



ADMINISTRATIVE TRIBUNAL
TRIBUNAL ADMINISTRATIF



**ADMINISTRATIVE TRIBUNAL
OF THE COUNCIL OF EUROPE**

**CASES IN 2015 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 COURT¹**

**(Statistical over-view of administrative complaints, the activity of the
Advisory Committee on Disputes and of 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)

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 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.

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 2014, 12 administrative complaints were lodged. In 2015, 7 complaints were lodged, of which 1 was accepted, and 6 were rejected. The subject matter of the complaints was as follows:

- A request to annul the decision to recover the amount unduly allocated to the appellant (payment of family allowances by the CAF, which should have been deducted from the dependent child allowances paid by the Council) (17.4.15)
- A request to annul the decision not to renew the appellant's contract (2.6.15)
- A request to annul the decision not to give the appellant access to his written examination (24e procedure) and request for a second correction of his test paper (19.6.15)
- A request for regularisation of the appellant's annual leave entitlement since 1993 (7.7.15),
- A request from the appellant for protection and assistance in his efforts to obtain compensation from the French authorities for his invalidity and a request for a meeting of the Council of Europe Invalidity Board to ensure that his entitlement to an invalidity pension was assessed as soon as possible (25.11.15)
- A request to annul the decision rejecting the appellant's application under an external recruitment procedure (3.12.15)

- A request to annul the decision to withdraw the appellant's allowance in respect of a dependent child and consequently the additional expatriated child allowance (12.12.15)

B) COUNCIL OF EUROPE DEVELOPMENT BANK

In 2015, 7 administrative complaints were lodged by 3 staff members, and were rejected. The subject matters of the complaints were as follows:

- Last appraisal in the probationary period and refusal to give a permanent contract (2 January and 14 February 2015);
- Reorganisation of the Bank and its negative effect on the appellant's situation (30 March 2015);
- Re-evaluation of post and demotion as a result of a new hierarchical junction and a diminution of responsibilities (four administrative complaints, the first lodged on 17 April 2015 and the three following complaints on 8 June 2015)

C) CENTRAL COMMISSION FOR THE NAVIGATION OF THE RHINE

No activity to report.

III. ADVISORY COMMITTEE ON DISPUTES

A) COMPOSITION

Until 30 June 2015, 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, Ms Emilia DE MATTEO 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.

As from 1 July 2015, the Advisory Committee on Disputes was composed as follows:

Chair: Mr Stefanos STAVROS.

Full members: Mr Wolfgang RAU, Mr Gaël MARTIN-MICALLEF and Mr Yves WINISDOERFFER.

Substitutes: Ms Françoise ELENS-PASSOS, Ms Clare OVEY, Ms Ana RUSU and Mr Jan MALINOWSKI.

Mr STAVROS, Mr RAU, Ms ELENS-PASSOS and Ms OVEY are appointed by the Secretary General. Mr MARTIN-MICALLEF, Mr WINISDOERFFER, Ms RUSU and Mr MALINOWSKI are elected by the Council of Europe Staff Committee.

For the Council of Europe Development Bank cases, Ms Emilia DE MATTEO was elected by the bank's staff to sit in cases concerning a Bank staff member. Mr Andrea BUCCOMINO, member appointed by the Governor of the Bank was replaced by Mr Felix SCHIEFERDECKER.

The Advisory Committee on Disputes is assisted by two joint secretaries, Ms Pamela Mc CORMICK and Mr Dmytro TRETAKOV. It was also assisted by a secretarial assistant, Ms Regina LETELIE.

B) CASES DEALT WITH

The Committee did not adopt any opinions in 2015 because no matters were pending and it had not received any new complaints.

IV. ADMINISTRATIVE TRIBUNAL

A) COMPOSITION

1. From 1 January to 31 March 2015, 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)

As from 1 April 2015, 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)

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. 50TH ANNIVERSARY

To mark the 50th anniversary of its establishment, the Administrative Tribunal of the Council of Europe organised an international colloquy on 19-20 March 2015 at the Palais de l'Europe. The Colloquy entitled “**Common focus and autonomy of International Administrative Tribunals**” was devoted to different aspects of the activity of international administrative tribunals.

It brought together some 200 participants, judges and former judges, registrars, researchers and persons appearing before the administrative tribunals of international organisations based in Europe and worldwide.

Six working sessions were offered to participants:

- The role and importance of administrative tribunals in international organisations
- Fundamental rights and international organisations: subjective rights and procedural safeguards
- Factors affecting the exercise of the right to appeal: access *ratione personae*, anonymity, mediation / conciliation, costs and legal aid
- Effectiveness of decisions before judgment (stays of execution) and after judgment (enforcement measures). Appeals system.

- The specific nature of international civil service law when compared with national law
- Discretionary power and its review before tribunals in the various fields of human resources management

The [programme](#) of the Colloquy, [speakers' presentations](#) and [video recordings](#) of the Colloquy are available on the [Tribunal's website](#).

The Colloquy was preceded on Wednesday 18 March by a meeting of international administrative tribunals following the one held in Washington on 3 April 2014 at the headquarters of the International Monetary Fund. This in camera meeting enabled judges and registries' staff of about twenty administrative tribunals of international organizations to address various issues, including the issue of collaboration between them.

A common search interface project to research in databases of the various administrative tribunals, conducted in collaboration with the Council of Europe Directorate of Information Technology, was also examined during this meeting, as well as projects proposed by other tribunals in order to encourage and strengthen cooperation between the administrative tribunals of international organisations.

