

30 March 2025

## Answers for the Administrative Tribunal of the Organization of American States (OAS) Questionnaire on the subject of general principles

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### I. Identification methods

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

The legal basis for recognizing the applicability of general principles in the Tribunal is found in Article 1 of its [Statute](#). While this provision establishes the primacy of internal law, it also confirms, implicitly, that the general principles of labor law, though secondary, may still be considered, when necessary. Thus, the Tribunal may refer to general principles of law, but only as a subsidiary source, strictly to fill a legal gap that internal law does not address.

It is necessary to take into account that, in its case-by-case analyses since 1972, the Tribunal has considered general principles of law in some of its rulings, using them as an interpretative and complementary criterion to support its reasoning. This has become a practice, where Tribunal members, when deemed necessary, in the absence of specific regulations on the matter, and because of the statutory restriction that confines the use of such principles strictly to a subsidiary role, resort to them to resolve cases.

- 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 Tribunal makes no distinction between general principles derived from national legal systems and principles of international law. For example, in Judgment 89, the Tribunal, in defending the principle of freedom of association, held that a worker must receive at least the same level of legal protection as national officials, as both perform an essentially personal and human activity, with equivalent rights and duties under the law.<sup>1</sup>

In the Tribunal's jurisprudence, there have been cases in which it has referred to general principles of labor law, such as *in dubio pro operario*, as well as other principles derived from rights contained in the **American Convention on Human Rights**, such as freedom of expression, enshrined in Article 13 of the same.<sup>2</sup>

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<sup>1</sup> Judgment 89, *Fernando Suárez de Castro v. Director General of the Inter-American Institute for Cooperation on Agriculture*

<sup>2</sup> Judgment 125, *Hugo Valverde v. Secretary General of the Organization of American States* : « ...such statements thus represented the exercise by the Complainant of his inalienable human right, which cannot be waived, of the freedom of opinion and of expression, provided for in Article 13(1) and 13(2) of the American Convention on Human Rights, and in Article IV of the American Declaration of the Rights and Duties of Man »

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

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?

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

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?

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)?

e. By some other method?

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

The Tribunal has followed the practice of identifying general principles by referring both to the jurisprudence of other international administrative tribunals and to its own prior case law. For example, in Judgment 17 of 1975, when referring to the principle that a staff member's salary cannot be reduced, it quotes decisions from the United Nations Administrative Tribunal, the Administrative Tribunal of the International Labour Organization, and the Tribunal itself.<sup>3</sup>

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

Yes, the Tribunal has applied principles on its own initiative (*proprio motu*) in its practice.

## 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?

As previously mentioned, precisely because the Tribunal cannot rely on principles as a primary source of law, general principles serve as a subsidiary source with a complementary and interpretative function. In the case of the OAS, the General Assembly Resolutions form part of the Organization's legal framework and are binding.

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

<sup>3</sup> In judgment 17, *Antonio Martínez Comolli v. Secretary General of the Organization of American States*, the Tribunal established: « That this complaint is based on the rights granted by Staff Rule 104.2 and NPA No. 25380. Furthermore, the Administrative Tribunal of the United Nations, in the Kaplan case (Judgment No. 19), decided in 1953, recognized the principle that a staff member's salary may not be reduced, and the Administrative Tribunal of the International Labour Organisation upheld the same thesis in the Lindsey case (Judgment No. 61). The Administrative Tribunal of the OAS has also expressed the same thesis in *Braulio Alaniz et al. v. Secretary General of the OAS* (Judgment No. 13). »

(within the organisation)?

No. That situation is beyond the Tribunal's jurisdiction.

- 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?

In Judgment 169, in a case concerning separation from service, the Tribunal interpreted the scope of Article 57(c)(iii) of the General Standards of the Secretariat of the OAS. In that case, the Tribunal identified various doubts regarding how the administration applied that article. These concerns were raised directly with the administration, which failed to provide satisfactory clarification. In light of this unresolved uncertainty, the Tribunal, by majority decision (with one dissenting opinion), ruled in favor of the complainant, relying on the labor law principle of *in dubio pro operario*.

In Judgment 127, the Tribunal referred to the principle of *fair salary*, which is incorporated in the OAS Charter under Article 33(g) and Article 3(i) and (k). The Tribunal granted it the highest hierarchy, not only as an interpretative criterion but also for its application in specific cases.<sup>4</sup>

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

a. fill gaps in written law?

