



ADMINISTRATIVE TRIBUNAL
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ADMINISTRATIVE TRIBUNAL OF THE COUCNCIL OF EUROPE

STAFF DISPUTES IN 2012 AT THE COUNCIL OF EUROPE AND THE COUNCIL OF EUROPE DEVELOPMENT BANK

**(Overview, with figures, of administrative complaints and cases
before the Advisory Committee on Disputes and the Administrative
Tribunal)**

The sections concerning Council of Europe administrative complaints, Council of Europe Development Bank cases and cases before the Advisory Committee on Disputes were drafted by the Secretary General's Legal Advice Department, the Development Bank's Human Resources Department and the Advisory Committee on Disputes secretariat respectively. The Tribunal's registry wrote the section concerning the Tribunal and oversaw publication of the document.

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I. INTRODUCTION

Staff disputes are governed by Articles 59 to 61 of the Staff Regulations, of which those articles make up Part VII (Disputes). No additional provisions have been adopted on examination of administrative complaints. The Advisory Committee on Disputes does not have a set of statutes, and its rules of procedure were laid down by the Secretary General in Rule 1062(2001), amended by Rule 1200(2004). In the Tribunal's case Part VII is supplemented by the Statute of the Administrative Tribunal (Appendix XI to the Staff Regulations) and by the rules of procedure which the Tribunal adopted.

Without going into full details here, it is worth pointing out that any person (whether a serving staff member, a former staff member or a person claiming through them) wishing to challenge an administrative act adversely affecting them must file an administrative complaint within 30 days. The complaint is made to the Secretary General (or the Governor of the Development Bank when it is an administrative measure by the bank that is involved), who decides whether or not to accept it.

When the complaint is lodged – and only at that point – the complainant can request that the Advisory Committee on Disputes draw up a reasoned opinion before the Secretary General or the Governor takes his/her decision.

The aforesaid Committee shall formulate its opinion within one year from the date of submission (Article 59.5 of the Staff Regulations).

In the case of complaints concerning a measure by the Development Bank, the committee includes two members of the bank's staff, one of whom is appointed by the Governor and the other elected by the bank's staff in the same manner as for election of the bank's staff committee. On the Advisory Committee on Disputes these two members replace, respectively, the second member appointed by the Secretary General and the second member elected by the Council of Europe staff.

The Secretary General and the Governor have 30 days (calculated differently according to whether the case has been referred to the Advisory Committee on Disputes) to take a decision on the administrative complaint. If there is no decision within that period it means that the complaint has been implicitly rejected. In their decision the Secretary General and the Governor are free to follow or diverge from the Advisory Committee on Disputes' opinion.

When the Secretary General or Governor have taken their decision, the complainant can, within 60 days, lodge an appeal with the Administrative Tribunal if dissatisfied with the decision. Any appeal lodged without going through the preliminary stage of the administrative complaint (with referral to the Advisory Committee on Disputes or not) would be thrown out for non-compliance with the rules of procedure.

The Tribunal's decision is not appealable and is binding on the parties as soon as it is delivered.

II. ADMINISTRATIVE COMPLAINTS

A) COUNCIL OF EUROPE

Since April 2004 the Legal Advice Service has had the job of replying, on the Secretary General's behalf, to administrative complaints filed under Article 59 of the Staff Regulations. In 2011, 93 administrative complaints were lodged. In 2012, 57 administrative complaints were lodged, of which 5 were accepted, 3 were declared devoid of purpose, 4 were withdrawn, 44 were rejected and 1 is still pending. The subject matter of the complaints was as follows:

- a request to annul the decision to refuse to qualify as industrial disease the disability for the appellant's recognition as an invalid (2.1.12);
- a request to annul the decision to reject the appellant's application to an external competition (5.1.12);
- three requests to annul the internal recruitment procedure, which the appellants were candidates, which led to the appointment of another candidate; and to annul the appointment of this candidate (13.1.12);
- -three requests to annul the decision not to award the appellants the following step in grade, as well as the decision to double the period for awarding steps in future (16.1.12, 22 and 30/07/12);
- -two requests to annul the decision to appoint a candidate *ad interim* to a post the appellants had applied, following a decision of the Administrative Tribunal that had annulled the aforesaid appointment (27 et 31.1.12);
- two requests to annul the appraisal reports of both appellants, respectively, and the recommendation not to extend their contracts (20.3.12 et 18.10.12);
- a request to annul the decision not to proceed to the immediate destruction of confidential information concerning the applicant which could illegally be found in files other than administrative files; to order an investigation to identify the links and emails that contain private information in the Public Folders of the applicant's Directorate and to proceed to their destruction (12.4.12);
- two requests to withdraw a vacancy notice and to replace it with the previous notice for the same post or to resume the recruitment procedure in question at the most appropriate stage (13.4.12);
- a request for the recognition of the Council of Europe responsibility in relation to the damage the appellant believes having suffered (19.4.12);

