

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (81) 1

AMENDING THE STAFF REGULATIONS AND THE STATUTE OF THE APPEALS BOARD

*(Adopted by the Committee of Ministers on 23 January 1981
at the 328th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 16 of the Statute of the Council of Europe,

Having regard to the Council of Europe Staff Regulations ;

Having regard to the 10th activity report of the ad hoc Committee of Administrative Experts (CAHEA) (Doc. CM (79) 306) ;

Having regard to the draft amendment to Article 32 of the Staff Regulations and to the Statute of the Appeals Board drawn up by the Ministers' Deputies Working Party on the functioning of staff appointments ;

Having consulted the European Court of Human Rights,

Resolves as follows :

Article 1 :

Article 32 of the Staff Regulations is replaced by the new Articles 32, 32 bis and 32 ter as they appear in Appendix I to this resolution.

Article 2 :

The Statute of the Appeals Board is replaced by the new Statute as it appears in Appendix II to this resolution.

Article 3 :

The provisions of the present resolution shall enter into force on 25 September 1981. However, the provisions concerning the constitution of the new board are applicable as from the adoption of this resolution in order to allow it to be instituted at the end of the present board's term of office.

Appendix I to Resolution (81) 1

Articles 32, 32 bis and 32 ter of the Staff Regulations

Article 32—Complaints procedure

1. A staff member who has a direct and existing interest in so doing may submit to the Secretary General a complaint against an administrative act adversely affecting him. The expression "administrative act" shall mean any individual or general decision or measure taken by the Secretary General. If the Secretary General has not replied within sixty days to a request from a staff member inviting him to take a decision or measure which he is required to take, such silence shall be deemed an implicit decision rejecting the request. The sixty-day period shall run from the date of receipt of the request by the Secretariat, which shall acknowledge receipt thereof.

2. The complaint must be made in writing and lodged via the Head of Establishment Division

- a. within sixty days from the date of publication or notification of the act concerned or
- b. if the act has not been published or notified, within sixty days from the date on which the person concerned learned thereof or
- c. within sixty days from the date of the implicit decision rejecting the request as mentioned in paragraph 1.

The Head of Establishment Division shall acknowledge receipt of the complaint.

In exceptional cases and for duly justified reasons, the Secretary General may declare admissible a complaint lodged after the expiry of the periods laid down in this paragraph.

3. The Secretary General shall give a reasoned decision on the complaint as soon as possible and not later than sixty days from the date of its receipt and shall notify it to the complainant. The absence of a reply to the complaint within that period shall be deemed an implicit decision rejecting the complaint.

4. Either on the initiative of the Secretary General or if the staff member so requests in his complaint, the complaint shall be referred to the Advisory Committee on Disputes. In that event, the Secretary General shall have ninety days to give a decision on the complaint.

5. The Advisory Committee on Disputes shall comprise four staff members, two of whom shall be appointed by the Secretary General and two elected by the staff under the same conditions as those for the election of the Staff Committee. The committee shall be completely independent in the discharge of its duties. It shall formulate an opinion based on considerations of law and any other relevant matters after consulting the persons concerned where necessary. The Secretary General shall, by means of a rule, lay down the rules of procedure of the committee.

6. The complaints procedure set up by this article shall be open on the same conditions *mutatis mutandis*

a. to former staff members ;

b. to persons claiming through staff members or former staff members, within two years from the date of the act complained of ; in the event of individual notification, the normal time limit of sixty days shall apply ;

c. to the Staff Committee, where the complaint relates to an act of which it is the subject or to an act directly affecting its powers under the Staff Regulations ;

d. to candidates outside the organisation who have been allowed to sit a competitive recruitment examination, provided the complaint relates to an irregularity in the examination procedure.

7. A complaint shall not have a suspensive effect. However, the complainant may apply to the Chairman of the Appeals Board, with copy to the Secretary General, for a stay of execution of the act complained of if its execution is likely to cause him grave prejudice difficult to redress. The Secretary General shall, save for duly justified reasons, stay the execution of the act until the Chairman of the Appeals Board has ruled on the application in accordance with the Board's Statute.

Article 32 bis—Appeals procedure

1. In the event of either explicit rejection, in whole or in part, or implicit rejection of a complaint lodged under Article 32, the complainant may appeal to the Appeals Board set up by the Committee of Ministers.

