

# ACTIVITY REPORT 2020

## ADMINISTRATIVE TRIBUNAL OF THE COUNCIL OF EUROPE



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

# **ACTIVITY REPORT 2020**

ADMINISTRATIVE TRIBUNAL  
OF THE COUNCIL OF EUROPE

French edition:

*Rapport d'activités 2020*

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# Introduction

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**T**his report is the 9<sup>th</sup> report outlining the activities of the Administrative Tribunal of the Council of Europe (hereinafter “the Administrative Tribunal”). It covers the period from 1 January to 31 December 2020.

For this period, the report provides a statistical overview of:

administrative complaints filed to the Council of Europe and the Council of Europe Development Bank,

the activity of the Advisory Committee on Disputes at the Council of Europe and the Council of Europe Development Bank,

complaints and conciliation procedures within the international organisations that have recognised the jurisdiction of the Administrative Tribunal of the Council of Europe (hereinafter “organisations affiliated to the Administrative Tribunal”) <sup>1</sup> and,

Appeals lodged with the Administrative Tribunal.

## Disputes at the Council of Europe and the Development Bank

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](#).

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1. 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)

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) <sup>2</sup> of the same provision).

When the complaint is lodged, 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 or 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.

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2. 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)

## Disputes concerning organisations affiliated to the Administrative Tribunal

Since the amendment made in June 2014<sup>3</sup> to Article 15 of the Tribunal's Statute, Appendix XI to the Staff Regulations, the jurisdiction of the Administrative Tribunal may be extended to cover disputes between international governmental organisations other than the Council of Europe and their respective officials.

Pursuant to this provision, the jurisdiction of the Tribunal has been extended to include cases involving staff of three international organisations other than the Council of Europe:

- the [Central Commission for the Navigation of the Rhine](#);
- the [Hague Conference on Private International Law \(HCCH\)](#);
- and the [Intergovernmental Organisation for International Carriage by Rail \(OTIF\)](#).

Under the agreements concluded with these organisations, provisions specific to the organisation concerned apply to the phase prior to the referral to the Tribunal, for which the Chair of the Tribunal is nevertheless responsible for appointing a Conciliator and a Deputy Conciliator.

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

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3. See the Committee of Ministers' [Resolution CM/Res2014\(4\)](#)

# Administrative complaints

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## Within the Council of Europe<sup>4</sup>

The Legal Advice and Litigation Department of the Directorate of Legal Advice and Public International Law has the job of replying, on the Secretary General's behalf, to administrative complaints lodged under Article 59 of the Staff Regulations.

In 2020, 79 administrative complaints were lodged, of which six were accepted and 73 were rejected. The requests made in these complaints were as follows:

Request to annul the decision not to grant effective protection to a staff member claiming to be a victim of harassment (16 January 2020);

56 requests to annul the amendment of the method of adjustment of pensions paid under the Coordinated Pension Scheme (27 January 24 February 2020);

Request to annul the downgrading of a staff member for disciplinary reasons (31 January 2020);

Three requests to annul the decision on the reimbursement of the tax adjustment paid in 2018 to pensioners residing in France (10-24 February 2020);

Request to annul the decision not to apply the salary adjustment for 2018 retroactively following the payment by the Russian Federation of its obligatory contributions (17 February 2020);

Four requests to annul the written tests of an external recruitment procedure (3-6 April 2020);

Two requests to annul the amount awarded to two staff members for damages suffered as victims of harassment (20-28 April 2020);

Request to annul the decision not to recruit a former staff member for the second phase of a project for which she had been employed in the first phase (27 April 2020);

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4. Information in this section of the report have been provided by the Legal Advice and Litigation Department of the Directorate of Legal Advice and Public International Law of the Council of Europe.

