although there is not a sole definition of the term "legality", academics agree on some common elements, such as parliamentary control over the government and the system which is based on universal suffrage. As for citizens, legality means the prevalence of *nulla poena sine lege* and *nullum crimen sine lege* principles. Self-evidently, legality is a formal doctrine of the written law, procedurally applied. At the international level, current developments show that international law has moved away from the principle of strict legality and has been changed to the new doctrine of transparency. The main reasons of this transition, on the one hand, stem from the fact that basic documents, charters and treaties of the international organizations are hardly changeable compared to the issues of national legislations, due to the relatively large number of participants and the ever-changing political climate. As a consequence, judicial power attains a more elevated ground to fill the arising gaps. On the other hand, new control mechanisms have been introduced; as the rule of law does not only require a technical significance, but rather it has a wider significance in the information society, absorbing legal stability through flexibility, foresee ability and societal dynamics. Within these circumstances, on the field of control and supervision, peer reviews and self-regulatory solutions have more frequently replaced traditional hierarchic mechanisms. Due to the requirement of fairness, access to the law has became one of the most important conditions and, as a parallel of this phenomenon, a new legal infrastructure has been established, including ombudsmen and NGO's.

ILO has responded to these challenges by creating the function of an ethics officer and a mediator. The ethics officer's functions cover promotion of ethical standards, consultation about ethical issues and protection of whistleblowers[22]. The Office of the Mediator is an independent, impartial, neutral and confidential position for resolving work-related problems

[21] van Bijsterveld, *The Empty Throne* (Lemma publishers, Utrecht, 2002)
[22] http://www.ilo.org/public/english/ethics/index.htm, accessed 21 May 2010

through dialogue and mediation[23]. However, this procedure is highly informal and is certainly not a replacement for other forms of dispute resolution, but can be efficient in the prevention of conflicts and with resolving sensible cases, such as sexual harassment.

Staying with our main topic, we emphasise the importance of transparency in judicial settings. Initially, transparency means access to the courts or tribunals and the right to a fair trial. Moreover, they emphasize the reasoning behind a decision rendered: "The judge must explain why he has reached his decision. The question is always, what is required of the judge to do so, and that will differ from case to case. Transparency should be the watchword."[24]

We can conclude that transparency is a higher level of legality. It brings a greater involvement of, a better access and closer governance, to the citizens. Although the legal community is still in our debt to properly define the notion of transparency, we hardly ever see public legal documents without the mention of this term.

§ 2. Accountability

Transparency is also being seen as a precondition of accountability[25]. The classical model of a nation state can be defined by *Trias Politica*: the separation of legislation, administration and judicial power. During the early period of the genesis of nation states, judicial decision-making was seen as an application of legislation in conflict situation. Parallel to the development of power structures, judicial function has became rather an element of "checks and balances" especially in the United States. Even though *Trias Politica* does not characterise the international organizations, judicial function has remained a part of the controlling mechanism but already in a larger setting of accountability. In this new role, judicial power reflects the acts of member states and makes decisions in debates between them or between citizens and the state, instead of dealing with the international organization itself. The role of the administrative tribunals is deemed to be different since these organs supervise the individual acts of administrative bodies of international organizations. Therefore, the independence of the judiciary power has come to the fore.

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[23] http://www.ilo.org/public/english/mediate/index.htm, accessed 21 May 2010

[24] Judge Henry in *Flannery v Halifax Estates Agencies Ltd*., 2000, 1. W.L.R. 377 (C.A.) in: lecture of van Bijsterveld, Tilburg University Law School

[25] van Bijsterveld, *The Empty Throne* (Lemma publishers, Utrecht, 2002)

Similarly, as direct ministerial responsibility cannot be enforced in international settings, in the absence of traditional, elected parliamentary bodies, judicial independence requires new patterns as well. Since judicial decision-making is connected rather to states' activity than to those of the international organizations, the requirement of independence is definitely more important from the member states than the organization itself. However, the situation is different concerning administrative tribunals. Whereas, these tribunals have supervisory competence over the international administrative bodies, their independence from governance is crucial indeed. Moreover, the tribunals have to distinct from other jurisdictions and provide spiritual independence to the judges themselves[26]. How ILOAT satisfies these accountabilities will be discussed in a later chapter.

Chapter 2. The System of International Tribunals

§ 1. International Civil Servants

After the Second World War, parallel to the development of international organizations, it has become important to protect international civil servants against the organizations themselves[27]. But who are these international civil servants? There is not even a generally accepted definition at our disposal, only some common elements. According to them, an international civil servant shall be independent of their country of origin; they are entitled to deal solely with their functions, and furthermore they are beholden to a separate master[28].

§ 2. Immunity at UN Family

As a consequence of the legal personality of international organizations, they possess immunity from national jurisdictions. Therefore, their employees, the international civil

[26] Germond, *Les Principles Généraux selon le Tribunal Administratif de l'OIT* (Éditions Pedone, Paris, 2009) p. 310
[27] Pellet, Ruzié, *Les Fonctionnaires Internationaux* (Paris, 1993, Presses Universitaire de France) p.94
[28] Pellet, Ruzié, *Les Fonctionnaires Internationaux* (Paris, 1993, Presses Universitaire de France) p.9

servants,[29] should not file labour related suits at domestic courts against the employer, in the event of a legal dispute. According to the ICJ's Advisory Opinion,[30] the simple restriction would "hardly be consistent" with the general values and principles of the UN and other international entities. Consequently, various legal tracks have been established for grievances[31]. However, other authors emphasise the absence of explicit treaty-based obligations to carry out alternative dispute settlement mechanisms; they acknowledge the direct connection between immunity and the desire to handle employment-related issues[32].

Several organizations, UNESCO, WHO, UNICEF and UNIDO, only to name a few, following the experiences of Scandinavian countries, launched the institution of ombudsman to mediate disputes. This solution was highly popular especially during the 1970's and has been vigorously debated since. Although ombudsmen are independent from the hierarchy, they are named by the director general of the organization. Moreover, the traditional bureaucratic way has been facilitated with them, but the influence of ombudsmen has remained limited. Apart from ombudsman, another soft track, a consultative approach, exists along with other methods. We have referred earlier to ILO's ethics officer and mediator is this respect.

The discretional nature of these methods constitutes the main problem with the consultative track. So, another frame of legal remedy has been introduced: the various administrative tribunals[33].

Within the UN family, the ILOAT is not the single administrative tribunal. The United Nations launched its own tribunal, which was established in 1950 for the purpose of resolving employment-related disputes. The UNAT's competence extends to UN Programs and Funds as well as to other international organizations (International Maritime Organization, International Civil Aviation Organization) which have accepted the jurisdiction of the

[29] Even though the Rules and the Statutes of ILOAT use permanently the notion of „officials"
[30] Effects of Awards of Compensation Made by the United Nations Administrative Tribunal (Advisory Opinion) I.C.J. Reports, 1954 p.47
[31] Pellet, Ruzié, *Les Fonctionnaires Internationaux* (Paris, 1993, Presses Universitaire de France) p. 95
[32] Reinisch, 'The Immunity of International Organizations and the Jurisdiction of their Administrative Tribunals' Chinese Journal of International Law, Oxford University Press, 2008. 7.
[33]Böhre, von Dewall, Middel, Steer, 'The (Non-) Application of International Law by the ILO Administrative Tribunal: Possible Legal Avenues for Establishing Responsibility' (paper of Amsterdam international Law Clinic 2004) <http://www.iowatch.org/legal/amsterdam.pdf> accessed 20 February 2005

UNAT[34]. Apart from UNAT, a separate tribunal has been established at the World Bank and at the International Monetary Fund, in 1980 and in 1992, respectively.

The significance of the ILOAT arises from the widespread acknowledgement of its jurisdiction. From 1947, ILOAT has heard complaints from serving and former officials of the ILO and from 54 other international organizations which recognise the power of the Tribunal[35]. The number of the co-operating agencies is still growing. According to the author's estimation, the ILOAT's jurisdiction may cover 35-40,000 international civil servants.

By agreement[36], the ILO enjoys absolute diplomatic immunity from Switzerland, its host country. Article 6 of the Agreement stipulates that ILO shall enjoy immunity from every form of legal process except in so far as this immunity is formally waived by the Director of ILO. Moreover, Article 17 adds that all officials of the ILO, irrespective of nationality, shall enjoy exemption from jurisdiction for all acts performed in the discharge of their duties. Obviously, this immunity covers the procedures of ILOAT as well – at least in theory.

§ 3. Requirements of Due Process

The right to due process and a fair trial results from the International Covenant on Civil and Political Rights and the European Convention on Human Rights[37]. As Art. 14 (1) of ICCPR stipulates: "… everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". Art. 6 of ECHR sum it up a bit differently: „everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

Similar phenomenon characterise the development of the European Union. The EU has gradually acknowledged the crucial role of human rights, in the absence of explicit treaty, based on the jurisdiction of European Court of Justice. The jurisdiction declares that human

[34] http://untreaty.un.org/unat/Overview.htm accessed 14 March 2010
[35] http://www.ilo.org/public/english/tribunal/index.htm accessed 14 march 2010, for the list see Annex ..
[36] Agreement between the Swiss Federal Council and the International Labour Organization concerning the legal status of the International Labour Organization in Switzerland, 1946
[37] Kingsbury, 'The Concept of „Law" in Global Administrative Law' The European Journal of International Law, Vol. 20, No. 1

rights form part of the general principles of law, and therefore, shall be indirectly binding. We can cite here the *Nold-case*[38], in which the court expressed that „fundamental rights form an integral part of the general principles of law".

In *Nold*, the applicant, a coal wholesaler requested the annulations of a Commission's Decision in which a merger was authorized creating a new, integrated coal supplier. The Decision laid down new conditions stipulating the minimum quantities that dealers must undertake to purchase in order to acquire entitlement to direct supply from the producer. With these new regulations the applicant has lost its entitlement to direct supplies and is relegated to the position of having to deal through an intermediary, with all the commercial disadvantages which this involves. The applicant asserted that its fundamental rights have been violated, notably his right to pursue a business activity and his proprietary right since the new rules have jeopardised the very existence of the company.

Although the ECJ dismissed the application, as the disadvantages claimed are in fact the result of economic changes and not the result of the challenged decision, the judgment is a paramount in the European development of fundamental rights. For the first time the Court expressed that fundamental rights form an integral part of the general principles of law. Moreover, the decision explicitly stated that the Court is bound to draw inspiration from constitutional traditions common to the Member States, and it cannot therefore uphold measures which are incompatible with fundamental rights recognized and protected by the Constitutions of those States[39]. Similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law.

As we are going to experience in the present thesis, the ILOAT has not possessed a similar decision that the *Nold* judgment.

§ 4. Challenging the Immunity

As we have seen before, theoretically, the international organizations are covered with immunity. In reality though, the European Court of Human Rights has broken its undisrupted

[38] *Nold*, C-4/73, ECR 1974, 491
[39] *Nold* judgment paragraph 14

practice and established the relative immunity in *Waite and Kennedy* decision[40] stating that the jurisdictional immunity of international organizations highly depends on the availability of reasonable alternative means and other point of views detailed hereinafter.

In that decision two British nationals employed by also a British firm were placed at the disposal of the European Space Agency, in Germany. A year later their company let them know that the cooperation with the Agency would terminate and consequently their employment will be expired as well. The applicants instituted proceedings before local labour court, arguing that pursuant to the relevant German regulation on temporary workers, they had acquired the status of employees at ESA. The labour court at the first instance found that ESA had validly relied on its immunity from the jurisdiction due to the convention which founded the Agency. The competent labour appeals court and subsequently the Federal Labour Court as well as the Federal Constitutional Court dismissed the appeals of the applicants. Moreover, the applicants unsuccessfully requested the British and German governments to intervene with the ESA with a view to waive the immunity. Thus, the proceedings before the German labour courts had concentrated on the question of whether or not ESA could validly rely on its immunity from that jurisdiction.

Finally, the ECtHR examined whether this degree of access limited to a preliminary issue was sufficient to secure the applicants' "right to a court", having regard to the rule of law in a democratic society. Admittedly, the applicants were able to argue the question of immunity at three levels of German jurisdiction but, as they maintained, the right to access to the court was not met merely by the institution of proceedings. On the contrary, this right contains the requirement that the court examine the merits of the claim. The applicants considered that the courts had disregarded the priority of the human rights based on international agreements over the immunity of the organization.

The ECtHR focused on the legitimate nature of the immunity's objective and the proportionality. The Court founded the objective legitimate as the international organizations could perform properly their duties provided they were not forced to adapt to different national regulations. As for proportionality, the Court shared the defendant's opinion that the test of proportionality cannot be applied in such a way as to compel an international organisation to submit itself to national litigation in relation to employment conditions prescribed under national labour law. Moreover, the ECtHR has taken into account the

[40] *Waite and Kennedy v Federal Republic of Germany*, European Court of Human Rights, 26083/94

possible alternative ways (ESA Appeals Board, damages from the company) which were available for the applicants.

For these reasons the Court dismissed the application. Notwithstanding the judgment, the importance of *Waite and Kennedy* should not be underestimated. The decision drew the attention to certain criteria under which international organizations may not exempt. From this decision, the test of legitimate objective, proportionality and the availability of alternative remedies will take part of the control over international tribunal's practice.

Some of the other courts have concluded, in case of non-availability or inadequacy, that the level of protection may justify the withdrawal of immunity in order to avoid a denial of justice, which would be contrary to human rights requirements[41].

Since ECtHR's *Waite and Kennedy* decision made international organizations' immunity relative and conditional, national courts are also tending to change their traditional views towards immunity. For instance, a French appellate court rejected UNESCO's plea of immunity and invoked the said ECtHR-decision[42]. In the *Siedler* decision, the Brussels Labour Court of Appeal found that internal procedures within an organization did not secure a fair trial, especially in the absence of public hearings and published decisions[43].

In this chapter, it was discussed thus far that normal courts can interfere if an inadequate level of reasonable alternative means are found. But the further question arises, whether the decisions of administrative tribunals can be challenged in normal courts. Subject to several national courts' decisions[44], it seems that the decisions of international organizations are beyond the power of review of national courts[45].

[41] Reinisch, 'The Immunity of International Organizations and the Jurisdiction of their Administrative Tribunals' Chinese Journal of International Law, Oxford University Press, 2008. 7.
[42] *Unesco v. Boulois,* Tribunal de grand instance de Paris, 1997 In: Yearbook of Commercial Arbitration 1999
[43] *Siedler v Western European Union,* Brussels Labour Court of Appeal, 2003, Journal des Tribunaux (2004), 617
[44] Among others: *Dalfino v Governing Council of European Schools,* Belgium, Conseil d'État, 1982, 108 ILR 638 and *Popineau v Office Européen des Brevets,* France, Conseil d'État, 1995, No. 161.784.
[45] Reinisch, 'The Immunity of International Organizations and the Jurisdiction of their Administrative Tribunals' Chinese Journal of International Law, Oxford University Press, 2008. 7.

Part III. The ILO Administrative Tribunal

Chapter 1. The Genesis of Statute and Rules

§ 1. Competence

The statute of ILOAT was adopted in 1946. Although the Tribunal had been working since 1927, there were only a few cases before it[46]. Under the provisions of Art. X. 2, the Tribunal established its rules only in 1993. The Rules of the Tribunal add important details to the Statutes.

