

YEARS TOGETHER



**Staff
Association**

« La Justice interne au CERN et sa réforme »

Séminaire organisé et présenté par
l'Association du personnel



Mardi 18 février 2025: 12h30

CERN Meyrin, 503/1-001 - Council chamber & Zoom

**Quels sont les mécanismes existants, les améliorations possibles,
les motivations et le statut de la réforme en cours?**

**Pourquoi un système de Justice interne performant est
indispensable pour les membres du personnel du CERN ainsi que
pour l'Organisation?**



La conférence se tiendra en français
Traduction en anglais simultanée



Enregistrement :

CERN's internal justice system and its reform

Why an efficient internal justice system is essential for the members of the personnel of CERN, as well as for the Organization?

What are the existing mechanisms, possible improvements, motivations, and the status of the ongoing reform?

S. Evrard – EN

N. Salomon - PF

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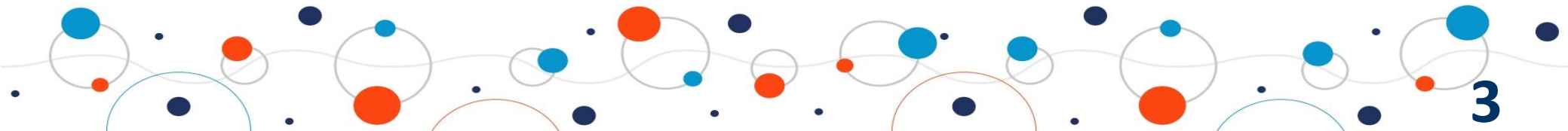
PART 1 - Existing mechanisms

- Context
- Investigations
- Internal (External) Justice
- Statistics over 10 years
- Staff Association position
- Areas of improvement

PART 2 – Ongoing reform

- Investigations
- Formal dispute settlement
- Disciplinary Procedure
- Informal dispute settlement
- Whistleblowing policy
- Acknowledgments/Publications

PART 3 – Questions/Answers



Context

- **Immunity of jurisdiction granted to International Organizations (IOs)**
 - Immunity from national courts to ensure independent functioning.
- **Specificity of International Organizations workforce**
 - Global DNA and diversity
- **Labour relations and norms**
 - Staff Rules and Regulations – Administrative and Operational Circulars – Employment contract
- **Internal Justice Systems (IJSs) resolve employment disputes through:**
 - Conflict prevention
 - Peer review mechanisms
 - Administrative Tribunal of the International Labour Organization (ILOAT) as the final decision-making body

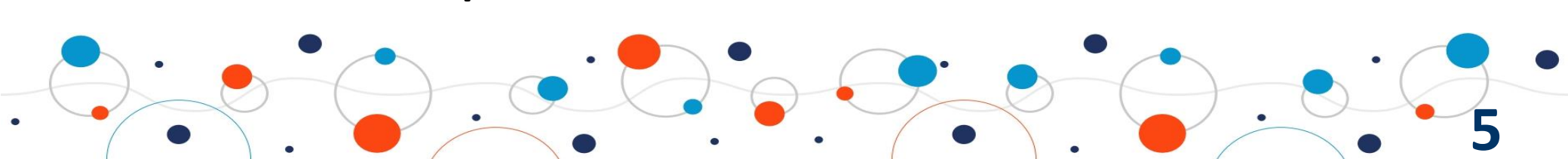
Context

Why CERN needs an internal justice system?

- **Unique legal status & duty of care**
 - Disputes are a part of working life. They cannot be resolved through local courts and national authorities due to CERN's legal status.
 - CERN has the responsibility to provide an internal justice system that is fair, impartial and can effectively resolve disputes.
- **Checks & balances**
 - Possibility for people to address their issues formally and informally, and to feel heard and taken seriously.
 - Possibility for the Organization to ensure we have fair, transparent and just processes in place.

Having an internal justice system is not a choice, it is an obligation!