Request to annul the decision not to select the candidature of a staff member following an internal competition (28 April 2020);

Request to annul the decision to terminate employment at the end of a probationary period (15 July 2020);

Request to annul the decision not to place a candidate on the reserve list drawn up following an external recruitment procedure (3 August 2020);

Two requests to annul the results obtained by two candidates in the written tests of an external recruitment procedure (10 August 2020);

Request to annul the decision to rectify the scale applicable to the calculation of a pensioner's pension as a result of her change of country of residence (24 August 2020);

Request to annul the decision not to grant the education allowance to a staff member (26 August 2020);

Request to annul the decision to declare an application to take part in an internal competition inadmissible (7 October 2020);

Two requests to annul the results obtained in the written tests of an external recruitment procedure (27-30 November 2020).

## **Within the Council of Europe Development Bank<sup>5</sup>**

The Legal Advice Service of the Development Bank has the job of replying, on the Governor's behalf, to administrative complaints filed under Article 59 of the Staff Regulations (Part VII – Disputes).

In 2020, one complaint was lodged and rejected. The subject matter of this complaint is the challenge of a decision on permanent and total disability (3 November 2020).

## **Within organisations affiliated to the Administrative Tribunal<sup>6</sup>**

No administrative complaints were filed in 2020 in the affiliated organisations (CCNR, HCCH and OTIF).

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5. Information in this section of the report have been provided by the Legal Advice Service of the Development Bank

6. Information in this section of the report have been provided by the Tribunal Registry after consultation with the legal departments of the affiliated organisations mentioned.

# Advisory Committee on Disputes of the Council of Europe

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## Composition

The composition of the Council of Europe's Advisory Committee on Disputes remained unchanged during the period covered by this report.

Chair	Ms Ulrika FLODIN-JANSON
Full members	Mr Hallvard GORSETH Mr Gaël MARTIN-MICALLEF Mr Yves WINISDOERFFER
Substitutes	Ms Catherine DU-BERNARD ROCHY Mr Daniele CANGEMI Ms Françoise KEMPF Ms Anca RADU

Ms FLODIN-JANSON, Mr. GORSETH, Ms DU-BERNARD ROCHY and Mr CANGEMI were appointed by the Secretary General.

Mr MARTIN-MICALLEF, Mr WINISDOERFFER, Ms KEMPF and Ms RADU were 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, member elected by staff, 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.

## Cases dealt with

The Committee gave one opinion in 2020.

# Conciliation in international organisations affiliated to the Administrative Tribunal

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## Conciliators

The Conciliator and Deputy Conciliator for CCNR, HCCH and OTIF appointed on 3 April 2018 by the Chair of the Administrative Tribunal, remained in their positions during the reporting period. They are:

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.

## Conciliation within organisations affiliated to the Administrative Tribunal

In 2020, no application for conciliation was sent to the Tribunal.

# Administrative Tribunal

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## Composition

The composition of the Tribunal remained unchanged during the period covered by this report:

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 was 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).

Following the retirement of Mr Sergio Sansotta on 30 June 2020, Ms Eva Hubalkova stepped in as acting Registrar until Ms Christina Olsen was appointed Registrar of the Tribunal on 1 November 2020. Ms Hubalkova then resumed her duties as Deputy Registrar until 31 December 2020.

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).

## Organisational measures

In the context of the covid-19 health crisis, as of March 2020, the Chair decided to avail herself of prerogatives granted to her by Article 42 of the Rules of Tribunal.

As a result, she decided that, during the period during which the Council of Europe is not accessible and the staff is required to telework, the date of lodging of appeals would be exceptionally that of the electronic dispatch of a duly completed appeal form and its annexes. It is up to the appellant (or his/her representative) either to send the documents dispatched electronically

by a registered letter or to deposit them at the registry as soon as possible and without adding any modification.

The Chair decided that the same procedure should apply when lodging requests for stay.

From March 2020, it was not possible to hold hearings in person at the seat of the Tribunal in Strasbourg. With the exception of the two hearings held in January 2020, the hearings that took place thereafter were held by videoconference and were not open to the public.

