ACTIVITY REPORT 2021

ADMINISTRATIVE TRIBUNAL OF THE COUNCIL OF EUROPE



COUNCIL OF EUROPE

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Introduction

This report is the 10th 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 2021.

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

- administrative complaints lodged with the Council of Europe and the Council of Europe Development Bank;
- the activities 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 Tribunal[1] (hereinafter "organisations affiliated to the Administrative Tribunal") and
- appeals and other applications lodged with the Administrative Tribunal.

Disputes concerning the Council of Europe and the Council of Europe 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.[2] 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.

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).
2. New Staff Regulations were adopted by the Committee of Ministers on 22 September 2021 (see CM/Res(2021)6). They are due to come into force on 1 January 2023. The description of the applicable procedures in this report reflects the Staff Regulations in force in 2021 and so does not take into account the changes introduced by the new Staff Regulations.

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.[3] 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 by a Council of Europe staff member, the complainant can request that the Advisory Committee on Disputes draw up a reasoned opinion before the Secretary General takes his/her decision. The aforesaid Committee formulates its opinion within one year from the date of submission (Article 59.5 of the Staff Regulations). Until 19 March 2021,[4] a staff member who had lodged a complaint concerning a measure by the Bank could also refer the matter to the Advisory Committee. In that case, the committee included two members of the bank's staff, one of whom was 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. These two members replaced, respectively, the second member appointed by the Secretary General and the second member elected by the Council of Europe staff. The composition of the Advisory Committee on Disputes is set out in part III of this report.

The Secretary General or the Governor has 30 days 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.

3. By its decision 28 April 2015 in appeals Nos. 548-553/2014 – *Clelia CUCCHETTI RONDANINI and others v. Secretary General,* the Tribunal, ruling on the admissibility of appeals of candidates who had 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).
4. With effect from 19 March 2021, the Advisory Committee on Disputes for the Development Bank has been abolished and a conciliation mechanism introduced whereby the Governor can propose that a staff member who has lodged an administrative complaint reach an amicable settlement before a Conciliation Board, chaired by a person outside the Bank (see Resolution 1627(2021) of the Bank's Administrative Council). At the time of publication of this report, Mr Philippe Vorreux had been appointed Chair of the Conciliation Board, and the other members were in the process of being appointed.

When the Secretary General or Governor has 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 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.

Disputes concerning organisations affiliated to the Administrative Tribunal

Since the amendment made in June 2014[5] 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 (CNNR);
- the Hague Conference on Private International Law (HCCH);
- 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 Tribunal's Registry.

5. See Resolution CM/Res2014(4) of the Committee of Ministers.

Administrative complaints

Within the Council of Europe[6]

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

In 2021, 55 administrative complaints were lodged on the dates indicated below, of which two were accepted and 53 were rejected.

The requests made in these complaints were as follows:

- Two requests to annul decisions not to allow an applicant to take part in an internal competition (6 January and 9 February 2021);
- Request to annul the results obtained in the written tests of an external recruitment procedure (18 February 2021);
- Request to annul the decision refusing to promote a staff member to grade A3 (2 March 2021);
- Request to annul the decision not to renew the fixed-term contract of a staff member and to deny their request for protection in their official capacity (3 March 2021);
- Two requests to annul decisions not to place candidates on the reserve list drawn up following external recruitment procedures (9 March and 26 April 2021);
- Request to annul the decision not to allow a staff member to engage in a secondary activity (25 March 2021);
- Two requests to annul decisions not to allow an applicant to take part in an external recruitment procedure (27 May and 24 June 2021);
- Request to annul the decision to terminate the employment of a staff member at the end of the probationary period (15 October 2021);
- Request to annul the decision not to select an applicant following an internal competition (18 October 2021);

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

- Eight requests to annul the Secretary General's proposal that the Committee of Ministers apply the affordability clause and award the 2022 salary adjustment only partially (24-26 November 2021);
- 33 requests to annul the Secretary General's proposal that the Committee of Ministers apply the affordability clause and award the 2022 salary adjustment only partially. The complainants, based in Ankara, also claimed that their salaries were too low, particularly in view of the very high inflation rate in Turkey (25 November – 7 December 2021);
- Two requests to annul decisions not to renew fixed-term contracts (3 and 20 December 2021).

Within the Council of Europe Development Bank[7]

The Development Bank's legal advice service – the Office of the General Counsel – is responsible for replying, on the Governor's behalf, to administrative complaints filed under Article 59 of the Staff Regulations.

No administrative complaints were lodged in 2021.

