



ADMINISTRATIVE TRIBUNAL  
TRIBUNAL ADMINISTRATIF



## **ADMINISTRATIVE TRIBUNAL OF THE COUNCIL OF EUROPE**

### **STAFF DISPUTES IN 2014 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)**

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The sections concerning Council of Europe administrative complaints, Council of Europe Development Bank administrative complaints 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 No. 1062 (2001), amended by [Rule No. 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.

On 11 June 2014, the Committee of Ministers of the Council of Europe approved a major extension of the Tribunal's jurisdiction: in its [Resolution 2014 \(4\)](#) of 11 June 2014, it amended [Article 15 of the Statute of the Tribunal](#) - Appendix XI to the Staff Regulations. With this change, it extended the jurisdiction of the Administrative Tribunal to cover disputes between international governmental organisations other than the Council of Europe and their respective officials. Since 16 December 2014, the [Central Commission for the Navigation of the Rhine](#) has recognized such jurisdiction. Under that agreement, the Commission adopted its own internal appeal procedure – to be followed before the referral to the Tribunal – involving the appointment by the Chair of the Administrative Tribunal of a Conciliator and a Deputy Conciliator of the Commission.

## **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 2013, 28 administrative complaints were lodged. In 2014, 12 complaints were lodged, of which 2 were accepted, 1 is pending before the Advisory Committee on Disputes and 9 were rejected. The subject matter of the complaints was as follows:

- A request to cancel the written note sharing duties between the complainant and an assistant (3.2.14)
- A request to annul the increase of the amount deducted from the complainant's pension by means of collective medical insurance premium (25.2.14)
- A request to annul the decision to terminate the appointment of the complainant at the end of his/her probationary period and request to extend the probationary period for a further year (28.2.14)
- A request to annul the decision not to promote the complainant to A3 grade after 4 years of service as A2 grade (25.4.14),
- A request to cancel the refusal to register the complainant's car in special series (26.6.14)
- Two requests to annul the recruitment procedure to which the complainants have applied and, consequently, to annul the decision to appoint the selected candidate (27.6.14)
- A request to review the results of an external competition in which the complainant has applied (2.7.14),
- A request to annul the decision not to wait for the observations of the complainant following the recommendation to terminate his/her employment (17.5.13),

- A request to annul the decision not to disclose the complainant 's score on the written test organized as part of a competition; and request for challenging the minimum score that was required to be invited to the next step of the competition and / or the score itself (11.7.14),
- A request for obtaining advancement in step after 24 months of service (20.11.14),
- A request to cancel the decision not to invite the complainant to be interviewed in an external recruitment procedure (3.12.14)
- A request to annul the decision refusing to grant special leave to a complainant summoned as a juror at the Assize Court (8.12.14)

## **B) THE COUNCIL OF EUROPE DEVELOPMENT BANK**

In 2014, an administrative complaint was lodged, and it was rejected. The subject matter of the complaint was as follows:

- The complainant wishes to be restored to its previous position before a reorganization of services.

## **III. ADVISORY COMMITTEE ON DISPUTES**

### **A) COMPOSITION**

In 2014, the Advisory Committee on Disputes was composed as follows:

Chair: Mr Yves WINISDOERFFER.

Full members: Mr Wolfgang RAU, Mr Stefanos STAVROS and Ms Nathalie VERNEAU.

Substitutes: Mr Philippe COURADES, Ms Françoise ELENS-PASSOS, Ms Tanja KLEINSORGE and Ms Clare OVEY.

Ms ELENS-PASSOS, Mr RAU, Ms OVEY and Mr STAVROS are appointed by the Secretary General. Mr COURADES, Ms KLEINSORGE, Ms VERNEAU and Mr WINISDOERFFER 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. From 20 November 2014, he was replaced by Ms Emilia de MATTEO. 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, Ms Pamela Mc CORMICK and Mr Dmytro TRETYAKOV. Until December 2014, it was also assisted by a secretarial assistant, Ms Elizabeth ALEXIEVA.

## **B) CASES DEALT WITH**

The Committee adopted 3 opinions in 2014. The first one related to complaints from staff members with fixed-term contracts, who complained about the Directorate of Human Resources' decision not to accept their applications for an external competition and alleged they have received wrong information about the option to contribute individually to the French unemployment insurance scheme. The second concerned a complaint from the concubine of a deceased staff member before the Governor of the Development Bank against the Governor's decision not to grant the survivor's pension under Article 18, Appendix V of the Staff Regulations. The third concerned a complaint from a retired staff member against the Rule 1364 of 28 January 2014, who complained that the Rule has introduced a minimum rate of contribution to the health insurance plan, which would have increased her substantial premium.

The Committee also received the complaint of a staff member who was candidate in an internal procedure and had been invited to pass written tests; she complained about the refusal of the Directorate of Human Resources to disclose the results to the tests. Noting that the Directorate of Human Resources had finally responded to this request, the Committee decided that there was no need to give an opinion on it.

## **IV. THE ADMINISTRATIVE TRIBUNAL**

### **A) COMPOSITION**

1. From 1 January to 31 December 2014, 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 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 2014 the Tribunal had 5 sessions adding up to 7 working days. It held 6 hearings at which it considered 12 appeals. All the hearings were held in public.

