



ADMINISTRATIVE TRIBUNAL
TRIBUNAL ADMINISTRATIF



ADMINISTRATIVE TRIBUNAL OF THE COUCNCIL OF EUROPE

STAFF DISPUTES IN 2013 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. For the Development Bank of the Council of Europe, these texts apply in the version adopted by the Council of Europe if the Bank has not adopted changes to be applied to the Bank.

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 – Article 59, paragraph 8, letters (a) and (b), of the Staff Regulations) 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. Specific provisions apply to the Staff Committees of the Council of Europe and of the Bank, as well as to staff and external candidates who participate in recruitment procedures (letters (c) and (d) of the same provision).

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 (the starting point being different if 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 2013, 28 administrative complaints were lodged, of which 3 were declared devoid of purpose, 25 were rejected. The subject matter of the complaints was as follows:

- A request to annul the decision not to preselect the appellant in an external recruitment procedure (2.1.13)
- A request to annul the decision not to grant the appellant an allowance for other dependant (8.1.13)
- A request to annul the decision not to grant the appellant an A2 grade at the time of his/her recruitment (8.1.13),
- A request to cancel the notice sent to the appellant (25.1.13),
- A request to annul the appraisal report of the appellant and the recommendation contained therein to terminate his/her employment (6.3.13)
- A request for cancellation and revision of the appellant's appraisal report (2.4.13)
- A request to annul the decision not to promote the appellant to A3 grade (3.4.13),
- A request to annul the decision not to wait for the observations of the appellant following the recommendation to terminate his/her employment (17.5.13),
- A request from the Staff Committee to annul a decision *Ad Personam* granting steps to a staff member (3.6.13),
- Seven requests from appellants in CDD to remain beyond the end of their 5-year contract and to obtain the redefinition of their contract in CDI or the reimbursement of benefits they believe they could have collected from the unemployment insurance (14.6.13)
- A request to annul the decision not to invite the appellant to the written tests of a recruitment procedure following his/her failure in ability tests (12.7.13)
- A request from the Staff Committee to annul the proposed upgrading of a A5 post to A6 post (29.7.13)
- A request to annul the decision informing the appellant of the non-renewal of his/her temporary contract (31.7.13),
- A request to annul the decision not to retain in service the appellant beyond the age of 65 years (12.8.13),
- A request to annul the decision not to provide the appellant, in writing, the reasons why his/her application was not shortlisted in a recruitment procedure (13.9.13),

- A request to annul the decision not to renew the contract of the appellant (2.10.13),
- A request to annul the decision not to recruit an assistant in a Department (22.10.13),
- A request to annul the decision to award the claimant the following step in grade only 24 months after the end of his probationary period (29.11.13),
- A request to annul the decision not to recognize the Council of Europe responsibility in the accident in which the appellant was a victim and a request for compensation (4.12.13),
- A request to annul the proposal to pay over the amounts for service of the appellant on the basis of a calculation based on years of service in Grade B5, and request for a new proposal of calculation based on wages received as B3, B4 and B5 grade (12.12.13),
- A request to annul the decision not to proceed following the expression of interest of the appellant for early retirement (19.12.13),
- A request to annul the decision refusing the appellant's revaluation of his/her post from A2 to A4 grade and request for a retroactive adjustment of salary (23.12.13).

B) THE COUNCIL OF EUROPE DEVELOPMENT BANK

In 2013, 2 administrative complaints were lodged. One was rejected and one is pending. The subject matter of the complaints was as follows:

- A claim on the action taken on a complaint for harassment (13.11.2013) ;
- A request to annul the decision not to grant the appellant education allowance (23.12.2013).

In addition, an administrative complaint, submitted to the Advisory Committee on Disputes in 2012 (23.11.2012), concerning a request to annul the decision refusing to grant a survivor's pension to the appellant, is pending before the Advisory Committee on Disputes.

III. ADVISORY COMMITTEE ON DISPUTES

A) COMPOSITION

In 2013, the Advisory Committee on Disputes was composed as follows:

Chair: Ms Karen REID until June 2013 ; Mr Yves WINISDOERFFER, from June 2013.

Full members: Ms Monique BECRET, Ms Claudia MONTEVECCHI and, until June 2013; Mr Wolfgang RAU, Mr Stefanos STAVROS and Ms Nathalie VERNEAU, from June 2013.

Substitutes: Mr Philippe COURADES, Mr Carlos DE SOLA and Ms Françoise ELENS-PASSOS until June 2013 ; Mr Philippe COURADES, Ms Françoise ELENS-PASSOS, Ms Tanja KLEINSORGE and Ms Clare OVEY, from June 2013.

Mr DE SOLA, Ms ELENS-PASSOS, Mr Rau, Ms OVEY, Ms REID and Mr STAVROS were/are appointed by the Secretary General. Ms BECRET, Mr COURADES, Ms KLEINSORGE, Ms MONTEVECCHI, Ms VERNEAU and Mr WINISDOERFFER were/are elected by the Council of Europe Staff Committee.

For the Council of Europe Development Bank cases, Mr Constantino LONGARES BARRIO was elected by the bank's staff to sit in cases concerning a Bank staff member. If such a case arose, Mr Andrea BUCCOMINO, member appointed by the Governor of the Bank would also sit, in accordance with Article 59, paragraph 5 of the Staff Regulations.

The Advisory Committee on Disputes is assisted by two joint secretaries, Mr Panayotis VOYATZIS until June 2013; Ms Pamela Mc CORMICK and Mr Dmytro TRETYAKOV since June 2013. It is assisted by a secretarial assistant as well, Ms Elizabeth ALEXIEVA.