Within affiliated organisations[8]

No administrative complaints were filed in 2021 with regard to the affiliated organisations (CCNR, HCCH and OTIF).

7. Information in this section of the report has been provided by the Bank's Office of the General Counsel.
8. Information in this section of the report has 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

Composition

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

Until October 2021:

Chair	Ms Ulrika Flodin-Janson
Full Members	Ms Ulrika Flodin-Janson Mr Hallvard Gorseth Mr Gaël Martin-Micallef Mr Yves Winisdoerffer
Substitutes	Ms Catherine Du-Bernard Rochy Mr Nicola Daniele Cangemi Ms Françoise Kempf

Ms Flodin-Janson, Mr Gorseth, Ms Du-Bernard Rochy and Mr Cangemi were appointed by the Secretary General.

Mr Martin-Micallef, Mr Winisdoerffer and Ms Kempf were elected by the Council of Europe staff.

From October 2021:

Chair	Ms Ulrika Flodin-Janson
Full Members	Ms Ulrika Flodin-Janson
	Mr Hallvard Gorseth
	Mr Yves Winisdoerffer
	Ms Françoise Kempf
Substitutes	Ms Catherine Du-Bernard Rochy
	Mr Nicola Daniele Cangemi
	Ms Tatiana Trussevits
	Mr Emmanuel Simonet

Ms Flodin-Janson, Mr Gorseth, Ms Du-Bernard Rochy and Mr Cangemi were appointed by the Secretary General.

Mr Winisdoerffer, Ms Kempf, Ms Trussevits and Mr Simonet were elected by the Council of Europe staff.

The committee was assisted by two joint secretaries, Ms Pamela McCormick and Mr Sonmez Ozturk.

Cases dealt with

The Committee delivered no opinions in 2021 and did not receive any complaints.

Conciliation in affiliated organisations

Conciliators and Deputy Conciliators

The terms of reference of the Conciliator and Deputy Conciliator for CCNR, HCCH and OTIF, appointed in April 2018 by the Chair of the Administrative Tribunal, ended during the reporting period:

- Mr Thomas Laker, Conciliator for HCCH and Deputy Conciliator for CCNR and OTIF, resigned after being elected as a judge of the Tribunal with effect from 1 April 2021;
- Ms Mireille Heers, Conciliator for CCNR and OTIF, and Deputy Conciliator for HCCH, resigned on 13 May 2021.

The Chair of the Tribunal appointed two new Conciliators/Deputy Conciliators to replace them:

- Mr Helmut Buss was appointed on 10 May 2021 as Conciliator for HCCH and as Deputy Conciliator for CCNR and OTIF;
- Ms Mirka Dreger was appointed on 17 December 2021 as Conciliator for CCNR and OTIF and as Deputy Conciliator for HCCH.
- Mr Buss and Ms Dreger shall remain in office for the remainder of their predecessors' term, i.e. until 2 April 2023.

Conciliation in affiliated organisations

An application for conciliation concerning CCNR was sent to the Tribunal's Registry on 6 May 2021. The conciliation procedure culminated in the signing of an agreement putting an end to the dispute on 21 December 2021.

The proceedings related to the non-renewal of a fixed-term contract and a harassment complaint.

Administrative Tribunal

Composition

On 31 March 2021, the term of office of the Tribunal judges who had been appointed in 2018 reached the end of the three years provided for in Article 1, paragraph 2, of the Tribunal's Statute.

Up until then, the composition of the Tribunal had been as follows:

Chair	Ms Nina Vajić	(Croatia)
Deputy Chair	Mr András Baka	(Hungary)
Judges	Ms Françoise Tulkens	(Belgium)
	Mr Christos Vassilopoulos	(Greece)
Deputy judges	Ms Lenia Samuel	(Cyprus)
	Mr Osman Hazir	(Turkey)

On 17 March 2021, the Committee of Ministers elected the new judges and deputy judges of the Administrative Tribunal. Previously, on 1 February 2021, the European Court of Human Rights had taken the decision to renew the term of office of the Chair and Deputy Chair.

From 1 April 2021, the Tribunal was composed as follows:

Chair	Ms Nina Vajić	(Croatia)
Deputy Chair	Mr András Baka	(Hungary)
Judges	Ms Lenia Samuel	(Cyprus)
	Mr Thomas Laker	(Germany)
Deputy judges	Ms Françoise Tulkens	(Belgium)
	Mr Christos Vassilopoulos	(Greece)

The Tribunal was assisted by a Registrar (Ms Christina Olsen) and a Deputy Registrar (Mr Dmytro Tretyakov) appointed with effect from 1 March 2021. Mr Tretyakov replaced Ms Eva Hubalkova, Deputy Registrar until 31 December 2020.

