

ACTIVITY REPORT 2023

ADMINISTRATIVE TRIBUNAL
OF THE COUNCIL OF EUROPE



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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OF THE COUNCIL OF EUROPE

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Foreword



2 023 demonstrated, once again, the relevance of the Administrative Tribunal's mission, as the Council of Europe body responsible for settling disputes arising between the Organisation and its staff. The number of appeals examined in final deliberations during the year was especially high. The judgments handed down by the Tribunal in these cases provided answers to new and complex legal questions, having regard, in particular, to the current international context.

Following the example of other international administrative tribunals, for the first time ever in 2023 the Administrative Tribunal held a meeting of stakeholders, which provided an opportunity for informal dialogue with the various actors involved in judicial proceedings, including both members of the Administration and staff representatives. The Tribunal had been eager to organise such an event as a sign of its commitment to transparency in the judicial process and effective co-operation between stakeholders.

In this year's annual report, you will find a summary of the Tribunal's judicial activity, including a statistical overview of caseload, and a description of the landmark decisions of 2023. In addition, details of the main regulatory developments can be found in a section on the new procedure that has applied in Tribunal cases since the entry into force on 1 January 2023 of the new Statute of the Tribunal and the adoption of its revised Rules of Procedure.

I hope you enjoy reading this report and find it both informative and engaging.

Nina Vajić
Chair of the Administrative Tribunal

A handwritten signature in dark ink, appearing to read 'Nina Vajić'.

Introduction

This is the 12th 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 2023.

In addition to information about the Tribunal’s judicial activities, the report provides for this period a statistical overview of administrative complaints lodged with the Council of Europe and the Council of Europe Development Bank, as well as complaints and conciliation procedures within the international organisations that have recognised the jurisdiction of the Tribunal which are the Central Commission for the Navigation of the Rhine (CCNR), the Hague Conference on Private International Law (HCCH) and the Intergovernmental Organisation for International Carriage by Rail (OTIF) (hereinafter “organisations affiliated to the Administrative Tribunal”).



From left to right: Lenia Samuel (Judge), András Baka (Deputy Chair), Nina Vajić (Chair) and Thomas Laker (Judge)

Reform of the regulatory framework

By way of introduction to this report, it should be noted that the legal framework applicable to disputes was significantly overhauled in 2023. Texts to be mentioned in this context include, in chronological order:

- ▶ the new [Staff Regulations and Staff Rules of the Council of Europe](#), adopted by the Committee of Ministers on 22 September 2021 (CM/Res(2021)6), with effect from 1 January 2023;
- ▶ the new [Staff Regulations and Staff Rules of the Council of Europe Development Bank](#), with effect from 1 January 2023;
- ▶ [Council of Europe Regulations on the Protection of Personal Data](#), adopted by the Committee of Ministers on 15 June 2022 (CM/Res(2022)14) with effect from 1 January 2023 while the [Council of Europe Development Bank Data Protection Regulations](#) were adopted on 18 March 2022 with effect from 1 July 2022;
- ▶ the new Statute of the Tribunal, adopted by the Committee of Ministers on 16 November 2022 (CM/Res(2022)65), with effect from 1 January 2023;
- ▶ Decision of the ATCE laying down the applicable rules and establishing an internal control mechanism for the processing of personal data carried out within the framework of the judicial functions of the Administrative Tribunal, adopted on 26 January 2023, with effect from 1 March 2023;
- ▶ the amended [Rules of Procedure of the Administrative Tribunal](#), adopted by the Tribunal on 26 January 2023 which apply to appeals included in the list of cases of the Tribunal from 10 February 2023.

