

28 April 2025

Answers for the Administrative Labor Tribunal of MERCOSUR Questionnaire on the subject of general principles

I. Identification methods

- 1) On what legal basis (written rule, implied power, etc.) does your tribunal recognise the applicability of general principles?

As regards applicable regulatory texts, the Tribunal Statute (GMC/RES No. 54/03) refers to applicable rules in articles 3 and 10, which contain general Mercosur norms. Notably, the Rules of the Mercosur Administrative Labour Tribunal (Rules 2016) explicitly contain reference to general principles of law.

In substantiating its decisions, the Tribunal has recognized public international law and its principles as a legal source, as seen in Judgment No. 5/2025, where the theory of implicit powers developed by the International Court of Justice was applied.

Consequently, the Mercosur Administrative Labour Tribunal has applied general principles of law formed within the international legal system. As background, it is worth mentioning that in the Tribunal's first judgment (Judgment No. 1/2005), it was decided that the legal basis for rulings would be the general and regulatory norms issued by Mercosur bodies, as well as General Principles of Law. This served as a precedent for subsequent judgments.

- 2) Does your tribunal make a distinction between "general principles of law derived from national legal systems" and "general principles of law formed within the international legal system", and perhaps other principles (e.g. the general principles of international civil service law, etc.)? If so, which ones, for what reason(s) and what are the implications?

The Mercosur Administrative Labour Tribunal addressed this issue in Judgments No. 1/2005 and No. 2/2005. According to the Tribunal, general principles include those proclaimed in international and regional instruments that recognize rights of the highest value and efficacy, as well as those derived from comparative law among the four Mercosur States Parties. The inclusion of general principles of law necessitates determining which principles apply to a given case, considering that these relations are governed by specific norms not unique to any national legal system. In subsequent judgments, including the recent Judgment No. 5/2025, the Mercosur Administrative Labour Tribunal has based its decisions on Mercosur rules and applicable "general principles." The Tribunal has applied general principles of law formed within the international legal system.

3) How does your tribunal go about identifying a general principle?

The Tribunal identifies and applies general principles in situations not resolved by express rules. For example, in Judgment No. 1/2005, the Tribunal decided that in labor matters, one of the general principles accepted by the doctrine and jurisprudence of the States Parties is the protective principle that underlies fundamental rules. One such rule is *in dubio pro operario*, a directive guiding judges or interpreters to decide in favor of the worker when reasonable doubt arises in interpreting a norm. (Judgment No. 1/2005) Another recognized rule is "the most favorable norm", which requires judges to apply the most favorable norm to the worker when multiple conflicting norms can be applied to the same legal situation. (Judgment No. 1/2005)

- a. By reference to national law? If so, which national law? Does your tribunal do a comparative law analysis, even if it is only a limited one? How are difficulties in translating legal concepts overcome?

The Mercosur Administrative Labour Tribunal makes decisions considering the specificity of the case and recognized principles set forth in International Labour Conventions, the Declaration of ILO Fundamental Principles and Rights, and the Mercosur Socio-Labor Declaration. (Judgment No. 1/2005) In Judgment No. 1/2005, the Tribunal was guided by general principles of procedural law and general principles of law applicable to civil and labor proceedings, treating the case exceptionally due to its specificity. In Judgment No. 4/2017, the Mercosur Administrative Labour Tribunal explicitly stated that national law and domestic jurisprudence were not applicable, as their application fell outside the organization's purview.

- b. By reference to your tribunal's previous case law?

The Mercosur Administrative Labour Tribunal considers previous decisions and precedents as a source of law in its judgments.

- c. By reference to the case law of other international administrative tribunals? If so, which ones? Is this reference explicit in the judgments handed down or does your tribunal refer to such case law only when preparing judgments?

To date, the Mercosur Administrative Labour Tribunal has not referenced rulings from other international administrative labour tribunals.

- d. By explicit or implicit reference (please specify) to an international text, e.g. with regard to general principles relating to human rights? If so, which text(s)?

The Mercosur Administrative Labour Tribunal has considered that it could apply principles set forth in International Labour Conventions, the Declaration of ILO Fundamental Principles and Rights, and the Mercosur Socio-Labor Declaration.

