



ADMINISTRATIVE TRIBUNAL
TRIBUNAL ADMINISTRATIF



**ADMINISTRATIVE TRIBUNAL
OF THE COUNCIL OF EUROPE**

ACTIVITY REPORT 2018

CASES IN 2018 INVOLVING STAFF WORKING AT THE COUNCIL OF EUROPE, IN BODIES ATTACHED TO THE COUNCIL OF EUROPE AND IN OTHER INTERNATIONAL GOVERNMENTAL ORGANISATIONS WHICH HAVE RECOGNISED THE JURISDICTION OF THE TRIBUNAL¹

Statistical overview of:

- Administrative complaints and activity of the Advisory Committee on Disputes of the Council of Europe Development Bank and of the Administrative Tribunal,**
- Complaints and conciliation procedures of international organisations affiliated to the Administrative Tribunal of the Council of Europe**
- Appeals lodged with the Administrative Tribunal ²**

¹ Bodies attached to the Council of Europe: Council of Europe Development Bank
International organisations: Central Commission for the Navigation of the Rhine (CCNR), Hague Conference on Private International Law (HCCH), and Intergovernmental Organisation for International Carriage by Rail (OTIF)

² The sections regarding Council of Europe administrative complaints, Council of Europe Development Bank administrative complaints, cases before the Advisory Committee on Disputes and litigation of the Central Commission for Navigation on the Rhine were drafted by the Secretary General's Legal Advice Department, the Development Bank's Human Resources Department, the secretariat of the Advisory Committee on Disputes and by the Registry of the Administrative Tribunal after consulting the legal department of the Central Commission for Navigation on the Rhine, respectively. The Tribunal's registry wrote the section concerning the Tribunal and oversaw the publication of the document.

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I. INTRODUCTION

At the Council of Europe and the Council of Europe Development Bank, staff disputes are governed by Articles 59 to 61 of the Council of Europe Staff Regulations, which 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)¹ 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.

¹ By its decision of 28 April 2015 in appeals Cucchetti and others, the Tribunal, ruling on the admissibility of appeals of candidates who have not been admitted to the recruitment competition, did not accept the amendment introduced by the Organisation after a previous decision of the Tribunal (see paragraphs 61 to 64 of the decision)

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.

On 24 November and 8 December 2017, the Council of Europe signed two Agreements with the [Hague Conference on Private International Law \(HCCH\)](#) and the [Intergovernmental Organisation for International Carriage by Rail \(OTIF\)](#) to extend the jurisdiction of the Administrative Tribunal of the Council of Europe to these international organisations enjoying immunity. From now on, the Administrative Tribunal will be able to examine the related disputes between these organisations and their staff members.

The Agreements provide for an internal appeal procedure – prior to the referral to the Tribunal – which will apply to staff of both Organisations. It is a procedure specific to the international organisation concerned, which involves a conciliator during the procedure. The conciliator is appointed by the Chair of the Administrative Tribunal.

A Conciliator and Deputy Conciliator were appointed for CCNR, HCCH and OTIF were appointed on 3 April 2018.

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 2018, 34 administrative complaints were lodged, of which one was accepted, another was without object, and 32 were rejected. The subject matter of the complaints was as follows:

- Challenge to the decision to apply by analogy, to the staff member reinstated after unpaid leave, the provisions relating to the transfer of pension rights following recruitment (2 January 2018);
- Challenge to the decision to have the staff member return to grade A3 which he held prior to his promotion to grade A4 (5 February 2018);
- Challenge to the decision to rectify the expiry date of the staff member's fixed-term contract, which had been incorrectly fixed because of a purely material error, in order to comply with the maximum duration for employment (9 February 2018);
- Challenge to the refusal to authorise the staff member to work full-time (16 February 2018);
- Challenges to the decision to apply the affordability clause and not to adjust remunerations and pensions as from 1 January 2018, as well as the decision to postpone by one year the adoption of the CCR report introducing a new moderation clause in the remuneration adjustment method (20-26 February 2018);
- Challenge to the decision not to renew the staff member's temporary contract (17 May 2018);
- Challenge to an evaluation procedure for candidates for secondment of Turkish officials to the Council of Europe, following which the candidate was not selected (18 May 2018);
- Challenges to decisions to conduct an internal inquiry into allegations against the staff member (22 May 2018 and 12 June 2018);
- Challenge to the decision to impose dismissal as a disciplinary measure on the staff member (June 6, 2018);
- Challenge to the refusal to exempt the staff member from a new probationary period following his recruitment for the exercise of duties he was previously performing (10 August 2018);
- Challenge of decisions refusing to grant the exceptional rate of the education allowance to the staff member in respect of her two children (7 September 2018 and 12 December 2018);
- Challenge to the staff member's level of remuneration (8 October 2018);

- Challenge to the decision to discontinue the employment of a temporary staff member and to redeploy a staff member on indefinite term contract to the job she held (29 November 2018);
- Challenge to the decision not to pay the education allowance to the staff member (7 December 2018);
- Challenge to the decision not to renew the staff member's fixed-term contract during her probationary period (18 December 2018)

B) COUNCIL OF EUROPE DEVELOPMENT BANK

In 2018, five complaints were lodged and they were rejected. The subject matter of the complaints was as follows:

- A request to annul an appraisal within a context of allegations of moral harassment (11 May 2018);
- A request to annul a reprimand and organizational measures (18 June 2018);
- A request to annul the non-renewal of a fixed-term contract (28 June 2018);
- A request to reevaluate the capital sum paid following the recognition of a permanent and total disability (1 October 2018);
- A request for promotion and post reclassification with retroactive effect (17 November 2018).