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

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

d. other?

The Tribunal assigns to general principles the function of facilitating the interpretation of written provisions. Article I of the Statute of the Administrative Tribunal, in establishing the normative hierarchy, makes an implicit distinction between the law of the Member States and the general principles of labor law, solely to state that the Organization's internal law prevails over both.

In its jurisprudence, the Tribunal has established in Judgment 111 that principles apply only in the absence, insufficiency, or ambiguity of internal regulations. For example, in Judgment 170, the Tribunal invoked the *principle of substance over form* to resolve a conflict of norms and determined that Staff Rule 103.7(f) constituted a *lex specialis* on the subject of audits and should therefore take precedence over other provisions.

### 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:

<sup>4</sup> Judgment 127, *Manuel Díaz-Franjul v. Secretary General of the Organization of American States* : «This broad reading is grounded in the principle of labor law of a fair salary, incorporated in the OAS Charter at Article 33(g) and Article 3(i) and (k), which the Tribunal understands to constitute labor principles that are not only binding on the Tribunal, but also of the highest order when applying these principles to specific cases.»

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| a. human rights principles;                                             |
| b. procedural rights;                                                   |
| c. duty of care, i.e. positive obligations for the competent authority; |
| d. acquired/essential rights;                                           |
| e. any other principle you wish to mention?                             |

In addition to those mentioned above, the following decisions may also be referenced:

**Judgment 13, *Braulio O. Alaniz, Elbio Arias, Gualberto R. Cuenca, Lylian Millán, and María Emilia López Bartibás v. Secretary General*:** Juridically speaking, to what extent was and is this change legitimate? The legitimacy of the change results from its general nature and from the individual acceptance by each of the Complainants. It is a well-known principle of labor law that not even the will of the parties is sufficient to change the contract to the point of reducing workers' salary.

**Judgment No.84, *Guillermo J. McGough. Vs OAS Retirement and Pension Committee*:** “[T]he Tribunal considers that the apparent conflict that arises between clauses in the Complainant's contracts (which he calls “fixed-term contracts”) and Article 16(d) of the General Standards [...] must be resolved by applying the principle that standards of a public nature take precedence over those that are purely contractual. Therefore, in the present case the apparent conflict between a contractual clause and the General Standards is resolved in favor of the latter.”

**Judgment 88, *Marijane E. Peplow vs SG*:** “The Tribunal believes that the general universal principle of law that an error does not create a right is applicable in the present case. However, the existence of a factual error should be determined in each particular situation by identifying or assessing the factual-legal assumptions (motive and content as essential elements of the administrative act) and that the burden of proof rests squarely on the person making the allegation or denying the fact.”

**Judgment 169, *Steven Griner v. Secretary General of the OAS*:** “After internal debate and due consideration, we hold that, henceforth, in serious misconduct cases, this Tribunal will be prepared to affirm such a finding and a sanction of corresponding gravity, provided that serious misconduct has been proved by “clear and convincing evidence.” Moreover, we hold that the application of this standard of proof is consonant with “the basic principles” set forth in Article I of the Tribunal's Statute, as well as with universally-established norms of fairness and due process widely recognized within the international community of administrative tribunals.”

**Judgment 170, *Ricardo Cabral v. Secretary General of the Organization of American States*:** This is the case with Staff Rule 103.7, entitled “*Allowance for Special Duties*”. Its substance, however, goes into other topics, including the classification process. Staff Rule 103.7 (f) provides, *inter alia*, that “[t]he auditing and decision-making process regarding the classification of a post shall not exceed six months from the date of receipt by the Department of Human Resources of the supervisor's written request for the audit” (which is the requirement most applicable to the facts of this case). In the Tribunal's opinion, and according to the principle of substance over form, this part of Staff Rule 103.7 (f) constitutes the *lex specialis* regarding time-limits for the audit or post review and the SG's final decision, and should be preferred to the more generic Staff Rule 102.3 (i), in terms of time-limits. Hence, Staff Rule 103.7(f) settles time-limits for the conclusion of the classification process with more certainty for both parties concerned, the Secretariat staff, and GS/OAS.