Key regulatory developments

The main regulatory changes concerning disputes before the Tribunal introduced by the above-mentioned texts are briefly summarised below:

- ▶ As regards the **composition** and **term of office of the Tribunal**, the eligibility criteria for judges have been tightened (Article 3.4 of the Statute of the Tribunal). Also, judges are now appointed for four years rather than three and their term may be renewed only once whereas previously there was no limit on renewal (Article 3.5 of the Statute of the Tribunal).
- ▶ The **jurisdiction of the Tribunal** in matters of personal data protection has been expressly recognised (Article 18 of the Council of Europe Regulations on the Protection of Personal Data and of the Council of Europe Development Bank Data Protection Regulations) and it may also hear requests for rectification, interpretation, revision and execution of judgments (Article 17 of the Tribunal's Statute).
- ▶ The categories of **persons who may apply to the Tribunal** have been widened where candidates for competitions are concerned. Whereas under the old rules, only candidates who had been allowed to sit an examination as part of a selection procedure could lodge a complaint,¹ now all job candidates may lodge complaints and appeals with the Tribunal, insofar as the complaint or appeal concerns irregularities in the selection process directly affecting them (Article 14.10 of the Staff Regulations).

1. By its decision of 28 April 2015 in appeals Nos. 548-553/2014, [Cuchetti Rondanini and others v. Secretary General of the Council of Europe](#), the Tribunal, ruling on the admissibility of appeals of candidates who had not been admitted to the recruitment competition under the former Staff Regulations, held that letter d of paragraph 8 of Article 59, which provided that only staff members and external candidates who had been allowed to sit a competitive recruitment examination could lodge a complaint, was inconsistent with its case law and with the general principle of law that all persons believing themselves to be the victim of an act adversely affecting them were entitled to challenge that act through the courts.

- ▶ The **admissibility criteria for appeals have been tightened and clarified** and the principle developed by the Administrative Tribunal's earlier case law in line with relevant international case law, whereby the appeal must raise in substance the same grievance as that in respect of which the available remedies were sought, has been codified in the Tribunal's Statute (Article 7.1 of the Statute of the Tribunal).
- ▶ While the **time limits** provided for in the Statute are generally the same as those that applied under the old rules, it is now stipulated that these time limits are to be suspended during any annual closure of the Council of Europe headquarters fixed by decision of the Secretary General (Article VI of the Statute of the Tribunal).
- ▶ An **appeal may now be lodged with the Tribunal by electronic means**, if the appellant so chooses. Since the Tribunal does not have a secure electronic platform, appellants are still required to submit a paper copy of the appeal by post within one week after sending the appeal by e-mail (Rule 9 of the Tribunal's Rules of Procedure).
- ▶ With regard to the Council of Europe, in addition to the administrative complaints procedure that was available before, the **internal remedies** now include a management review (Article 14.3 of the Staff Regulations).
- ▶ The **Advisory Committee on Disputes**, which issued opinions on complaints lodged by staff members at the request of the concerned staff member or on the initiative of the Secretary General, has been abolished.
- ▶ **Appeals may now be lodged directly with the Tribunal**, without first lodging, in the case of the Council of Europe, a complaint with the Secretary General, against the imposition of a disciplinary sanction other than a written warning and, in the case of the Bank, a complaint with the Governor, against the imposition of a disciplinary sanction other than a written reprimand. In the case of the Council of Europe, an appeal may also be lodged directly with the Tribunal against a decision taken by the Secretary General personally, or against an administrative decision implementing a legislative measure of general character adopted by the Committee of Ministers (Article 14.6 of the Staff Regulations of the Council of Europe and Article 14.5 of the Staff Regulations of the Council of Europe Development Bank).
- ▶ The **written procedure** consists of an exchange of written submissions between the parties, which may be followed by a second exchange by decision of the Chair of the Tribunal, either on the Chair's own initiative or on a reasoned request by the appellant (Article 10.4 of the Statute of the Tribunal). A limit of twenty-five pages has been set for the parties' written submissions in the first exchange (Rule 10 of the Tribunal's Rules of Procedure). In any event, the Tribunal retains a margin of flexibility with regard to this limit and may waive the requirement "if this derogation does not affect the proper administration of justice" (Rule 27 of the Tribunal's Rules of Procedure).
- ▶ While holding an **oral hearing** before the Tribunal remains the norm, the Tribunal may, on its own initiative or at the request of one of the parties, decide to dispense with it (Article 5.2 of the Tribunal's Statute).
- ▶ **Anonymisation** is required by default for all judgments, which must now be drafted in such a way as not to contain any information likely to permit a member of the general public to identify the appellant or any witnesses (Article 14.5 of the Tribunal's Statute).
- ▶ The Tribunal's power to recommend, on its own initiative, that parties enter into discussions for the purpose of reaching a **friendly settlement** has been expressly recognised (Article 13.2 of the Tribunal's Statute).
- ▶ Where a judgment annuls the contested decision, the question as to whether that **judgment may be executed by awarding financial compensation** is now solely a matter for the Secretary General or the Governor of the Development Bank, who may "decide that it would not be in the interests of the Organisation to take the measures that the judgment would entail, and that compensation shall be paid to the appellant in lieu of such measures being taken" (Article 16.2 of the Statute of the Tribunal). The amount of such compensation, however, is fixed by the Tribunal, in accordance with the conditions laid down in the Statute.

Grievance procedures

Administrative remedies

On the basis of Article 14.10 of the Staff Regulations of the Council of Europe and Article 14.9 of the Staff Regulations of the Council of Europe Development Bank, the following may challenge an administrative decision that is prejudicial to their interests:

- ▶ serving staff members;
- ▶ former staff members;
- ▶ persons claiming through staff members or former staff members;
- ▶ job candidates, insofar as their complaint or appeal concerns irregularities in the selection process directly affecting them;
- ▶ the Staff Committee, in some circumstances.

In the first instance, anyone who considers that an administrative decision is prejudicial to their interest and conflicts with their terms and conditions of appointment or with any pertinent regulatory provisions may initiate the process of **management review**.

The request must be made in writing and filed within 30 days with the original decision-maker, who transfers it to their manager for review (Article 14.3 of the Staff Regulations of the Council of Europe).

The management review procedure concerns only administrative decisions of the Council of Europe and does not apply to administrative decisions of the Council of Europe Development Bank.

Where a staff member is not satisfied with the outcome of the management review, they may lodge an **administrative complaint** against the original administrative decision. In the case of the Council of Europe, the complaint must be lodged in writing with the Secretary General within 30 days from the date on which the outcome of the management review was notified or, in the absence of notification, 30 days from the date on which the notification was due (Article 14.4 of the Staff Regulations of the Council of Europe).

In the case of the Council of Europe Development Bank, the complaint must be made in writing and lodged via the Director of Human Resources within thirty days from the date of publication of the act concerned, in the case of a general measure, within thirty days of the date of notification of the act, in the case of an individual measure, within thirty days from the date on which the complainant learned of the act, if it was neither published nor notified, or within thirty days from the date of the implicit decision rejecting the administrative request, where applicable (Article 14.3 of the Staff Regulations of the Council of Europe Development Bank).²

The Secretary General, through the Legal Advice and Litigation Department of the Directorate of Legal Advice and Public International Law, or the Governor, through the Legal Department of the Development Bank then have 30 days to take a decision on the administrative complaint.

After a staff member of the Council of Europe Development Bank lodges a complaint, the Governor may propose reaching an amicable settlement before a Conciliation Board, chaired by a person from outside the Bank (*Article 14.3 of the Staff Regulations of the Council of Europe Development Bank*).

It should also be noted, however, that some decisions can be challenged directly before the Tribunal without first lodging a request for a management review and/or an administrative complaint. This is the case for disciplinary sanctions (with the exception of written warnings in the case of the Council of Europe and written reprimands in the case of the Bank), decisions taken by the Secretary General personally and administrative decisions implementing a legislative measure of general character adopted by the Committee of Ministers (Article 14.6 of the Staff Regulations of the Council of Europe and Article 14.5 of the Staff Regulations of the Council of Europe Development Bank).

2. During the period covered by this report, Philippe Vorreux chaired the Conciliation Board of the Council of Europe Development Bank.

Requests for stay of execution

Requesting a management review, filing a complaint or lodging an appeal with the Tribunal does not suspend the administrative decision being contested. A staff member may, however, file a request with the Administrative Tribunal to suspend the implementation of the said decision in cases of particular urgency where implementation would cause serious and irreparable damage to the staff member (Article 14.8 of the Staff Regulations of the Council of Europe and of the Development Bank).

When a request for a stay of execution is filed, the Secretary General or the Governor shall, unless there are duly justified reasons, suspend the execution of the contested decision until the Chair of the Tribunal has ruled on the request (Article 12.1 of the Statute of the Tribunal). The Chair rules within 15 days following the request, by giving a reasoned decision (Article 12.2 of the Statute of the Tribunal).