The Organization can choose how to proceed



Investigations

Several kinds of investigations coexist at CERN, which apply to all members of the personnel (MP) i.e. employed members of the personnel (MPE) and associated members of the personnel (MPA) and also apply to non-MP to varying extents:

- **Fraud**

Fraud is defined as any intentional act or omission designed to deceive others and to achieve a gain for the perpetrator or a third party, resulting in the Organization suffering a loss of funds, property or reputation.

- **Misconduct**

- **Harassment**

Harassment means unwelcome behaviour that has the effect of violating a person's dignity and/or creating a hostile work environment.

- **Safety breach**

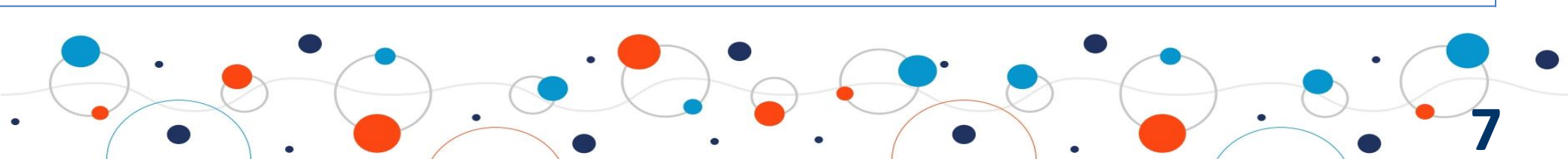
- **Security breach**

- Site & Access
- Computing Security



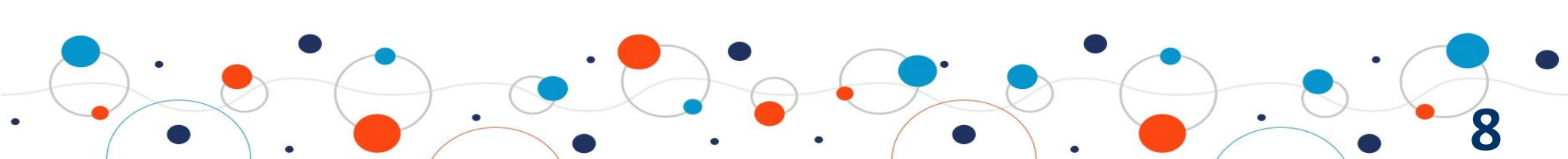
Investigations

Kind	Legal framework	Responsible Body	Possible Outcome
Fraud	OC10 - Principles and procedures governing investigation of fraud	Internal Audit	administrative and/or disciplinary action
Misconduct	SRR & Code of Conduct	Department Heads and HR	administrative and/or disciplinary action
Harassment	OC9 - Principles and procedures governing complaints of harassment	HIP (Harassment Investigation Panel)	administrative and/or disciplinary action
Safety	Safety rules	HSE unit (Health and Safety Unit)	administrative and/or disciplinary action
Security Site & Access	OC2 - Conditions of access to the fenced parts of the CERN site	Department in charge	administrative and/or disciplinary action
Computer Security	OC5 - Use of CERN computing facilities	Department in charge	administrative and/or disciplinary action



Internal Justice: existing mechanisms

- Members of the personnel may challenge an administrative decision by the Director-General where it adversely affects the **conditions of employment or association** that derive from their contract or from the Staff Rules and Regulations.
- If permitted by the Staff Rules and Regulations, a decision may be challenged internally within the Organization:
 - through a **review procedure**; or (Also known as management review in other IOs)
 - through an **internal appeal procedure**. In this case, the Joint Advisory Appeals Board (JAAB) shall be consulted by the Director-General prior to taking any final decision on the merits. (Also known as Administrative review in other IOs)
- The submission of a request for a review or an internal appeal **shall not suspend** the application of the challenged decision.