- a request to annul the decision not to pay the applicant the expatriation allowance (1.6.12);
- A request to pass new written tests of an external competition, without aptitude tests (21.6.12);
- A request to annul an external recruitment procedure (10.7.12);
- 24 requests to cancel the deductions carried out with respect to the August 2012 pay slips for the applicants who took part in the “work stoppage” on 19 June 2012 (between 8.8.12 and 6.9.12);
- A request from the Staff Committee to cancel the deductions carried out with respect to the August 2012 pay slips for certain staff members who took part in the “work stoppage” on 19 June 2012 (13.8.12);
- Two requests to annul decisions by which the Administration required a staff member to give back a file which contained, according to him, private and confidential information (16.8.12 et 17.10.12);
- Three requests to annul the rejection to put in writing the reasons why the appellants’ applications have not been accepted in the context of an external recruitment procedure (20.8.12);
- A request to annul the decision to put the pay-day at the end of the month as from April (5.10.12);
- A request to annul the decision to refuse a fixed-term contract to the appellant (10.10.12);
- A request not to apply to the claimant the freezed granting of CDIs, and request to grant to him a CDI (26.10.12);
- A request to annul the decision to end the claimant’s CDD (26.10.12);
- A request to cancel the appointment of a candidate in the context of an internal recruitment procedure further to a mobility notice, followed by the publication of the post in question in the context of an internal promotion procedure (30.10.12);
- A request to annul the decision not to allow the claimant to sign a contract offer without reserve (26.11.12);
- A request to annul the consultation of the Staff Committee “in the circumstances in which it occurred” (27.11.12);

- A request to annul the decision to refuse to shortlist the claimant in the context of an external recruitment procedure (19.12.12).

B) THE COUNCIL OF EUROPE DEVELOPMENT BANK

In 2012, 4 administrative complaints were lodged. Three of them were rejected and one is pending.

Subject matter of administrative complaints lodged in 2012:

1. A request to annul the decision not to consider the claimant as invalid in the sense of Article 13.1, Appendix V-Pension Scheme Rules to the Staff Regulations (20/01/2012)
2. A request to annul the decision to remove the appellant from his post as a disciplinary measure (07/08/2012)
3. A request to annul the decision not to pay the claimant a survivor's pension (23/11/2012)
4. A request to end an alleged situation of harassment against the claimant, and to cancel the decision to move the assignment of his post, accompanied by supplementary requests (17/12/2012)

III. ADVISORY COMMITTEE ON DISPUTES

A) COMPOSITION

In 2012, the Advisory Committee on Disputes was composed as follows:

Chair: Ms Karen REID

Full members: Mr Wolfgang RAU
Mr Frank STEKETEE (replaced by Ms Claudia MONTEVECCHI in March 2012)
Ms Monique BECRET

Substitutes: Ms Françoise ELENS-PASSOS
Mr Carlos DE SOLA
Ms Claudia MONTEVECCHI (until March 2012)
Mr Philippe COURADES

Ms Reid, Mr Rau, Ms Elens-Passos and Mr de Sola were appointed by the Secretary General. Mr Steketee, Ms Becret, Ms Montevecchi and Mr Courades were elected by the Council of Europe Staff Committee.

The terms of office of the present members expire in June 2013.

For the Council of Europe Development Bank cases, Mr Roberto BUQUICCHIO (full member) and Mr Rafael RUIZSANCHEZ (substitute) were elected by the bank's staff to sit in cases concerning a bank staff member. In any Bank case, Mr Andrea BUCCOMINO, the member appointed by the Governor of the Bank, sit in accordance with Article 59.5 bis of the Staff Regulations.

The Advisory Committee on Disputes is assisted by two joint secretaries, Mr Panayotis Voyatzis and Mr Hasan Bakirci, as well as by a secretarial assistant, Ms Elizabeth Alexieva.

B) CASES DEALT WITH

In 2012 the Advisory Committee on Disputes twice had cases referred to it, one concerning a complaint of the Staff Committee about the new mobility procedure and the statutory right of the Committee to participate in internal procedures concerning staff movements. The second involved a complaint made by a staff member of the Council of Europe Development Bank relating to a disciplinary proceeding that had been imposed by the Governor of the Bank.