The statute facilitated the possibility for other international organizations to accept the jurisdiction of ILOAT. The organizations need only to fulfil a few conditions to be able to take this step: An organization has to be permanent and clearly international in character, with respect to its membership, structure and scope of activity. Furthermore, the organization must not be required to apply any national laws in its relations with its official functions, and it shall then enjoy immunity.

According to Article II. of the Statute, the Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials, and of such provisions of the Staff Regulations or Staff Pensions Regulations, including wife or husband and children of the officials. Moreover, the Tribunal settles any disputes concerning the compensation provided for in cases of invalidity, injury or death incurred by an official in the course of employment, and shall be competent to hear disputes arising out of contracts to which the International Labour Organization is a party and which provide for the competence of the Tribunal in cases of dispute with regard to their execution. As to the officials, the Tribunal deals with them even if their employment has ceased and also with any person on whom the official's rights have devolved upon his death.

[46] Comtet-Simpson, 'The ILO Administrative Tribunal' http://www.ilo.org/public/english/tribunal/download/articleccenglish.pdf, accessed 1 May 2010

§ 2. Applicable law

The Article in question refers to the terms of appointment and the provisions of Staff Regulations, but there is no further indication to the applicable law[47]. The Tribunal occasionally mentions various legal principles and states that "the general principles enshrined in the Convention[48], particularly the principles of non-discrimination and the protection of property rights […] are part of human rights, which, […] in compliance with the Tribunal's case law, apply to relations with staff"[49]. In this case where the EPO was the involved organization, the ILOAT found applicable the ECHR since all of the EPO's member states signed this Convention. It is still unclear whether the ECHR is applicable concerning other organizations in which member states did not ratify it. Furthermore, another question arises whether the ECtHR's decisions are ever relevant to the ILOAT cases or whether the Tribunal's previous precedents have any legally binding effect or not. Particularly, that in an earlier judgment[50] the ILOAT explicitly declared that the Tribunal was not depend on the judgments of ECJ. It is not perfectly clear that the distinction between the ECtHR's and the ECJ's jurisdictions is part of the ILOAT policy or the Tribunal have been only negligent to refer properly to the previous judgments. The situation is a bit distinct concerning the ILOAT and the UNAT, since the ILOAT harmonise its decisions with those of the UNAT. We will examine, in the present thesis, contradictory decisions, some of which refer to reasons of alteration while others are reluctant to mention them.

§ 3. Personal scope and receivability

In light of the ILOAT's practice to define "official" broadly, one can hardly define access to the Tribunal as complete. In *Judgment No. 307* the Tribunal accepted a complaint in which the related complainant was without an actual appointment but was only covered by a binding contract; in other words, there was an intention to conclude a subsequent contract which was never fulfilled. In *Judgment No. 2382,* the ILOAT clarified that a demonstrable intent is needed on the part of the organization. By contrast, in *Judgment No. 1964,* the Tribunal did not accept a claim from a person who did not comply with medical examination requirements

[47] Reinisch, Weber, 'In the Shadow of Waite and Kennedy' International Organizations Law Review, 2004, 1.
[48] i.e. European Convention of Human Rights
[49] In Judgment No. 2292
[50] Judgment No. 785

prior to commencing employment, and who unsuccessfully referred to the existence of a binding contract. Moreover, those who have casual employment with an organization do not have a right of access to the Tribunal, as they are not covered by the staff regulations of the given organization[51]. We will deal with the equal treatment issues of these temporary workers subsequently[52]. Additionally, unsuccessful candidates, interns or even external consultants do not have the right to access either. The basic problem concerning the reluctance towards these kinds of workers is that there are no alternative means of legal redress because of the immunity of the international organizations.

A complaint is deemed admitted only if the decision attacked is final, and the claimant has already exhausted all other means of redress. The complaint must be filed within 90 days from the date of notification or publication. It is important to note that the filing does not stay the execution of the attacked decision.

§ 4. Composition

The Tribunal consists of seven judges; all of them have to be of different nationalities. The current president of the Tribunal is Ms Mary G. Gaudron from Australia, and the other judges come from Senegal, Argentina, Switzerland, Italy, Canada and France. It is clearly observable that they are mainly from industrialized countries. The judges are appointed for three years by the Conference of ILO, upon the proposal of the Director General. Therefore, DG's role is crucial in the selection, and as an earlier document observed, this role is not officially established but is "in keeping with long-standing practice"[53].

As we've referred to above[54], judicial independence has gained an important role in international settings as well. ILOAT's judges are appointed for three years, and it is possible to re-appoint them for a further three-year term. It seems that precarious work is as widespread among judges as it is among the rest of the ILO staff. Consequently, a judge might be biased towards the organization as he is expecting a re-appointment. The shorter the

[51] Comtet-Simpson, 'The ILO Administrative Tribunal' http://www.ilo.org/public/english/tribunal/download/articleccenglish.pdf, accessed 1 May 2010.
[52] see Part III. Chapter 3. Paragraph 9.
[53] http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_gb_298_pfa_21_2_en.pdf, accessed 21 May 2010
[54] please see Part II. Chapter 1

term of the appointment, the bigger is the menace of a judge being biased. For that reason, experts suggest to increase the length of appointment and eliminate the possibility of re-appointment[55].

A further question arises about the spiritual independence of the judges. Although dissenting and concurring opinions are published along with the decisions, these opinions are extremely rare; one can find only in 19 of 2,618 judgments[56] such instruments.

§ 5. Procedure

The procedure at the Tribunal is certainly contradictory[57]. The complaint will be followed by a reply on behalf of the defendant, subsequently by the complainant's rejoinder and a surrejoinder from the other party[58]. If no such documents are filed within the 30 day limit, the case will be closed at this point. Moreover, the Tribunal may, on its own motion or on the application of one of the parties, hear experts or other witnesses[59]; however these types of actions are very rare.

A trial unit is composed of three judges or, in exceptional cases, five or even seven, by the request of the President of ILOAT. The Tribunal decides at its own discretion whether to hold oral proceedings and whether the hearings are to take place in public or *in camera*. Apart from just the possibility, ILOAT has virtually never held oral hearings. In our opinion, this procedure is problematic due to the cited articles, (Article 14 (1) of ICCPR and Article 6 (1) of ECHR). We have already mentioned why all the elements of a fair and impartial trial constitute a paramount interest for ILOAT and other international tribunals. In absence of oral hearings, there is no opportunity to cross-examine individuals involved in sensitive cases. We can hardly consider to be a well-founded argument, especially since, in equality cases, oral hearings form parts of previous stages of grievances that considering the simple administrative nature of ILOAT, hearings would be redundant and unnecessary. On the

[55] Opinion about ILOAT Reform Prepared by Geoffrey Robertson, http://www.ilo.org/public/english/staffun/info/iloat/robertson.htm, accessed 31 May 2010
[56] until mid-2007 in: Germond, *Les Principles Généraux selon le Tribunal Administratif de l'OIT* (Éditions Pedone, Paris, 2009) p. 310
[57] Pellet, Ruzié, *Les Fonctionnaires Internationaux* (Paris, 1993, Presses Universitaire de France) p.107
[58] Rules of the ILOAT Art. 8 -9
[59] Rules of the ILOAT Art. 12

contrary, oral hearings before the judicial phase often cannot be effective, particularly in the event of sexual harassment or mobbing, if the involved organization itself provides the facilities for the process. In these special cases, it would be more professional to believe the complainants that a hearing is necessary and ensure a forum at the request of the claimant.

A good example can be found in the *Cachelin* case[60] to prove the vital importance of oral hearings. In that (first) case the complainant cited an unlawful practice of the organization concerning "golden handshakes", and cited some 80 different cases as a background for the argument. She requested a hearing of some of the witnesses, but the Tribunal refused it. The first case has ended with the observance that further evidence was needed. Meanwhile, the complainant amassed the written testimony of some relevant and involved persons and filed them with the Tribunal. Continuing the case, ILOAT examined and accepted the facts based on the testimonies and, mainly due to this demonstration, quashed the attacked decision of the organization. Several observations can be made: It seems that not the content but the form of the evidence was what did not suit the "mood" of the Tribunal. Within these circumstances, only the complainant's aptitude saved the day, notably, she did not give up, considering the importance of the facts, and that she was never told that the evidence would be found acceptable in another form.

This practice of the ILOAT is unsatisfactory and not only because written testimony may be manipulated with ease compared to oral cross-examination. It is conceivable, that the reluctance toward oral hearing results from the extended workload of the Tribunal. Moreover, undoubtedly it would be expensive to make parties or witnesses travel to the headquarters. On the other hand, it is not unprecedented to resolve this problem with the help of modern technology. At the Court of Arbitration for Sport, Presidents of the Panel have occasionally - and exceptionally - authorized the hearing of witnesses and experts via tele- or video-conference[61]. Practitioners concerned with this issue, who were interviewed at the ILO Geneva HQ about this possibility, would hail this cost-efficient solution which would enhance transparency of ILOAT processes as well.

[60] Judgment No. 767
[61] Rules of Court of Arbitration for Sport 44.2

§ 6. Representation

Pertaining to Art. 5 of the Rules, a complainant may represent himself or be represented by an agent; these can be former officials of an organization which recognises ILOAT or UNAT jurisdiction or a member of a bar association of any of the member states or, with the consent of the President, anyone who is qualified to deal with issues related to international civil service. The same rules are applied for the defendant's representation, with a notice that „self representation" is chosen, by a serving the official with this intention.

§ 7. Decision, Appeal, Review

If the complaint is well founded, the Tribunal orders the rescinding of the decision attacked. In the event such rescinding is not possible or advisable, the Tribunal awards compensation to the complainant. The Tribunal makes decisions by majority vote; however, as earlier was mentioned, dissenting and concurring opinions are published as well. The judgment is final and without appeal. The reasons for the decision must be stated.

However, the decisions of the Tribunal are final and there is no ground to appeal them; theoretically, it is not impossible to request the revision of the decisions. The decision is *res iudicata* on the one hand, and the Tribunal does not allow an application to review it on the ground of mistake of law or mistake in the evaluation of the facts and the failure to admit evidence. On the other hand, only once in 160 cases did the ILOAT accept the application for review[62].

The ILOAT emphasises[63] that it is an "administrative tribunal". Therefore, for example, in the *Tévodjré* case[64], the decision of ILO's Governing Body was not judged as an administrative but policy decision even though it affected the promotion of an official[65]. Subject to the self-

[62] in Judgment No. 1255
[63] Comtet-Simpson, 'The ILO Administrative Tribunal' http://www.ilo.org/public/english/tribunal/download/articleccenglish.pdf, accessed 1 May 2010. Ms. Comtet is the current registrar of ILOAT
[64] Judgment No. 508
[65] The complaint was launched by an unsuccessful candidate for the position of Director-General who was civil servant of the ILO. Apart from the nature of the impugned decision, the Tribunal found that the complainant

definition, its purpose is to examine complaints by officials that the rules and regulations governing their employment relationship have been applied to them unfairly or have been ignored, and to ensure that administrations are appropriately brought to book for any abuse of authority or arbitrariness in the application of such rules and regulations. It is often stated that ILOAT has a due regard for international legal principles as well as to ILO's core standards.

In conclusion, the Statute and Rules, as well as the practice of ILOAT concerning fundamental rights, are not exempted from debate. ILO's Staff Union drafted a working paper containing 40 bullet points with a view to reform the ILOAT[66]. As a result of the interviews about ILOAT, another alleged problem cropped up, such as lawyers representing complainants were not always permitted to participate at the hearings, fundamental documents being classified as confidential and access to them refused and the absence of a neutral Registry of documents system within the Tribunal. We could not verify these allegations, and therefore, the present thesis deals with facts obtained from public sources.

Chapter 2. ILOAT Case Law on Equal Treatment Issues

§ 1. Database TRIBLEX

In the course of working on the present thesis, we examined a total of 165 cases. We were working with the ILO TRIBLEX database which contains all of the cases ILOAT has ever dealt with. Although the Tribunal's official language is French, generally a bilingual (English and French) version is available, including extracts from the judgments. We heavily capitalized on the search options of the database as a springboard to achieve our research's ambition. Pre-defined keywords were at our disposal containing the notion of "equal treatment" as well. Therefore, the author was able to select relevant cases; however, we have to mention that TRIBLEX is not exempt from some errors. By the definition of the keyword, 197 cases were marked as related to equal treatment, but the selected relevant database

as civil servant with a right to access to the Tribunal would have an unfair advantage over the candidates who, not being officials of ILO, do not have such access, if he had a cause of action

[66] http://www.ilo.org/public/english/staffun/info/iloat/bulletpoints.htm, accessed 31 May 2010

contains “only” 165 decisions. All in all, we examined all the decisions available and we categorized them in proportion to their main scope.

§ 2. Selection of Cases

Pertaining to the nature of the (alleged) discriminatory actions, we distinguished “general” cases in which the exact type of discrimination was not defined but the complainant alleged to have suffered as a result of an objectively non-justifiable situation. In these cases, the complainants referred to discrimination but they did not articulate which characteristics the discrimination was based on. On the other hand, the second type of the cases contains well defined discriminatory practices. The present paper addresses only the latter cases in detail, but also deals with “general cases” but only from the statistical point of view. We applied the name of the cases[67] if they were marked, in the event of a hidden name we used the number of the judgment.

§ 3. Distribution among Organizations

As the Annex 2. demonstrates, equal treatment judgments are divided among twenty-one international organizations, in other words, roughly one-third of organizations which have accepted the Tribunal’s jurisdiction. Thus, two-thirds of the subject organizations have never had equal treatment-related cases. Naturally, the number of civil servants of affected international organizations and the length of subordination to ILOAT jurisdiction determines the number of the possible cases. Additionally, sometimes one decision of the defendant affected a large number of employees, resulting in a larger number of similar cases. After all, it is remarkable that more than a half of the total cases (86) are connected to just four organizations, namely European Patent Organization, Food and Agriculture Organization, International Labour Organization and Eurocontroll, with special regard to EPO which is responsible for 41 cases alone, nearly one quart of the aggregate number of the cases. This

[67] after the name of the complainant

paper does not have the intention to examine the causes why the given organizations are well overrepresented; we only note it as a ground for possible further research.

§ 4. Timely proportion

Annex 3. shows the proportion of the cases per five-year cycles. We found that periods shorter than five years scatter without any good reason and therefore a five-year cycle can show the current trends more accurately. It's easy to observe that before 1974 virtually no equal treatment cases were detected[68]. From the 1980's, the Tribunal's workload was equally distributed per cycle, with the exception of the period from 1990 to 1994, during which the number of equal treatment cases increased significantly—nearly doubled— then returned to the "normal" figures. We found that, in spite of the constant increase in the number of subject organizations, (except this peak period), the number of cases has remained constant. Again, further research would be needed to realize whether some sort of "fashion" caused the elevated number of cases during the early '90's or whether other factors contributed to it as well.

