

Amendments to the Rules of Procedure

DECISION

7 April 2025

PREAMBLE

The Administrative Tribunal of the Council of Europe,

Having regard to Article 14 of the Staff Regulations of the Council of Europe;

Having regard to the relevant regulatory provisions of the Council of Europe Development Bank and the other intergovernmental organisations which have agreed to an extension of the Tribunal's jurisdiction under Articles 2.2 and 2.3 of the Statute of the Administrative Tribunal, hereinafter referred to as "the Statute",

Pursuant to Article 19.1 of the Statute,

Having regard to the Rules of Procedure of the Administrative Tribunal, hereinafter referred to as "the Rules of Procedure",

Having consulted the Secretary General and the Staff Committee of the Council of Europe as well as the Governor and the Staff Committee of the Council of Europe Development Bank,

Adopts on 7 April 2025 the following amendments to the Rules of Procedure:

Article 1. Article 7 of the Rules of Procedure is amended as follows:

1. A new paragraph 2 is inserted, worded as follows:

"2. a. In accordance with Article 10.6 of the Statute of the Administrative Tribunal, any document communicated to the Tribunal by a party shall be transmitted without delay by the Registrar to the other party, subject to the confidentiality requirements inherent in certain documents, in which case the provisions under b, c and d shall apply.

b. Where a party to the proceedings relies on the confidential nature of a document to oppose its disclosure to the other party, it is for the Tribunal to determine whether the document in question is relevant to ruling on the dispute and, in the affirmative, whether this document or some of its elements are indeed of a confidential character.

c. If the Tribunal concludes that the document or some of its elements are confidential, such a document shall not be sent to the other party. The Tribunal may order the production of a non-confidential version of the document in question, such as a redacted version of the document, or a summary of the document or of its confidential elements. The Tribunal may take the document or its confidential elements into account in its deliberations, while respecting their confidential nature. In doing so, the Tribunal shall take into account the fact that the other party was not given the opportunity to comment on the document or its elements.

d. If the Tribunal concludes that the document is not confidential, it shall invite the party claiming confidentiality not to oppose its disclosure to the other party. In the event that the party concerned complies with the Tribunal's invitation, the document shall be transmitted by the Registrar to the other party and a time limit shall be given to it within which to submit its observations. In the opposite case, the Tribunal shall determine the consequences to be drawn from this refusal and shall rule without taking into account the elements not subject to adversarial process."

2. Paragraphs 2 and 3 shall become paragraphs 3 and 4, respectively.

Article 2. Article 10 of the Rules of Procedure is amended as follows:

1. A new paragraph 3 is inserted, worded as follows:

“3. The appellant shall join to his or her appeal the contested decision or decisions, as well as any document supporting his or her appeal. The documents are numbered in chronological order if possible.”

2. Paragraph 3 shall become paragraph 4.

3. Paragraph 4, which shall become paragraph 5, is replaced by the following text:

“The Registrar shall transmit a copy of any further submissions to the Secretary General without delay.”

Article 3. Article 11 of the Rules of Procedure is replaced by the following text:

“The Chair shall set a time limit for the submission by the Secretary General of his or her observations in writing, to which shall be appended all documents necessary for the Tribunal to rule on the appeal, as well as any additional documents the Secretary General deems relevant to justify the contested decision. These observations shall not exceed 25 pages (font: Times New Roman, font size: 12, line spacing: 1.15). They shall be transmitted to the appellant by the Registrar.”

Article 4. Article 12 of the Rules of Procedure is amended as follows:

1. In the French text, the heading is replaced by the following text: “Second échange de mémoires”.

2. The text of Article 12 is replaced by the following text:

“If the Chair decides that a second exchange of written submissions is necessary under Rule 8.2 of these Rules, he or she shall determine the conditions, including the time limit, for submitting observations in reply. The observations in reply shall be transmitted by the Registrar to the Secretary General, who may submit a rejoinder according to the conditions, including the time limit, set by the Chair. The rejoinder shall be transmitted by the Registrar to the appellant.”

Article 5. The present decision shall enter into force on 10 April 2025.