As of 31 December 2020, these measures were still in effect.

### Activity

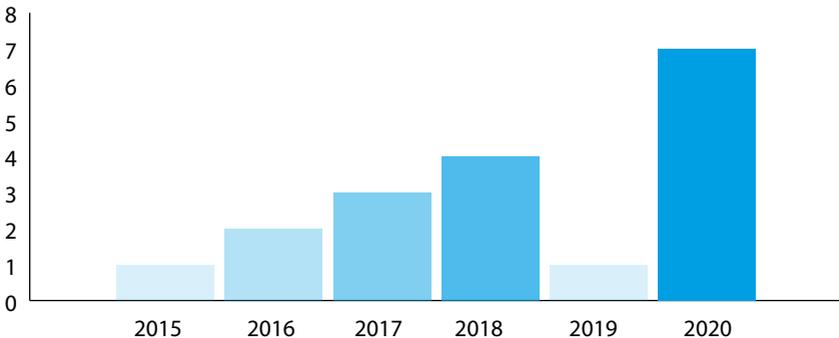
In 2020, the Tribunal had 5 ordinary sessions adding up to 12 working days. It held 9 hearings at which it considered 27 appeals. In 2 appeals, the Tribunal has ruled without holding a hearing at the request of the parties.

In 2020, the Tribunal did not rule on any request for compensatory indemnity (Article 60, paragraph 7, of the Staff Regulations).

In 2020, the Chair delivered 4 orders concerning 7 requests to stay execution of administrative decision pending determination of an administrative complaint (Article 59.9 of the Staff Regulations). One request was rejected and in the other six, the Chair accepted the withdrawal of the request.

In 2015, 2016, 2017, 2018 and 2019, the Chair dealt with 1, 2, 3, 4 and 1 requests for stays of execution respectively.

### Number of stays of execution



The 2020 judged request concerned:

Non admission to an oral procedure

Appointment and taking up office of a third party

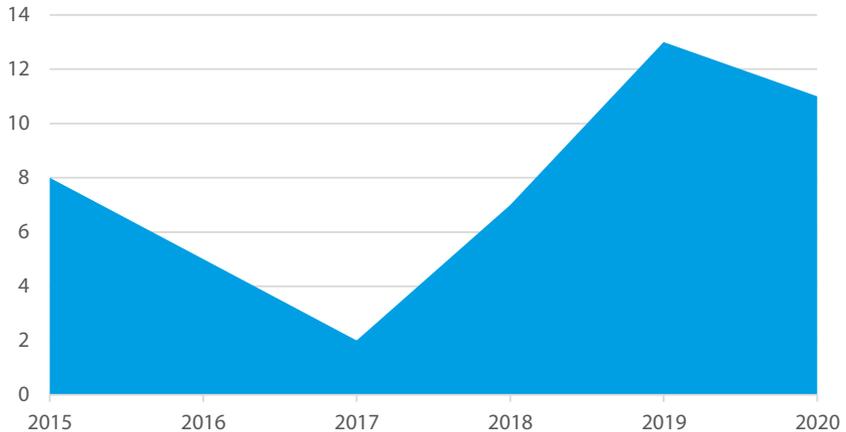
Non admission to the 2<sup>nd</sup> step of selection of a competition

No.	Registration	Appellant	Theme/Object	Order
1	03/04/2020	Leonid ANTOHI v. SG	Non admission to an oral procedure	17/04/2020
2	03/04/2020	Mahir MUSHTEID ADA v. SG	Non admission to an oral procedure	17/04/2020
3	06/04/2020	Illknur YUKSEK v. SG	Non admission to an oral procedure	17/04/2020
4	06/04/2020	Clotilde TALLEU v. SG	Non admission to an oral procedure	17/04/2020
5	29/04/2020	A v. CCNR	Appointment and taking up office of a third party	14/05/2020
6	27/11/2020	Panagiotis PSYLLOS v. SG	Non admission to the 2nd step of selection of a competition	11/12/2020
7	30/11/2020	Kotryna FILIPAVICI TE v. SG	Non admission to the 2nd step of selection of a competition	11/12/2020

During the same period the Tribunal delivered 11 decisions on 22 appeals.