Internal Justice: existing mechanisms

	Request for Review	Internal Appeal (JAAB - Joint Advisory Appeal Board)
Time limits	Within 30 calendar days of notification of the challenged decision.	Within 60 calendar days of notification of the challenged decision.
Form	<ul style="list-style-type: none"> • Shall be addressed to the Director-General • Shall be signed by the member of the personnel and • Shall include the following basic documents: <ol style="list-style-type: none"> a) copy of the challenged decision or of the request for a decision; b) written summary of the reasons. • Shall relate to individual members of the personnel 	
Receivability	Compliance with scope, time limit, form and lodged by a member of personnel	
Procedure (when receivable)	The DG shall take a decision on the merits within 60 calendar days of receiving it. The procedure shall be confidential . The DG shall take a new decision, which shall cancel and replace the initial decision and may be the subject of an internal appeal.	The DG shall consult the JAAB before deciding on its merits. The procedure shall be adversarial and confidential . The JAAB may at any time take any investigative measures which it deems necessary. The procedure may last several months (6 to 12),
Composition	Not applicable	<ul style="list-style-type: none"> • one member appointed by the Director-General; • one member appointed by the Staff Association; • one member chosen by the other two members

Joint Advisory Disciplinary Board JADB

- The Director-General may take **disciplinary action** against members of the personnel who, whether intentionally or through carelessness, are guilty of a breach of the Staff Rules and Regulations.
- Having regard to the **gravity of the breach or misconduct** in question, the disciplinary action may be:
 - a warning;
 - a reprimand;
 - suspension without remuneration or pay for a period not exceeding six months;
 - downward adjustment of the staff member's salary;
 - demotion;
 - dismissal.
- The Director-General shall consult the Joint Advisory Disciplinary Board (JADB) prior to taking any disciplinary action other than a warning or a reprimand or summary dismissal for **particularly serious misconduct**. In the latter situation, the Director-General may decide to dismiss without notice and without consulting the JADB.

Complaints before the Administrative Tribunal of the International Labour Organization (ILOAT)

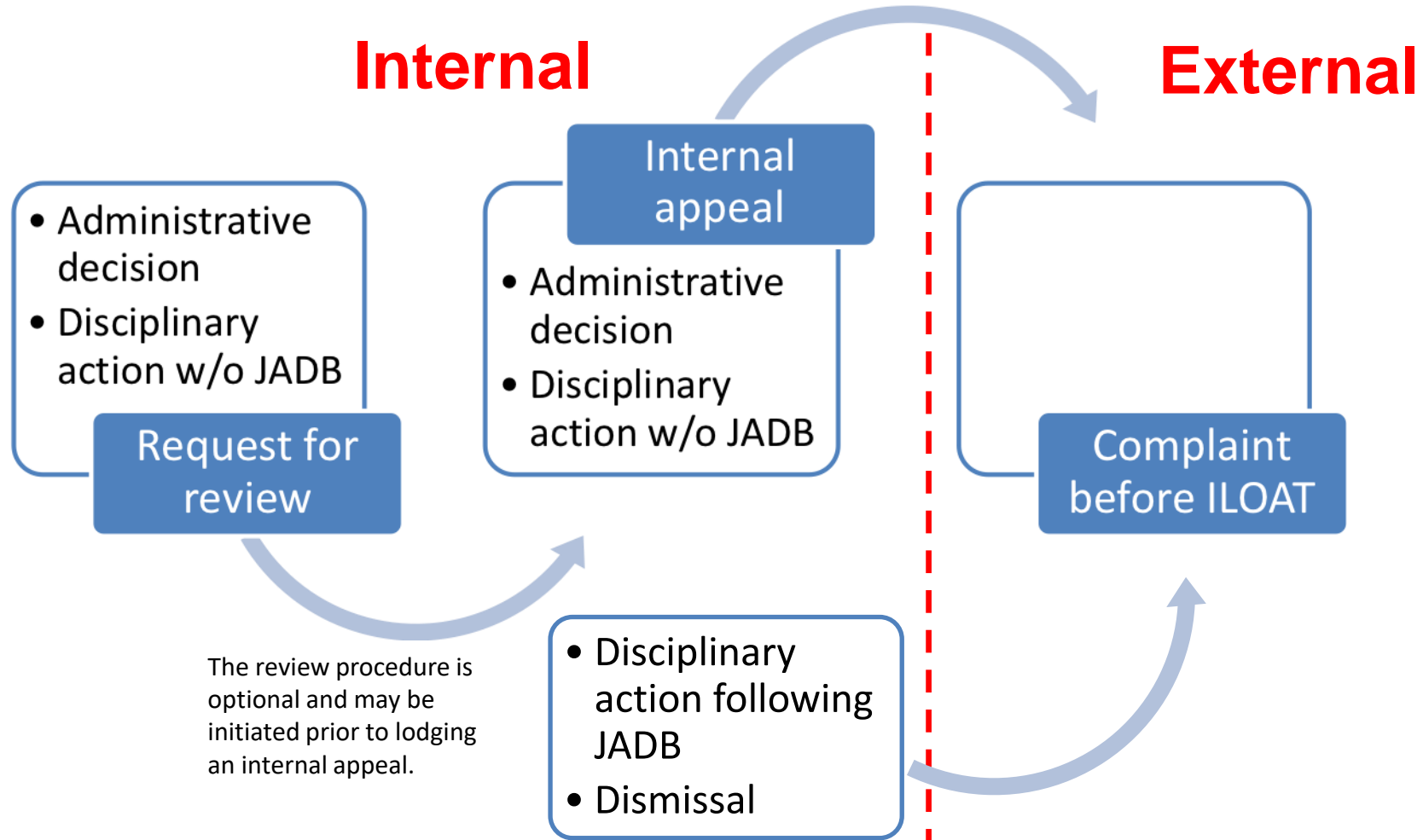
- A decision may be challenged externally by filing a complaint before the ILOAT:
 - when internal procedures have been exhausted and the decision is final;
 - when an internal challenge is not permitted by the Staff Rules and Regulations (*next slide); or
 - when the complainant is authorised by the DG to proceed directly to the Tribunal