- e. By some other method?

If more than one method is used, please number them in order of preference, if any.

Not applicable until today, as the Tribunal may decide on another method depending on the case.

4) Can your tribunal rely on a general principle *proprio motu*?

The Mercosur Administrative Labour Tribunal substantially granted the claimant's request by applying the principle of *iura novit curia* in Judgment No. 3/2015. In Judgment No. 5/2025, the

Mercosur Administrative Labour Tribunal decided that the system applied in the case was the most protective possible, making an interpretation more favorable to workers' rights.

II. Relationship with other sources

- 5) What legal value does your tribunal attach to general principles in relation to the various types of secondary legislation produced by the organisation (decisions adopted by organs of the organisation, including organs composed of states - e.g. General Assembly of the United Nations - or representatives of states - e.g. the Committee of Ministers of the Council of Europe -), in relation to the instrument establishing the organisation and in relation to other sources of international law? Why?

The application of Mercosur norms, rules, and principles prevails over other rules because they govern labor relations within Mercosur.

- 6) Has your tribunal ever agreed to examine, if only by way of an objection, the legality of an act adopted by a body composed of states in relation to a general principle? If so, what were the implications, both legally (for the instrument in question) and politically (within the organisation)?

The tribunal has decided on the legality of acts approved by a body. The legal implications of reviewing the act were debated in Judgment No. 3/2015 and resulted in the nullity of the act issued by the body.

- 7) Could you give at least one example of a general principle in procedural matters, one example of a general principle in substantive matters (e.g. the principle of independence, the principle recognising acquired/essential rights, etc.) and one example of a general principle in matters relating to human rights protection, regarding the status of the principle in the hierarchy of norms?

The Mercosur Administrative Labour Tribunal (TAL) must resolve cases by applying the general and regulatory rules issued by Mercosur, as well as the general principles of law. In labor matters, one of the general principles accepted by the doctrine and jurisprudence of the States Parties is the protective principle, which inspires fundamental rules. One such rule is *in dubio pro operario*, which consists of a directive guiding the judge or interpreter to decide with the criterion most favorable to the worker when there is reasonable doubt in interpreting a rule. Another rule is the "more favorable rule," which assumes that when two or more conflicting rules may be applicable to the same legal situation, the judge must necessarily lean towards the one most favorable to the worker. Additionally, the tribunal applies the *iura novit curia* principle, as explained in Judgment No. 3/2015, which is a legal principle of procedural law indicating that the judge is aware of the law and must decide in accordance with legal norms, even when the parties have not correctly framed their petition or have invoked different legal norms than those the judge considers applicable to the specific case.

- 8) What function(s) does your tribunal assign to general principles? For example, are they intended to:

a. fill gaps in written law?

The Mercosur Administrative Labour Tribunal (TAL) must resolve cases by applying the general and regulatory rules issued by Mercosur, as well as general principles of law.

b. facilitate the interpretation of written provisions, e.g. by interpreting written provisions in the light of general principles?

The Mercosur Administrative Labour Tribunal (TAL) has decided in Judgment No. 5/2025 that the system applied in the case is the most protective possible, making an interpretation more favorable to workers' rights.

c. ensure substantive rule of law (Rechtsstaatlichkeit), for example pursuant to general principles relating to human rights, including within international organisations?

The Mercosur Administrative Labour Tribunal has decided in Judgment No. 5/2025 that the system applied in the case is the most protective possible, making an interpretation more favorable to the rights of the workers.

d. other?

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III. Establishing the boundaries of principles

9) Where a general principle is applicable, how is it delimited? Have there been any cases where the general principle has been found to have been violated? Could you illustrate your answer, if applicable, with regard to the following areas:

a. human rights principles;

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b. procedural rights;

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c. duty of care, i.e. positive obligations for the competent authority;

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d. acquired/essential rights;

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e. any other principle you wish to mention?

In Judgment No. 3/2015, the general principle applied referred to the duty of care, i.e., the positive obligations for the competent authority, as recognized by Mercosur norms. The decision of the Mercosur Administrative Labour Tribunal (TAL) consisted of not recognizing the legal effects of the act challenged by the claimant.