In 2015, 2016, 2017, 2018 and 2019, it delivered 8, 5, 2, 7 and 13 decisions respectively.

## Number of decisions



The decisions delivered in 2020 dealt with the following matters:

- a) “Exceptional rate” of reimbursement of educational costs foreseen for children with special educational needs (Article 7, paragraph 6.d of Appendix IV of Staff Regulations and paragraph 5 of Rule 1277). (29 January 2020, [appeals Nos 619 and 620/2019 – Ana GOREY \(IV and V\) v. Secretary General](#) and [appeal No. 621/2019 – Merete BJERREGAARD v. Secretary General](#))
- b) Annulment of the decision to remove the appellant from his post as a disciplinary measure (28 January 2020 and 6 April 2020, [appeal No. 622/2019 – Michel BRECHENMACHER \(II\) v. Secretary General](#) and [appeal No. 624/2019 – Jean-Michel MARTZ v. Secretary General](#))
- c) Annulment of the decision to refuse retroactive payment of the household allowance (6 April 2020, [appeal No. 623/2019 – Nigel SMITH v. Secretary General](#))
- d) Amendment of the medical insurance scheme CEMSIS concerning children of 18 and 19 years old, and therefore depriving them of their full and free of charge coverage previously provided for in Article 9, paragraph 2, of Staff Regulations (30 November 2020, [appeal No. 625/2019 – James BRANNAN \(IV\) v. Secretary General](#))
- e) Refusal to open an external investigation concerning allegations of mental harassment. The appellant also requests to suspend the implementation

of the appointments made (30 November 2020, – [appeal No. 626/2020 – A v. CCNR](#) (Central Commission for the Navigation of the Rhine (CCNR))

- f) Application of the adjustments of salaries for the year 2018 after the payment of the arrears of the salary contribution by a member state (22 December 2020, [appeals Nos 627-637/2020 – Ulrich BOHNER \(V\) and others v. Secretary General](#))
- g) Refusal of a job application (external competition) (30 November 2020, [appeal No. 638/2020 – Arman ZRVANDYAN v. Secretary General](#))
- h) Execution of a decision (30 November 2020, [appeal No. 639/2020 – Isabela MIHALACHE \(II\) v. Secretary General](#))
- i) Request for a salary increase of 1,1% calculated for 2018, after the payment of the arrears of the salary contribution by a Member State for the years 2018, 2019 and 2020 (22 December 2020, [appeal No. 663/2020 – Silvia MUÑOZ BOTELLA \(II\) v. Secretary General](#))