§ 5. Proportion by Outcome

According to Annex 4. chart, the relative effectiveness, from the point of view of the complainant shows rather negative results on the whole. One hundred and sixteen cases out of one hundred and sixty-five have concluded with the dismissal of the claims. We divided into two parts the decisions in which the judges accepted the complainant's position, making a distinction between partially and wholly accepted points of view. We note, however, that a partial acceptance does not necessarily mean the balance between the parties' positions, due to the often exaggerated nature of the claims. In the latter cases, complainants were expected to be satisfied with the more realistic, partial acceptance of their position. Moreover, even in cases where claims were accepted, as a whole, they did not represent complete triumph for the complainant since the damages awarded generally appeared to be less than would have been

[68] TRIBLEX refers to only four cases

justified. The present thesis opens the door for further papers to prove these observations accordingly.

§ 6. Grounds of Discrimination

Returning to our main scope of activity, we classified the cases in which the grounds for the discrimination were articulated, in proportion to their similarity. We found 62 such cases. We established groups ("pools") of harassment-related cases, including sexual, moral or other harassment (5 cases), age discrimination (6), gender discrimination (4), same-sex partnership discrimination (2), discrimination between internal and external candidates (7), discrimination against temporary workers (3), discrimination by location (10), by nationality or language (18), by educational background (4), by family background (2), by union membership or political opinion (2) and one equal pay judgment[69].

Chapter 3. Analysis of Some High Profile Cases

In this chapter, we will examine the nature and the enforcement of the general principles of equal treatment. Subsequently, we will discuss in detail eight grounds: gender, same-sex partnership, harassment (moral or sexual), age-related equal treatment cases, discrimination by family status, nationality, internal-external status and discrimination against temporary workers. Firstly, we developed the selected case groups as to whether they contained contradictory decisions, with one exemption: the discrimination against temporary workers. We have eventually chosen this type of cases because they reflect to an important problem in a larger context. Secondly, we needed a sufficient number of cases in the selected pools. Thus, we ruled out equal pay and political and union membership related discrimination cases. And finally, we looked through the relative importance of the remaining pools. We excluded location, educational background as these groups of cases are rather allowance-orientated

[69] In some cases more than one cause of discrimination were referred

without the nature of containing further lessons. As a conclusion, we examine at the end of this chapter how the ILOAT fulfils the due process requirements.

§ 1. General Practice of Equality at ILOAT

The Tribunal pronounced early in the *Khelifati* judgment[70] that it is not a violation of equal treatment principle if a civil servant is punished due to his illegal action, while other civil servants were not subjected to disciplinary measures for similar activity. In this case, the claimant, who was found in a drunken state twice, resulting in the termination of his contract, could not argue the equal treatment principle on the ground that other employees' rule-breaking behaviour excused his own conduct. A similar concept was introduced in the *Cachelin* case[71], where ILOAT articulated that precedent has it that one official may not rely on the unjust enrichment of another: equality in law does not embrace equality in the breach of it. Interestingly enough, the Tribunal finally accepted the claim—albeit only partially—although not on equality grounds but by applying the prohibition of retroactivity[72] principle.

The *Cachelin* decision was about ILO's Staff Regulation Art. 11.16, which stated that in the event of termination of an appointment initialized by the Director-General, with the consent of the civil servant, the terminated official can receive a generous indemnity, provided that the action would be in the interest of efficiency at work. In this case, it was the official herself who initiated the termination because of her health and so, formally, the criteria of Staff Regulations were not fulfilled. After the refusal to indemnify the complainant, the ILO circled around a declaration about the changes in termination. The complainant argued successfully that, notwithstanding her initiated action; the practice of "golden handshake" was well-established within the organization. What is more, in certain cases, re-appointment was allowed even though like indemnity was already paid, and its condition was to ensure better efficiency. The claimant asked for an oral hearing so she could call six former employees as witnesses, who received indemnity, but the ILOAT refused it. In the second process, though, the written testimonies of the above-mentioned people were admitted and considered by the

[70] Judgment No. 207, in 1973
[71] Judgment No. 767
[72] Judgment No. 792. The first process (J. No. 767) finished with further considerations, which were the second judgment.

Tribunal. Finally, the Tribunal found the application of the said circular to be invalid for the case, because it was commenced after the termination of the claimant's contract, and it quashed the impugning decision.

And again: in *Judgment No. 1080*, the complainants objected to the amount of their termination compensation and pointed out that another official received a much larger sum, although, through an error made by the organization. The Tribunal declared that "the unlawful handling of one case does not entitle the complainants to the same unlawful treatment."

We could continue with these examples[73]; instead, we conclude that the ILOAT's practice is yet unchanged in this respect.

In *De Gregori*[74], the ILOAT stated that the principle is not off base that all staff members must be equally treated; however, this would mean the abolition of the grade system. Instead, staff members in similar circumstances must be treated equally.

In the *Tévoedjré* judgment[75], the Tribunal added that the principle of equality does not mean that the same rule must be uniformly applied to everyone. What it means is that like facts require like treatment by the law, but different facts allow different treatment. This judgment was already mentioned in the present thesis as an example to complain against a political decision instead of an administrative one. In this case the complainant challenged the new appointment of the director-general who was the incumbent however he was over the age limit of 65. The ILOAT found that the DG's place in the organization was beyond the comparison. Consequently, because of the director-general's unique status the Governing Body was at liberty to set no age limit and in so deciding it was not in breach of the principle of equality. In this context, the DG is not deemed to be a member of the staff as the age limit is not applied to him but his subordinates. On the other hand, the present train of thought may give ground for an extreme interpretation: no infringe of the equality principle is possible concerning the position of the DG due to the unique nature of his position.

The *Delhomme-case*[76] revealed the difference between legal and factual equality. In this case a French citizen who worked for an organization in The Netherlands, realized that his children's kindergarten fees were not reimbursed, however, at the same organization's

[73] Judgment No. 1366, No. 1536 just to mention but a few
[74] Judgment No. 409
[75] Judgment No. 580
[76] Judgment No. 518

premises in Germany these fees, allegedly, were repaid. Pertaining to the Service Regulations of the organization, where an employee who is not a national of the country in which he is serving, is unable to have his child educated at a European School[77] for reasons beyond his control, the organization shall on request pay the fee charged by another international school. The complainant's children attended the kindergarten of French School at The Hague. The claimant alleged, although the rule concerning kindergarten fees was not a part of the regulations but an addendum did refer to these types of fees. The present allegation was unanswered and the Tribunal did not deal with either. The organization argued that the principle of equal treatment merely requires equivalent terms of repayment to the staff at different duty stations, for example repayment of expenses from the start of compulsory schooling. Under Dutch law schooling is compulsory only from the primary stage. At other duty stations staff can send their children to kindergarten free of charge, but the organization is not obliged to provide similar benefits for staff at The Hague. The ILOAT found that staff members in Germany have at their disposal facilities for educating their children which in practice those stationed at The Hague and in another duty stations do not. In the circumstances of the present case, however, that does not constitute any breach of the principle of equality.

To summarize the decision: the principle of equality requires that all those in a same position should receive equivalent and non-discriminatory treatment, but different factual situations may exist, and therefore, an organization may adapt rules prescribing or allowing reasonable distinctions.

Moreover, there is not a breach of the principle of equality where the treatment is a fair, reasonable and logical outcome of circumstantial differences – as the *Metten-decision*[78] sets forth. In *Metten* the complainant referred to his poor rank on the seniority list in lack of a promotion compare to the promoted colleagues in spite of his extended industrial experiences.

In this case, ILOAT found that there is a difference between promotion and advancement; while the latter one is automatic, based on experience, promotion cannot be seen as a right, since it depends equally on experience and performance. Therefore, the promotion of a less-experienced official does not automatically mean the violation of the equality principle.

[77] e.g. the relevant institution in Germany
[78] Judgment No. 755

This paragraph shows, in outline, the way the Tribunal define the notion of equal treatment in general. The principle of equality does not mean to apply the same rule to everyone, uniformly. Instead, like facts allow like treatment by the law, but different facts require different treatment. The treatment of different circumstances must be fair, reasonable and logical. Forbidding the reference to similar breaches of law constitutes further obstacle of mechanical comparison: equality in law does not embrace equality in the breach of it; what is more, the unlawful handling of one case does not entitle the complainants to the same unlawful treatment.

§ 2. Gender Issues

The number of gender discrimination cases is not particularly high but the subjects of the cases are interesting: reverse discrimination, double discrimination and collision of different preferences.

In the *Matthews* judgment,[79] we find an example of reverse discrimination. Among six candidates for a position of a director, a female candidate was selected over the complainant who achieved the same score on a written test. One question on the test contained an error which was detected only by the complainant. Therefore, it was questionable how the equality of scores was possible, and the organization did not provide any justification. Moreover, the complainant was interviewed by video conference while all the other five candidates were interviewed in person, at the Geneva HQ. It is true, that the claimant was located in Washington DC, but another American candidate was interviewed in person as well. In total (test + interview), the complainant was ranked in third place, although his score was the second highest. The first in rank, and the incumbent, was a female, while the second one was male and only third in score points. The conversion of the points and the weighting was not wholly transparent.

Additionally, the complainant referred to a speech of the DG: "The World Health Assembly has repeatedly called for gender parity. I intend to follow up on that call. Cabinet has decided to secure that 6 out of 10 new appointments are women until parity is reached." Furthermore, the final assessment contained the following recommendation: "Given the current gender

[79] Judgment No. 2004

inequity (no female Directors) ... I would like to recommend that you consider [Ms W.] (who rated highest on total scores) for the post of Director". Subject to the Tribunal's opinion, this was an invitation to make the sex of the incumbent a factor in the choice of candidate. Therefore, the ILOAT set the appointment of the female candidate aside and sent back the case to the organization. The Tribunal emphasised that there is nothing wrong in having a policy aimed at gender parity. But this policy cannot be achieved by setting quotas and by reverse discrimination, in other words, by the appointment - for particular posts - of women who are less qualified than men.

The *Matthews* judgment had a similar outcome to the ECJ's *Kalanke* decision[80]. The ECJ stated in its *Kalanke* case that affirmative action programs, such as preferential treatment and quotas in favour of women, were not bringing about an end of discrimination. On the contrary, these programs are now no longer discriminating against women, but men. Therefore, affirmative action programs of that kind are not compatible with Directive 76/207/EEC, which aims at the equal treatment of both women and men[81]. The present thesis does not attempt to justify the right to deal with ECJ's practice in detail, but it does intend to point out that—as confusing as it may be—the European Court of Justice reached a different conclusion in the *Marshall* judgment[82], although it started from the same principles and applied the same law. In the latter case, the Court found that affirmative action is not against Community law if candidates are subject to an objective assessment which takes into account all of the criteria specific to the individual candidates.

Another interesting gender discrimination case is the *Broere-Moore*[83]. In this case, a female worker's appointment was prematurely terminated by an "agreed termination". As a part of the deal, she was to be put on special leave without pay for 15 months instead of immediate termination of her job. During this period, the organization advertised for the vacant post and the complainant applied for it as well. The organization hired an external male candidate, and the complainant challenged the decision. The first consideration was whether the Tribunal faced a double discrimination situation. In accordance with the Staff Regulations, internal candidates enjoy priority in selection over external candidates, and the ad stated that female

[80] Kalanke v Freie Hansestadt Bremen, ECJ C-450/93
[81] Zuleeg, 'Gender Equality and Affirmative Action Under the Law of the European Union' Columbia Journal of European law Vol 5., 1999
[82] Hellmut Marshall v Land Nordhrein Westfalen, ECJ C-409/95
[83] Judgment No. 1706

candidates were particularly encouraged to apply. Due to the special leave of the complainant at the time of advertising, she was deemed to be an internal candidate. Without this special status, she would have been disallowed access to the Tribunal, as an unsuccessful candidate cannot file a claim at ILOAT. The organization insisted that it made a lawful discretionary decision in favour of the candidate best suited for the post. The Tribunal found that the complainant's qualifications were at least equal to those of the selected candidate, and yet, she was not given preference over him. We note that, at the time of the impugned decision, the complainant had already challenged her termination and had filed three more claims against the organization. During the process, the organization did not argue the obvious factor: why work along with an employee who was already terminated and with whom four complaints were in progress at ILOAT? In the end, the Tribunal ordered a large sum of money to be paid to the claimant for material and moral injury.

We have experienced a collision of different preferences in *Judgment No. 2392*. This case was about a promotion for Director of African Region for which a female, internal candidate and a Sub-Saharan male, external candidate competed. Pertaining to the rules of selection, both females and Sub-Saharans were preferential groups; moreover, internal candidates enjoyed an advantage over externals. Finally, the male candidate was selected and the female filed a complaint with the Tribunal. In the complaint, she alleged unequal treatment based on her gender and internal status, furthermore, she claimed that she had a higher educational background, and she also complained of the lack of explanation about the selection. The organization argued that in spite of the advantage of the complainant, in theoretical studies, the selected candidate was far more experienced, and that was the decisive issue between them. The Tribunal found otherwise: the absence of a fair explanation cannot be a defence by the organization, as its Human Resources Handbook contained a provision that stated: "when outside recruitment is recommended full information as to the reasons behind recommending external candidates in preference to internal candidates should be provided".

Due to the above mentioned circumstances, the ILOAT did not rank the various preferences. According to the decision, it is well settled that preferences must be given effect to where the choice has to be made between candidates who are evenly matched. On the other hand, they have no role to play where there is a significant and relevant difference between the qualifications of the candidates. In this case, the Tribunal was not supposed to choose which

of the preferences is stronger; however, it would have been interesting to see how ILOAT would have solved a similar situation.

§ 3. Same-sex Partnership

According to our previous experience, same-sex partnership cases constitute always a good test to measure the level of equality. In *Judgment No. 2193,* it is possible to contrast the conflicting points of view. In this case, an UNESCO staff member informed the organization about the establishment of a civil union contract[84] with his same-sex partner, and applied for an allowance for a dependent spouse. The organization refused to pay the benefit. UNESCO Staff Rules did not contain any special provision about this type of situation, but applied the word "spouse" without defining it. The organization argued that the term must be understood in the ordinary sense of "husband or wife", and since PACS did not result in such as institutionalized outcome, there was no legal basis on which to pay allowance on dependency.

The ILOAT called upon the precedent of *Judgment No. 1715* (*Geyer* case) to define the meaning of "spouse". In the cited judgment, it was found that "spouse" will flow from a marriage publicly performed and certified by an official of the State, along with an official certificate. Thus, the Tribunal established a link between the word "spouse" and the institution of marriage, whatever form it may take. And because in the present case, PACS did not have the same link, the Tribunal dismissed the complaint. Technically speaking, ILOAT decided correctly, having examined not more than the written text of the organization's rules and regulations.

The author has to mention that the *Geyer* case was not about same-sex partnerships, and so the Tribunal applied an unlike case to draw a parallel between the two dissimilar cases. In *Geyer*. a heterosexual couple's common law marriage was not accepted as resulting in a "spouse". But there is also the underlying difference between the cases: in the event of the first couple, a decision was made to distinguish between common law and institutionalized marriage. For same-sex partners, a similar choice was not at their disposal.

[84] Under French law is Pacte civil de solidarité or PACS. UNESCO HQ is located in Paris.