C) INTERNATIONAL ORGANISATIONS AFFILIATED TO THE ADMINISTRATIVE TRIBUNAL OF THE COUNCIL OF EUROPE

An administrative complaint was examined within the Central Commission for the Navigation of the Rhine. Thereafter, one request for a conciliation procedure was sent to the Registry (see part IV.B.)

There was no administrative complaint in the other membership organisations.

III. ADVISORY COMMITTEE ON DISPUTES OF THE COUNCIL OF EUROPE

A) COMPOSITION

The Advisory Committee on Disputes was composed as follows:

Chair: Mr Gaël MARTIN-MICALLEF

Full members: Mr Gianluca ESPOSITO, Ms Clare OVEY and Mr Yves WINISDOERFFER

Substitutes: Ms Pascale BOUILLON, Ms Renata DEGENER and Mr Axel MULLER-ELSCHNER

Mr ESPOSITA, Ms OVEY, Ms DEGENER and Mr MULLER-ELSCHNER are appointed by the Secretary General.

Mr MARTIN-MICALLEF, Mr WINISDOERFFER and Ms BOUILLON are elected by the Council of Europe Staff Committee.

When cases involving staff of the Council of Europe Development Bank are referred to the Committee, two staff members of the Bank shall sit on it: Ms Emilia DE MATTEO and Mr Felix SCHIEFERDECKER, member appointed by the Governor, in accordance with Article 59, paragraph 7, of the Staff Regulations.

The Advisory Committee on Disputes was assisted by two joint secretaries, Ms Pamela McCORMICK and Mr Sonmez OZTURK (who replaced Dmytro TRETYAKOV on 15 January 2018).

B) CASES DEALT WITH

The Committee gave three opinions in 2018, one of which concerned similar complaints brought by 17 complainants. The Committee joined these complaints and addressed them in one opinion. The Committee has also started work on three other cases in which opinions will be delivered in 2019.

IV. CONCILIATION IN INTERNATIONAL ORGANISATIONS AFFILIATED TO THE ADMINISTRATIVE TRIBUNAL OF THE COUNCIL OF EUROPE

A) APPOINTMENT OF CONCILIATORS

A Conciliator and Deputy Conciliator were appointed for CCNR, HCCH and OTIF were appointed on 3 April 2018. Ms Nina Vajić, Chair of the Administrative Tribunal, appointed on 3 April 2018 for a five-year term:

- Ms Mireille Heers as Conciliator for CCNR and OTIF and as Deputy Conciliator for HCCH;
- Mr Thomas Laker as Conciliator for HCCH and as Deputy Conciliator for CCNR and OTIF.

The conciliators' secretariat is provided by the Registry of the Tribunal

B) CONCILIATION WITHIN CCNR

An application for conciliation was sent to the Tribunal on 20 March 2018. Following a measure of withdrawal and an arrangement with the appellant, the conciliation procedure in course ended on 27 April 2018.

V. ADMINISTRATIVE TRIBUNAL

A) COMPOSITION

1. Until 31 March 2018, the Administrative Tribunal was composed as follows:

Chair	Mr Christos ROZAKIS	(Greece)
Deputy Chair	Mr Giorgio MALINVERNI	(Switzerland)
Judges	Ms Mireille HEERS	(France)
	Mr Ömer Faruk ATES	(Turkey)
Deputy judges	Mr Rocco Antonio CANGELOSI	(Italy)
	Ms Lenia SAMUEL	(Cyprus)

As from 1 April 2018, the Administrative Tribunal was composed as follows:

Chair	Ms Nina VAJIC	(Croatia)
Deputy Chair	Mr Andras BAKA	(Hungary)
Judges	Ms Françoise TULKENS	(Belgium)
	Mr Christos VASSILOPOULOS	(Greece)
Deputy judges	Ms Lenia SAMUEL	(Cyprus)
	Mr Osman HAZIR	(Turkey)

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) ACTIVITY

2. In 2018, the Tribunal had 6 sessions adding up to 8 working days. It held 6 hearings at which it considered 6 appeals. The hearings were held in public.

In 2018, the Tribunal did not rule on any request for compensatory indemnity (Article 60, paragraph 7, of the Staff Regulations).

3. In 2018, the Chair delivered 4 orders concerning 4 requests to stay execution of administrative decision pending determination of an administrative complaint (Article 59.9 of the Staff Regulations). One request has been accepted and the three other requests have been rejected.

