



ADMINISTRATIVE TRIBUNAL  
TRIBUNAL ADMINISTRATIF



ADMINISTRATIVE TRIBUNAL  
OF THE COUNCIL OF EUROPE

CASES IN 2016 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 TRIBUNAL<sup>1</sup>

(Statistical overview of administrative complaints, activity of the  
Advisory Committee on Disputes and of the Administrative Tribunal)<sup>2</sup>

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<sup>1</sup> Bodies attached to the Council of Europe: Council of Europe Development Bank  
International organisation: Central Commission for the Navigation of the Rhine (CCNR)

<sup>2</sup> 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)<sup>1</sup> 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.

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<sup>1</sup> 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 2015, 7 administrative complaints were lodged. In 2016, 19 complaints were lodged, of which 2 were accepted, and 17 were rejected. The subject matter of the complaints was as follows:

- A request to annul the refusal to grant the appellant the dependent child allowance for the 2014-2015 school year in respect of his son (2 March 2016);
- - A request to annul the oral test held before the Appointments Commission as part of an external recruitment procedure (10 March 2016);
- A request to annul the Secretary General's decision in reply to a complaint submitted by the appellant in 2015 (11 March 2016);
- A request to annul the Secretary General's decision to dismiss the appellant (to terminate the appellant's contract) on disciplinary grounds (31 March 2016);
- A request to annul the decision not to renew the appellant's temporary contract and challenge the failure to pay the loss of employment benefits (29 April 2016);

- A request to annul the refusal to grant the appellant additional steps based on his professional background (23 June 2016);
- A request to cancel the written test in an external recruitment procedure (5 July 2016);
- A request to annul the decision not to accept the appellant's candidature as part of an external recruitment procedure (26 August 2016);
- A request to annul the decision not to maintain the payment of the dependent children allowance and the education allowance in respect of the appellant's daughter during the period of unpaid leave. (5 September 2016);
- 9 requests to cancel certain changes to the insurance medical coverage made as from 1 January 2017 following the negotiation of the renewal of the Council of Europe's group insurance contract, in particular the decision to abolish the doubling of the paid-up capital in the event of death or invalidity for staff members receiving the household allowance and the decision to make supplementary medical cover payable for spouses or partners who are permanent, total and exclusive dependents of the household allowance (6, 19, 20 and 21 December 2016); and
- A request to annul the decision not to accept the appellant's application in an internal competition (25 December 2016).

#### **B) COUNCIL OF EUROPE DEVELOPMENT BANK**

No administrative complaint was lodged in 2016.

#### **C) CENTRAL COMMISSION FOR THE NAVIGATION OF THE RHINE**

No appeal has been submitted to the Tribunal.

### **III. ADVISORY COMMITTEE ON DISPUTES**

#### **A) COMPOSITION**

In 2016, the Advisory Committee on Disputes was composed as follows:

Chair: Mr Stefanos STAVROS.

Full members: Mr Wolfgang RAU (until 1 August 2016), 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. She was re-elected by the bank's staff on 22 November 2016.

If such a case arose, Mr Felix SCHIEFERDECKER, member appointed by the Governor of the Bank would also sit, in accordance with Article 59, paragraph 5 of the Staff Regulations.

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

In 2016, the Committee received two complaints. One complaint was struck off the list and the second was pending on 31 December 2016.

## IV. ADMINISTRATIVE TRIBUNAL

### A) COMPOSITION

1. In 2016, 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 ATEŞ         | (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. ACTIVITY

2. In 2016, the Tribunal had 3 sessions adding up to 3 working days. It held 1 hearing at which it considered 1 appeal. The hearing was held in public.

In 2016, the Tribunal did not rule on any request for compensatory indemnity (Article 60, paragraph 7, of the Staff Regulations).

3. In 2016, the Chair delivered 2 orders concerning 2 requests to stay execution of administrative decision pending determination of an administrative complaint (Article 59.9 of the Staff Regulations). Both requests have been rejected.

In 2011, 2012, 2013, 2014 and 2015, the Chair dealt with 42, 6, 4, 1 and 1 requests for stays of execution respectively.

The 2016 judged request concerned a recruitment procedure (outcome of the interview) and the insurance medical coverage.

4. During the same period the Tribunal delivered 5 decisions on 8 appeals.

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

The decisions delivered in 2016 dealt with the following matters:

*a) Renewal of a contract* (29 January 2016, [appeal No. 567/2015](#), Costas SKOURAS v. Secretary General);

*b) Challenge of a new hierarchical junction and moral harassment* (31 March 2016, [appeal No. 566/2015](#), Holger SEIFERT v. Governor of the Development Bank);

*c) Deterioration of working conditions, downgrading, moral harassment, disciplinary measure* (29 January 2016, [appeal No. 559/2014](#), Maria-Lucia ORISTANIO (I) and [appeal No. 565/2015](#), Maria-Lucia ORISTANIO (II) v. Governor of the Development Bank);

*d) Challenge of the appraisal, non-renewal of a fixed term contract, psychological harassment and unequal treatment, refusal to grant a permanent contract at the end of the probationary period* (26 April 2016 : [appeals No. 561-564/2015](#), Gyorgyi KACSANDI (I, II, III, IV) v. Governor of the Development Bank)

5. In 2016 the Administrative Tribunal registered 2 appeals lodged against the Secretary General of the Council of Europe.

Appeals registered in 2016 deal with the following matters:

*a) Dependent children allowance and education allowance*

- maintain the payment of the allowance in respect of dependent children and the education allowance during the period of unpaid leave.

b) *Invalidity following an accident at work*

- Decision to reject protection and assistance about an invalidity pension following an accident at work.

***Full list of appeals lodged in 2016:***

|          |                         |   |
|----------|-------------------------|---|
| 570/2016 | CROSS                   | The appellant challenges the Secretary General's decision not to maintain the payment of the allowance in respect of dependent children and the education allowance during the period of unpaid leave.  |
| 569/2016 | Natalia KRAVCHENKO (II) | The appellant, a former temporary staff member, challenges the Secretary General's decision to reject her request for protection and assistance in her action before the Directorate of Human Resources and in her judicial proceedings against the "Bas-Rhin sickness insurance fund (Caisse Primaire d'Assurance Maladie du Bas-Rhin)" about an invalidity pension following an accident at work reported by the Directorate of Human Resources.. |

6. The Tribunal struck out off the list two appeals at the appellants' request (Case struck out on 30 June 2016, [appeal No. 569/2016, Kravchenko \(II\) v. Secretary General](#) and Case struck out on 29 January 2016, [appeal No. 568/2015, Raphaël ALOMAR v. Governor of the Development Bank](#)).

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.