Voting must have been tight as two dissenting opinions were also published. In his opinion, Judge Hugessen drew the attention to three important questions: First, that the distinction applied in the case was based on irrelevant personal characteristics, specifically, sexual orientation; consequently, the Tribunal should have had no difficulty in finding sexual orientation as an improper and irrelevant basis for distinction. Secondly, the purpose of the dependant's allowance was not examined by ILOAT. The purpose is to protect the staff member's domestic partner, and, indirectly, the staff member himself. Domestic partnership is characterised by its voluntary nature, permanency, legal enforceability, mutual dependency and assistance between partners, such as it was in the present case between the complainant and his partner. And thirdly, the Tribunal needed to verify whether, in the event of difference in treatment, was the difference a fair, reasonable and logical outcome of circumstantial differences. In the case, this appeared not to be the situation.

In the other dissenting opinion, Judge De Sanso referred to the fact that in another case, at the World Bank, it had already been accepted as a principle that a same-sex partner is a "spouse". Moreover, she argued that semantic interpretation cannot be restrictive. On the contrary, it must be as broad as possible. We can add one more factor: the Tribunal's decision is illogical, if homosexuals cannot be discriminated against as individuals, why should they be treated differently when they are a couple.

In a larger context, it seems that two legal schools of thought were clashing: legal positivism and natural law. Between the competing mindsets, in this case, positivism won, suggesting that, apart from the written text of the organization's regulations, there is nothing else to be taken into consideration. The natural law's way of thinking is a broader concept; law cannot be opposite to its societal designation. Therefore, the purpose of the regulations, the interest to be defended, is equally a subject of the analysis. To summarize this case, the author does not consider the Tribunal to be discriminatory in general terms. We do think rather that the complainant's arguments were out of scope. He concentrated on the rules of PACS in French legal settings and their application at the international level. We consider that the ILOAT's

reluctance to apply a national law in an international setting was larger than their aim to come to a fair and impartial decision.

We have found a similar case in the annals of the European Court of Justice. In the famous *Grant* case[85], ECJ decided that discrimination based on sexual orientation did not form part of sex discrimination, and dismissed the claim to receive travel concessions for the same-sex partner, although it was granted in another case for opposite sex, but unmarried, partners.

In these cases, it seems as if ILOAT and ECJ have forgotten the rule of thumb: apply a test of objective justification to determine whether you face differentiation or discrimination. In *Grant*, due to the direct discrimination in defendant's policy, there is no need for objective justification. The defendant's actions constituted direct discrimination under Art. 119 of EC Treaty.

Subsequently, the Tribunal faced a similar situation. In *Judgment No. 2549*, a Danish national submitted a Certificate of Registered Partnership, under her national law, for dependent's allowance. In that case, the Danish Ministry of Justice and Permanent Mission of Denmark at UN confirmed that a Registered Partnership is legally recognised under Danish law and, except for the adoption of children, parties enjoy the same rights as those in marriage. Meanwhile, UNAT reached a decision in which PACS was found having the same nature and legal consequences as a marital "spouse".

In *No. 2549*, the ILOAT accepted the claim, set aside the impugning decision and awarded compensation to the complainant. But instead of laying down general rules, the Tribunal only papered over the cracks. With these two decisions, the ILOAT did not establish unambiguous criteria for dependant's benefits of same-sex partners, but made a distinction between the French PACS and the Danish Registered Partnership. Compared to the previous case, the scope of the grievance (in *Case No.* 2549) was better founded, as it was supported by Danish authorities. Interestingly, in both cases the *Geyer* decision was referred to and, in the latter one, *No. 2193,* it was followed. The question arises: taking into account the two decisions of

[85] Grant v South-West Trains Ltd, C-249/96

the Tribunal, will the nationality, more precisely the national law of the same-sex partners determine eligibility for the benefit? Does it not seem discriminatory again, not because of sexual orientation anymore, but based on nationality? And finally: is it logical that while the Tribunal is generally reluctant to apply national laws, in these cases it undertakes to bind international organizations by them? These questions are expecting to be answered based on a more detailed study.

§ 4. Harassment Cases

Although definitions abound, the most complex and appropriate description concerning the notion of harassment can be found in IAEA's staff notice: "Harassment is any conduct or comment made by a staff member or group of staff members on either a one-time or continuous basis that demeans, belittles or causes personal humiliation. It can take many different forms, including, for example: threatening comments, whether oral or written, or threatening physical behaviour; intimidation, blackmail or coercion; making deliberate insults related to a person's personal or professional competence; humiliating, degrading or making offensive or abusive personal remarks to someone; undermining or isolating people; or making it impossible for staff to do their job by, for example, withholding information."[86] According to this definition, we shall discuss moral as well as sexual harassment in this paragraph.

Leaving aside, for the moment, the question whether the Tribunal has dealt properly with these kind of cases, the very first thing to notice is that the organizations themselves, in the course of their internal procedures, prior to the judicial phase, sometimes do not apply sufficient sanctions against the violators. Notwithstanding the further decisions on behalf of the ILOAT, if harassment was detected, it would be advisable to punish the individuals concerned in an appropriate manner. By contrast, in *Judgment No. 2706,* it was the harassed official who was transferred to another department, and her accused supervisor was given only a verbal reprimand, which was recorded only by placing a note in his personal file. In *Judgment No. 2771,* the disciplinary measure of demoting the alleged offending official's rank from D-1 to P-5 (one rank lower) was applied. Both cases were about sexual harassment.

[86] IAEA Staff Notice SEC/NOT/1922

The question is: if the organizations themselves found the officials responsible for the sexual harassment—which is a straight criminal offence—why not dismiss them outright?

Due to the sensitive character of the cases related to harassment, the procedure prior to the Tribunal's phase is crucial. Many controversial applicational and procedural matters appear in *Judgment No. 2771,* in which the complainant was the official accused of sexual harassment. He pointed out that he was not present when witnesses were interviewed, consequently he was not permitted to cross-examine them; in addition, he was not given the opportunity to challenge the admissibility of documents used against him, and he was denied the right to the presumption of innocence. In other words, the Investigation Panel proceeded in breach of his right to due process.

Pertaining to the a previous judgment[87] of the ILOAT, it was said that "before deciding a disciplinary sanction, an organisation should inform the person concerned that disciplinary proceedings have been initiated and should allow him ample opportunity to take part in adversarial proceedings, in the course of which he is given the opportunity to express his point of view, put forward evidence and participate in the processing of the evidence submitted in support of the charges against him". Moreover, "investigation be conducted in a manner designed to ascertain all relevant facts without compromising the good name of the employee and that the employee be given an opportunity to test the evidence put against him or her and to answer the charge made".

In accordance with the principle of due process, during its previous decisions, the ILOAT has constantly insisted on the right to confront the accusations. In the *Ferrechia* case[88], the Tribunal stated that an official against whom disciplinary proceedings were taken had the right to be heard and this right included the opportunity to participate in the examination of the evidence. In the case at issue, the complainant was duly questioned by the Staff Relations Committee. He was not, however, allowed to be present during the hearing of the witnesses or to participate in the examination of the evidence. Although the statements made by the witnesses were communicated to him, he was not in a position, during the hearing, to rebut the charges against him, to put questions to the witnesses, or to ask for clarification.

[87] Judgment No. 2254
[88] Judgment No. 203

Accordingly, in the *Sharma* judgment[89], the Tribunal ruled: "there can be no certainty that justice will be done if evidence is taken in the absence of one of the parties". Moreover, in the *Manaktala* case[90], the ILOAT added that the failure by the organization to afford the complainant an opportunity to be present at the Personnel Department's taking of statements and to put questions to the witnesses' amounted to a violation of due process. More importantly: „Whether or not the evidence did work to the complainant's prejudice is irrelevant." And finally, in *Judgment No. 2475: „*The procedure adopted in this case was clearly flawed in that the complainant was denied the opportunity to question any of the persons whose statements were used against him, evidence of little probative value was relied upon and, at least to some extent, he was required to prove his innocence instead of having the matters alleged proven against him".

Contrary to the cited decisions, in *Judgment No. 2771*, the Tribunal found that the complainant was able to confront and test the evidence against him, even though he was not present when statements were made and was not able to cross-examine the witnesses against him. The ILOAT drew attention to the fact that these processes (e.g. to be present and cross-examine the witnesses) are not the only means by which due process can be ensured. The author feels that it is particularly unacceptable that the Tribunal did not give any explanations as to why they did not follow the precedents, even though the complainant explicitly called their attention to the cited decisions[91].

The author cannot hide his opinion concerning the importance of the oral element of the judicial processes. It is more important to ensure the accused officials the right to cross-examination since they do not have much chance to have oral hearings at the Tribunal. Without a guarantee to have a partially oral proceeding, the accused civil servants' possibility to defend themselves efficiently is likely to be severely limited. In harassment cases, it is quite rare if any factual evidences exist – it is more likely for the evidence to be circumstantial. Therefore, the testimony of the harassed person and the witnesses can be decisive. To cross-examine the witnesses or to have their written testimony and make observations thereto can hardly be seen as equal in strength. For these reasons, pertaining to the previous practice, it

[89] Judgment No. 999
[90] Judgment No. 1133
[91] to be more accurate, to Judgment No. 999 and 2475, but these judgments contain further references also

would better ensure the right to due process if the accused official had the possibility to cross-examine witnesses or have an oral hearing before the Tribunal.

Another procedural mistake can be observed in *Judgment No. 2520*. In this case, an official lodged a formal complaint of moral harassment against her immediate supervisor. Subsequently, she withdrew the complaint and therefore the file was not forwarded to the immediate supervisor. However, the record of the complaint remained in the complainant's personal file and her indirect supervisor, the director of the division, had knowledge of the incident. When the official applied for a new post within the division, the interview panel included her immediate supervisor as well as the indirect supervisor (the director). The next day after the interview, the complainant wrote a letter to the personnel officer in which she revealed the story. Meanwhile, upon the suggestion of the interview panel, a person, other than the complainant, was appointed to the post. Thereafter, the complainant filed a formal grievance against the appointment. The second supervisor stated that the selection process was fair and impartial. The grievance was rejected, and the complainant turned to the Tribunal. The Tribunal found that there was no evidence that the immediate supervisor knew about the complaint at the time of the interview and further, that the biased nature of the interview had also not been proven. For these reasons, the complaint was dismissed by ILOAT.

It seems that the Tribunal did not rank logically the factual circumstances in this case. On the one hand it is hardly imaginable that the supervisor did not check the personal file of the complainant in which the grievance was taken. On the other hand, the proof of the biased decision had only a secondary significance, as the mere possibility of treating the complainant unequally gave sufficient ground to quash the impugned decision. Since the indirect supervisor had knowledge of the previous complaint, the organization should not have been allowed to argue the exclusion of "the possibility" of being biased. Instead, the rule is applicable in this case too: if a committee or a panel is established unlawfully or with a personal bias or conflict, notwithstanding whether the decision was correct or not, the whole action of the given committee or panel should be annulled. In this case, the simple possibility that the immediate supervisor could have known about the complaint against her or that the director himself could be biased, due to the previous complaint, established the necessity of quashing the decision. This was not done in the present case.

§ 5. Age Discrimination

Age discrimination is one of the fastest growing fields of law worldwide. In just the United States alone, the authorities receive more than 20.000 new claims on a yearly basis[92]. This growth is, among others, attributable to the increasing number of aging employees in the workplace. International organizations are not exempt from this effect and its consequences either.

Generally speaking, the career path of international officials is well planned, and promotions are easy to count on in accordance with the time served as international civil servants. On the other hand, this way of professional life is often automatic and is spared the detailed assessment of performance; moreover, these norms do not really facilitate the entry of external professionals. But officials can expect their promotion in a timely manner – within normal circumstances.

In the *Seissau* decision [93], the Tribunal ruled that age is not to form part of the consideration in the event of appraisal of work. In this case the complainant could not achieve the desired rank in her carrier path, although, as she alleged, she performed the same work and met the same responsibilities as her colleagues in a more elevated position. The guidelines of the organization on the designation of career paths prescribed the next grade as it was attained after age 38. Without any doubt, the age of the officials functioned as a condition for certain grades in the organization. However, in absence of demonstrating a sufficient number of officials in same factual situation but in a more elevated rank, the ILOAT only set aside the decision about carrier path and the case was sent back to the organization for a new decision.

To sum the case up, a higher age cannot be an objective justification why an official, with the same work and the same responsibilities, cannot be promoted in the same order as his/her colleagues; it deemed "classical" age discrimination.

By contrast, earlier in the *West* decision[94], the Tribunal added some nuances concerning the application of the age factor. Pertaining to this decision, seniority merely qualifies an official

[92] http://www.seniormag.com/legal/age-discrimination.htm, accessed 9 June 2010
[93] Judgment No. 1416
[94] Judgment No. 1137

for the promotion; for the decision whether to promote, age, seniority and performance are to be evaluated. In this case, the complainant alleged unequal treatment because he was not promoted when other officials with similar performance rating and seniority were. The ILOAT accepted the defence of the organization that a combination of three factors was taken into account, as they compared the concerned candidates by their age, seniority and performance rating. The Tribunal emphasised that they do not interfere with discretionary decisions, except for lack of authority, formal or procedural flaws, disregard of essential facts, mistaken deductions from the evidence, mistake of fact or law, and abuse of authority.

Apart from "classical" age discrimination cases, one can find specific ones, due to the strict rule of statutory retirement at a certain age. The subject of *Judgment No. 2513,* is related to compulsory retirement as well. The importance of this case stems from the possibility of changing a discretionary decision. In this judgment, the complainant reached the statutory retirement age of 60, then he was given a one-year extension, but his request for a second extension was refused by the director-general. It is clear that the director-general made a discretionary decision in both cases, as the granting of an extension is not obligatory. Along with the complainant's case, the director-general dealt with six other requests and reached different decisions: some were granted, some were rejected including the complainant's request. This request was turned down without any reason being given, although we do not know from the case whether the other rejected requests had any reasons given or not. Moreover, the organization failed to inform directly the complainant about the refusal and only drew his attention to the date of termination of his contract in two letters and did not explain it during the procedure of the grievance either.

Interestingly, the problem of the absence of the complainant at the hearing of the witnesses comes up again in this case. The Tribunal warned the organization, in unusually strong terms, that internal appellate bodies must strictly observe the rules of due process and natural justice, and that those rules normally require a full opportunity for interested parties to be present at the hearing of witnesses. Furthermore, and even more rarely, ILOAT instructed the organization that it should waste no time in instituting the necessary reforms. The question arises: how is this decision related to *Judgment No. 2771*[95], and again, why did the Tribunal not apply this principle in the latter case?

[95] see among harassment cases

For the above reasons, the Tribunal awarded the complainant all the benefits which he would have received had his appointment been extended, plus a large amount for moral damages and a very generous cost refund. However, the ILOAT stated that the Tribunal will not interfere in the exercise of discretional decisions, except in extremely limited circumstances. Naturally, national labour laws do not bind the Tribunal, but it is necessary to mention that in many national laws there is no obligation to state a reason why a dismissed employee was terminated or why his contract was not extended. Consequently, a similar case at some of these national courts would likely be dismissed.

By contrast, the Tribunal dismissed a complaint filed previously on the same subject. In *Judgment No. 2377,* the ILOAT emphasised that the complainant had introduced no convincing evidence of unequal treatment and did not find it important that many other appointments were extended. The complaints were made against the same organization. At least, in *Judgment No. 2513,* the Tribunal referred to the previous decision and stated that this case differed markedly from the other one.