Explanatory report

1. The amendments to the Rules of Procedure of the Administrative Tribunal primarily aim to incorporate into the Rules provisions governing the confidentiality of information or documents submitted by a party to the Tribunal. The opportunity was also taken to clarify the provisions of the Rules concerning the case file to be submitted by the parties to the Tribunal and the transmission of documents by the Registrar to the parties.

A draft version of the amendments was adopted by the Tribunal on 29 January 2025. This draft was communicated to the Secretary General and to the Staff Committee of the Council of Europe, as well as to the Governor and the Staff Committee of the Council of Europe Development Bank. Based on the comments received, the Tribunal further deliberated on the amendments on 25 March 2025, and then adopted the final text on 7 April 2025.

2. Article 7 of the Rules is supplemented by new provisions concerning the confidentiality of documents submitted by a party.

To introduce these provisions, Article 7 § 2 (a) recalls the principle already established in Article 10.6 of the Statute of the Tribunal according to which documents communicated to the Tribunal by one party must also be communicated to the other party without delay.

Article 10.6 of the Statute provides for an exception to this principle, stating that the communication of documents to the other party is subject to “the confidentiality requirements inherent in certain documents.” However, the existing texts do not define the procedure to be followed in such a situation. The amendments seek to fill this gap drawing inspiration from systems in place in other courts and tribunals, including Article 44F of the [Rules of Court](#) of the European Court of Human Rights, Article 103 of the Rules of Procedure of the General Court of the European Union, and Article [R.412-2-1](#) of the French Code of Administrative Justice.

3. Article 7 § 2 (b) establishes the principle that it is for the Tribunal to decide whether a confidential document should be disclosed to the other party. The characterisation of the document as confidential by the party concerned is therefore not decisive.

Article 7 § 2 (c) addresses the hypothesis in which the Tribunal determines that the document is indeed confidential. In such a case, the document shall not be transmitted to the other party. However, the Tribunal may order that a non-confidential version of the document – such as a redacted version or a summary – be placed in the file by the party concerned for the purpose of its transmission to the other party. In any case, the Tribunal itself may take the confidential document into account in its deliberations. If it does so, it must consider the fact that the other party has not had the opportunity to examine the document or to comment on it. In this way, the Tribunal will be able to balance on the one hand, the requirements of confidentiality and on the other hand those of the right to effective judicial protection, in particular the right to respect for the principle of adversarial proceedings. Naturally, this balancing exercise will depend on the specific circumstances, including the nature of the document and the grounds for its confidentiality (such as the protection of private life, the identity of a whistleblower, security).

Article 7 § 2 (d) concerns the hypothesis in which the Tribunal finds that the document is not, in fact, confidential. In such a case, the document will not automatically be transmitted to the other party. It will be for the party concerned to decide whether or not to authorise its disclosure. If the party does not object, the principle of adversarial proceedings can fully apply. However, if the party refuses to allow disclosure, the document will not be transmitted and the Tribunal, for its part, will not take it into account. Nevertheless, the Tribunal may draw conclusions from the fact that the party concerned refuses to disclose it. For example, if the document is held by the respondent and contains information necessary to establish the legal or factual basis of the contested decision, the Tribunal may find that such a basis is lacking. Of course, it may happen that the party concerned quotes excerpts from the document in its submissions. In that case, those excerpts are subject to adversarial proceedings and may be taken into account by the

Tribunal. The Tribunal may, however, assess whether quoting only selected excerpts of the document does not give a misleading or overly selective representation of its overall content.

4. Article 10 of the Rules concerns the application submitted by the appellant. A new paragraph 3 clarifies that the appellant must join to his or her appeal the contested decision(s) as well as any documents supporting his or her appeal. With the exception of the contested decision(s), the appellant is responsible for compiling his or her own file. Naturally, insofar as the appellant bears the burden of proving the facts alleged, it is in his or her interest to submit as complete a file as possible.