Complaints before the Administrative Tribunal of the International Labour Organization (ILOAT)

- * An internal appeal shall not be lodged against the following decisions:
 - a) dismissal notified during the **probation period**;
 - b) dismissal of **staff members appointed by the Council**;
 - c) dismissal for **particularly serious misconduct**;
 - d) a decision taken following recommendations by the **Joint Advisory Rehabilitation and Disability Board**;
 - e) a decision taken following recommendations by the **Joint Advisory Disciplinary Board**;
 - f) a decision taken as a result of the procedure for the settlement of disputes provided for in the Rules of the Organization's **Health Insurance Scheme**.
 - g) a decision taken as a result of the procedure for the resolution of complaints provided for in the Organization's rules on **data privacy protection**

Any complaint against such decisions shall be referred directly to the ILOAT.

Internal/external justice flow chart



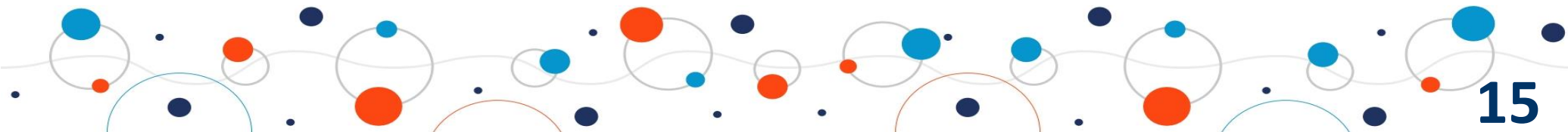
Peer Review Boards

- Independent and impartial review of a case by a board composed of peers
- Issuance of a report by this board to the deciding authority (usually the Head of the Organization) with collegial considerations, conclusions and recommendations on the individual case
- Highlighting general issues and making general recommendations for corrective measures
- Records-keeping and statistics (and, if applicable, annual reporting)