§ 6. Discrimination by Family Status

We can find only two cases in this pool, and they are not controversial as one is about allowances, the other deals with a job candidacy and the outcome is favourable for the complainants in both cases.

In *Meyler* decision[96] a British citizen who worked in Paris lost her acquired right to the non-resident allowances while she married to a French citizen. Subject to the Staff Rules of the given organization, the non-resident's allowance shall not be paid, or shall cease to be paid, to a staff member whose husband is a national of the country of the duty station. Even though the incriminated regulation has been changed in the meantime – e.g. after the decision but before the file of the complaint – from "husband" to "spouse", the organization has not modified the situation of the complainant giving her back the non-resident allowances. So, this case led us to the ground of sex discrimination as the plaintiff treated differently men and women: a male official would not have lost its allowances if he had married his local bride.

[96] Judgment No. 978

The organization committed huge faults in this case: Firstly, they had changed “husband” to “spouse” in all of the other regulations more than a decade earlier, except for the rule of non-resident allowance. Secondly, they failed to acknowledge the discriminatory character of this regulation and award the benefit to the complainant. Otherwise, in our understanding, the position of the organization should have been well defendable, since non-resident allowances covered – among others – repatriation grant, removal of household goods, family visit and home leave which became obsolete establishing a new family at the place of the duty station, therefore these allowances would have withdrawn or reduced.

Instead, the organization argued that the complainant did not protest against the original decision and filed the complaint almost 18 months later. Pertaining to the previous decisions of the ILOAT, it can be hardly seen as a successful defence. As it was clearly stipulated in *Molloy*[97] and *Conolly-Battisti*[98], since the withheld benefit was recurrent on a monthly base, each month in which the non-resident allowance was not paid there was a new cause of action. So, the Tribunal set aside the impugned decision.

In the other case, *Judgment No. 2120,* the complainant and his wife were both employed by an organization at the same time. The complainant applied for a vacant post in the same section as his wife, but in a different unit and falling under a different hierarchical structure. Although the selection committee recommended him and they were of the opinion that the complainant’s appointment would involve no conflict or breach of the applicable regulations, the Director General came to the discretional decision to advertise a new competition for the same job but with other conditions (lower grade, shorter duration). The complainant filed a grievance against the decision. The grievance was refused, saying it was a discretional decision "taking into account various statutory and policy requirements".

During the Tribunal’s phase the complainant pointed out that the Staff Regulations of the organization, as primary legislation, excluded only, firstly, to be assigned to serve in a post which is superior or subordinate in the line of authority to the staff member to whom he/she is related as a spouse or, secondly shall disqualify him/herself from participating in the process of reaching or reviewing an administrative decision affecting the status or entitlements of the

[97] Judgment No. 292
[98] Judgment No. 323

staff member to whom he or she is related as a spouse. Furthermore, if two staff members marry, the benefits and entitlements which accrue to them shall be modified as provided in the relevant staff rules; their appointment status shall not, however, be affected. Since in his case neither of the above-mentioned conditions was applicable, he reasoned, the discretional decision was unlawful.

In its reply the organization argued that the decision to appoint a candidate is a discretionary one and as such was open only to limited review by the Tribunal. Furthermore, the executive head of an international organisation was free to decide not to appoint any of the candidates if he concluded that none meets the specified requirements. The organization referred to a secondary legislation: "The spouse shall normally not be employed in the same department as the staff member ...".

Obviously, the complainant' interest covered no more than reach his appointment to the post advertised with a retroactive effect but the conclusions of this case are much broader. According to the Tribunal, the quoted secondary legislation is clearly unenforceable as improperly discriminates between candidates for appointment based on their marital status and familial relationship. Therefore, the ILOAT stated the said regulation does not comply with general principles of law and is particularly contrary to the Charter of the United Nations and the ICCPR. In this case, although we consider redundant the applied notion of "improper discrimination" since, as it was written in the Part I. of the present thesis, the objective justification distinguish between differentiation ("proper") and discrimination ("improper"), the impugned decision drew distinction based on irrelevant personal characteristics, more precisely on familial relationship. The Tribunal acknowledged that self-evidently to employ close relatives can cause managerial conflicts but it did not give a ground for such unlawful practice. Further importance must be added as the decision explicitly referred to the general law principles and to the cited international conventions.

§ 7. Discrimination by Nationality

Concerning discrimination based on nationality, taxation-related issues occurs quite often. Since international organizations deduct amounts from the benefits of civil servants for health care and pension purposes, the UN intended to conclude an effective and fair system with a view to avoid double taxation.

The General Assembly of the United Nations decided in 1948 that the salaries of all United Nations staff should be submitted to an internal form of "taxation", called the staff assessment, bearing some resemblance to national income tax systems. Thus a distinction had to be drawn between gross and net salary, and the proceeds of the staff assessment were presented as a credit to the total appropriations of the regular budget. With the introduction of this mechanism the General Assembly expected that member States of the United Nations would refrain, so as to avoid double taxation, from levying tax on the income of their nationals who were staff members of the Organization. The member States which had not accepted the Convention on the Privileges and Immunities of the United Nations, or which had done so with reservations, to enact legislation to avoid double taxation of their nationals employed by the United Nations. Most member States agreed not to tax the income of their nationals. But a few did not, and one was the United States, which at the time had the highest number of nationals of any State in the United Nations secretariat. To avoid inequalities and discrepancies in the contributions of member States to the United Nations budget the staff assessment had to be supplemented by another mechanism.

The General Assembly established a special fund in 1955 to be known as the Tax Equalization Fund and to be financed by the proceeds of the staff assessment deducted from salaries paid out of the regular budget. The Fund has a sub-account for each member State, the total proceeds of staff assessment being apportioned between member States in the proportion of their assessed contributions for the financial year. From the Fund came any payments necessary to reimburse staff required to pay national income taxes on salary. Any such reimbursement of tax on UN earnings is charged to the sub-account of the member State of nationality or of such other member State as levied the tax. In determining the net contribution of a member State to the budget of the Organization the balance of the sub-account is deducted from the country's assessed contribution. The system ensures that all staff members enjoy effective tax exemption and equality of remuneration with others in the same grade or category and that member States suffer no disadvantage by granting tax exemption and, for that matter, gain no advantage by levying tax[99].

[99] In: Judgment No. 1225

As a result, in *Arbuckle* case[100] the Tribunal did not find either unjust enrichment, that the deducted amounts from an international civil servant were not paid to its countries entitled to the taxation but remained on the account of the organization, nor unlawful if the amounts would have paid without providing any service to the taxpayer. In this judgment, the complainant, a United Kingdom citizen who was resident in Canada at the time of his first appointment, filed a grievance, saying, although the organization deducted in each month the amount of staff assessment, the money remained on the sub-account and the organization have not repaid it to the member States. He argued on the one hand, that the withdrawal of the amounts would be unjust enrichment on behalf of the organization; on the other hand the member States would not be entitled to the amounts as they have not provided any services to him, as taxpayer, in return the money. In its judgment the ILOAT stated that any refund made to a staff member on the grounds that the member State has not claimed or received a credit from the Tax Equalization Fund would violate the basic principle of equality in regard to the net salaries of staff members in the same grade or category in the Organization. Therefore, the complaint was dismissed.

Obviously, the implemented system of tax equalization could not solve all of the possible occurring alterations between staff members concerning their nationality but mainly not because of the mechanism itself, rather due to the discrepancies in national taxations. In *O'Dell* judgment[101], an American citizen, who is a resident in the country indeed, faced the national rule that at the time of the case[102] those citizens who was resided abroad was entitled not to add their foreign-earned income up to 70,000 USD in contrast with those, who was not. In other words, an official who was equally citizen and resident of the US, paid more taxes on his income from the organization than another official who though American citizen, was not resident of the country. In this case the Tribunal recognised the difference between the two situations but stated that the source of inequality came from the national system and not from the policy of the international organization. Therefore, the plea was dismissed.

Judgment No. 2296 is about an American citizen who was entitled to a reimbursement of the paid tax by an agreement established between the ILO and the USA but he was still obliged to filing tax forms in accordance with US tax law. For six years the complainant failed to file the

[100] Judgment No. 1225
[101] Judgment No. 1224
[102] in 1989

tax documentation and he send them all together. Although he acknowledged his negligence not to file the forms year by year, and therefore he did not seek reimbursement of late penalties but he asked reimbursement for the tax paid. The ILO partially rejected the request and reimbursed only the two last year's tax of the claimant due to the organization's Staff Regulations which provided 12 months and the general practice of ILO which was more favourable to the officials. Moreover, the ILO referred a circular named as "Reimbursement of taxation" which contained more detailed information as well, with special regard to the consequences of the negligence. In the preliminary stage of the grievance, in spite of the supporting advice of the Panel, the DG insisted on having the given amount from the US government before and do not pay the reimbursement until and unless.

The Tribunal decided that the interest of the international civil servants that they should not be obliged to pay a double taxation took into account more seriously than the negligence of the official or the clear regulations. The Tribunal founded that the plaintiff failed to prove that the detailed circular was known by the officials and so, it has not been applicable. Moreover, the ILO failed to prove that all nationals in the same situation were treated equally. Therefore, the ILOAT ordered to reimburse the whole amount of tax but did not grant any damages, costs or interest, true that the complainant did not ask for them either.

In contrast, the complainants received the reimbursement in good order in *Augier and Gardette*[103] after all they filed a complaint due to the progressive tax regime of France, their national state. In this case the claimants had incomes from the international organization as well as from other sources. According to the relevant regulations, the incomes from the organization covered with a full reimbursement but self-evidently other revenues not. However, the aggregation of all of the incomes pushed up the bottom line and the officials eventually paid more tax after their non-covered revenues than they have been paid without the income from the organization. The complainants considered it discriminatory but the Tribunal did not share their opinion, saying, that the difference in treatment due to their French nationality was not the organization's making: it was due solely to the working French tax law.

[103] Judgment No. 1491

In *Judgment No. 2637* a civil servant who held a double (French and Swiss) citizenship claimed certain benefits which were not available to local staff. The complainant was recruited as local due to her Swiss nationality and Geneva as her place of work some fifteen years before the filing. Only after her reassessment as international staff she realized that she was another (local) status before and she claimed retroactively for the benefits. As a matter of fact, her circumstances were truly internationals (parents with different nationalities, both international civil servants living in a third country), although she has spent most of her life in Switzerland. She found her treatment discriminatory as she was defined as local, however, both of her parents were different nationalities and other than the locality of the duty station.

The complainant faced difficulties in burden of proof. She was refused asking the director of human resources to be able to reach the personal files of other civil servants in similar factual situation. Then she asked the same from the Tribunal but without any success. The ILOAT did not see the reason to open these files as the complainant "failed to establish and arguable case of discrimination". Subsequently, she identifies five civil servants, who, although being citizens of Switzerland were granted international status – but the Tribunal found their factual circumstances others than the complainant. Finally, the complaint was dismissed and the ILOAT agreed with the organization applying the mechanical rule of the Staff Regulations: "Staff members will be considered as locally recruited if at the time of recruitment they are resident within a radius of 75 km from the Pont du Mont-Blanc in Geneva regardless of the duration of that residence".

§ 8. Discrimination between Internal and External Candidates

In the course of recruitment a visible tension is detectable between internal and external candidates. Vast majority of the international organizations apply provisions in filling vacancies which, in the event of equal assessment of an internal and an external candidate, ensure advantage for persons already in the service of the given organization. This (alleged) advantage, more precisely, the lack of the application of it, gives often ground for internal candidates to file a complaint against the decision. As we have seen earlier[104], external candidates are out of the personal scope of the Tribunal's jurisdiction. Nevertheless,

[104] see Part III. Chapter 1. Paragraph 3

sometimes quasi-external candidates, for example claimants employed in a short-term contract, used to apply to the ILOAT.

In *Passacantando* judgment[105] a draughtsman complained against another (external) candidate's appointment. In his grievance he mentioned the alleged prejudication of his chief, who was member of the selection committee and the circumstances of his crucial airbrush test, during which, due to the breakdown of his tool, he left ten minutes and therefore he was not able to properly finish his work. The ILOAT dismissed the claim stating, firstly, that the papers made by the candidates having been placed in plain envelopes marked only with a letter of the alphabet which method excluded all sort of possible bias, secondly, if the complainant had asked for an extension of ten minutes, which he did not do, his request would have been granted, and finally, subject to the evaluation record if the claimant had won the airbrush test the results of other four test would not have been better in aggregation than those of the incumbent. Therefore, unequal treatment was not detectable. However, we do agree with the first and the third statement of the Tribunal, the second one only based on a single conclusion, maybe on a fallacy. Since the Tribunal have never intended to accept deductions, it was not too elegant to apply one in his own judgment.

By contrast, with *Glenn* decision[106] the Tribunal accepted another internal candidate's arguments. The claimant, who was working for 14 years for the organization was not acquainted that his chief will be retired and the defendant appointed an external candidate for the position without holding a formal selection procedure. The organization argued that the formal procedure was not necessary as they only interviewed the external candidate because they possessed all of the necessary information about the complainant. A reason for objective justification had occurred also: the lack of sufficient Spanish language knowledge of the claimant what was an important condition of the appointment. The Tribunal founded that an unfair advantage was given to the outside applicant because the defendant did not provide an opportunity to the claimant for being competitive. Even though it can be true that the organization could evaluate his official after 14 years of work, what is more, the language skills arguably the most objective criterion of selection processes and exclude the possibility of unequal treatment, the simple omission of the selection had made the base of the establishment of the defendant's failure.

[105] Judgment No. 107
[106] Judgment No. 1268

Same defendant and again language skills characterise the *Flores* case[107]. In that case an internal candidate was appointed, although she did not fulfil the minimum requirements, e.g. working knowledge, in the field of English language skills. The complainant, who was a precarious worker with his three short-time contract, deemed an external candidate. The organization referred to the previous post of the incumbent which was successfully served and it comprised elevated English skills, even though during the assessment in the course of the vacancy her English was summarized as "elementary". The Tribunal concluded that the organization broke the basic rule of any process of selection that the successful applicant must have all the minimum qualifications required in the notice of vacancy. Therefore, as the complainant had no interest in returning to the organization, the Tribunal granted compensation for him.

A very recent judgment (*Judgment No. 2859*) has brought one of the most interesting cases, similarly to *Judgment No. 2193*[108], with a concurring opinion of one of the judges. The case was about an official who had been promoted but his basic salary has remained merely equal to the amount which he had obtained before the promotion. Pertaining to the organization's staff regulations, an employee shall receive a higher salary in his new position. Even though the organization paid him a compensatory payment, he claimed for unequal treatment given that an external candidate with same experiences and skills would have been appointed possibly to a higher grade, obviously with higher salary, than himself bounding by his career path.

In its reply the organization stated that the promotion was lawful, however, at the time of the promotion it did not comply with the staff regulations, that is why a compensatory payment was applied. They added there were not any possibilities to promote the claimant to a higher position as the present promotion from "B" to "A" class itself constituted an exceptional career development. Furthermore, the defendant rejected the allegation about the unequal treatment, saying that external candidates' situation was different therefore not comparable with the complainant's as their professional experience was evaluated on an individual basis.

