



**ADMINISTRATIVE TRIBUNAL
OF THE COUNCIL OF EUROPE**

**CASES IN 2017 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 TRIBUNAL¹**

**(Statistical overview of administrative complaints, activity of the
Advisory Committee on Disputes and of the Administrative Tribunal)²**

¹ Bodies attached to the Council of Europe: Council of Europe Development Bank
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 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 Registry of the Administrative Tribunal after consulting 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)¹ 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.

¹ 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.

On 24 November and 8 December 2017, the Council of Europe signed two Agreements with the [Hague Conference on Private International Law \(HCCH\)](#) and the [Intergovernmental Organisation for International Carriage by Rail \(OTIF\)](#) to extend the jurisdiction of the Administrative Tribunal of the Council of Europe to these international organisations enjoying immunity. From now on, the Administrative Tribunal will be able to examine the related disputes between these organisations and their staff members.

The Agreements provide for an internal appeal procedure – prior to the referral to the Tribunal – which will apply to staff of both Organisations. It is a procedure specific to the international organisation concerned, which involves a conciliator during the procedure. The conciliator is appointed by the Chair of the Administrative Tribunal.

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 2017, 15 administrative complaints were lodged., of which 3 were accepted, and 12 were rejected. The subject matter of the complaints was as follows:

- Two requests to annul a procedure to assess candidates for the selection of seconded Turkish lawyers in the Council of Europe, following which the appellants have not been selected (2 January 2017);
- A request to cancel the results obtained by the appellant in the written tests of a recruitment procedure (21 March 2017);
- Two requests to annul a decision of the Deputy Secretary General taken under the opinion and recommendations of the Commission against harassment, following a complaint against the appellants (12 May 2017);
- Two requests to cancel the amount of the capital paid following the recognition of a permanent and total invalidity (19 June 2017 and 28 August 2017);
- A request to annul the decision to terminate a contract after an unsatisfying probationary period (5 July 2017);
- A request for compensation for damages suffered as a result of moral harassment (12 July 2017);
- A request to annul the decision not to recruit the appellant at the end of a recruitment procedure (15 September 2017);
- A request to cancel the refusal to regularize the appellant's remuneration according to the salary scale applicable at his duty station (12 October 2017);
- A request for the cancellation of the written tests held as part of a recruitment procedure (20 October 2017);
- A request for compensation for the salary's reduction of the appellant employed on the basis of a temporary contract (20 October 2017);
- A request to cancel the refusal to compensate the appellant following the theft of her bicycle during a mission (21 November 2017);
- A request to annul the decision not to renew the appellant's temporary contract (22 December 2017).

B) COUNCIL OF EUROPE DEVELOPMENT BANK

No administrative complaint was lodged in 2017.

C) CENTRAL COMMISSION FOR THE NAVIGATION OF THE RHINE

No appeal has been submitted to the Tribunal.

No request for any conciliation procedure was sent to the Tribunal in 2017

III. ADVISORY COMMITTEE ON DISPUTES

A) COMPOSITION

Until 30 June 2017, the Advisory Committee on Disputes was composed as follows:

Chair: Mr Stefanos STAVROS

Full members: Mr Gaël MARTIN-MICALLEF and Mr Yves WINISDOERFFER

Substitutes: Ms Françoise ELENS-PASSOS, Ms Clare OVEY, Ms Ana RUSU and Mr Jan MALINOWSKI

From 1 July 2017, the Committee was composed as follows:

Chair: Mr Gaël MARTIN-MICALLEF

Full members: Mr Gianluca ESPOSITA, Ms Clare OVEY, and Mr Yves WINISDOERFFER

Substitutes: Ms Pascale BOUILLON, Ms Renata DEGENER and Mr Axel MULLER-ELSCHNER

Mr ESPOSITA, Ms OVEY, Ms DEGENER and Mr MULLER-ELSCHNER are appointed by the Secretary General.

Mr MARTIN-MICALLEF, Mr WINISDOERFFER and Ms BOUILLON 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. If such a case arose, Mr Felix SCHIEFERDECKER, as the 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 was assisted by two joint secretaries, Ms Pamela McCORMICK and Mr Dmytro TRETYAKOV

B) CASES DEALT WITH

One complaint, lodged in 2016, was disposed of in March 2017.

The Committee received two further complaints in the course of the year, both of which were disposed of by the end of 2017.

IV. ADMINISTRATIVE TRIBUNAL

A) COMPOSITION

1. In 2017, 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 ATES	(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 2017, the Tribunal had 5 sessions adding up to 6 working days. It held 3 hearings at which it considered 9 appeals. The hearings were held in public.

In 2017, the Tribunal did not rule on any request for compensatory indemnity (Article 60, paragraph 7, of the Staff Regulations).

3. In 2017, the Chair delivered 3 orders concerning 3 requests to stay execution of administrative decision pending determination of an administrative complaint (Article 59.9 of the Staff Regulations). All requests have been rejected.

In 2012, 2013, 2014, 2015 and 2016, the Chair dealt with 6, 4, 1, 1 and 2 requests for stays of execution respectively.

The 2017 judged request concerned:

- Two requests to annul a procedure to assess candidates for the selection of seconded Turkish lawyers in the Council of Europe, following which the appellants have not been selected ;
- A request to annul the decision to terminate a contract after an unsatisfying probationary period ;

4. During the same period the Tribunal delivered 2 decisions on 8 appeals.

In 2012, 2013, 2014, 2015 and 2016, it delivered 16, 8, 3, 8 and 5 decisions respectively.