It should be noted that the Registry has a permanent post of registrar. The deputy-registrar duties, however, 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).

In 2021, the Registry staff also included an administrative support assistant (Ms Anna Regard), a part-time administrative assistant (Ms Flore Chaboisseau) and, from 22 February 2021, a part-time assistant providing temporary backup (Ms Léa De Barros).

The Registry also benefited from the input of stagiaires participating in the Council of Europe's official internship programme. It accordingly hosted Ms Marie-Charlotte Ehret, from 1 March to 31 July, for the first session of the official programme, and Ms Salomé Agénie from 1 September 2021 for the second session.

The Registry also hosted a study visitor, Ms Séréna Ortigosa, from 12 July to 10 September 2021.

Organisational measures

On 14 January 2021, using her powers under Rule 42 of the Tribunal's Rules of Procedure, the Chair decided to maintain the organisational measures that had been introduced from March 2020 in response to the COVID-19 crisis.

The Chair had decided that, for the period during which precautionary measures remained in force at the Council of Europe, the date of lodging of appeals would be that of the electronic dispatch of a duly completed appeal form and its appendices. It was up to the appellant (or their representative) either to send the documents dispatched electronically by registered letter or to deposit them at the Registry as soon as possible and without adding any changes.

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

In 2021, Tribunal sessions were held by videoconference. Tribunal hearings were also held by videoconference open to the public following prior registration with the Registry.

As at 31 December 2021, these measures were still in effect.

Cases dealt with

In 2021, the Tribunal had 4 ordinary sessions and 4 extraordinary meetings, adding up to 16 working days. It held 7 hearings – one of which was held

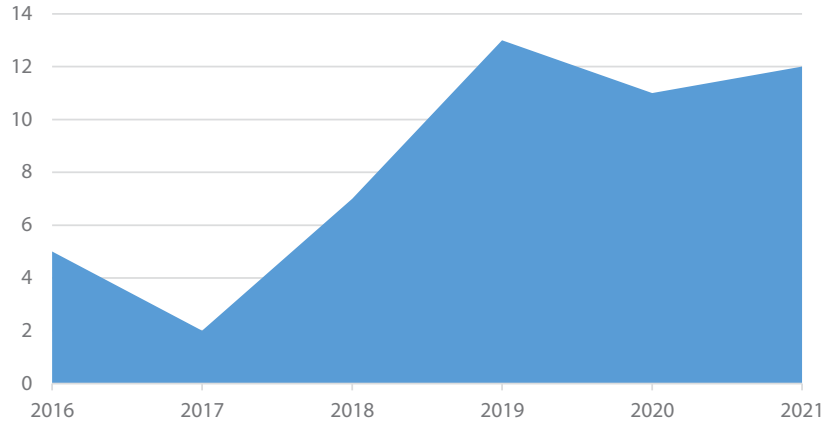
in camera – at which it considered 9 appeals. Two appeals were considered without a hearing on the decision of the Chair, at the request of the parties.

Decisions

In 2021, the Tribunal delivered 12 decisions on 32 appeals.

In 2016, 2017, 2018, 2019 and 2020, it delivered 5, 2, 7, 13 and 11 decisions respectively.

Number of decisions delivered



The decisions delivered in 2021 on the dates indicated below dealt with the following matters:

a) Requests to annul the amendment of the method of adjustment of pensions paid under the Co-ordinated Pension Scheme (20 April 2021, Appeals Nos. 640/2020-644/2020, 646/2020-648/2020 – John PARSONS (V) and others v. Secretary General and Appeals Nos. 649/2020, 652/2020-660/2020 and 664/2020 – Nathalie VERNEAU (II) and others v. Secretary General);

b) Request to annul the decision not to grant effective protection to a staff member claiming to be the victim of harassment (15 January 2021, Appeal No. 645/2020 – Riccardo PRIORE (II) v. Secretary General of the Council of Europe);

c) Request to annul a partially satisfactory appraisal (12 February 2021, Appeal No. 650/2020 – Youlia LEVERTOVA v. Governor of the Council of Europe Development Bank);

d) Request to annul the downgrading of a staff member for disciplinary reasons (13 July 2021, Appeal No. 651/2020 – B v. Secretary General);

e) Requests to annul the decision on the reimbursement of the tax adjustment paid in 2018 to pensioners residing in France (27 April 2021, Appeal No. 661-662/2020 – Ulrich BOHNER (VII) and Antonella CAGNOLATI v. Secretary General);