[107] Judgment No. 1497
[108] see Part III. Chapter 3. Paragraph 3. Same-sex Partnership

The Tribunal dismissed the complaint founding satisfactory the payment compensation and accepting the factual differences between internal and external candidates. The ILOAT referred to a previous judgment[109] in which the Tribunal had similarly accepted the ad-hoc solution of an organization. The decision was not completely unanimous since Judge Augustin Gordillo filed his concurring opinion. In his opinion he drew the attention the differences between the long-time practice of the Tribunal to abstain from intervening to a carrier system and to pronounce its reasonableness for all the time. The judge considered, if the system is not changed at some appropriate time, the ad-hoc solutions will hurt basic legal principles, such as fairness, equal treatment, proportionality, what might lead a new approach on behalf of the Tribunal. Since this decision is a recent one we do not know yet whether the organization will eventually change its career system or the Tribunal will modify its practice towards similar cases.

§ 9. Discrimination against Temporary Workers

Temporary workers do not form part of staff members. Very often they perform same or similar activities than the members of the staff but their rights and allowances abound. In contrast to some national jurisdictions[110] in which permanent and temporary workers are entitled to same rights, international organizations do not follow this practice. That is a source of conflicts which affects the work of the ILOAT as well.

There is a well-known Central-East-European (true) story about someone who was born in the Austro-Hungarian Empire, attended schools in Tsechoslovakia, married in Hungary, worked in the Soviet Union and retired in Ukraine, although he has never leaved his mother town, Ungvar (Uzsgorod). Something similar has happened to the complainant in *Judgment No. 2138*. He was working for fifteen years at the same place with the same job, meanwhile his employer has changed several times: he was recruited for a joint program of two international organizations and during his service he was employed by both of the organizations, respectively. He asked for a long-term contract instead of a new two years appointment from his latest employer but the request was refused.

[109] Judgment No. 2624
[110] see for example Hungarian Labour Code 1992.: XXII.

The Tribunal stated even if the complainant's contract had been continuous with the organization in question there would not have had a right to a long-term contract. According to the Staff Regulations, those who exceed seven years in service may be appointed for a long-term contract by the sole discretion of the Director General. In that case the claimant did not exceed the term due to the circumstances. Therefore, the complaint was dismissed.

The author does understand that the ILOAT, and the administrative tribunals in general, are not in charge to compensate the injustices of the world of international civil servants. Technically speaking, the Tribunal reached the only possible verdict: since the decision of the Director General was discretionally, what is more, the claimant did not meet the criteria. However, we have to mention that precarious work constitutes one of the biggest problems in the sphere of international officials notwithstanding they are temporary workers or staff members. The international organizations use to refer their rotational policy but we consider that an underlying concept might be introduced. The international civil servants work under a permanent threat that their contract would not to be renewed consequently they are not brave enough to stand up for their rights – at least in accordance with the allegations of staff unions[111]. In our opinion, the actual climate does not facilitate the self-defence of the workers neither in private nor in public sector. In this respect there is not significant differences between an international civil servant and, let us say, an at-will employee in the United States.

With its decision in *Judgment No. 2649* the ILOAT dismissed a complaint about the appliance of staff salary scales to the temporary workers. The complainant, a temporary worker, requested for same salary scale as it would have had if he had been staff member. The Tribunal insisted on its long-standing and safe practice: if an organization complies with its rules and regulations, the Tribunal seldom examine the regulation itself. Moreover, the call of equal treatment was not possible at all since the ILOAT stated that the temporary workers salary scales are beyond the jurisdiction of the Tribunal. So, there was not any base of comparison as one of the systems to compare was not constituted the subject of examination.

Until now, we have covered such cases in which the complainant was employed in short-term contract from the beginning. By contrast, in *Deville-Gasser*[112] judgment the affected civil servants were forced to accept half-time service instead of their previous full-time

[111] personal interview
[112] Judgment No. 2097

employment due to the financial situation of the organization. The officials had a choice to reduce the workforce with 50 percent or switch the employment according to the above-mentioned fashion.

Reportedly, however they accepted the changes, the complainants (22 civil servants) were not fully aware of the meaning of the change: their previous international civil servant status has changed to external, temporary worker, pertaining to the Staff Regulations. As a consequence, they have lost, among others, dependants' and language allowances and contributions to the Pension Fund. By their interim grievance, the latter element was awarded to them but not with a retroactive effect. The rest of their request was rejected.

The complainants referred to various ILO Conventions to prove the unfair and unequal treatment of the defendant. They called the ILO Part-time Work Convention[113]. Under the wording of the Convention, the complainants were "full-time workers affected by partial unemployment". The claimant stated they were not short-term staff members but international civil servants whose fixed-term contracts had been reduced to half-time. In fact, they submit that the Staff Rules make no mention of short-term contracts, only short-term staff. It is not possible for a fixed-term or permanent contract holder to be, concurrently, short-term staff, even if that person is remunerated under a short-term contract. If their assumption was right, same rights and allowances would be granted to them as for full-time staff members. Moreover, the complainant referred to ILO Equal Remuneration Convention[114] as well. The Convention requires that all workers be given equal remuneration for work of equal value. The claimant alleged that the defendant clearly breached this principle, make sharp distinction between full-time and short-term staff.

In its reply the organization argued that ILO Conventions are not binding on international organizations but solely the member states which had ratified the legal norm. Furthermore, there was not a breach of the equal remuneration principle since short-term and full-time employment was legally and factually different. The decision about pension scheme was discretional although there were not any obligations to do so. It was taken in good faith and as a gesture of goodwill.

[113] ILO Convention No. 175, 1994
[114] ILO Convention No. 100, 1951

The Tribunal accepted organisation's arguments. It is interesting, and requires further analysis, that the ILOAT declared only that the Conventions did not apply to the case but did not add that ILO Conventions have been excluded at all from the application to the cases before the Tribunal. On the other hand, the Tribunal called "fishing expedition" and denied to deal with the "vast array of documents" which the complainants had filed. Yes, sometimes parties use to do that. Without any doubt the plaintiffs are required to file all of the necessary documents in good order and avoid redundant and indifferent information. Based on the documentation, the court may accept the arguments or dismiss the case. However, in our opinion one thing is strictly forbidden: to rate the parties and to apply malicious comments on their activities.

To summarize this paragraph, all of the complaints were dismissed[115]. Although the claims were admitted due to the extension of the notion "officials" who are entitled to apply for the Tribunal, according to the Tribunal there is not equal treatment between staff members and short-term workers as their factual and legal position is so different. Therefore, the breakthrough in this kind of cases is still expected.

§ 10. Fulfilment of Due Process Requirements

As we have discussed earlier in the present thesis[116] the fair trial and the due process is crucial for international tribunals. Since the immunity of the international organizations is deemed rather relative than absolute, the tribunal's procedures might be challenged on that ground. In the present thesis we have covered forty decisions what provides a cross-section not only about equal treatment but concerning due process as well.

Theoretically, the ILOAT does not have a pre-defined, absolute proof system; all positive proofs are acceptable which have causative relation to the subject. On the other hand, negative proving is not totally denied by the Tribunal[117]. However, in several cases we have experienced a reluctant attitude towards the complainant because of the difficulties to prove their allegations which finally led to a dismissal. In *Judgment No. 2637*[118] the complainant

[115] not only in the discussed cases but in the other cases as well
[116] see Part II. Chapter 2. Paragraph 3.
[117] Germond, *Les Principles Généraux selon le Tribunal Administratif de l'OIT* (Éditions Pedone, Paris, 2009) p. 327
[118] see Paragraph 7. in this chapter

unsuccessfully requested to the Tribunal to reach personal files with a view to find like factual situations with different treatment. The motion was refused. In *Judgment No. 2771*[119] the complainant was not notified of witnesses' hearing, therefore he was not able to cross-examine them. The complaint was dismissed, contrary to several previous decisions, saying, that later he knew the documentation of the hearings and could make observations to it. It seems, the classical principle of *audi alterem partem was* partially damaged in that case. Moreover, in several cases the complaints were refused without thorough examination due to the lack of appropriate proof. In these cases, even the complaints were received, the procedures ended without really substantial decisions. Self-evidently, the Tribunal can deal only with proper proofs but in absence of trials and oral hearings the further available possibilities for the complainants are strongly limited.

We arrived again to the question of oral hearings. As we have discussed above, the ILOAT ignore this method at all. The *Cachelin* case[120] made it clear there are not any principal objections against the possible content of the hearings as the same statements from the witnesses were accepted in writing. As we have stated before, we cannot regard written statements as equal with oral hearings and we do consider the latter indispensable especially in sensible cases like harassment.

Another controversial decision can be found in *Judgment No. 2520*[121] concerning burden of proof. The Tribunal turned a blind eye to an obvious incompatibility of an alleged supervisor as an interviewer, saying, that the complainant did not directly prove the biased nature of the interview and the fact that the supervisor know about the complaint at the time of the interview. In our opinion, the formal legal fault should not be a question of further proofs. If a self-evident incompatibility occurs, any additional circumstances won't be material; the impugned measure will be null and void.

Similar decision was taken in *Passacantando* judgment[122]. The ILOAT set deduction up instead of acknowledge the obvious malpractice. The Tribunal's conclusion, if the complainant had asked for more time, the request surely would have been granted, is not more than a simple supposition. Apart from the fact, that the complaint had to dismiss for another

[119] see Paragraph 4. in this chapter
[120] see Paragraph 1. in this chapter
[121] see Paragraph 4. in this chapter
[122] see Paragraph 8. in this chapter

reasons, the Tribunal is not in charge of finding excuses for the international organisations' faults.

One can consider, these breaches of the due process principle are seldom and the general practice of ILOAT is exempt from such mistakes. From quantitative point of view we do agree with that statement. By contrast, the ILOAT must be the flagship of all labour courts and tribunals all around the world and from this respect; we do think that even one conceptual fault is deemed to be too much.

Conclusions

In the course of the present research, equal treatment decisions of the ILOAT were discussed with special regard to some dedicated type of discrimination. One hundred and sixty-five equal treatment related cases were found in ILO TRIBLEX database in which we examined thoroughly forty judgments.

Equal treatment is one of the most important issues in the globalized labour market. The international organizations by their nature cannot exist without diversity and, consequently, equal treatment. The concept is strongly promoted worldwide by ILO. The ILOAT has widely acknowledged jurisdiction, so the Tribunal's judgments serve as role models for the organizations and these decisions are worth a detailed study.

Due to the growing significance of transparency and accountability principles the control over the administrative tribunals is increasing since ECtHR's *Waite and Kennedy* judgment has made relative the immunity of international organizations. This decision has warned tribunals about the vital importance of fair process and due trial. Legal procedures at administrative tribunals are not exclusively for inner circles anymore.

After *Waite and Kennedy*, ILOAT, and surely other administrative tribunals, have to prove with all of their decisions that this legal track means a reasonable alternative for access to law. Within these circumstances, independence of the judges and procedural mistakes and discrepancies have paramount significance. We found the possibility of re-appointment of judges controversial. Moreover, the personal scope of the Tribunal is unduly narrow, excluding external consultants, interns or unsuccessful candidates from the access to ILOAT. In our opinion, the most problematic finding is that the Tribunal procedure is characterised by the absence of oral hearings. As *Cachelin* has proved, in certain case oral hearing would be inevitable with special regard to the harassment cases.

Concerning equal treatment cases, the general observations of the Tribunal are hardly open to criticism. The ILOAT has kept to the Aristotelian definition of equality. The statements of the Tribunal about differences between factual and legal equality (*Delhomme*) and between differentiation and discrimination (*Metten*); or the prohibition of uniform assessment (*De*

Gregori, Tévoedjré) marked this practice. Several decisions[123] have fostered the concept that unlawful handling of one case does not entitle the complainants to the same unlawful treatment.

Among the decisions about an (alleged) unequal treatment situation based on a well-defined peculiarity, we found a large number of controversial ones. In same-sex partnership cases, Judgment *No. 2193 and No. 2549* are clearly conflicting as well as *Judgment No. 2771* and *Ferrechia, Sharma, Manaktala* decisions and *Judgment No. 2475* (harassment cases). And just like *Seissau* and *West* judgments in age discrimination. At least, we can examine judges' dissenting opinions which are published in TRIBLEX. Obviously, we can find contradictory decisions in most of the other courts' practice and, parallel to social changes, juridical practice is an ever-changing system too. However, ILOAT has not made clear the relation with the previous judgments, whether they are still applicable or obsolete and the Tribunal will follow another way of thinking. The lack of guarantee to define in an obligatory fashion the relative position to the previous judgments and the absence of a coherent system of reference to other courts' decisions (ECJ, ECtHR) or universal legal principles, sometimes make ILOAT jurisdiction vulnerable and incalculable.

Another interesting subject is open to further investigations: a comparative study concerning ILOAT and ECJ decisions. Although the present thesis found similarities between *Judgment No. 2193* and *Grant* case or *Matthews* and *Kalanke*, a deeper analysis was out of scope of this study.

[123] Khelifati, Cachelin, Judgment No. 1080, 1366, 1536

Recommendations

In order to avoid allegations, we suggest lengthening the time of appointment of the judges instead of further engagements. The solution can be to increase three-year appointments to five-years, or even more.

We recommend that oral hearings should be taken by video conference saving time and money, similar to the possibility in CAS procedural rules. As we stated several times in the present thesis, oral hearings are *sine qua non*-s of all conflict resolutions with special regard to the labour-related disputes.

And most importantly: no further delay is possible to develop an unambiguous and comprehensible position to the ILOAT's previous judgments as well as other respectful judicial organs' (ECJ, EctHR) decisions. Since simple judgments are not consequent to that issue, other legal tool would be needed. We do imagine the extension of the text of statutes and rules of the Tribunal or other appropriate way to ensure a general and mandatory application of the said practices.

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List of Equal Treatment Cases at ILOAT

Annex No. 1.

	A	B	C	D	E	F
1						
2	No. of case	Nature of discrimination	Outcome	Organization involved	Year of decision	
3	2859	internal-external candidates	dismissed	EPO	2009	
4	2835	general: promotion	dismissed	EPO	2009	
5	2834	general: promotion	dismissed	EPO	2009	
6	2773	general:disciplinary	dismissed	FAO	2009	
7	2771	sexual harassment	partially accepted	FAO	2009	
8	2725	general:benefits	dismissed	Eurocontroll	2008	
9	2706	sexual harassment	partially accepted	WIPO	2008	
10	2704	general: promotion	partially accepted	UNIDO	2008	
11	2649	temporary worker	dismissed	EPO	2007	
12	2638	nationality	dismissed	WTO	2007	
13	2637	nationality	dismissed	WTO	2007	
14	2619	general:special leave	dismissed	UNESCO	2007	
15	2597	nationality:expat. Allowance	dismissed	EPO	2007	
16	2556	general:replacement days	dismissed	Org. Prohib. Che. Wae.	2006	
17	2553	harrasment	dismissed	IAEA	2006	
18	2549	same-sex partnership	accepted	ILO	2006	
19	2527	nationality:pension	dismissed	EPO	2006	
20	2520	moral harassment	dismissed	FAO	2006	
21	2513	age: retirement	accepted	IAEA	2006	
22	2498	location (local radius)	dismissed	CERN	2006	
23	2418	general: promotion	partially accepted	EPO	2005	
24	2393	general: vacation	dismissed	FAO	2005	
25	2392	sex+internal status: vacancy	partially accepted	IFAD	2005	
26	2377	age: retirement	dismissed	IAEA	2005	
27	2363	general: vacation	dismissed	PAHO	2004	
28	2336	general: vacation	partially accepted	Eurocontroll	2004	
29	2314	general: allowance	accepted	UNESCO	2004	
30	2313	general: promotion	dismissed	WHO	2004	
31	2296	nationality:taxation	accepted	ILO	2004	
32	2292	nationality (territory):pension	dismissed	EPO	2004	
33	2256	nationality:taxation	partially accepted	Org. Prohib. Che. Wae.	2003	
34	2244	general: composition of appeal committee	accepted	EPO	2003	
35	2210	general: vacation	partially accepted	Eurocontroll	2003	

List of Equal Treatment Cases at ILOAT

Annex No. 1.