### List of decisions judged in 2020

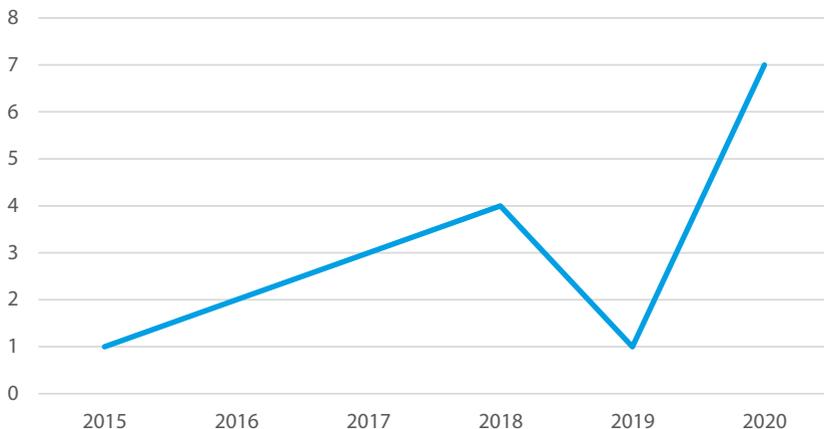
No.	Appellant	Theme/Object
619/2019	GOREY (IV)	Ask for granting “the exceptional rate” of reimbursement of educational costs foreseen for children with special educational needs for her daughter (article 7, paragraph 6.d of Annexe IV of Staff Regulations and paragraph 5 of Rule 1277)
620/2019	GOREY (V)	Ask for granting “the exceptional rate” of reimbursement of educational costs foreseen for children with special educational needs for her son (article 7, paragraph 6.d of Annexe IV of Staff Regulations and paragraph 5 of Rule 1277)
621/2019	BJERREGAARD	Ask for granting the educational allowance and the reimbursement at “the exceptional rate” of educational costs foreseen for children with special educational needs for her son (article 7, paragraph 6.d of Annexe IV of Staff Regulations and paragraph 5 of Rule 1277)
622/2019	BRECHENMACHER (II)	Removal from the post as a disciplinary measure

623/2019	SMITH	Retroactive payment of the household allowance	
624/2019	MARTZ	Removal from the post as a disciplinary measure	
625/2019	BRANNAN (IV)	Amendment of the medical insurance scheme CEMIS concerning children of 18 and 19 years old, and therefore depriving them of their full and free of charge coverage previously provided for in Article 9, paragraph 2, of Staff Regulations	
626/2020	A v. CCNR	External investigation concerning allegations of mental harassment and suspension of the appointments made	
627/2020	BOHNER (V)	Adjustment of salaries for the year 2018	
628/2020	BABOCSAY (VI)		
629/2020	DE BUYER (II)		
630/2020	BAECHEL (IV)		
631/2020	PARSONS (IV)		
632/2020	SCHIRMER (II)		
633/2020	HARTIG (II)		
634/2020	NYCTELIUS (II)		
635/2020	ZARDI (V)		
636/2020	FRANCK		
637/2020	FROSSARD		
638/2020	ZRVANDYAN		Refusal of a job application (external competition)
639/2020	MIHALACHE (II)		Execution of a decision of the Tribunal
663/2020	MUÑOZ BOTELLA (II)	Salary rating calculated for 2018, after the payment of the arrears of the salary contribution by a Member State for the years 2018, 2019 and 2020	

## Appeals concerning the Council of Europe

In 2020, the Administrative Tribunal registered 47 appeals – including several groups of appeals that have been joined because they have the same object (see below for details).

### Number of appeals registered



The Appeals registered in 2020 deal with the following matters:

- a) External investigation concerning allegations of mental harassment and suspension of the appointments made
- b) Salary adjustment for 2018 (11 appeals)
- c) Candidature à un concours de recrutement extérieur
- d) Execution of a decision of the Tribunal
- e) Pension (Droits à pension, amendement de l'article 36 du Règlement des Pensions, calcul du barème de pension) (20 appeals)
- f) Protection effective
- g) Appraisal
- h) Sanction disciplinaire
- i) Competition and procedure of recruitment (3 appeals)
- j) Ajustement fiscal (2 appeals)

- k) Indemnisation pour harcèlement moral (2 appeals)
- l) Request for a salary increase
- m) Education allowance
- n) End of contract

### Appeals concerning the Council of Europe Development Bank

The appeal registered in 2020 deals with the following matter: challenge of a partially unsatisfactory appraisal.

### Appeals concerning affiliated organisations

Following an administrative complaint lodged on 8 September 2019 by a staff member of the Central Commission for Navigation of the Rhine (CCNR), an appeal was lodged at the Tribunal's Registry and registered on 3 January 2020 under No. 626/2020 A v. Central Commission for Navigation of the Rhine.