2. The Appeals Board, after establishing the facts, shall decide as to the law. In disputes of a pecuniary nature, it shall have unlimited jurisdiction. In other disputes, it may annul the act complained of. It may also order the organisation to pay to the appellant compensation for damage resulting from the act complained of.

3. An appeal shall be lodged in writing within sixty days from the date of notification of the Secretary General's decision on the complaint or of the expiry of the time-limit referred to in Article 32, paragraph 3. Nevertheless, in exceptional cases and for duly justified reasons, the Appeals Board may declare admissible an appeal lodged after the expiry of these periods.

4. An appeal shall have no suspensive effect. However, if a stay of execution of the act complained of has been granted by the Chairman of the Appeals Board following an application under Article 32, paragraph 7, that stay of execution shall be maintained throughout the appeal proceedings unless the Board decides otherwise on a reasoned request from the Secretary General.

5. While an appeal is pending, the Secretary General shall avoid taking any further measure in respect of the appellant which, in the event of the appeal being upheld, would render unfeasible the redress sought.

6. Decisions of the Appeals Board shall be binding on the parties as soon as they are delivered. The Secretary General shall inform the Board of the execution of its decisions within thirty days from the date on which they were delivered.

7. If the Secretary General considers that the execution of an annulment decision is likely to create serious internal difficulties for the organisation, he shall inform the Board to that effect in a reasoned opinion. If the Board considers the reasons given by the Secretary General to be valid, it shall then fix the sum to be paid to the appellant by way of compensation.

Article 32 ter—Calculation of time-limits

The time-limits in Articles 32 and 32 bis shall run from midnight of the first day of each time-limit as defined in the provision concerned. Saturdays, Sundays and official holidays shall count when calculating a time-limit. However, where the last day of a time-limit is a Saturday, Sunday or an official holiday, the time-limit shall be extended to include the first working day thereafter.

Appendix II to Resolution (81) 1

Statute of the Appeals Board

Article 1—Membership of the Board

1. The Appeals Board (hereinafter referred to as the Board) shall be composed of three members, who shall not be staff members of the Council of Europe. One member shall be appointed by the European Court of Human Rights (hereinafter referred to as the Court) from among its own members ; the remaining members shall be appointed by the Committee of Ministers among jurists or other persons of high standing, with great experience in the field of administration. The members of the Board shall be appointed for a term of three years and shall take up office on the same date. They may be re-appointed.

Three substitute members shall be appointed by the Court and the Committee of Ministers, on the same conditions.

The six members and substitute members must be nationals of different member states.

2. In the event of the death or resignation of a member or substitute member during the three-year term for which he was appointed, the Court or the Committee of Ministers, as the case may be, shall appoint a replacement to serve for the remainder of the term of office of his predecessor.

Article 2—Chairman

The member of the Board appointed by the Court shall be the Board's Chairman. If the Chairman is unable to act, he shall be replaced by the substitute member appointed by the Court.

Article 3—Independence of members

The members of the Board shall be completely independent in the discharge of their duties ; they shall not receive any instructions.

Article 4—Jurisdiction

The jurisdiction of the Board is provided for in Article 32 bis of the Staff Regulations. Any dispute concerning the scope of its jurisdiction shall be settled by the Board itself.

Article 5—Admissibility

1. An appeal shall not be deemed admissible unless it complies with the conditions laid down in Article 32 bis, paragraphs 1 and 3, of the Staff Regulations.
2. If the Chairman states, in a reasoned report to the members of the Board, that he considers the appeal to be manifestly inadmissible, and if the members raise no objections within two months, the appellant shall be informed without delay that his appeal has been declared inadmissible for the reasons stated in the report, a copy of which shall be communicated to him.

Article 6—Working languages

The official languages of the Board shall be English and French.