In 2 appeals, the Tribunal has ruled without holding a hearing. However, it considered requests (rejected) for review of anonymity of the applicant and in 1 appeal, it proceeded with the hearing of three witnesses.

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

In 2014 the Tribunal did not rule on any request for compensatory indemnity (Article 60, paragraph 7, of the Staff Regulations).

3. In 2014 the Chair delivered 1 order concerning a request to stay execution of administrative decision pending determination of an administrative complaint (Article 59.9 of the Staff Regulations). He found that the appellant had withdrawn the request for stay of execution because it had been successful.

In 2010, 2011, 2012 and 2013 the Chair dealt with 6, 42, 6 and 4 requests for stays of execution respectively.

The 2014 judged request had the following subject matter: to annul the decision refusing to grant special leave to an appellant summoned as a juror at the Assize Court.

4. During the same period the Tribunal delivered 3 decisions on 4 appeals.

In 2010, 2011, 2012 and 2013, it delivered 8, 8, 16 and 8 decisions respectively.

The decisions delivered in 2014 dealt with the following matters:

*a) Challenging appraisal* (30 January 2014, [appeal No. 539/2013](#), ANDREA v. Secretary General);

*b) Cancellation of the A.P. decision 6186 concerning inter alia the granting of steps to a staff member* (13 March 2014, [appeal No. 540/2013](#), STAFF COMMITTEE (XIV) v. Secretary General);

*c) Decision to refuse to renew a fixed-term contract following the New Staff Policy* (2 October 2014, [appeal No. 542/2013](#), TANCREDI v. Secretary General);

d) *Decision refusing a new classification of his grade* (2 October 2014, [appeal No. 544/2014](#), TANCREDI (II) v. Secretary General);

5. In 2014 the Administrative Tribunal registered 6 appeals (one of them against the Governor of the Development Bank).

Appeals registered in 2014 deal with the following matters:

a) *Pension* (purchase of the pension rights and collective insurance premiums)

b) *Career*:

- Exclusion from a special promotion procedure
- Revaluation of the grade
- Early termination of service
- External recruitment
- Work conditions

***Full list of appeals lodged in 2014:***

543/2014	KURT TORUN	Exclusion from the special procedure under <a href="#">article 24.e of the Regulations on Appointments</a> following the ability tests FOUNDED
544/2014	TANCREDI (II)	Refusal to re-evaluate the grade JOINDER INADMISSIBLE
545/2014	JAFFREY	Civil liability of the Council of Europe for an accident at work UNFOUNDED REJECTED
546/2014	DEVAUX	Calculation method of benefits to purchase pension entitlement UNFOUNDED
547/2014	BECRET (IV)	Refusal of early retirement measures UNFOUNDED
548/2014	CUCCHETTI-RONDANINI	Reject of application to an external recruitment and wrong information concerning the possibility of taking out an unemployment insurance JOINDER 1st ground of appeal: <a href="#">ADMISSIBLE / FOUNDED</a> 2nd ground of appeal: <a href="#">UNFOUNDED</a>



549/2014	GÜNDÜZ	Reject of application to an external recruitment and wrong information concerning the possibility of taking out an unemployment insurance JOINDER 1st ground of appeal: INADMISSIBLE 2nd ground of appeal: UNFOUNDED
550/2014	GUTFREUND	Reject of application to an external recruitment and wrong information concerning the possibility of taking out an unemployment insurance JOINDER 1st ground of appeal: ADMISSIBLE / FOUNDED 2nd ground of appeal: UNFOUNDED
551/2014	KESSOUR	Reject of application to an external recruitment and wrong information concerning the possibility of taking out an unemployment insurance JOINDER 1st ground of appeal: ADMISSIBLE / FOUNDED 2nd ground of appeal: UNFOUNDED
552/2014	LANG	Reject of application to an external recruitment and wrong information concerning the possibility of taking out an unemployment insurance JOINDER 1st ground of appeal: ADMISSIBLE / FOUNDED 2nd ground of appeal: UNFOUNDED
553/2014	GURY	Reject of application to an external recruitment and wrong information concerning the possibility of taking out an unemployment insurance JOINDER 1st ground of appeal: ADMISSIBLE / FOUNDED 2nd ground of appeal: UNFOUNDED
554/2014	PETRASHENKO	External recruitment procedure UNFOUNDED
555/2014	MAYER	Recruitment procedure and subsequent decisions including the appointment of another candidate JOINDER UNFOUNDED
556/2014	KELLENS	Recruitment procedure and subsequent decisions including the appointment of another candidate JOINDER UNFOUNDED
557/2014	HEDMAN	Revision of Rule No. 1364 of 28 January 2014 on contributions towards collective insurance premiums

		and the restoring of the base provided for in Rule No. 1325
558/2014	CARALY-STARKE	Accident at work
559/2014	ORISTANIO (I) v. Governor	Deterioration of working conditions, downgrading, moral harassment and disguised disciplinary measure under the guise of a reorganization. Refusal to be reestablished in the integrality of duties

6. The Tribunal's decisions and the orders striking appeals out off the list are public documents available on the Intranet and Internet website in original version (usually in 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.