In 2013, 2014, 2015, 2016 and 2017, the Chair dealt with 4, 1, 1, 2 and 3 requests for stays of execution respectively.

The 2018 judged request concerned:

- Refusal of a pension transfer request submitted after a date fixed by HRD ;
- Disciplinary measure
- Opening of an internal investigation ;
- End of contract (CDD)

4. During the same period the Tribunal delivered 7 decisions on 9 appeals.

In 2013, 2014, 2015, 2016 and 2017, it delivered 8, 3, 8, 5 and 2 decisions respectively.

The decisions delivered in 2018 dealt with the following matters:

a) Appointment to posts of seconded lawyers at the European Court of Human Rights (31 January 2018, [Appeals Nos. 579-580/2017 – Zeki UYSAL and Sibel DEMİR SALDIRIM \(I\) v. Secretary General](#));

b) Refusal of additional steps (7 March 2018, [Appeal No. 581/2017 – Manuel Antonio de ALMEIDA PEREIRA v. Secretary General](#));

c) Challenging a decision of the Deputy Secretary General taken under Rule 1292 of 3 September 2010 on the protection of human dignity at the Council of Europe (17 May 2018, [Appeals Nos. 582-583/2017 – Régis BRILLAT \(III\) and Riccardo PRIORE v. Secretary General](#))

d) Demand for compensation for acts of moral harassment (17 May 2018, [Appeal No. 586/2017 – Manuel PAOLILLO v. Secretary General](#))

e) Non maintaining of remuneration (9 October 2018, [Appeal No. 587/2018 – Jannick DEVAUX \(II\) v. Secretary General](#))

f) Non-renewal of a contract (9 October 2018, [Appeal No. 587/2018 – Jannick DEVAUX \(III\) v. Secretary General](#))

g) Pension transfer request submitted after a date fixed by HRD (29 November 2018, Appeal No. 589/2018 - Victor SOLOVEYTCHIK v. Secretary General

5. In 2018 the Administrative Tribunal registered 16 appeals, 13 were lodged against the Secretary General of the Council of Europe, 3 against the Governor of the Council of Europe Development Bank.

The Appeals registered in 2018 deal with the following matters:

a) Salary maintenance

b) Non-renewal of a contract

c) Pension transfer

d) Career

- Return to a grade (A3) occupied before a promotion to grade A4

e) Disciplinary sanctions (revocation / blame)

f) Appraisal

g) Annual salary and pension adjustment

For the Council of Europe Development Bank:

The appeals registered in 2018 deal with the following matters:

a) Career

Challenge of an appraisal within a context of allegations of moral harassment.

b) Discipline

Challenge of a reprimand and organizational measures.

c) Disability

Challenge of the capital sum paid following the recognition of a permanent and total disability.

Full list of appeals lodged in 2018

587/2018	DEVAUX (II)	Refusal to maintain the remuneration
588/2018	DEVAUX (III)	Non-renewal of a contract of employment
589/2018	SOLOVEYTCHIK	Annulment of a Directorate of Human Resources decision determining that a pension transfer request submitted after a date fixed by HRD would be refused
590/2018	KORLJAN	Annulment of a decision of the Deputy Secretary General to return to the grade A3 (occupied before a promotion to grade A4)
591/2018	BRECHENMACHER	Annulment of the decision to remove the appellant from his post as a disciplinary measure
592/2018	DEMİR SALDIRIM (II)	Annulment of written and oral examination for the selection of seconded lawyers in the Organisation
593/2018	SCHIO v. Governor	Appraisal
594/2018	BAUER v. Governor	Reprimand as a disciplinary measure and reorganisation of duties
595/2018	ALBERELLI (III)	Annual salary and pension adjustment
596/2018	BRANNAN (III)	Annual salary and pension adjustment
597/2018	PARSONS (III)	Annual salary and pension adjustment
598/2018	ZARDI (III)	Annual salary and pension adjustment
599/2018	BOHNER (III)	Annual salary and pension adjustment
600/2018	PARROTT (II)	Annual salary and pension adjustment
601/2018	DENU (III)	Annual salary and pension adjustment

6. The Tribunal did not strike out off the list any appeal in 2018.
7. No ruling of manifest inadmissibility or compensatory decision was adopted in 2018.
8. 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.

C. OTHER ACTIVITIES OF THE TRIBUNAL

In 2017, the Administrative Tribunal was for the first time integrated into the [Internal Justice Systems of International Organisations Legitimacy Index 2017 \(Bretton Woods Law\)](#)

In 2018, the Administrative Tribunal the Administrative Tribunal is also included in the [Internal Justice Systems of International Organisations Legitimacy Index 2018 \(Bretton Woods Law\)](#) launched during the 6th International Administrative Law Centre of Excellence annual conference which was held in London on 25-26 October 2018.

The Administrative Tribunal is ranked in third position out of 35 Systems, after the [Commonwealth Secretariat \(COMSEC\)](#) and the [United Nations \(UN\)](#) (*ex aequo*).