Article 7—Preparation of case files

1. The notice of appeal must indicate its purpose, set out the facts and grounds of appeal and be accompanied by all supporting documents. Two copies thereof shall either be sent by registered post or handed to the Secretary of the Board, who shall acknowledge receipt and communicate them to the Chairman and to the Secretary General.
2. The Chairman shall set a time-limit for the submission by the Secretary General of his observations in writing, to which all supporting documents not already submitted by the appellant shall be attached. The observations of the Secretary General shall be communicated to the appellant, for the submission of whose reply, if any, a time-limit shall also be set by the Chairman.
3. The appeal, together with the memoranda and other supporting documents, the comments of the Secretary General and the appellant's reply, if any, shall be communicated to the members of the Board at least fifteen days before the date of the session at which it is to be considered.
4. If the Advisory Committee on Disputes has been asked for an opinion under Article 32, paragraph 4, of the Staff Regulations, the opinion shall be communicated to the Board as part of the case-file. However, evidence given before the Advisory Committee shall not be binding on the parties, nor may it be raised against them in the proceedings before the Board.
5. The Board may request any other document it considers necessary for the consideration of the appeal.
6. Every document included in the case-file shall be transmitted to the parties or made available to them for consultation in the offices of the Board's Secretariat.
7. The Secretary to the Board shall be responsible for communicating documents to the parties.

Article 8—Stay of execution

1. The Chairman shall rule within fifteen days on applications made under Article 32, paragraph 7, of the Staff Regulations for a stay of execution of an administrative act.
2. The Chairman may make his decision subject to certain conditions.

Article 9—Meetings of the Board

1. The Board shall not be validly constituted unless a Chairman and two members or substitute members are present.
2. The Board shall be convened by the Chairman.
3. The Board's hearings shall be public unless the Board itself decides otherwise.
4. The Secretary General and the appellant may attend the hearing and make any oral submissions in support of the arguments put forward in their written statements. They may be assisted and represented for that purpose by one or more persons of their choice.

5. The Board shall hear any witnesses whose evidence it considers relevant to the hearing. The Board may require any official of the Council of Europe to appear before it as a witness.
6. The members of the Board shall deliberate in private.

Article 10—Intervention

1. Any natural person to whom the Board is open for the purposes of lodging an appeal and who establishes a sufficient interest in the result of a case submitted to the Board may be authorised by the Board to intervene in that case.
2. Submissions made in an intervention shall be limited to supporting the submissions of one of the parties.

Article 11—Costs of the appeal

1. The Board may, if it considers that an appeal constituted an abuse of procedure, order the appellant to pay all or part of the costs incurred.
2. In cases where it has allowed an appeal, the Board may decide that the organisation shall reimburse at a reasonable rate properly vouched expenses incurred by the appellant, taking the nature and importance of the dispute into account.
3. In cases where it has rejected an appeal, the Board may, if it considers there are exceptional circumstances justifying such an order, decide that the organisation shall reimburse in whole or in part properly vouched expenses incurred by the appellant. The Board shall indicate the exceptional circumstances on which the decision is based.
4. The Board may decide that the organisation shall reimburse justified travel and subsistence expenses incurred by witnesses who have been heard, within the limits of the rates applicable to staff on official journeys.

Article 12—Decisions of the Board

1. The Board shall reach its decisions by a majority vote. Reasons shall be given for decisions.
2. No appeal lies from decisions. In the event of a clerical error in a decision, it may be rectified by the Chairman either *ex officio* or at the request of one of the parties.
3. A copy of the decision shall be delivered to each of the parties. The original shall be deposited in the archives of the Secretariat of the Board.
4. Decisions of the Board shall be published *in extenso* by the Secretary General.

Article 13—Internal Rules of Procedure

The Board shall adopt its own Rules of Procedure.

Article 14—Secretariat and budgetary arrangements

1. The Secretary General shall make the necessary administrative arrangements for the functioning of the Board.
2. The Secretary General shall appoint a Secretary and a Deputy Secretary to the Board. In the discharge of their duties they shall be responsible only to the Board.
3. Subject to the provisions of Article 15, any compensation awarded by the Board shall be borne by the budget of the Council of Europe.
4. Travel and subsistence expenses incurred by members of the Board shall be refunded according to the rules in force in the organisation and at the rates determined by the Committee of Ministers.

Article 15—Organisations attached to the Council of Europe

1. The jurisdiction of the Board may be extended to cover disputes between organisations attached to the Council of Europe and their officials, should the appropriate authorities of such organisations so request.
2. In such cases, an agreement governing administrative procedure and arrangements shall be concluded between the Secretary General and the organisation concerned. The agreement shall expressly provide that the latter organisation shall itself bear the cost of compensation awarded by the Board to any of its officials and the cost of sessions occasioned by such disputes.