Statistics 2014-2023

Year	Int/Ext Justice			Disciplinary actions						
	Review request	Internal appeal	Complaint before ILOAT	Warning	Reprimand	Site ban	Downward salary adjustment	Demotion	Dismissal in probation period	Dismissal (summary dismissal)
2023	5	7	5	1	2				2	
2022	2	7	8	5	0				4	(1)
2021	1	7	67	1	1		1	1	1	(1)
2020	0	198	4	0	4				3	
2019	7	11	3	4	5		1	1	0	(5)
2018	4	2	8						0	
2017	4	16	3	3	2	1	1	1	1	
2016	2	3		5	12	1	2		2	
2015	3	2		6	3	3	1		2	2
2014	2	1	4	2	4		4		0	4
Total # cases	30	254	102	27	33	5	10	3	15	12
"success rate" #	3	4	3	<i>Warning: Some internal appeals and appeals before the ILOAT have been withdrawn after mutual and confidential agreement</i>						
"success rate" (%)	10	1.6 (7)	3 (9)							

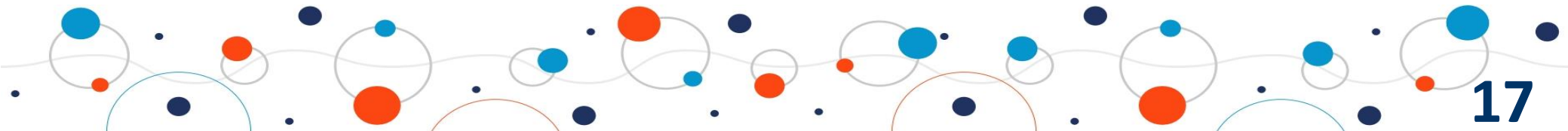


Statistics over 10 years

- **Very low use of internal justice processes (which is quite reassuring)**
 - Scientific Organization and Culture
 - CERN is an employer which corrects problems when there is an obvious error/omission → no need for litigation
 - SRR and circulars are well written, resulting from concertation process
 - Sign of a relative social peace (and discerning assistance from Staff Association in orienting each case)
 - Very tight time limits for complainants – Informal settlements through mediation
- **Very low “success rate” in Review and Appeal procedures (which is quite concerning)**
 - SRR and circulars are well written, resulting from concertation process → no much room for interpretation
 - Lack of equality of means by design of Appeal processes and hearings
 - The Organization is defended by professional lawyers which is not the case for the complainants
 - Cases are mainly assessed on the form rather than on merits
- **Occasional «peaks» of cases: 5-yearly review in 2015, COLA (Cost of Living Allowance)**
- **Main challenged decisions: MERIT, disciplinary action, award of indefinite contract. Pension and Health insurance issues are treated by ad hoc bodies.**

CERN Staff Association Position

- The Staff Association **was not satisfied** with the current processes. Especially, perceived or actual conflict of interest, perceived lack of impartiality, inequality of means between the parties and the length of the process were the main identified drawbacks.
- Improving and modernizing/streamlining the internal justice at CERN was **necessary and urgent**. This observation was shared by several services, and across different levels in the Organisation.
- The Staff Association recalled that as an international organisation, CERN has the duties of a nation in respect of its personnel and must put in place **exemplary processes** related to enquiries and internal justice.
- The Staff Association has requested since 2017 that a **working group** was established as soon as possible, under the aegis of the Standing Concertation Committee (SCC).
- **The IJWG is an HR WG providing regular reports to SCC. It was launched in March 2020.**



Areas of Improvement (Staff Association proposals)

1. Review the design of the different internal justice systems

- Reinforce prevention and conflict resolution (mediation) by promoting face to face and direct exchanges
- Allow class actions: collective requests for review and internal appeals

2. Streamline investigation processes

- CERN should afford best-in-class rights and protections
- Centralize all investigators in one single unit sharing the same standards & guidelines