	A	B	C	D	E	F
36	2194	general: vacation	dismissed	Eurocontroll	2003	
37	2193	same-sex partnership	dismissed	UNESCO	2003	
38	2163	general: promotion	dismissed	FAO	2002	
39	2138	temporary worker	dismissed	IAEA	2002	
40	2120	family status	partially accepted	IAEA	2002	
41	2097	temporary worker	dismissed	WHO	2002	
42	2066	general:salary scale	dismissed	UNESCO	2001	
43	2060	general: vacation	dismissed	Eurocontroll	2001	
44	2023	equal pay for equal work	dismissed	WHO	2001	
45	2004	gender, reverse discrimination!	partially accepted	WHO	2001	
46	1990	language	dismissed	Eurocontroll	2000	
47	1968	general: promotion	partially accepted	EPO	2000	
48	1866	location (creche)	dismissed	EPO	1999	
49	1804	general: promotion	partially accepted	EPO	1999	
50	1789	general: overqualification	accepted	European Southern O.	1999	
51	1787	general: vacation	accepted	IOM	1998	
52	1706	gender	partially accepted	UNIDO	1998	
53	1600	general: promotion	partially accepted	EPO	1997	
54	1549	general: vacation	partially accepted	IAEA	1996	
55	1536	age: retirement	dismissed	UNESCO	1996	
56	1497	internal-external candidates	accepted	WHO	1996	
57	1491	nationality:taxation	dismissed	CERN	1996	
58	1461	general: allowance	accepted	Eurocontroll	1995	
59	1445	general:allowance	dismissed	UPU	1995	
60	1436	general: disciplinary action	dismissed	ITU	1995	
61	1420	general: allowance	accepted	European Southern O.	1995	
62	1416	age: carrier path	partially accepted	CERN	1995	
63	1415	general: carrier path	dismissed	CERN	1995	
64	1414	general: carrier path	dismissed	CERN	1995	
65	1413	general: carrier path	dismissed	CERN	1995	
66	1412	general: carrier path	dismissed	CERN	1995	
67	1390	general: vacation	accepted	Eurocontroll	1995	
68	1376	sexual harassment	accepted	WHO	1994	
69	1369	union membership	dismissed	Eurocontroll	1994	
70	1366	general: education grant	dismissed	UPU	1994	

List of Equal Treatment Cases at ILOAT

Annex No. 1.

	A	B	C	D	E	F
71	1364	nationality: location	accepted	EPO	1994	
72	1355	general: promotion	dismissed	UPU	1994	
73	1339	gender: parental leave	dismissed	WHO	1994	
74	1333	general: family allowance	dismissed	EPO	1994	
75	1324	nationality: location	accepted	EPO	1994	
76	1321	general: allowance	dismissed	CERN	1994	
77	1317	general: contract renewal	partially accepted	ITU	1994	
78	1268	internal-external candidates	accepted	PAHO	1993	
79	1241	general: allowance	dismissed	WHO	1993	
80	1225	nationality:taxation	dismissed	FAO	1993	
81	1224	nationality:taxation	dismissed	IAEA	1993	
82	1223	internal-external candidates	accepted	Eurocontroll	1993	
83	1213	general:promotion	dismissed	ILO	1993	
84	1204	general:promotion	partially accepted	CERN	1993	
85	1196	location	dismissed	WIPO	1992	
86	1189	location	dismissed	ILO	1992	
87	1182	nationality:taxation	accepted	CERN	1992	
88	1170	general:promotion	dismissed	EPO	1992	
89	1158	general:promotion	partially accepted	UNIDO	1992	
90	1144	general:reporting system	dismissed	EPO	1992	
91	1137	age (seniority)	dismissed	EPO	1992	
92	1124	general:dismissal	dismissed	INTERPOL	1991	
93	1121	general:payment	dismissed	Eurocontroll	1991	
94	1120	general:payment	dismissed	Eurocontroll	1991	
95	1119	general:payment	dismissed	Eurocontroll	1991	
96	1080	general:payment	dismissed	INTERPOL	1991	
97	1077	general: promotion	partially accepted	PAHO	1991	
98	1071	general:vacancy	accepted	PAHO	1991	
99	1051	general:allowance	dismissed	ITU	1990	
100	1022	general:dismissal	partially accepted	INTERPOL	1990	
101	1021	general:dismissal	dismissed	INTERPOL	1990	
102	1020	general:dismissal	dismissed	INTERPOL	1990	
103	1019	general:dismissal	dismissed	INTERPOL	1990	
104	978	family status	partially accepted	UNESCO	1989	
105	957	general: seniority	dismissed	EPO	1989	

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	A	B	C	D	E	F
106	953	general: seniority	dismissed	EPO	1989	
107	917	political opinion	dismissed	FAO	1988	
108	895	educational background	dismissed	EPO	1988	
109	870	general: carrier path	dismissed	ILO	1987	
110	851	educational background	dismissed	EPO	1987	
111	850	educational background	dismissed	EPO	1987	
112	845	general: promotion	dismissed	EPO	1987	
113	832	general: pension	dismissed	ILO	1987	
114	819	educational background	dismissed	EPO	1987	
115	818	general: seniority	dismissed	EPO	1987	
116	767	general: golden handshake	partially accepted	ILO	1986	
117	755	general:promotion	dismissed	EPO	1986	
118	754	general	dismissed	EPO	1986	
119	739	general:seniority	dismissed	EPO	1986	
120	734	general:seniority	dismissed	EPO	1986	
121	729	general: vacation	partially accepted	FAO	1986	
122	721	internal-external candidates	partially accepted	EPO	1986	
123	674	general:promotion	dismissed	EPO	1985	
124	666	general:education costs	dismissed	EPO	1985	
125	656	general:seniority	accepted	EPO	1985	
126	614	general:promotion	dismissed	ILO	1984	
127	580	general, access to the Tribunal	dismissed	ILO	1983	
128	572	general: seniority	accepted	EPO	1983	
129	568	general:promotion	dismissed	EPO	1983	
130	551	nationality, quotas	dismissed	EPO	1983	
131	524	general: vacation	dismissed	ILO	1982	
132	518	general:allowance	dismissed	EPO	1982	
133	514	general:allowance	dismissed	PAHO	1982	
134	505	general:allowance	dismissed	FAO	1982	
135	498	general:allowance	dismissed	ILO	1982	
136	485	location, allowance	dismissed	FAO	1982	
137	484	location, allowance	dismissed	FAO	1982	
138	483	location,allowance	dismissed	FAO	1982	
139	470	general:abolition of post	partially accepted	PAHO	1982	
140	452	location, allowance	dismissed	FAO	1981	

List of Equal Treatment Cases at ILOAT

Annex No. 1.

	A	B	C	D	E	F
141	442	res iudicata	dismissed	ILO	1981	
142	426	taxation	dismissed	PAHO	1980	
143	409	general:promotion	dismissed	FAO	1980	
144	391	general: allowance	dismissed	ILO	1980	
145	371	general: pension	dismissed	EPO	1979	
146	368	general:allowance	dismissed	EPO	1979	
147	347	general:promotion	dismissed	IPI	1978	
148	308	general:allowance	dismissed	IPI	1977	
149	304	general:promotion	dismissed	IPI	1977	
150	301	general:promotion	dismissed	IPI	1977	
151	300	general:promotion	dismissed	IPI	1977	
152	294	general:promotion	accepted	FAO	1977	
153	262	general:promotion	partially accepted	IPI	1975	
154	220	nationality	partially accepted	IPI	1973	
155	217	general: seniority	dismissed	IPI	1973	
156	212	nationality	dismissed	WHO	1973	
157	208	age	dismissed	UPU	1973	
158	207	drunken state	dismissed	UNESCO	1973	
159	202	general:promotion	dismissed	IPI	1973	
160	177	nationality:taxation	dismissed	UIBPIP	1971	
161	168	location, allowance	dismissed	FAO	1970	
162	167	location,allowance	dismissed	FAO	1970	
163	166	general:contract renewal	dismissed	FAO	1970	
164	107	internal-external candidates	dismissed	FAO	1967	
165	66	general: publication	dismissed	WHO	1962	
166	60	general:allowance	partially accepted	WHO	1962	
167	39	general:promotion	dismissed	ITU	1958	

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Annex No. 1.

No. of case	Nature of discrimination	Outcome	Organization involved	Year of decision
2859	internal-external candidates	dismissed	EPO	2009
2835	general: promotion	dismissed	EPO	2009
2834	general: promotion	dismissed	EPO	2009
2773	general:disciplinary	dismissed	FAO	2009
2771	sexual harassment	partially accepted	FAO	2009
2725	general:benefits	dismissed	Eurocontroll	2008
2706	sexual harassment	partially accepted	WIPO	2008
2704	general: promotion	partially accepted	UNIDO	2008
2649	temporary worker	dismissed	EPO	2007
2638	nationality	dismissed	WTO	2007
2637	nationality	dismissed	WTO	2007
2619	general:special leave	dismissed	UNESCO	2007
2597	nationality:expat. Allowance	dismissed	EPO	2007
2556	general:replacement days	dismissed	Org. Prohib. Che. Wae.	2006
2553	harrasment	dismissed	IAEA	2006
2549	same-sex partnership	accepted	ILO	2006
2527	nationality:pension	dismissed	EPO	2006
2520	moral harassment	dismissed	FAO	2006
2513	age: retirement	accepted	IAEA	2006
2498	location (local radius)	dismissed	CERN	2006
2418	general: promotion	partially accepted	EPO	2005
2393	general: vacation	dismissed	FAO	2005
2392	sex+internal status: vacancy	partially accepted	IFAD	2005
2377	age: retirement	dismissed	IAEA	2005
2363	general: vacation	dismissed	PAHO	2004
2336	general: vacation	partially accepted	Eurocontroll	2004
2314	general: allowance	accepted	UNESCO	2004
2313	general: promotion	dismissed	WHO	2004
2296	nationality:taxation	accepted	ILO	2004
2292	nationality (territory):pension	dismissed	EPO	2004
2256	nationality:taxation	partially accepted	Org. Prohib. Che. Wae.	2003
2244	general: composition of appeal committee	accepted	EPO	2003
2210	general: vacation	partially accepted	Eurocontroll	2003

List of Equal Treatment Cases at ILOAT

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	A	B	C	D	E	F
36	2194	general: vacation	dismissed	Eurocontroll	2003	
37	2193	same-sex partnership	dismissed	UNESCO	2003	
38	2163	general: promotion	dismissed	FAO	2002	
39	2138	temporary worker	dismissed	IAEA	2002	
40	2120	family status	partially accepted	IAEA	2002	
41	2097	temporary worker	dismissed	WHO	2002	
42	2066	general:salary scale	dismissed	UNESCO	2001	
43	2060	general: vacation	dismissed	Eurocontroll	2001	
44	2023	equal pay for equal work	dismissed	WHO	2001	
45	2004	gender, reverse discrimination!	partially accepted	WHO	2001	
46	1990	language	dismissed	Eurocontroll	2000	
47	1968	general: promotion	partially accepted	EPO	2000	
48	1866	location (creche)	dismissed	EPO	1999	
49	1804	general: promotion	partially accepted	EPO	1999	
50	1789	general: overqualification	accepted	European Southern O.	1999	
51	1787	general: vacation	accepted	IOM	1998	
52	1706	gender	partially accepted	UNIDO	1998	
53	1600	general: promotion	partially accepted	EPO	1997	
54	1549	general: vacation	partially accepted	IAEA	1996	
55	1536	age: retirement	dismissed	UNESCO	1996	
56	1497	internal-external candidates	accepted	WHO	1996	
57	1491	nationality:taxation	dismissed	CERN	1996	
58	1461	general: allowance	accepted	Eurocontroll	1995	
59	1445	general:allowance	dismissed	UPU	1995	
60	1436	general: disciplinary action	dismissed	ITU	1995	
61	1420	general: allowance	accepted	European Southern O.	1995	
62	1416	age: carrier path	partially accepted	CERN	1995	
63	1415	general: carrier path	dismissed	CERN	1995	
64	1414	general: carrier path	dismissed	CERN	1995	
65	1413	general: carrier path	dismissed	CERN	1995	
66	1412	general: carrier path	dismissed	CERN	1995	
67	1390	general: vacation	accepted	Eurocontroll	1995	
68	1376	sexual harassment	accepted	WHO	1994	
69	1369	union membership	dismissed	Eurocontroll	1994	
70	1366	general: education grant	dismissed	UPU	1994	

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Annex No. 1.