B. CASES DEALT WITH

2. In 2015 the Tribunal had 6 sessions adding up to 9 working days. It held 6 hearings at which it considered 10 appeals. All the hearings were held in public.

In 5 appeals, the Tribunal has ruled without holding a hearing. However, it considered requests (rejected) for review of anonymity of the applicant in 2 appeals and in 2 appeals, it proceeded with the hearing of witnesses. In 2 disputes, the Committee ordered an expert report. In one set of proceedings the Tribunal rejected a request for an on-site visit. It also rejected a request for incidental proceedings.

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

In 2015 the Tribunal did not rule on any request for compensatory indemnity (Article 60, paragraph 7, of the Staff Regulations).

3. In 2015 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). It granted the requested stay of execution. Given that the Secretary General had requested that the stay of execution be lifted in another order, the Chair rejected this request.

In 2010, 2011, 2012, 2013 and 2014 the Chair dealt with 6, 42, 6, 4 and 1 requests for stays of execution respectively.

The 2015 judged request concerned the continued employment of a temporary member of staff whose post had been opened to the recruitment procedure.

4. During the same period the Tribunal delivered 10 decisions on 16 appeals.

In 2010, 2011, 2012, 2013, 2014 and 2015, it delivered 8, 8, 16, 8, 3 and 8 decisions respectively.

The decisions delivered in 2015 dealt with the following matters:

a) Exclusion from the special procedure under article 24.e of the Regulations on Appointments following the ability tests (30 January 2015, [appeal No. 543/2014](#), Bilge KURT TORUN v. Secretary General);

b) Challenging the calculation method of benefits to purchase pension entitlement (30 January 2015, [appeal No. 546/2014](#), Jannick DEVAUX v. Secretary General);

c) Refusal of early retirement measures (30 January 2015, [appeal No. 547/2014](#), Monique BECRET v. Secretary General);

d) Recognition of the Council of Europe responsibility for the harm suffered (17 March 2015: [appeal No. 529/2012](#), Nelly ROUGIE-EICHLER v. Secretary General)

e) External recruitment procedure (17 March 2015, [appeal No. 554/2014](#) – Viaceslav PETRASHENKO v. Secretary General; 28 April 2015, [appeals Nos. 555-556/2014](#) – Geneviève MAYER and Fabrice KELLENS v. Secretary General; 28 April 2015, [appeals Nos. 548-553/2014](#) – Clelia CUCCHETTI RONDANINI and others v. Secretary General);

f) Civil liability of the Council of Europe for an accident at work (23 October 2015, [appeal No. 545/2014](#), Cynera JAFFREY v. Secretary General)

g) Refusal to effect advancement in step after 24 months of service (article 3 of Appendix IV to the Staff Regulations). And challenging the exclusion of probationary period from the term of service in the calculations for the purposes of advances of steps (23 October 2015, [appeal No. 560/2015](#), Nataliya YAKIMOVA v. Secretary General)

h) 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 (10 December 2015, [appeal No. 557/2014](#), Gunilla HEDMAN v. Secretary General)

5. In 2015 the Administrative Tribunal registered 9 appeals (7 of them against the Governor of the Development Bank).

Appeals registered in 2015 deal with the following matters:

a) Career:

- Step advancement;
- Appraisal;
- End of fixed-term contract;
- Harassment and unequal treatment;
- Refusal of permanent contract after the probationary period;
- Work conditions;
- Evolution of the hierarchical junction and responsibilities

b) *Pension* (member's exclusion from the Consultative Committee of the Autonomous Pension Fund)

Full list of appeals lodged in 2015:

560/2015	Nataliya YAKIMOVA	Refusal to effect advancement in step after 24 months of service (article 3 of Appendix IV to the Staff Regulations). Exclusion of probationary period from the term of service in the calculations for the purposes of advances of steps. UNFOUNDED REJECTED
561/2015	Gyorgyi KACSANDI (I) v. Governor of the Council of Europe Development Bank	Appraisal JOINDER ADMISSIBLE
562/2015	Gyorgyi KACSANDI (II) v. Governor of the Council of Europe Development Bank	End of a fixed-term contract JOINDER ADMISSIBLE
563/2015	Gyorgyi KACSANDI (III) v. Governor of the Council of Europe Development Bank	Psychological harassment and unequal treatment JOINDER INADMISSIBLE UNFOUNDED
564/2015	Gyorgyi KACSANDI (IV) v. Governor of the Council of Europe Development Bank	Refusal of a permanent contract at the end of the probationary period JOINDER INADMISSIBLE UNFOUNDED
565/2015	Maria-Lucia	Continuation of the degradation of working

	ORISTANIO (II) v. Governor of the Council of Europe Development Bank	conditions, downgrading, moral harassment and disguised disciplinary measure FOUNDED
566/2015	Holger SEIFERT v. Governor of the Council of Europe Development Bank	New hierarchical junction and diminution of responsibilities; Moral harassment. UNFOUNDED REJECTED
567/2015	Costas SKOURAS	Non renewal of a contract of employment UNFOUNDED REJECTED
568/2015	Raphaël ALOMAR v. Governor of the Council of Europe Development Bank	Exclusion of the Retiring Governor of the Bank from the Consultative Committee of the Autonomous Pension Fund STRIKING THE CASE OFF THE LIST WITHDRAWAL MANIFESTLY INADMISSIBLE

6. The Tribunal struck out off the list one appeal at the appellants' request ([appeal No. 558/2014](#), CARALY-STARKE v. Secretary General).

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 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.