No appeal was lodged in 2020 in the other affiliated organisations (HCCH and OTIF).

### Full list of appeals lodged in 2020

No.	Appellant	Theme/Object
626/2020	A v. CCNR	External investigation concerning allegations of mental harassment and suspension of the appointments made
627/2020	BOHNER (V)	Adjustment of salaries for the year 2018
628/2020	BABOCSAY (VI)	
629/2020	DE BUYER (II)	
630/2020	BAECHEL (IV)	
631/2020	PARSONS (IV)	
632/2020	SCHIRMER (II)	
633/2020	HARTIG (II)	
634/2020	NYCTELIUS (II)	
635/2020	ZARDI (V)	
636/2020	FRANCK	
637/2020	FROSSARD	

No.	Appellant	Theme/Object
638/2020	ZRVANDYAN	Refusal of a job application (external competition)
639/2020	MIHALACHE (II)	Execution of a decision of the Tribunal
640/2020	PARSONS (V)	Amendment of the article 36 of Coordinated Pension Regulations
641/2020	ZARDI (VI)	
642/2020	O'LOUGHLIN	
643/2020	PALMER	
644/2020	BOHNER (VI)	
645/2020	PRIORE (II)	
646/2020	DE JONGE (III)	Amendment of the article 36 of Coordinated Pension Regulations
647/2020	BABOCSAY (VII)	
648/2020	HARTIG (III)	
649/2020	VERNEAU (II)	Pension rights
650/2020	LEVERTOVA	Appraisal
651/2020	B	Disciplinary measure
652/2020	DENU (IV)	Pension rights
653/2020	EMERY	
654/2020	GRAS	
655/2020	KLEIN	
656/2020	MUÑOZ BOTELLA (I)	
657/2020	OLIVEIRA	
658/2020	TAESCH	
659/2020	TRAIN	
660/2020	TROADEC	
661/2020	BOHNER (VII)	
662/2020	CAGNOLATI	
663/2020	MUÑOZ BOTELLA (II)	Salary rating calculated for 2018, after the payment of the arrears of the salary contribution by a Member State for the years 2018, 2019 and 2020
664/2020	CARTWRIGHT	Pension rights
665/2020	YUKSEK (II)	No registration on a reserve list following a competition

No.	Appellant	Theme/Object
666/2020	DALVY	Moral harassment compensation
667/2020	OCHOA-LLIDO	Moral harassment compensation
668/2020	KALOVSKA ROUSSOU	Discrimination and non-inclusion in the follow-up project on promoting human rights and minorities protection in the South-East of Europe
669/2020	M. R.	Recruitment procedure and reopening of the internal competition with written and oral examination.
670/2020	WEIDMANN (II)	Scale of calculation of pension
671/2020	NECTOUX	Termination of contract
672/2020	KOWALCZYK-KEDZIORA	Educational allowance for the university for a child studying in a third country

In 2020, the Tribunal struck out off the list no appeal.

No ruling of manifest inadmissibility or compensatory decision was adopted in 2020.

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 as soon as they are delivered (the translation is available later). Orders of requests for stay of execution are available at the registry.

The Administrative Tribunal of the Council of Europe (ATCE) is an international administrative court competent to hear complaints of the serving and former staff members of the Council of Europe against their employer. The jurisdiction of the Administrative Tribunal has also been recognised by other international organisations enjoying immunity.

This report outlines the activities of the Administrative Tribunal from 1 January to 31 December 2020.

It provides a statistical overview of:

- ▶ administrative complaints filed to the Council of Europe and the Council of Europe Development Bank,
- ▶ the activity of the Advisory Committee on Disputes at the Council of Europe and the Council of Europe Development Bank,
- ▶ complaints and conciliation procedures within the international organisations that have recognised the jurisdiction of the Administrative Tribunal of the Council of Europe (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) and,
- ▶ appeals lodged with the Administrative Tribunal.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE