



ADMINISTRATIVE TRIBUNAL
TRIBUNAL ADMINISTRATIF



ADMINISTRATIVE TRIBUNAL OF THE COUNCIL OF EUROPE

ACTIVITY REPORT 2019

**CASES IN 2019 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 and activity of the Advisory Committee on Disputes of the Council of Europe Development Bank and of the Administrative Tribunal,**
- Complaints and conciliation procedures of international organisations affiliated to the Administrative Tribunal of the Council of Europe**
- Appeals lodged with 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.

TABLE OF CONTENTS

I. INTRODUCTION

II. ADMINISTRATIVE COMPLAINTS

- A) COUNCIL OF EUROPE
- B) THE COUNCIL OF EUROPE DEVELOPMENT BANK
- C) INTERNATIONAL ORGANISATIONS AFFILIATED TO THE
ADMINISTRATIVE TRIBUNAL OF THE COUNCIL OF EUROPE

III. ADVISORY COMMITTEE ON DISPUTES OF THE COUNCIL OF EUROPE

- A) COMPOSITION
- B) CASES DEALT WITH

IV. CONCILIATION IN INTERNATIONAL ORGANISATIONS AFFILIATED TO THE ADMINISTRATIVE TRIBUNAL OF THE COUNCIL OF EUROPE

- A) APPOINTMENT OF CONCILIATORS
- B) CONCILIATION WITHIN ORGANISATIONS AFFILIATED TO THE
ADMINISTRATIVE TRIBUNAL

V. THE ADMINISTRATIVE TRIBUNAL

- A) COMPOSITION
- B) CASES DEALT WITH

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.

A Conciliator and Deputy Conciliator were appointed for CCNR, HCCH and OTIF were appointed on 3 April 2018.

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 2019, 67 complaints were lodged, 66 complaints were dismissed and one of them, which was referred to the Advisory Committee on Disputes, is still pending.

The requests made in these complaints were as follows:

- Request to annul the decision to defer advancement to a higher step because of unsatisfactory service (21 January 2019);
- 12 requests to annul the decision to apply the affordability clause and not to adjust salaries and pensions from 1 January 2019 (7-22 February 2019);
- Request to annul the decision to terminate employment after a probationary period (27 March 2019);
- Request to annul the decision to declare an application to take part in an internal competition inadmissible (29 March 2019);
- Request to annul the decision not to grant special leave for removal when leaving the Organisation (8 April 2019);
- Request to annul the decision not to allow an applicant to take part in an external competition (12 April 2019);
- Two requests to annul dismissals on disciplinary grounds (27 May 2019 and 7 August 2019);
- Request to annul the decision not to renew a contract beyond the maximum period of employment applicable (31 May 2019);
- Request to annul the decision to adjust the annual leave entitlement according to the length of the employment contract (6 June 2019);
- Request to annul the decision to refuse to backdate family allowances to March 2016 (19 June 2019);
- Request to annul the decision not to allow an applicant to take part in an external competition (11 July 2019);
- Request to annul the decision to finalise an appraisal report (7 August 2019);
- Request to annul the decision to reject an application to be included in an early departure scheme (14 August 2019);
- Request to annul the decision to share family allowances with a former spouse following a divorce (3 September 2019);
- Request to annul the decision not to place an applicant on a reserve list following an external competition (5 September 2019);

- Request to annul the decision refusing to recognise a dependent child over the age of 18 as a beneficiary entitled through a principal beneficiary from 1 January 2020 and to impose a charge for the child's supplementary medical insurance (11 September 2020);
- 37 requests to annul the decision not to apply the salary adjustment for 2018 retroactively following the payment by Russia of its obligatory contributions (10-27 December 2019);
- Request to annul the decision to impose the one-year waiting period which must be observed on completing a fixed-term contract before being recruited on a temporary basis (12 December 2019);
- Request to annul the arrangements for executing the Tribunal's decision in Appeal No. 604/2019 (18 December 2019).

B) COUNCIL OF EUROPE DEVELOPMENT BANK

In 2019, six complaints were lodged, of which one was partially accepted, four were rejected, and one was referred to the Advisory Committee on Disputes for its opinion. The subject matter of the complaints was as follows:

- Challenge to the decision to reject a staff member's application to an external competition (26 March 2019);
- Challenges to a partially unsatisfactory appraisal (14 April 2019, 13 et 17 May 2019);
- Challenge to the non-conversion of a fixed-term contract into an indefinite-term contract (31 July 2019);
- Challenge to the non-renewal of a fixed-term contract (26 October 2019).