5. Article 11 of the Rules currently provides that the respondent must join to his or her observations “all supporting documents not already submitted by the appellant”. This rule is replaced by a new provision requiring the respondent to submit “all documents necessary for the Tribunal to adjudicate the appeal”, as well as “any additional documents that the [respondent] deems relevant to justify the contested decision”. The first category is broader than the one defined in the current version. It includes, for example, performance or harassment reports (if relevant to the case), the initial decision, the administrative complaint, and the decision on that complaint. These documents should enable the Tribunal to understand the decision-making process and assess the appellant’s claims in their factual context. The second category is left to the discretion of the respondent.

6. The changes to Article 12 of the Rules are of a purely formal nature and are intended to align the terminology used with that in Articles 7 § 3 (new), 10, and 11.

7. The decision shall enter into force on 10 April 2025. The amended provisions of the Rules shall apply immediately, including to cases pending before the Tribunal.

Annex: Co-ordinated text of the modified articles

Rule 7. Instructions

1. The Tribunal may, at any time, either on its own initiative or at the request of one of the parties, order the production of documents or such other evidence as it deems necessary.

2. a. In accordance with Article 10.6 of the Statute of the Administrative Tribunal, any document communicated to the Tribunal by a party shall be transmitted without delay by the Registrar to the other party, subject to the confidentiality requirements inherent in certain documents, in which case the provisions under b, c and d shall apply.

b. Where a party to the proceedings relies on the confidential nature of a document to oppose its disclosure to the other party, it is for the Tribunal to determine whether the document in question is relevant to ruling on the dispute and, in the affirmative, whether this document or some of its elements are indeed of a confidential character.

c. If the Tribunal concludes that the document or some of its elements are confidential, such a document shall not be sent to the other party. The Tribunal may order the production of a non-confidential version of the document in question, such as a redacted version of the document, or a summary of the document or of its confidential elements. The Tribunal may take the document or its confidential elements into account in its deliberations, while respecting their confidential nature. In doing so, the Tribunal shall take into account the fact that the other party was not given the opportunity to comment on the document or its elements.

d. If the Tribunal concludes that the document is not confidential, it shall invite the party claiming confidentiality not to oppose its disclosure to the other party. In the event that the party

concerned complies with the Tribunal's invitation, the document shall be transmitted by the Registrar to the other party and a time limit shall be given to it within which to submit its observations. In the opposite case, the Tribunal shall determine the consequences to be drawn from this refusal and shall rule without taking into account the elements not subject to adversarial process.

3. The Tribunal may, at any time, either on its own initiative or at the request of a party, take any decision in the interests of the proper administration of justice.

4. The Tribunal may appoint one or more of its members to take on its behalf, such action as it considers necessary or expedient for the proper performance of its duties under its Statute and, in particular, hear witnesses or experts or examine documents or any other evidence. Such members shall duly report to the Tribunal.

Rule 10. Content of the appeal

1. The appeal shall state the object of the request, the facts and the grounds, as well as any other information required by the appeal form.

2. The appeal must also provide any information demonstrating that it meets the admissibility requirements set out in Article 7 of the Statute.

3. The appellant shall join to his or her appeal the contested decision or decisions, as well as any document supporting his or her appeal. The documents are numbered in chronological order if possible.

4. The appeal form may be supplemented with further submissions within the time limit set by the Chair. Further submissions must not exceed 25 pages (font: Times New Roman, font size: 12, line spacing: 1.15).

5. The Registrar shall transmit a copy of any further submissions to the Secretary General without delay.

Rule 11. Observations of the Secretary General

The Chair shall set a time limit for the submission by the Secretary General of his or her observations in writing, to which shall be appended all documents necessary for the Tribunal to rule on the appeal, as well as any additional documents the Secretary General deems relevant to justify the contested decision. These observations shall not exceed 25 pages (font: Times New Roman, font size: 12, line spacing: 1.15). They shall be transmitted to the appellant by the Registrar.

Rule 12. Second exchange of written submissions

If the Chair decides that a second exchange of written submissions is necessary under Rule 8.2 of these Rules, he or she shall determine the conditions, including the time limit, for submitting observations in reply. The observations in reply shall be transmitted by the Registrar to the Secretary General, who may submit a rejoinder according to the conditions, including the time limit, set by the Chair. The rejoinder shall be transmitted by the Registrar to the appellant.