f) Request to annul the decision not to place a candidate on the reserve list drawn up following an external recruitment procedure (12 February 2021, Appeal No. 665/2020 – Ilknur YUKSEK (II) v. Secretary General);

g) Requests to set aside the amount of compensation awarded for damage suffered as victims of harassment (22 March 2021, Appeals Nos. 666-667/2020 – Vincente DALVY and Maria OCHOA-LLIDO v. Secretary General);

h) Request to annul the decision not to recruit a former staff member for the second phase of a project on which she had been employed in the first phase (24 June 2021, Appeal No. 668/2020 – Tanja KALOVSKA ROUSSOU v. Secretary General);

i) Request to annul the decision not to select the candidature of a staff member following an internal competition (24 June 2021, Appeal No. 669/2020 – M. R. (I) v. Secretary General);

j) 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 (21 October 2021, Appeal No. 670/2020 – Irène WEIDMANN (II) v. Secretary General);

k) Request to annul the decision to terminate employment at the end of a probationary period (21 October 2021, Appeal No. 671/2020 – Laurence NECTOUX v. Secretary General);

l) Request to annul the decision not to grant the education allowance to a staff member (21 October 2021, Appeal No. 671/2020 – Irena Alicja KOWALCZYK-KEDZIORA v. Secretary General).

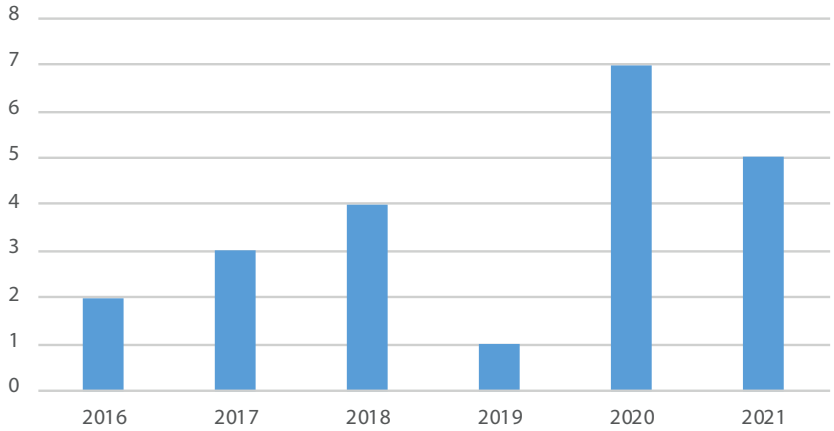
The list of decisions appears in Appendix 1.

Orders ruling on applications for a stay of execution

In 2021, the Chair of the Tribunal delivered 5 orders concerning 5 requests to stay the execution of an administrative decision pending determination of an administrative complaint (Article 59.9 of the Staff Regulations). In one case, the Chair accepted the withdrawal of the request and in the four other cases, the requests were rejected.

In 2016, 2017, 2018, 2019 and 2020, the Chair dealt with 2, 3, 4, 1 and 7 requests for stays of execution respectively.

Orders issued on requests for stays of execution



The requests ruled upon in 2021 concerned:

a) Failure to pass the written tests in a recruitment procedure;
b) Failure to pass the oral tests in a recruitment procedure;
c) Non-renewal of contract;
d) Applicant not selected in a recruitment procedure.

A table listing the orders on applications for a stay of execution delivered in 2021 appears in Appendix 2.

Other orders and decisions

On 8 January 2021, the Tribunal delivered a decision rejecting the objection of bias raised by the appellant to contest the validity of the decision delivered on

30 November 2020 in Appeal No. 625/2019 – James BRANNAN (IV) v. Secretary General of the Council of Europe.

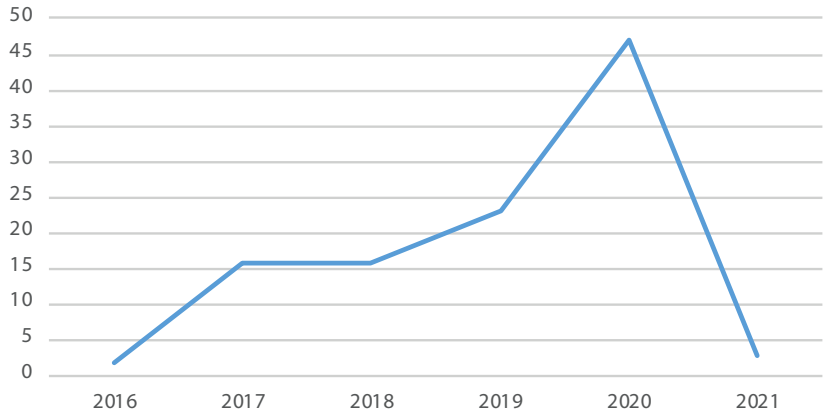
In 2021, the Chair decided to grant anonymity in two cases (Appeal No. 673/2021 – C v. Governor of the Development Bank and application for a stay of execution No. 5/2021 – D v. Secretary General of the Council of Europe).