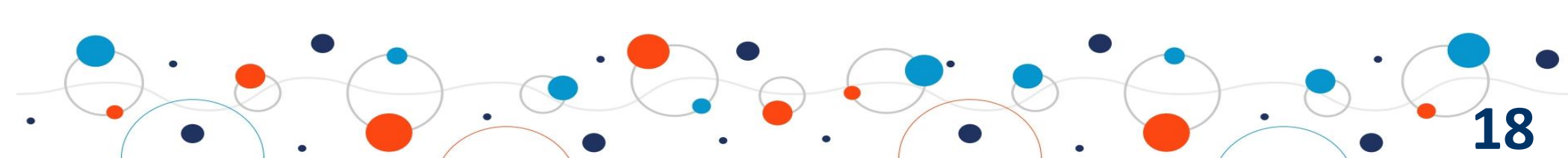
3. Improve Equality of means

- Introduce a professional legal assistance for staff during hearings

4. Enhance Independence & Impartiality of the joint boards

5. Clarify and jointly agree rules of procedure & procedural steps

6. Set up training for all stakeholders



Internal Justice Reshaping

- **Internal Justice working group**
 - Twice a month
 - Suggesting improvement
 - Assessing proposals
- **Mandated external experts**
 - Assessing current system
 - Compare with other organisations
- **Training official bodies members**
 - Bring everyone to the same standards

OBJECTIVE

Establish a robust, fair, and modern justice system to align with global best practices.

Internal Justice Reshaping



PEER-REVIEW SYSTEM

- Peer-review was a widespread approach to internal justice systems in 60s / 70s
- Requires volunteers – varied levels of competence, expertise & (dis)comfort in role
- Has functioned throughout the years since CERN is not a very litigious organisation in nature



STREAMLINING: PROCESSES, ENTRY POINTS, STANDARDS & PRACTICES

- Confusing landscape to anyone wishing to exercise their rights and to address misconduct (formal, informal, multiple entry points, lack of holistic approach leading to potential oversights)
- Risk of inconsistency in investigations due to lack of common standards/protocol
- Clarification of scope of bodies; plenty of pre-analysis, possible repetition of investigation



CONTEXT, EXPECTATIONS & NEEDS HAVE EVOLVED

- General trend shifting to a more professionalized approach

Reframe Internal Justice

ITEM 1:
INVESTIGATIONS

ITEM 2:
**DISCIPLINARY
PROCEDURES**

ITEM 3:
**FORMAL
DISPUTE
SETTLEMENT/
JAAB**

ITEM 4:
**INFORMAL
DISPUTE
SETTLEMENT**

ITEM 5:
**WHISTLEBLOWING
POLICY**

Investigations

- The goal is to strengthen CERN's ability to investigate misconduct, ensuring a thorough, efficient, and fair process for handling reported concerns with two key objectives:
 - Dedicated investigation capacity for all misconduct reports
 - Single dedicated investigation unit
 - Single investigation protocol for all types of investigation
 - Develop investigation protocol to replace Operational Circulars No. 5, 9, and 10 with a UNIQUE Operational Circular

Benefits

- Harmonised approach resulting in consistent processes and adherence to due process.
- Comprehensive handling of all aspects of misconduct, including complex cases.
- Clear outcomes enhance credibility and personnel confidence.



Formal dispute settlement/JAAB

- Request for review transformed into mandatory administrative review
- JAAB pool/panel composition: External Professional Chair, panel: chair plus 2 peer assessors
- Establishment of support office (Office of Administration of Justice)
- Access to internal justice for former members of the personnel
- Procedural changes: Introduction of written rules of procedures

Benefits

- Offers HR an opportunity to reconsider and address concerns proactively
- Combines professional leadership with peer representation for fairness and balance.
- Ensures consistency, transparency, and adherence to high standards in disciplinary matters.
- Streamlined process to facilitate faster decision-making
- Enhances privacy, confidentiality, and impartiality in proceedings.