The first case was a complaint of the Staff Committee about the new mobility procedure and the Committee's statutory right to participate in internal staff movement's procedures. The second involved a complaint made by a staff member of the Council of Europe Development Bank relating to a disciplinary measure that had been imposed by the Governor of the Bank.

IV. THE ADMINISTRATIVE TRIBUNAL

A) COMPOSITION

1. Two key events took place in 2012.

First there was the three-yearly renewal of the Tribunal. Its membership for the period from 1 April 2012 to 31 March 2015 is:

Chair	Mr Christos ROZAKIS	(Greece)
Deputy Chair	Mr Giorgio MALINVERNI	(Switzerland)
Judges	Mr Jean WALINE	(France)
	Mr Rocco Antonio CANGELOSI	(Italy)
Deputy judges	Mr Serkan KIZILYEL	(Turkey)
	Ms Magdalena RYCAK	(Poland)

Secondly, for the second time since the 1965 inception of the Tribunal (formerly the Appeals Board), a woman was appointed as a member. Ms Rycak is Deputy judge.

The Tribunal is assisted by a registrar (Mr Sergio Sansotta) and a deputy registrar (Ms Eva Hubalkova) as well as by an administrative assistant (Ms Anna Regard).

It should be noted that the registry has a permanent post of registrar.

However the deputy-registrar duties continue to be performed by a permanent staff member with other duties as well.

B. CASES DEALT WITH

2. In 2012 the Tribunal had five sessions adding up to 13 working days. It held 12 hearings at which it considered 34 appeals. All the hearings were held in public.

In an appeal, the Tribunal ruled without holding a hearing.

During the year the Chair adopted four orders authorising third parties to intervene in proceedings (under Article 10 of the Staff Regulations).

In 2012 the Tribunal did not receive any requests for hearings of witnesses or expert witnesses.

However, it ruled on a request for compensatory indemnity (Article 60, paragraph 7, of the Staff Regulations). This is the second time that the Tribunal is asked to rule on such a question.

3. In 2012 the Chair delivered six orders concerning six requests (including one filed in December 2011) to stay execution of administrative decisions pending determination of an administrative complaint (Article 59.9 of the Staff Regulations) and one order on a stay-of-execution request made after the filing of the appeal following rejection of the administrative complaint (Article 59.9 of the Staff Regulations).

In 2010 and 2011 the Chair dealt with 6 and 42 requests for stays of execution respectively.

The 2012 judged requests had the following subject matter:

- a) *Child allowance*
- b) *Changing a fixed-term contract (CDD) in permanent contract (CDI)*
- c) *Writing of a vacancy notice (two requests)*
- d) *Conditional acceptance of a contract*
- e) *Request to submit a file with personal data (two requests)*

4. During the same period the Tribunal delivered 16 decisions on 59 appeals.

In 2010 and 2011 it delivered 8 decisions respectively.

The decisions delivered in 2012 dealt with the following matters:

a) Non-renewal of a contract of employment (20 April 2012, appeal No. 469/2010 and 473/2011, PUMPYANSKAYA (II) et (III) v. Secretary General);

b) Reducing salary and pension scales (20 April 2012, appeals Nos 477-484/2011, PREVOST and others v. Secretary General);

c) External recruitment procedures (20 April 2012, appeals Nos 486-489, 491, 498-500, 502/2011, KILINC and others v. Secretary General), (20 April 2012, appeal No. 490/2011, CONRAD v. Secretary General);

d) Appraisal and end of contract (25 April 2012, appeal No. 485/2011 and 509/2011, J. de la P. (I) and (II) v. Governor);

e) Annulment of Rule No. 1329 on the education allowance and “exceptional rate” of reimbursement of educational costs (25 April 2012, appeal No. 503/2011, GOREY v. Secretary General);

f) Alleged acts of moral harassment, discrimination and racist abuses (11 June 2012, appeal No. 513/2011, D.M. v. Governor);

g) Disciplinary measure (11 June 2012, appeal No. 501/2011, SEMERTZIDIS v. Governor), (26 September 2012, appeal No. 521/2011, R.V. (II) v. Governor);

h) Periodic increase of step in grade and doubling the period for awarding steps in future. (26 September 2012, appeal No. 492 to 497, 504 to 510, 512, 515 to 520/2011 and 527/2012, BARON and others v. Secretary General);

i) Replacement of a CDD with a CDI following the vacancy of the post corresponding to the duties which are effectively exercised (9 November 2012, appeal No. 526/2012, d’ALESSANDRO v. Secretary General);

j) Disability recognition (6 December 2012, appeal No. 528/2012, R.V. (III) v. Governor);

k) Qualification as industrial disease the disability for its recognition as an invalid (6 December 2012, appeal Nos. 523 and 524/2012, LINTERMANS v. Secretary General);

l) Modalities of execution of a decision (6 December 2012, appeals Nos. 530 and 531/2012, PRINZ (II) and ZARDI (II) v. Secretary General).