	A	B	C	D	E	F
71	1364	nationality: location	accepted	EPO	1994	
72	1355	general: promotion	dismissed	UPU	1994	
73	1339	gender: parental leave	dismissed	WHO	1994	
74	1333	general: family allowance	dismissed	EPO	1994	
75	1324	nationality: location	accepted	EPO	1994	
76	1321	general: allowance	dismissed	CERN	1994	
77	1317	general: contract renewal	partially accepted	ITU	1994	
78	1268	internal-external candidates	accepted	PAHO	1993	
79	1241	general: allowance	dismissed	WHO	1993	
80	1225	nationality:taxation	dismissed	FAO	1993	
81	1224	nationality:taxation	dismissed	IAEA	1993	
82	1223	internal-external candidates	accepted	Eurocontroll	1993	
83	1213	general:promotion	dismissed	ILO	1993	
84	1204	general:promotion	partially accepted	CERN	1993	
85	1196	location	dismissed	WIPO	1992	
86	1189	location	dismissed	ILO	1992	
87	1182	nationality:taxation	accepted	CERN	1992	
88	1170	general:promotion	dismissed	EPO	1992	
89	1158	general:promotion	partially accepted	UNIDO	1992	
90	1144	general:reporting system	dismissed	EPO	1992	
91	1137	age (seniority)	dismissed	EPO	1992	
92	1124	general:dismissal	dismissed	INTERPOL	1991	
93	1121	general:payment	dismissed	Eurocontroll	1991	
94	1120	general:payment	dismissed	Eurocontroll	1991	
95	1119	general:payment	dismissed	Eurocontroll	1991	
96	1080	general:payment	dismissed	INTERPOL	1991	
97	1077	general: promotion	partially accepted	PAHO	1991	
98	1071	general:vacancy	accepted	PAHO	1991	
99	1051	general:allowance	dismissed	ITU	1990	
100	1022	general:dismissal	partially accepted	INTERPOL	1990	
101	1021	general:dismissal	dismissed	INTERPOL	1990	
102	1020	general:dismissal	dismissed	INTERPOL	1990	
103	1019	general:dismissal	dismissed	INTERPOL	1990	
104	978	family status	partially accepted	UNESCO	1989	
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116	767	general: golden handshake	partially accepted	ILO	1986	
117	755	general:promotion	dismissed	EPO	1986	
118	754	general	dismissed	EPO	1986	
119	739	general:seniority	dismissed	EPO	1986	
120	734	general:seniority	dismissed	EPO	1986	
121	729	general: vacation	partially accepted	FAO	1986	
122	721	internal-external candidates	partially accepted	EPO	1986	
123	674	general:promotion	dismissed	EPO	1985	
124	666	general:education costs	dismissed	EPO	1985	
125	656	general:seniority	accepted	EPO	1985	
126	614	general:promotion	dismissed	ILO	1984	
127	580	general, access to the Tribunal	dismissed	ILO	1983	
128	572	general: seniority	accepted	EPO	1983	
129	568	general:promotion	dismissed	EPO	1983	
130	551	nationality, quotas	dismissed	EPO	1983	
131	524	general: vacation	dismissed	ILO	1982	
132	518	general:allowance	dismissed	EPO	1982	
133	514	general:allowance	dismissed	PAHO	1982	
134	505	general:allowance	dismissed	FAO	1982	
135	498	general:allowance	dismissed	ILO	1982	
136	485	location, allowance	dismissed	FAO	1982	
137	484	location, allowance	dismissed	FAO	1982	
138	483	location,allowance	dismissed	FAO	1982	
139	470	general:abolition of post	partially accepted	PAHO	1982	
140	452	location, allowance	dismissed	FAO	1981	

List of Equal Treatment Cases at ILOAT

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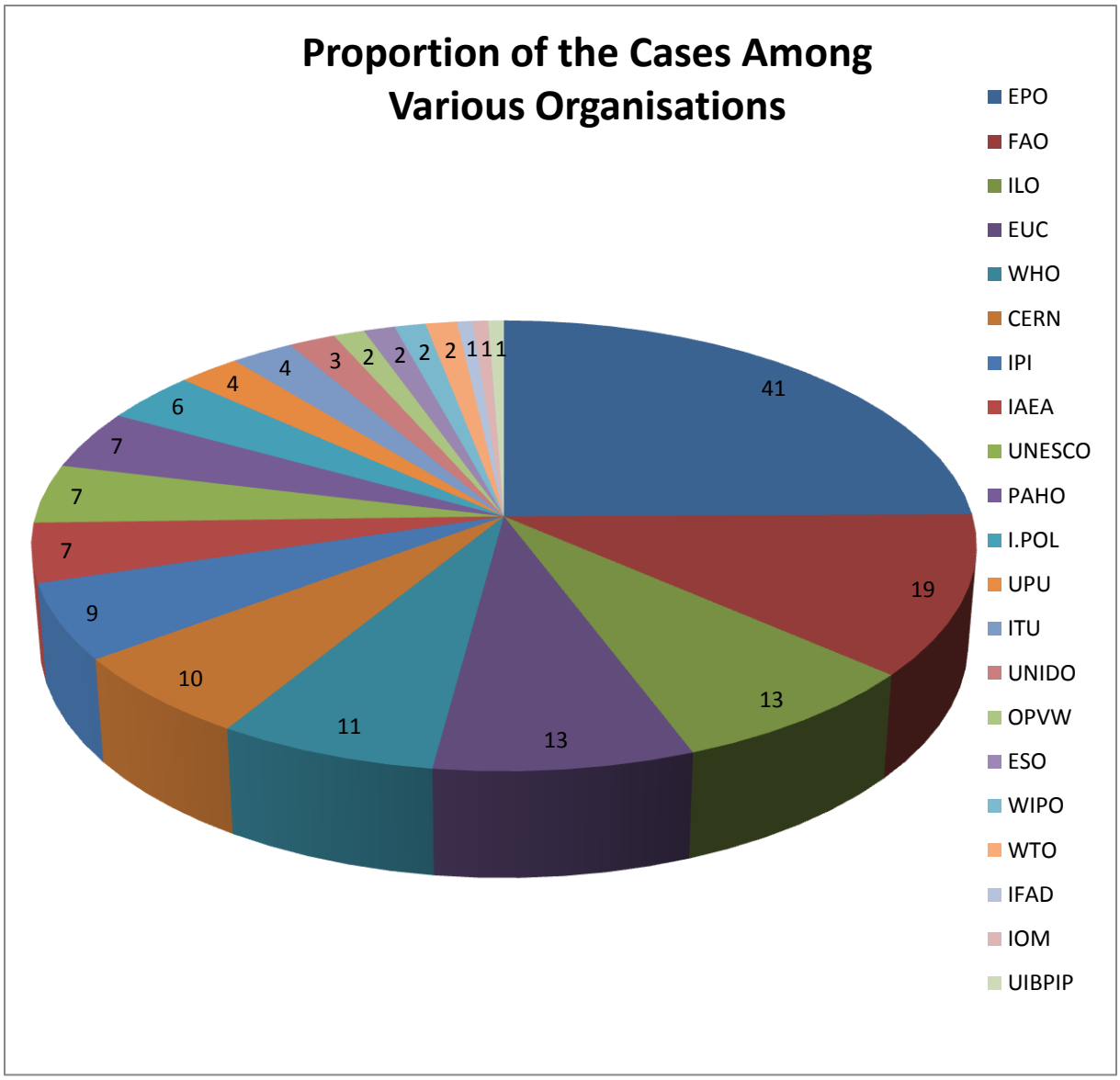
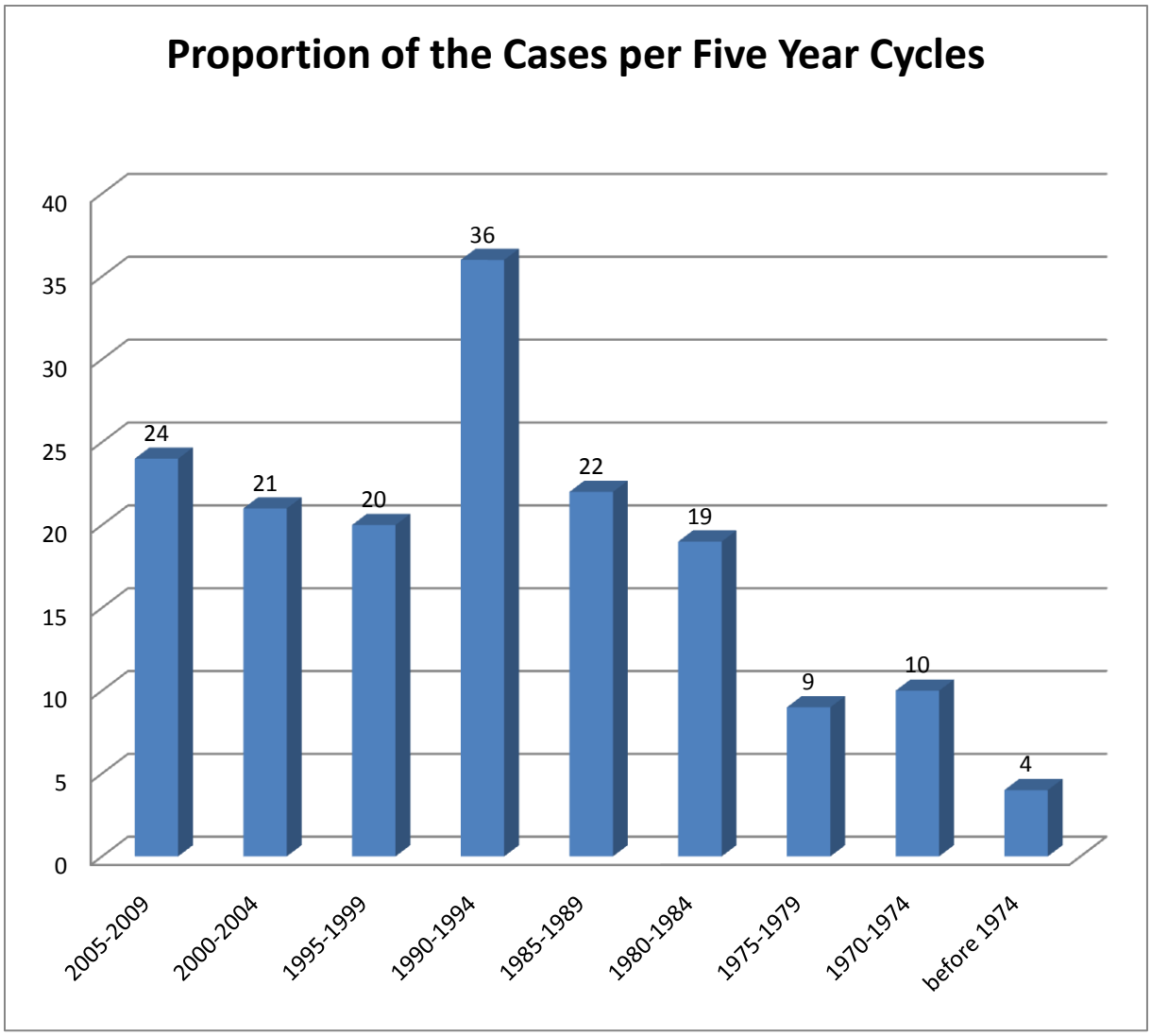
145	371	general: pension	dismissed	EPO	1979	
146	368	general:allowance	dismissed	EPO	1979	
147	347	general:promotion	dismissed	IPI	1978	
148	308	general:allowance	dismissed	IPI	1977	
149	304	general:promotion	dismissed	IPI	1977	
150	301	general:promotion	dismissed	IPI	1977	
151	300	general:promotion	dismissed	IPI	1977	
152	294	general:promotion	accepted	FAO	1977	
153	262	general:promotion	partially accepted	IPI	1975	
154	220	nationality	partially accepted	IPI	1973	
155	217	general: seniority	dismissed	IPI	1973	
156	212	nationality	dismissed	WHO	1973	
157	208	age	dismissed	UPU	1973	
158	207	drunken state	dismissed	UNESCO	1973	
159	202	general:promotion	dismissed	IPI	1973	
160	177	nationality:taxation	dismissed	UIBPIP	1971	
161	168	location, allowance	dismissed	FAO	1970	
162	167	location,allowance	dismissed	FAO	1970	
163	166	general:contract renewal	dismissed	FAO	1970	
164	107	internal-external candidates	dismissed	FAO	1967	
165	66	general: publication	dismissed	WHO	1962	
166	60	general:allowance	partially accepted	WHO	1962	
167	39	general:promotion	dismissed	ITU	1958	

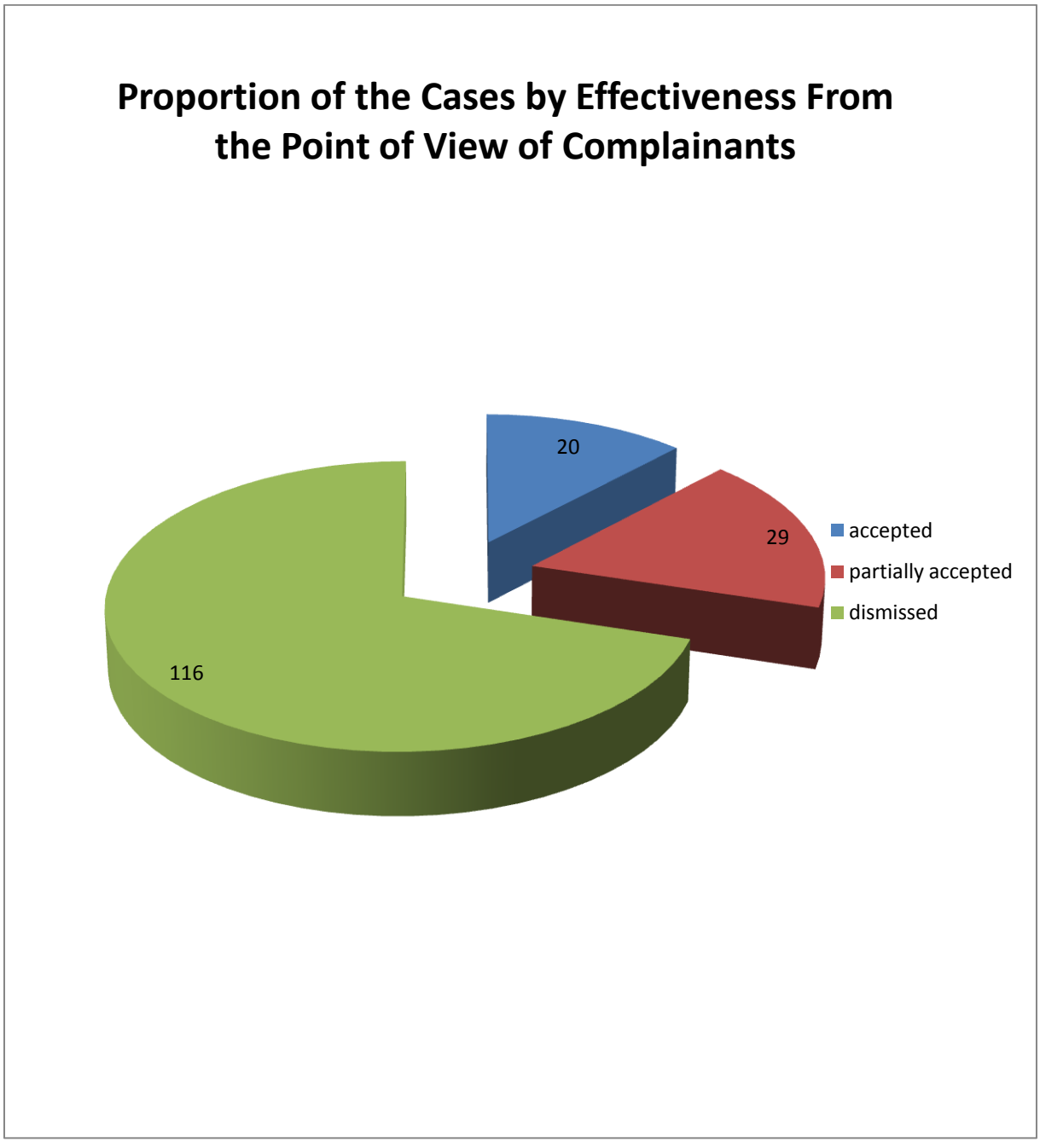
Annex No. 2.


Proportion of the Cases Among Various Organisations
41
19
13
13
11
10
9
7
7
7
6
4
4
3
2
2
2
2
1
1
1
EPO
FAO
ILO
EUC
WHO
CERN
IPI
IAEA
UNESCO
PAHO
I.POL
UPU
ITU
UNIDO
OPVW
ESO
WIPO
WTO
IFAD
IOM
UIBPIP

Annex No. 3.


Proportion of the Cases per Five Year Cycles
40
35
30
25
20
15
10
5
0
24
21
20
36
22
19
9
10
4
2005-2009
2000-2004
1995-1999
1990-1994
1985-1989
1980-1984
1975-1979
1970-1974
before 1974

Annex No. 4.


Proportion of the Cases by Effectiveness From the Point of View of Complainants
20
29
116
accepted
partially accepted
dismissed