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1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of a consolidated appeal against three Judgments rendered by the United N

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*Before the UNDT*

4. In 2017 and 2018, the UNDT in Geneva received what it referred to as “5 waves” of applications challenging the Administration’s implementation of the PAM, which had resulted in a pay cut for United Nations staff members based in Geneva. These cases have also been referred to as the “salary scale” cases. The applications, all filed by individual staff, were consolidated and then transferred from the UNDT in Geneva to the UNDT in Nairobi on account of recusal by two Geneva-based Judges.<sup>5</sup>

5. Throughout the summer of 2020, the UNDT in Nairobi issued 19 Judgments on these applications. This Judgment addresses appeals against four of those Judgments as noted above. The remaining UNDT Judgments, which have been appealed separately, are disposed of by this Tribunal in other Judgments.

6. On 10 July 2020, the UNDT issued Judgments UNDT/2020/114 (*Steinbach*) and UNDT/2020/115 (*Bozic*). On 29 July 2020, the UNDT issued Judgment UNDT/2020/129 (*Bozic et al.*) These judgments dealt with staff members from the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). On 19 August 2020, the UNDT issued Judgment UNDT/2020/152 (*Alsaqqaf et al.*). The analysis and holdings of these four UNDT Judgments are, for material appeal pu

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18. The Appellants argue that the UNDT erred in law in not finding that the ICSC's decision had been taken *ultra vires*

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prior to 1985, the calculation was a function of both ICSC and General

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revision downward of salary was a question of good governance, which should consider

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would result in an estimated 1.3 per cent increase to the Geneva Post Adjustment Index. However,

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at the ICSC 2017 session at the three per cent level in response to political pressure as there was no discussion of its purpose of covering the margin of error. Such arbitrary  
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correct and in-line with that of the General Assembly. The position of the General Assembly is expressed in its recent resolution 74/255 A-B, which stated in part that it:<sup>26</sup>

the authority of the [ICSC] to continue to establish post adjustment multipliers for duty stations in the [UN] common system, under article 11(c) of the statute of the Commission.

that, in its resolution 44/198 and 45/259, it abolished the post adjustment scales mentioned in article 10(b) of the statute of the Commission, and reaffirms the authority of the Commission to continue to take decisions on the number of post adjustment multiplier points per duty station, under article 11(c) of its statute.

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depart from the determinations of the General Assembly and the ICSC.<sup>28</sup> Thus, in implementing the ICSC's decision regarding the common system, the Secretary-General

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37. The UNDT correctly held that the Secretary-General's decision did not infringe the Appellants' acquired rights. The UNDT's consideration in the instant case is similar to that dealt with by the Appeals Tribunal in *Lloret Alcañiz et al.* The UNDT concluded that doctrinal protection of acquired rights is an aspect of the principal of non-retroactivity. The aim is to protect individuals from harm to their vested entitlements caused by retrospective statutory instruments.<sup>30</sup> The UNDT in this case, however, suggests that when there is a prospective application, the issue of infringed acquired rights does not arise but instead a test of reasonableness applies, similar to the *Sanwidi* test.<sup>31</sup> The Secretary-General argues, however, that there is no reasonableness test applicable to decisions emanating from legislative power.

38. As indicated at the start, we adopt the reasoning of *Abd Al-Shakour et al., supra*, as reproduced below.

*Scope of the appeal*

39. This is one of a series of cases dealing with a sensitive issue deriving from a reduction in the remuneration of staff in Geneva as a result of a downward revision in the Post Adjustment Index (PAI) originated from an ICSC decision.

40. There are two features of the remuneration packages of affected United Nations staff members that underpin the decision in these cases. First, unlike in labour law, remuneration is not the subject of negotiation or bargaining between the employer and the employee directly, or with the employee's staff association or union. Rather, remuneration is determined by the General Assembly resolutions, as well as the terms of the appointment. Second, the post allowance element of the remuneration is a feature separate to the other components that go to make up a salary that reflect such considerations as qualifications, experience, senio

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staff member's total remuneration for the same role within the Organisation differ from those of an equivalent colleague depending upon where he or she is posted, but costs of living at particular posts also rise and fall reflecting a myriad of economic circumstances affecting each duty station such that an individual's total remuneration may rise or fall

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43. In the appeals now under consideration, the Appellants claim that: i) the ICSC acted *ultra vires*

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(b) Rates of allowances and benefits, other than pensions and those referred to in article 10(c), tharticle

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served to legitimize any errors about previous *de facto* decisions and thereby to corroborate the practice.

56. However, the Appeals Tribunal finds that the UNDT erred when it found that these subsequent resolutions a



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7. Expresses concern at the application of two concurrent post adjustment multipliers in the United Nations common system at the Geneva duty station, urges the Commission and member organizations to uphold the u

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Judgment No. 2021-UNAT-1109

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69. In the case at hand, the PAM is inherently changeable, depending on the circumstances of a certain time-period and place. Although the continued existence of the allowance might not be at stake, its nominal value or percentage amount is. This is what attracts its categorisation as "conditional compens

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scope of judicial review in the present case. The ILOAT is not constrained by these significant jurisdictional characteristics. The Appeals Tribunal recognizes this may be an undesirable situation. However, the remedy for the situation lies not in ignoring current statutory and legislative imperatives, but rather in the ability of the governing bodies of the two Organisations to effect change if they consider this is warranted.



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OZIC ET AL V SECRETARY GENERAL

1. Bozic, Lana
2. Steinbach, Rahel

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