In 2021, no appeal was struck out off the list and no ruling of manifest inadmissibility or compensatory decision was adopted.

Appeals registered

In 2021, the Administrative Tribunal registered 2 appeals against the Secretary General of the Council of Europe and one against the Governor of the Development Bank.

Number of appeals registered



The appeals registered in 2021 concern the following issues:

- Challenge to a decision recognising total, permanent invalidity on the ground that the invalidity had arisen through the fault of the Administration because of psychological harassment;
- Request to annul the decision not to renew a staff member's fixed-term contract and to refuse to grant them protection in their official capacity;

- Request to annul the decision not to allow an applicant to take part in an external recruitment procedure.

No appeal was lodged in 2021 against the affiliated organisations (CCNR, HCCH and OTIF).

The list of appeals registered in 2021 appears in Appendix 3.

The Registry publishes on the Administrative Tribunal website all decisions, orders striking appeals off the list and rulings of manifest inadmissibility as soon as possible after they are delivered (the translation is available later). Should a decision or order not be available on the site, however, a copy may be requested from the Registry.

Appendices

*In the tables reproduced below in the appendices, in the "parties" column, the respondent is only shown if they are a body or organisation other than the Council of Europe.

Appendix 1 – List of decisions delivered in 2021

No.	Parties*	Subject of the appeal
640/2020	PARSONS (V)	Pension rights JOINDER UNFOUNDED
641/2020	ZARDI (VI)	
642/2020	O'LOUGHLIN	
643/2020	PALMER	
644/2020	BOHNER (VI)	
645/2020	PRIORE (II)	Protection in case of harassment INADMISSIBLE
646/2020	DE JONGE (III)	Pension rights JOINDER UNFOUNDED
647/2020	BABOCSAY (VII)	
648/2020	HARTIG (III)	
649/2020	VERNEAU (II)	Pension rights JOINDER INADMISSIBLE
650/2020	LEVERTOVA	Appraisal FOUNDED
651/2020	B	Disciplinary measure UNFOUNDED

No.	Parties*	Subject of the appeal
652/2020	DENU (IV)	Pension rights JOINDER INADMISSIBLE
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)	Tax adjustment JOINDER ADMISSIBLE UNFOUNDED
662/2020	CAGNOLATI	
664/2020	CARTWRIGHT	Pension rights INADMISSIBLE
665/2020	YUKSEK (II)	No registration on a reserve list following an external competition FOUNDED
666/2020	DALVY	Moral harassment compensation JONCTION UNFOUNDED
667/2020	OCHOA-LLIDO	
668/2020	KALOVSKA ROUSSOU	Decision not to recruit a former staff member for the second phase of a project on which she had been employed in the first phase INADMISSIBLE
669/2020	M. R. (I)	Decision not to select the candidature of a staff member following an internal competition UNFOUNDED
670/2020	WEIDMANN (II)	Scale of calculation of pension UNFOUNDED
671/2020	NECTOUX	Termination of contract at the end of a probationary period UNFOUNDED
672/2020	KOWALCZYK-KEDZIORA	Education allowance INADMISSIBLE

Appendix 2 – List of orders ruling on applications for a stay of execution issued in 2021

No.	Parties*	Theme / Subject of the claim/the appeal	Date of the order
1/2021	Ramon PRIETO SUAREZ	RECRUITMENT – Failure to pass written examination WITHDRAWAL	19/02/2021
2/2021	A (II) v. CCNR	TERMINATION OF CONTRACT – Non-renewal of contract REJECTED	22/03/2021
3/2021	Ilknur YUKSEK (V)	RECRUITMENT – Failure to pass interview REJECTED	11/05/2021
4/2021	Ourania BOTSI	RECRUITMENT – Rejection of an application REJECTED	10/06/2021
5/2021	D	TERMINATION OF CONTRACT – Non-renewal of contract REJECTED	23/12/2021

Appendix 3 – List of appeals registered in 2021

No.	Parties*	Subject of the appeal
673/2021	C v. Governor of the Development Bank	Invalidity attributable to the Administration due to a situation of moral harassment
674/2021	MENDEZ CARVALHO	Non-renewal of a contract of employment
675/2021	M. R. (II)	Application for an external competition

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 2021.

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 46 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