C) INTERNATIONAL ORGANISATIONS AFFILIATED TO THE ADMINISTRATIVE TRIBUNAL OF THE COUNCIL OF EUROPE

An administrative complaint was lodged on September 8, 2019 by a staff member of the Central Commission for the Navigation of the Rhine (CCNR) who requested the opening of an investigation entrusted to an external investigator concerning acts of moral harassment.

A request for anonymity was addressed on 12 December 2019 and subsequently granted by the President of the Tribunal.

III. ADVISORY COMMITTEE ON DISPUTES OF THE COUNCIL OF EUROPE

A) COMPOSITION

The Advisory Committee on Disputes was composed as follows:

Chair: Ms Ulrika FLODIN-JANSON (who replaced Mr Gaël MARTIN-MICALLEF on 1 July 2019)

Full members: Mr. Hallvard GORSETH, Mr. Gaël MARTIN-MICALLEF and Mr Yves WINISDOERFFER (Ms Clare OVEY and Mr Gianluca ESPOSITO having been replaced on 1 July 2019)

Substitutes: Ms Catherine DU-BERNARD ROCHY, Mr Daniele CANGEMI, Ms Françoise KEMPF and Ms Anca RADU (who replaced Ms Pascale BOUILLON, Ms Renata DEGENER and Mr Axel MULLER-ELSCHNER on July 2019)

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

Mr MARTIN-MICALLEF, Mr WINISDOERFFER, Ms KEMPF and Ms RADU are 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.

B) CASES DEALT WITH

The Committee gave five opinions in 2019.

IV. CONCILIATION IN INTERNATIONAL ORGANISATIONS AFFILIATED TO THE ADMINISTRATIVE TRIBUNAL OF THE COUNCIL OF EUROPE

A) APPOINTMENT OF CONCILIATORS

A Conciliator and Deputy Conciliator for CCNR, HCCH and OTIF appointed on 3 April 2018 by Ms Nina Vajić, Chair of the Administrative Tribunal, for a five-year term 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.

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

B. CONCILIATION WITHIN ORGANISATIONS AFFILIATED TO THE ADMINISTRATIVE TRIBUNAL

➤ CCNR

The administrative complaint of 8 September 2019 (A v. Central Commission for the Navigation of the Rhine, see II, C) was not followed by a conciliation procedure, which is an optional procedure.

➤ OTIF

An application for conciliation was sent to the Tribunal on 28 December 2018 but registered on 7 January 2019 due to the closure of the Council of Europe during the end of year holidays. The conciliation procedure ended on 28 January 2019 following a measure of withdrawal and an arrangement with the appellant.

V. ADMINISTRATIVE TRIBUNAL

A) COMPOSITION

1. The Administrative Tribunal was composed as follows:

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 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 2019, the Tribunal had 5 sessions adding up to 11 working days. It held 9 hearings at which it considered 20 appeals. In 3 appeals, the Tribunal has ruled without holding a hearing at the request of the parties. The hearings were held in public.

In 2019, the Tribunal did not rule on any request for compensatory indemnity (Article 60, paragraph 7, of the Staff Regulations).

3. In 2019, the Chair delivered 2 orders concerning 1 request to stay execution of administrative decision pending determination of an administrative complaint (Article 59.9 of the Staff Regulations). This request has been accepted.

In 2014, 2015, 2016, 2017 and 2018, the Chair dealt with 1, 1, 2, 3 and 4 requests for stays of execution respectively.

The 2019 judged request concerned:

- End of contract (CDD)
- Recruitment – Exclusion of an application

4. During the same period the Tribunal delivered 13 decisions on 19 appeals.

In 2014, 2015, 2016, 2017 and 2018, it delivered 3, 8, 5, 2 and 7 decisions respectively.

The decisions delivered in 2019 dealt with the following matters:

a) Annulment of a decision of the Deputy Secretary General to return to the grade A3 (occupied before a promotion to grade A4) (30 January 2019, Appeal No. 590/2018 – Edo KORLIJAN v. Secretary General);

b) Annulment of written and oral examination for the selection of seconded lawyers in the Organisation (30 January 2019, Appeal No. 592/2018 – Sibel DEMİR SALDIRIM v. Secretary General);

c) Disciplinary measure (26 March 2019, Appeal No. 591/2018 – Michel BRECHENMACHER (I) v. Secretary General and 26 June 2019, Appeal N° 594/2018 – Matthias BAUER v. Governor of the Council of Europe Development Bank)

d) Appraisal (20 June 2019, Appeal No. 593/2018 – Luca SCHIO v. Governor of the Council of Europe Development Bank)

e) Annual salary and pension adjustment (20 June 2019, Appeals Nos. 595-601/2018 – Gianfranco ALBERELLI (III) and others v. Secretary General)

f) Request to grant another grade (22 October 2019, Appeal No. 603/2018 – Maria-Cristina ANA v. Secretary General)

g) Non-renewal of a contract of employment (22 October 2019, Appeal No. 605/2019 - Xv. Secretary General, 23 October 2019, Appeal No. 604/2019 – Isabela MIHALACHE v. Secretary General and No. 606/2019 – Céline COSSET v. Secretary General)

h) Probationary period (10 December 2019, Appeal No. 616/2019 – Magno LOURENCO AGOSTINHO v. Secretary General)

i) Special leave for the purpose of moving to a new house and challenge of the *pro rata* basis system regarding travelling time (10 December 2019, Appeals Nos. 617-618 – Barbara UBOWSKA I and II v. Secretary General)

5. In 2019 the Administrative Tribunal registered 23 appeals (including 9 having the same object).

The Appeals registered in 2019 deal with the following matters:

a) Non-renewal of a contract

b) Salary and pension freeze

c) Probationary period

d) Special leave for the purpose of moving to a new house and, in this context, travelling time calculated for 2019

e) Reimbursement of educational costs foreseen for children with special educational needs

f) Disciplinary sanction (revocation)

g) Coverage of the medical insurance scheme CEMSIS concerning children of 18 and 19 years old

For the Council of Europe Development Bank:

No appeal was registered in 2019.

Full list of appeals lodged in 2019

603/2019	ANA	Request to grant another grade
604/2019	MIHALACHE	Non-renewal of a contract of employment even though the appellant was successful in a recruitment procedure for the same functions
605/2019	X	Non-renewal of a contract of employment and request of compensation for damages
606/2019	COSSET	Non-renewal of a contract of employment before the ending of the probationary period
607/2019	ALBERELLI (IV)	Annulment of the decision to freeze salary and pensions for 2019 not applying the annual salary and pension adjustment recommended by the Co-ordinating Committee on Remuneration (CCR); and postpone by one year the introduction of the "moderation clause" in the method of salary and pensions adjustment
608/2019	ZARDI (IV)	Annulment of the decision to freeze salary and pensions for 2019 not applying the annual salary and pension adjustment recommended by the Co-ordinating Committee on Remuneration (CCR)
609/2019	BABOCSAY (V)	Annulment of the decision to freeze salary and pensions for 2019 not applying the annual salary and pension adjustment recommended by the Co-ordinating Committee on Remuneration (CCR)
610/2019	DE JONGE (II)	Annulment of the decision to freeze salary and pensions for 2019 not applying the annual salary and pension adjustment recommended by the Co-ordinating Committee on Remuneration (CCR)
611/2019	DE BUYER	Annulment of the decision to freeze salary and pensions for 2019 not applying the annual salary and pension adjustment recommended by the Co-ordinating Committee on Remuneration (CCR)
612/2019	MANCINI	Annulment of the decision to freeze salary and pensions for 2019 not applying the annual salary and pension adjustment recommended by the Co-ordinating Committee on Remuneration (CCR)
613/2019	BECRET (VI)	Annulment of the decision to freeze salary and pensions for 2019 not applying the annual salary and

		pension adjustment recommended by the Co-ordinating Committee on Remuneration (CCR)
614/2019	MASSON (II)	Annulment of the decision to freeze salary and pensions for 2019 not applying the annual salary and pension adjustment recommended by the Co-ordinating Committee on Remuneration (CCR)
615/2019	BOHNER (IV)	Annulment of the decision to freeze salary and pensions for 2019 not applying the annual salary and pension adjustment recommended by the Co-ordinating Committee on Remuneration (CCR)
616/2019	LOURENCO AGOSTINHO	New probationary period following a new contract for the same functions
617/2019	UBOWSKA (I)	Special leave for the purpose of moving house to Poland
618/2019	UBOWSKA (II)	Challenge of the <i>pro rata</i> basis system regarding travelling time calculated for 2019 to return home in Poland
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 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
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6. The Tribunal struck out off the list ten appeals at the appellants' request (Chair's Order of 31 July 2019, Appeals Nos. 607-615/2019 – Gianfranco ALBERELLI (IV) and others v. Secretary General and Chair's Order of 26 November 2019, Appeal No. 602/2018, Claire SMITH v. Governor of the Council of Europe Development Bank).

7. No ruling of manifest inadmissibility or compensatory decision was adopted in 2019.

8. 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 of requests for stay of execution are available at the registry.