B) CASES DEALT WITH

The Committee adopted six opinions in 2013. These opinions related to complaints from staff members of the Council of Europe. Two of these complaints concerned the conditions under which the procedures of transfer and promotion were conducted. The others concerned: non-admission of a staff member to an external recruitment procedure; the way the special assessment procedure was directed in 2013 under Article 24 e) of the Regulations on appointments; the suppression of the housing allowance; refusals of job upgradings.

In addition, the Committee, at the request of the applicant, struck out of the list of cases a complaint from a staff member of the Council of Europe Development Bank.

IV. THE ADMINISTRATIVE TRIBUNAL

A) COMPOSITION

1. From 1 January 2013 to 31 December 2013, the Administrative Tribunal was composed as follows:

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)

The Tribunal is assisted by a registrar (Mr Sergio Sansotta) and a deputy registrar (Ms Eva Hubalkova) as well as by two administrative assistants (Ms Anna Regard, and since 1 August 2013, Ms Flore Chaboisseau).

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 within the Organisation (in this case, the Registry of the European Court of Human Rights).

B. CASES DEALT WITH

2. In 2013 the Tribunal had six sessions adding up to 9 working days. It held 4 hearings at which it considered 4 appeals. All the hearings were held in public.

In any appeal, the Tribunal has ruled without holding a hearing. However, it considered requests (rejected) for review and reconsideration of anonymity of the applicant and a request to hold a hearing in camera (rejected)

During the year the Chair adopted one order authorising third parties to intervene in proceedings (under Article 10 of the Staff Regulations). The Tribunal also received a request (rejected) from other third parties to ignore an intervention.

In 2013 the Tribunal received a request for hearings of witnesses and expert witnesses. However, it did not rule on any request for compensatory indemnity (Article 60, paragraph 7, of the Staff Regulations).

3. In 2013 the Chair delivered four orders concerning ten requests to stay execution of administrative decisions pending determination of an administrative complaint (Article 59.9 of the Staff Regulations).

In 2010, 2011 and 2012 the Chair dealt with 6, 42 and 6 requests for stays of execution respectively.

The 2013 judged requests had the following subject matter:

- a) *Exclusion of a candidate in a recruitment procedure (eight requests for suspension);*
- b) *Exclusion of a candidate in a recruitment procedure following the ability tests;*
- c) *No further retain in service and retirement of the Chair of the Staff Committee.*

4. During the same period the Tribunal delivered 8 decisions on 8 appeals.

In 2010, 2011 and 2012 it delivered 8, 8 and 16 decisions respectively.

The decisions delivered in 2013 dealt with the following matters:

- a) Destruction of confidential information about the applicant (25 January 2013, appeal No. 532/2012, STAFFORD v. Secretary General);*
- b) Disciplinary removal from post (12 April 2013, appeal No. 535/2012, SEMERTZIDIS (II) v. Governor of the Council of Europe Development Bank);*
- c) Housing allowance for disabled staff member (or former staff member) (12 April 2013, appeal No. 525/2012, STAFF COMMITTEE (XI) v. Secretary General);*
- d) External recruitment procedure (12 April 2013, appeal No. 522/201, HOPPE v. Secretary General);*
- e) Expatriation allowance (12 April 2013, appeal No. 533/2012, PENNINCKX v. Secretary General);*
- f) 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 (28 June 2013, appeal No. 536/2013, STAFF COMMITTEE (XII) v. Secretary General);*
- g) Annulment of the consultation of the Staff Committee by the Administration on the use of the Vanbreda account (25 September 2013, appeal No. 537/2013, STAFF COMMITTEE (XIII) v. Secretary General);*
- h) Retain in service a staff member beyond the age of 65 years (20 December 2013, appeal No. 541/2013, PALMIERI (VIII) v. Secretary General).*

5. In 2013 the Administrative Tribunal registered 6 appeals (one of them against the Governor of the Development Bank).

Appeals registered in 2013 deal with the following matters:

- a) Appraisal (the report was worse compared to a point in the past)*
- b) Pension (Payment of a survivor’s pension)*
- c) Salary adjustment for an agent (granting of steps without respecting the prerogatives of the Staff Committee)*
- d) Prerogatives of the Staff Committee*

e) *Carreer*:

- no retain in service beyond the age of 65
- non renewal of a fixed-term contract

Full list of appeals lodged in 2013:

537/2013	COMITE du PERSONNEL C. E. (XIII)	Annulment of the consultation of the Staff Committee by the Administration on the use of the Vanbreda account ADMISSIBLE FOUNDED
538/2013	LELONEK c. Gouverneur	Payment of a survivor's pension MANIFESTLY INADMISSIBLE
539/2013	ANDREA	Appraisal UNFOUNDED
540/2013	COMITE du PERSONNEL C. E. (XIV)	Cancellation of the decision concerning the granting of steps to a staff member and Staff Committee's powers FOUNDED
541/2013	PALMIERI (VIII)	Extension of a staff member's employment beyond the age of 65 UNFOUNDED
542/2013	TANCREDI	Non renewal of a fixed-term contract UNFOUNDED

6. The Tribunal struck out off the list one appeal at the appellants' request (*non-renewal of a consulting contract*: 25 January 2013, appeal No. 534/2012, MURATI v. Secretary General) and said another manifestly inadmissible in accordance with Article 5 of the Statute of the Tribunal (*Payment of a survivor's pension*: 28 June 2013, appeal No. 538/2013, LELONEK v. Governor)

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.