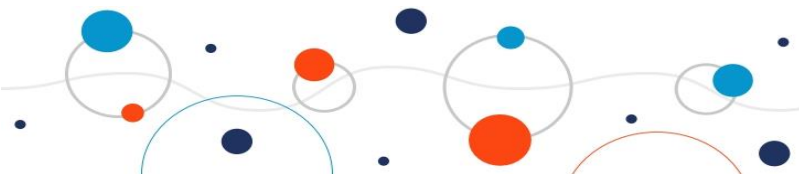


Disciplinary Procedure

- **No major change in the process:**
 - Warning/Reprimand: Decision by Head of HR
 - Sanctions > Reprimands: Decision by Director FHR, upon JADB recommendation
 - Dismissal and summary dismissal: Decision remains with DG
- **Upgrade on procedural aspects:**
 - Qualification of misconduct based on investigation findings, assesses procedural integrity, and recommends proportionate sanction
 - Consistent report format, to facilitate concise and consistent reporting focusing on recommendations.
 - Establish written rules of procedure for the JADB
 - Provide dedicated resources for case intake, processing, legal advice, report drafting, hearings, training, and administrative tasks.
 - Operate under the Director-General's office
 - External Professional Chair with 2 peer assessors

Benefits

- Ensures consistency, transparency, and adherence to high standards in disciplinary matters.
- Streamlined process to facilitate faster decision-making
- Enhances privacy, confidentiality, and impartiality in proceedings.
- Strengthens the independence of the JADB.



Informal dispute settlement

- **Promote mediation, not limited to request for review**
 - Allow suspension of formal processes for informal resolution efforts (e.g., dialogue or negotiation).
 - Introduce time limits to ensure efficiency and prevent unnecessary delays.
- **Mediation parameters established**
 - Develop a separate mediation framework outlining.
 - Roles and responsibilities of mediators and parties.
 - Procedures and guidelines for conducting mediation.

Benefits

- Promotes a collaborative and constructive work environment.
- Encourages early dispute resolution through neutral third-party facilitation.
- Enables quicker, amicable dispute resolution, reducing reliance on formal processes.
- Enhances overall efficiency and workplace harmony.



Whistleblowing policy

- **Set up a CERN's whistleblowing policy**
 - Develop a single whistleblowing policy document covering all kinds of alleged misconduct
 - Implementation of a secure and confidential whistleblowing line
- **Whistleblowing protection**
 - CERN's commitment to protecting whistleblowers from any form of retaliation

Benefits

- Enhances our working environment by encouraging ethical behaviour
- Facilitates the reporting of alleged misconduct enabling early detection of workplace issues and their prompt resolution.
- Builds trust by developing a clear process for ensuring protection of whistleblowers.



Acknowledgments/Credits

- Sandrine Lo-Pat, slp.consulting@icloud.com
CERN Staff Association Training session - 18 May 2021
- K. Hewitt, S. Intoudi (CERN- HR & LS)
SCC presentation on 5 December 2024