The decisions delivered in 2017 dealt with the following matters:

a) Maintenance of the allowance in respect of dependent children and the education allowance during the period of unpaid leave (12 May 2017, appeal No. 570/2016 – Susan CROSS v. Secretary General)

b) Annulment of the provisions of Rules No. 1384 and 1385 and of Rule No. 1387, modifying CEMSIS insurance medical coverage (10 November 2017, BRANNAN and others v. Secretary General) ;

5. In 2017 the Administrative Tribunal registered 16 appeals lodged against the Secretary General of the Council of Europe.

Appeals registered in 2017 deal with the following matters:

a) Insurance medical coverage and social security

- Annulment of the provisions of Rules No. 1384 and 1385 and of Rule No. 1387, modifying CEMSIS insurance medical coverage

b) Seconded lawyers to the European Court of Human Rights

- Concerning the appointment to posts of seconded lawyers at the European Court of Human Rights, the appellants request that their competencies be recognised and they demand the annulment of the Secretary General's decision to appoint the four successful candidates.

c) Career

- Refusal to grant additional steps

d) Measure adopted following a situation of moral harassment

- Decision of the Deputy Secretary General taken under Rule 1292 of 3 September 2010 on the protection of human dignity at the Council of Europe.

e) Challenge of a report of the Parliamentary Assembly

- Challenge of the report No. 14338 of the Parliamentary Assembly by the President of the Parliamentary Assembly of the Council of Europe

f) Invalidity

- Challenge of the amount of the providence invalidity benefits.

g) Compensation following a situation of moral harassment

- Demand for compensation for acts of moral harassment

Full list of appeals lodged in 2017:

571/2017	BRANNAN	The appellant requests the annulment of the provisions of Rules No. 1384 and 1385 and of Rule No. 1387, modifying CEMSIS insurance medical coverage.
572/2017	SCHIRMER	The appellant requests the annulment of the provisions of Rules No. 1384 and 1385 and of Rule No. 1387, modifying CEMSIS insurance medical coverage.
573/2017	KLEINSORGE	The appellant requests the annulment of the provisions of Rule No. 1387, modifying CEMSIS insurance medical coverage.
574/2017	RAMANAUSKAITE	The appellant requests the annulment of the provisions of Rule No. 1387, modifying CEMSIS insurance medical coverage.
575/2017	DOSSOW	The appellant requests the annulment of the provisions of Rule No. 1387, modifying CEMSIS insurance medical coverage.
576/2017	DÜRR	The appellant requests the annulment of the provisions of Rules No. 1384 and 1385 and of Rule No. 1387, modifying CEMSIS insurance medical coverage.
577/2017	DUSKUNKORUR	The appellant requests the annulment of the provisions of Rule No. 1387, modifying CEMSIS insurance medical coverage.
578/2017	BECRET	The appellant requests the annulment of the provisions of Rule No. 1387, modifying CEMSIS insurance medical coverage.

579/2017	UYSAL	Concerning the appointment to posts of seconded lawyers at the European Court of Human Rights. They request that their competencies be recognised and they demand the annulment of the Secretary General's decision to appoint the four successful candidates.
580/2017	DEMİR SALDIRIM (I)	
581/2017	de ALMEIDA PEREIRA	The appellant challenges the decision of the Director of Human Resources, denying him additional steps and he asks the Tribunal to grant him these steps.
582/2017	BRILLAT (III)	The appellants challenge a decision of the Deputy Secretary General taken under Rule 1292 of 3 September 2010 on the protection of human dignity at the Council of Europe.
583/2017	PRIORE	
584/2017	AGRAMUNT FONT de MORA	The appellant, President of the Parliamentary Assembly of the Council of Europe, challenges the report No. 14338 of the Parliamentary Assembly.
585/2017	BROWN	The appellant challenges the amount of the providence invalidity benefits.
586/2017	PAOLILLO	The appellant challenges the decision rejecting his demand for compensation for acts of moral harassment.

6. The Tribunal struck out off the list two appeals at the appellants' request (Case struck out on 12 July 2017, [appeal No. 577/2017, DUSKUNKORUR v. Secretary General](#) and Case struck out on 21 December 2017, [appeal No. 585/2017, BROWN v. Secretary General](#)).

7. On 10 November 2017, the Chair adopted a Ruling of manifest inadmissibility in appeal No. 584/2017, AGRAMUNT FONT de MORA v. Secretary General.

8. The Tribunal's decisions and the orders striking appeals out of 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.

C) OTHER ACTIVITIES OF THE TRIBUNAL

The Administrative Tribunal was for the first time integrated into the [Internal Justice Systems of International Organisations Legitimacy Index 2017 \(Bretton Woods Law\)](#)

The [Internal Justice Systems of International Organisations Legitimacy Index 2017 \(Bretton Woods Law\)](#) was launched during the 5th International Administrative Law Centre of Excellence annual conference which was held in London on 26-27 October 2017.

The Council of Europe' scoring is published for the first time in this index. It is ranked in third position out of 33 Systems, after the [Commonwealth Secretariat \(COMSEC\)](#) and the [United Nations \(UN\)](#) (*ex aequo*).