5. In 2012 the Administrative Tribunal registered 15 appeals (two of them against the Governor of the Development Bank). If we try to group appeals together by relatedness of subject matter (whether because they were joinable under Article 14 of the Tribunal's rules of procedure or because, even if they were not joinable, they dealt with questions requiring to be examined simultaneously), the Tribunal, ultimately, had 13 "cases" to deal with.

Appeals registered in 2012 deal with the following matters:

- a) *Recruitment disputes:*
 - contest the results of the online aptitude tests for a recruitment procedure;
 - replacement of a fixed term contract with an indefinite duration contract;
- b) *Invalidity:*
 - qualify disability as industrial disease;
 - Denial of disability;
- c) *Salary:*
 - Home adaptation grant to a staff member (or former staff member);
 - Expatriation allowance and related payments;
 - Salary deduction for a "work stoppage";
- d) *Salary adjustment of staff members (increase of step in grade and doubling the period for awarding steps);*
- e) *Council of Europe responsibility in relation to the damage suffered by the appellant;*
- f) *Modalities of execution of a Tribunal's decision;*
- g) *Storage of personal data;*
- h) *End of a consulting contract;*
- i) *Disciplinary dismissal.*

Full list of appeals lodged in 2012 (grouped by subject matter):

Appeal	Appellant	Subject of the appeal
522/2012	Tilman HOPPE	The appellant contests the tests results of his online test for a recruitment procedure (vacancy notice n° e104/2011).
523/2012	Laurent LINTERMANS (I)	The appellant seeks the annulment of the Secretary General's decision to refuse to qualify as industrial disease the disability for his recognition as an invalid.
524/2012	Laurent LINTERMANS (II)	The appellant seeks the annulment of the Secretary General's decision to refuse to qualify as industrial disease the disability for his recognition as an invalid.
525/2012	STAFF COMMITTEE (XI)	The appellant seeks the annulment of the Secretary General's decision not to award staff members (or former staff members) with a disability an exceptional home adaptation grant without respecting former engagements taken with the Staff Committee.
526/2012	Ivana d'ALESSANDRO	The appellant requests the replacement of a fixed term contract with an indefinite duration contract following the vacancy of the post corresponding to the duties which are effectively exercised.
527/2012	Alev GUNYAKTI	The appellant seeks the annulment of the decision not to award her the following step in her grade as from 1st January 2012, as well as the decision to double the period for awarding steps in future.
528/2012	R. V. (III) v. Governor of the Council of Europe Development Bank	The appellant seeks annulment of the decision not to consider him as invalid.
529/2012	Nelly ROUGIE-EICHLER	The appellant seeks the recognition of the Council of Europe responsibility in relation of the damage the appellant believes having suffered.
530/2012	Françoise PRINZ (II)	The appellant contests the modalities of execution of the 8 December 2011 decision N° 474/2011.
531/2012	Alfonso ZARDI (II)	The appellant contests the modalities of execution of the 8 December 2011 decision N° 475/2011.
532/2012	Joan STAFFORD	The appellant seeks the annulment of the Secretary General's decision not to proceed to the immediate destruction of confidential information concerning her which could illegally be found in files other than

		administrative files.
533/2012	Ellen Joanne PENNINCKZ	The appellant seeks the annulment of the Secretary General's decision not to pay her the expatriation allowance and all related payments.
534/2012	Mimoza MURATI	The appellant (a project manager with a consulting contract) seeks the annulment of the Secretary General's decision not to extend her contract.
535/2012	Michel SEMERTZIDIS v. Governor of the Council of Europe Development Bank	The appellant seeks annulment of the decision to remove him from his post as a disciplinary measure.
536/2012	STAFF COMMITTEE (XII)	The appellant seeks the cancellation of the deductions carried out with respect to the August 2012 pay slips for certain staff members who took part in the "work stoppage" organised by the Staff Committee on 19 June 2012.

6. The Tribunal struck out off the list no appeal at the appellants' request.

7. The Tribunal's decisions and the orders striking appeals out off the list are public documents available on the Intranet and Internet website in the original French as soon as they are delivered (the English translation is available later). Orders on requests for stay of execution are available at the registry.