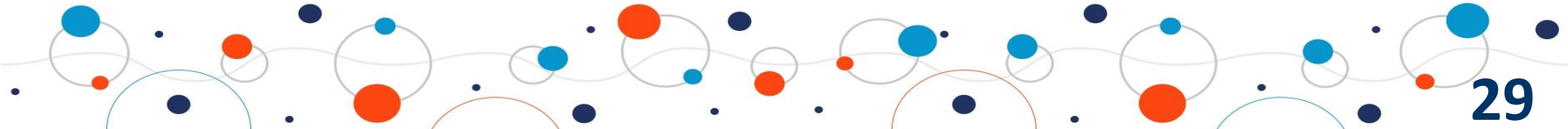
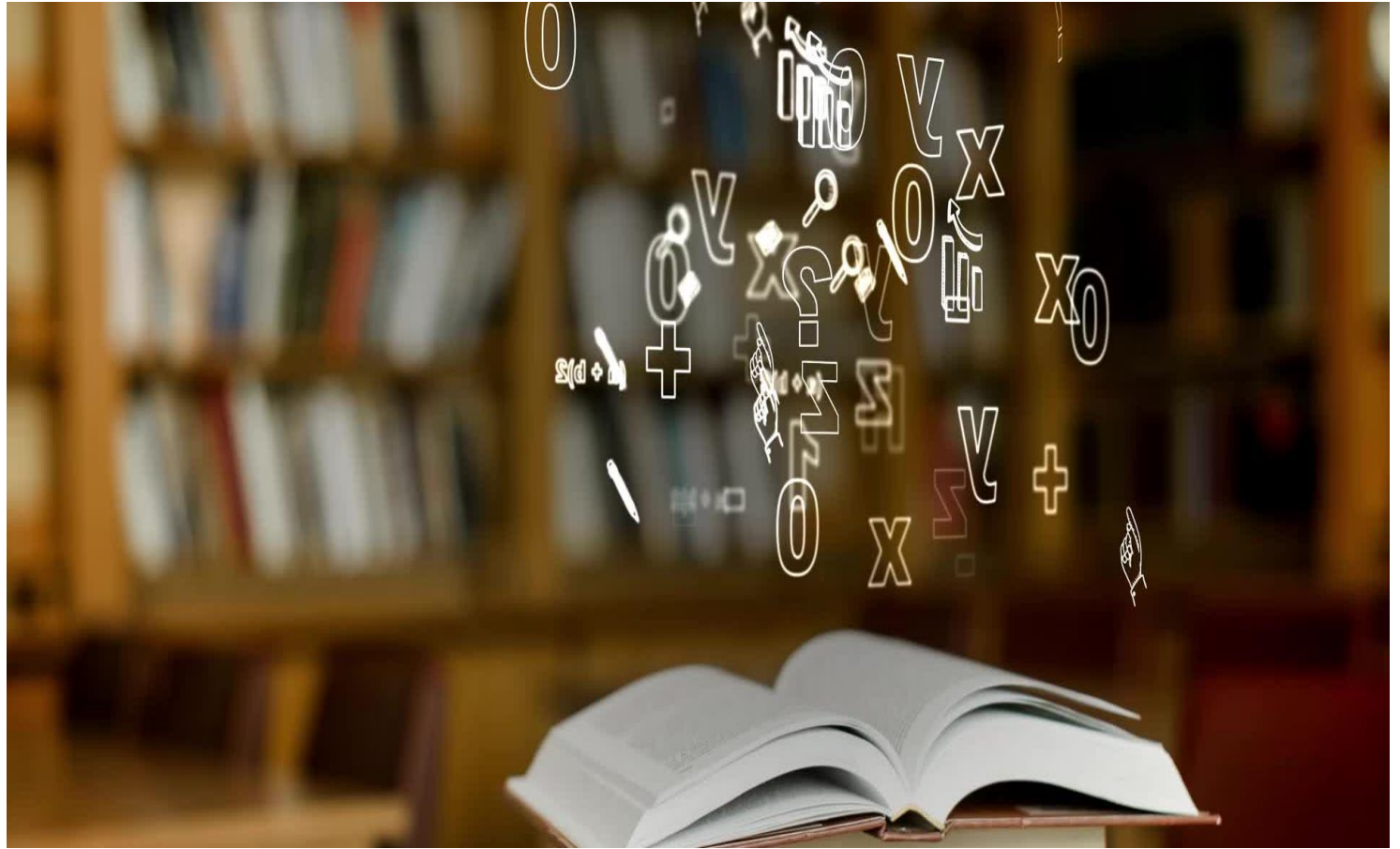
Publications

- CERN annual legal report: this report provides an overview of the cases handled under Chapter VI of the Staff Rules and Regulations:
 - [Documents officiels | Ressources humaines](#)
- ILOAT case law database:
 - <https://www.ilo.org/dyn/triblex/triblexmain.bySession>

Closing Remark

“To build a world of justice, we must be just.”

*Dag Hammarskjöld, the
second United Nations
Secretary-General*





THANKS!

- **Do you have any questions?**