Appeals to the Administrative Tribunal

Lodging an appeal

A staff member who is not satisfied with the Secretary General's or Governor's response to their complaint may lodge an **appeal with the Tribunal** (Article 14.6 of the Staff Regulations of the Council of Europe and Article 14.4 of the Staff Regulations of the Development Bank).

As a general rule, appeals to the Tribunal are admissible only if the following criteria are met:

- ▶ the administrative decision being contested must be final and the appellant must have exhausted all the (above-mentioned) remedies available under the Staff Regulations, in the prescribed manner and within the applicable time limits (Article 7.1 of the Statute of the Tribunal), unless the decision can be directly contested before the Tribunal (Article 14.6 of the Staff Regulations of the Council of Europe and Article 14.5 of the Staff Regulations of the Council of Europe Development Bank);
- ▶ the appeal brought before the Tribunal must raise in substance the same grievance as that in respect of which the available remedies were sought (Article 7.1 of the Statute of the Tribunal);
- ▶ the appeal must not be substantially the same as an appeal that the Tribunal has previously decided upon, unless it contains relevant new information (Article 7.4 of the Statute of the Tribunal);
- ▶ the appellant must have a direct and existing interest in challenging the contested decision (Article 7.5 of the Statute of the Tribunal);
- ▶ any appeal must be lodged with the Registry of the Tribunal within 60 days of notification of the contested decision (this decision is generally the explicit or implicit rejection of the complaint by the Secretary General or the Governor) (Article 7.2 of the Statute of the Tribunal).

An appeal may also be lodged under Article 18.5 of the Council of Europe Regulations on the Protection of Personal Data and of the Council of Europe Development Bank Data Protection Regulations.³ This provides that staff members, former staff members, claimants to their rights and job candidates may appeal against a decision of the Secretary General or, in the case of the Bank, a decision of the Governor:

- ▶ if they consider that their rights under the Data Protection Regulations have been infringed, and
- ▶ if they are not satisfied with the decision taken by the Secretary General or the Governor following a complaint filed with the Data Protection Commissioner.

Practical arrangements for lodging an appeal

Appeals are lodged using the appeal form appended to the Tribunal's Rules of Procedure, stating the object of the request, the facts and the grounds. This form may be supplemented with further submissions not exceeding 25 pages, to be submitted within the time limit set by the Chair of the Tribunal (Rule 10 of the Tribunal's Rules of Procedure).

Appeals must be submitted to the Registry, in English or French, either by depositing a paper copy with a handwritten signature, or by sending an electronic copy. An appeal is deemed to have been lodged on the date on which the appellant submitted it to the Registry, either by sending it by registered post or by sending an electronic copy of the appeal form together with supporting documents. It should be noted that depending

3. [Council of Europe Regulations on the Protection of Personal Data](#), with effect from 1 January 2023. [Council of Europe Development Bank Data Protection Regulations](#), with effect from 1 July 2022.

on which method of submission they choose, the appellant is required to provide a paper copy or an electronic copy of the appeal within one week (Rule 9 of the Tribunal's Rules of Procedure).

Proceedings before the Tribunal

Proceedings before the Tribunal are initially conducted in writing: once the appeal form together with any further submissions has been submitted to the Registry of the Tribunal, the Secretary General or the Governor is invited to submit observations in writing, within a time limit set by the Chair (Rule 11 of the Tribunal's Rules of Procedure).

The Chair of the Tribunal may decide, either of their own motion or on a reasoned request by the appellant, that a second exchange of pleadings is necessary. In that case, the appellant submits observations in reply, and the Secretary General or the Governor then has the opportunity to submit a rejoinder (Rule 12 of the Tribunal's Rules of Procedure).

Appeals to the Tribunal normally give rise to oral proceedings following the exchanges of pleadings. The Chair may, however, either on the Chair's own initiative or at the request of one of the parties, decide to dispense with an oral hearing. Hearings of the Tribunal are held in public, unless, in exceptional circumstances, the Tribunal decides to hold the hearing in camera (Rule 15 of the Tribunal's Rules of Procedure).

Judgments

The Tribunal's judgments are binding on the parties as soon as they are delivered and are published on the Tribunal's website. They are final and not subject to appeal (Article 5.3 of the Statute of the Administrative Tribunal). The Tribunal may, however, receive requests for rectification, interpretation, revision or execution of a judgment in certain cases provided for in the Tribunal's Statute (Article 17 of the Statute of the Tribunal).

Anonymisation of judgments issued by the Tribunal

Following the amendment of the Tribunal's Statute, anonymisation of judgments issued by the Tribunal has become the default rule. Article 14.5 of the Tribunal's Statute states that judgments must not contain any information likely to permit a member of the general public to identify the appellant or any witnesses. As a result, judgments issued in accordance with the new Statute now refer to the appellants by their initials and omit any information likely to make them recognisable to the general public. Previously, only decisions for which a request for anonymity had been made and accepted by the Chair were anonymised.

An appellant who wishes to benefit from a greater degree of anonymity may make a reasoned request to the Tribunal when the appeal is lodged, specifying, in the event that the request is granted by the Chair, whether they wish to be designated by their initials or by a single letter and whether they wish their gender not to be disclosed.

Procedure applicable to affiliated organisations

Under Article 2 of the [Administrative Tribunal's Statute](#), the jurisdiction of the Tribunal may be extended to cover disputes between other intergovernmental organisations and their respective officials.

The possibility of extending the Tribunal's jurisdiction beyond the Council of Europe and the Development Bank had previously been introduced by [Resolution CM/Res2014\(4\)](#) of the Committee of Ministers amending the Statute of the Administrative Tribunal. Under this resolution, agreements extending the Tribunal's jurisdiction to cases brought by staff of international organisations other than the Council of Europe were concluded with the [Central Commission for the Navigation of the Rhine \(CCNR\)](#), the [Hague Conference on Private International Law \(HCCH\)](#) and the [Intergovernmental Organisation for International Carriage by Rail \(OTIF\)](#).



The judicial procedure applicable to disputes concerning affiliated organisations is governed by the Statute and Rules of Procedure of the Tribunal and is identical to the one applicable to disputes concerning the Council of Europe and the Council of Europe Development Bank. Under the agreements concluded with these organisations, however, provisions specific to the organisation concerned apply to the phase prior to referral to the Tribunal, for which the Chair of the Tribunal is nevertheless responsible for appointing a Conciliator and a Deputy Conciliator. The Chair accordingly appointed:

- ▶ Helmut Buss as Conciliator for HCCH and as Deputy Conciliator for CCNR and OTIF (on 10 May 2021); and
- ▶ Mirka Dreger as Conciliator for CCNR and OTIF and as Deputy Conciliator for HCCH (on 17 December 2021).

In the course of 2023, Helmut Buss and Mirka Dreger were reappointed for a further five years until 2 April 2028.

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

Judicial activities

The Administrative Tribunal

A. Composition

In 2023, the composition of the Tribunal remained unaltered. Its membership was as follows:

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

The Tribunal was assisted by a Registrar and a Deputy Registrar. The Registrar is employed on a full-time basis and dedicates 100% of their working hours to running the Tribunal. The role of Deputy Registrar, on the other hand, is assumed by a staff member who, at the same time, performs other duties within the Organisation, notably in the Registry of the European Court of Human Rights.

The Registry staff also included two administrative assistants and two assistants providing temporary backup. In addition, the Registry benefited from the input of a stagiaire, who joined the team as part of the Council of Europe's official internship programme.



From left to right: Dmytro Tretyakov (Deputy Registrar), Christina Olsen (Registrar), Nina Vajić (Chair), Lenia Samuel (Judge) and Thomas Laker (Judge)

Judicial metrics: a year in review

Litigation before the Tribunal

4

sessions

7

hearings

8

appeals
registered

60

appeals examined

10

decisions

2

orders striking
appeals off the list

1

ruling of manifest
inadmissibility

2

orders ruling on
applications for a
stay of execution

Internal remedies at the pre-litigation stage

17

administrative complaints at
the Council of Europe

1

administrative complaint
at the Council of Europe
Development Bank

Sessions



Hearing room of the Administrative Tribunal, D Building

In 2023, the Tribunal convened at four ordinary sessions in Strasbourg, adding up to eight and a half days of meetings in total. In addition, it held seven hearings in the course of the year.

Of the 60 appeals dealt with during this period, only two were adjudicated without holding a hearing. The decision to dispense with a hearing was taken at the discretion of the Chair, who concluded that such action was warranted given the specific features of the cases in question.

The Tribunal also held informal videoconference meetings to discuss matters relating to the Tribunal's activities.

Adopted texts

At its first session in January 2023, following the entry into force of its new Statute, the Tribunal revised its [Rules of Procedure](#). The revised Rules apply to appeals included in the Tribunal's case list from 10 February 2023. The aspects of the judicial procedure before the Tribunal that have changed as a result of this overhaul are set out above in the section entitled *Reform of the regulatory framework*.

The Tribunal also used the first session of 2023 to amend its [Declaration on Professional Conduct](#) which is now available on the Tribunal website. This Declaration refers to the principles of independence and integrity of judges set out in the Tribunal's Statute and provides members of the Tribunal with a code of judicial ethics to guide them in their activities.

Also at the session, the Tribunal adopted its [Decision laying down the applicable rules and establishing an internal control mechanism for the processing of personal data carried out within the framework of the judicial functions of the Administrative Tribunal](#). In adopting these rules, the Tribunal was responding to Article 3.3. of the [Council of Europe Regulations on the Protection of Personal Data](#), according to which "The processing of personal data by the Administrative Tribunal of the Council of Europe in the framework of its judicial activities shall be regulated by the Statute of the Tribunal and its own rules." The [rules](#) in question are to a large extent inspired by the provisions of the said Council of Europe Regulations on the Protection of Personal Data, except for the provisions under sections III (Advisory and supervisory authorities) and IV (Remedies and sanctions). They also provide for an internal control mechanism whereby any individual who believes that there has been an infringement of their rights with regard to any personal data processing carried out by the Tribunal may submit a request to the Tribunal's Registrar.

Appeals registered

In 2023, the Administrative Tribunal registered eight appeals.

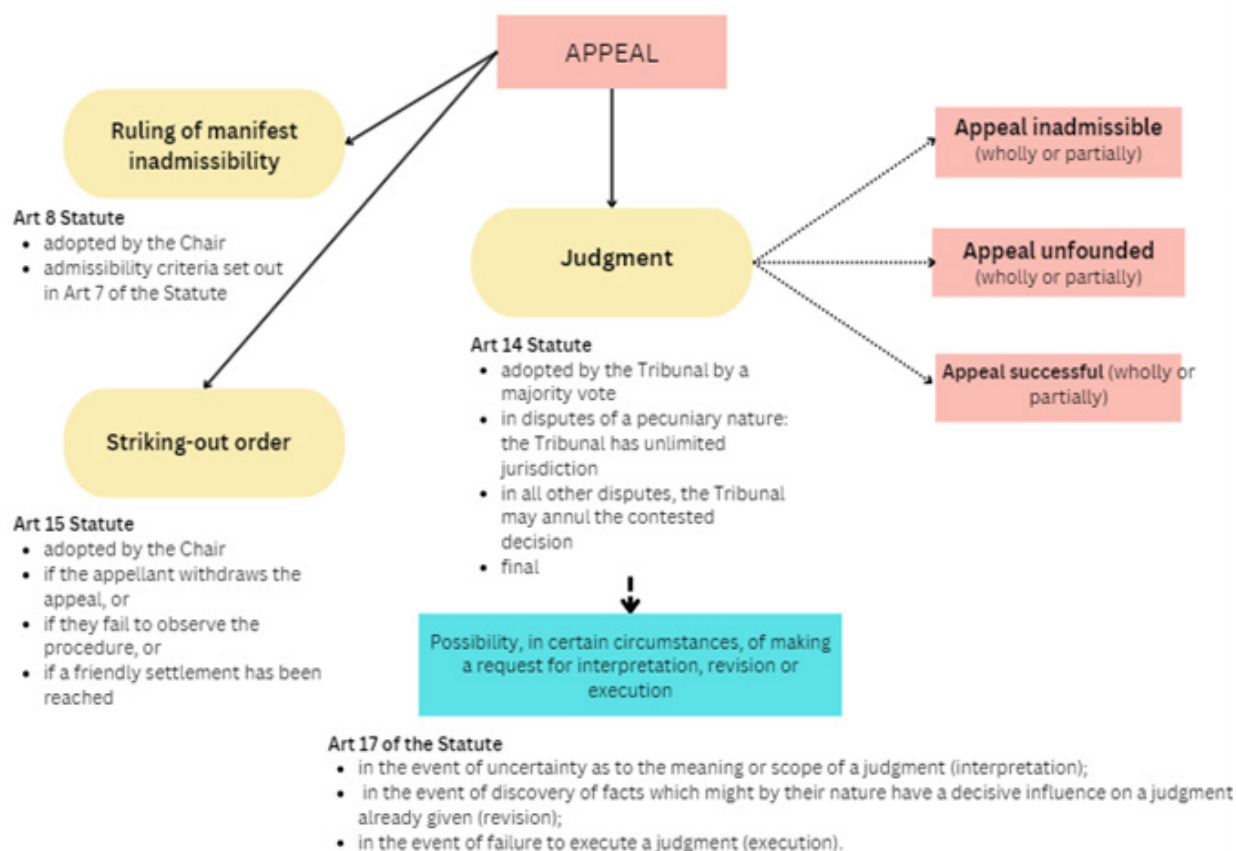
The appeals registered in 2023 concern the following issues:

- ▶ Challenge to the Deputy Secretary General's decision to endorse the Commission against Harassment opinion, finding that there had been no harassment (Appeal No. 735/2023 – *R. K. v. Secretary General of the Council of Europe*);
- ▶ Rejection of an application in an external recruitment procedure (Appeal No. 736/2023 – *A. A. v. Secretary General of the Council of Europe*);
- ▶ Termination of a temporary contract on the ground of manifest unsuitability for the work (Appeal No. 737/2023 – *G. T. v. Secretary General of the Council of Europe*);
- ▶ Appointment to grade A1 instead of A2 in an internal recruitment procedure (Appeal No. 738/2022 – *C. A. v. Secretary General of the Council of Europe*);
- ▶ Transfer to a job of a lower grade in the context of a risk assessment following the cessation of the membership of the Russian Federation (Appeals Nos. 739, 740 and 741/2023 – *E. T., D. K. and E. K. v. Secretary General of the Council of Europe*);
- ▶ Non-renewal of a fixed-term contract following the cessation of the membership of the Russian Federation (Appeal No. 742/2023 – *I. S. v. Secretary General of the Council of Europe*).

No appeal was registered with respect to the Council of Europe Development Bank or the organisations affiliated to the Tribunal in 2023.

A [summary table of appeals registered before the Tribunal since 2007](#) is available on the Tribunal website.

POSSIBLE OUTCOMES OF AN APPEAL



Decisions

In 2023, the Tribunal delivered ten decisions⁴ relating to 57 appeals.

The decisions delivered by the Tribunal dealt with the following matters:

- ▶ Request to annul the decision terminating an application for a vacancy on the ground of failure to have the nationality of a member state following the cessation of the Russian Federation's membership of the Council of Europe ([decision of 31 January 2023](#), Appeal No. 719/2022 – *Gurin v. Secretary General of the Council of Europe*);
- ▶ Request to annul the decision not to renew the secondment of a member state official ([decision of 31 January 2023](#), Appeal No. 720/2022 – *E v. Secretary General of the Council of Europe*);
- ▶ Request to annul the decision not to invite the appellant to the next stage of an external selection procedure because of inadequate results ([decision of 31 January 2023](#), Appeal No. 712/2021 – *Kirbas v. Secretary General of the Council of Europe*);
- ▶ Request to annul the decision not to renew the appellants' fixed-term contracts upon successful completion of the probation period, following the cessation of the Russian Federation's membership of the Council of Europe ([decision of 4 April 2023](#), Appeals Nos. 722, 731, 732 and 733/2022 – *Orekhova and Others v. Secretary General of the Council of Europe*);
- ▶ Request to annul the decision to partially apply the 2022 salary adjustment in application of the affordability clause in the salary adjustment method ([decision of 6 June 2023](#), Appeals Nos. 677-711/2022, 713-718/2022 and 724-727/2022 – *Frossard (II) and others v. Secretary General of the Council of Europe*);
- ▶ Request to annul the decision not to renew the appellant's fixed-term contract upon successful completion of the probation period, following the cessation of the Russian Federation's membership of the Council of Europe ([decision of 12 June 2023](#), Appeal No. 721/2022 – *Izyumenko v. Secretary General of the Council of Europe*);
- ▶ Request to annul the decision refusing to grant unpaid leave and not to renew the appellant's fixed-term contract following the cessation of the Russian Federation's membership of the Council of Europe ([decision of 12 June 2023](#), Appeal No. 723/2022 – *Zaytseva v. Secretary General of the Council of Europe*);
- ▶ Request to annul the decision not to place the appellant on the reserve list for an external selection procedure ([decision of 12 June 2023](#), Appeal No. 729/2022 – *Ramazanov v. Secretary General of the Council of Europe*);
- ▶ Request to annul the decision not to invite the appellant to the next stage of a selection procedure because of failure to pass the written test ([decision of 10 November 2023](#), Appeal No. 730/2023 – *Conrad (III) v. Secretary General of the Council of Europe*);
- ▶ Request to annul the decision to reject the appellant's application in an external recruitment procedure ([judgment of 30 November 2023](#), Appeal No. 736/2023 – *A. A. v. Secretary General of the Council of Europe*);

The [complete list of decisions](#) delivered the Tribunal is available on the Tribunal website.

Orders ruling on applications for a stay of execution

In 2023, the Chair of the Tribunal received two applications for a stay of execution, in accordance with Article 14.8 of the Staff Regulations of the Council of Europe and Article 12 of the Statute of the Tribunal.

The first concerned the suspension of the decision to terminate a fixed-term contract on account of unsatisfactory performance during the probation period ([Order of 13 July 2023](#) – in the case of *L. C. v. Secretary General of the Council of Europe*).

The second application for a stay of execution concerned the suspension of the decision to reject an application in an external recruitment procedure ([Order of 21 December 2023](#) – in the case of *P. M. C. v. Secretary General of the Council of Europe*).

A [table](#) listing all the orders issued since 2009 on applications for a stay of execution is available on the Tribunal website.

4. Since the new Statute of the Tribunal came into force on 1 January 2023, the word "judgment" has replaced "decision".

Other orders and decisions

In 2023, two orders striking cases off the list were issued concerning Appeal No. 734/2023 ([striking-out order of 30 January 2023](#) – in the case of *Lobba v. Secretary General of the Council of Europe*) and Appeal No. 735/2023 ([striking-out order of 25 May 2023](#) – in the case of *R. K. v. Secretary General of the Council of Europe*).

A ruling of manifest inadmissibility was issued concerning Appeal No. 728/2022 – *C (II) v. Governor of the Council of Europe Development Bank* ([ruling of manifest inadmissibility of 10 March 2023](#)).

Administrative complaints

In order to provide as comprehensive a framework as possible for the litigation, the Tribunal's activity report also includes data on administrative complaints lodged with the Council of Europe, the Development Bank and within the affiliated organisations.

The data are provided by the Legal Advice and Litigation Department, Directorate of Legal Advice and Public International Law in the case of the Council of Europe, by the Directorate of Legal Affairs (Office of the General Counsel) in the case of the Development Bank and, in the case of the affiliated organisations, by their respective legal departments.

Within the Council of Europe

In 2023, 17 formal complaints were lodged, of which one was upheld and 16 were rejected.

The requests made in these complaints were as follows:

- ▶ Challenge by a staff member of their administrative situation and request to be assigned to a job corresponding to their grade and qualifications (20 January 2023);
- ▶ Request to annul the decision not to include a candidate on the reserve list drawn up following an external recruitment procedure (17 May 2023);
- ▶ Three requests to annul decisions to transfer staff members to jobs in a lower grade (9 June 2023);
- ▶ Request to annul the decision not to select a candidate following an internal competition (9 June 2023);
- ▶ Request to annul the decision not to shortlist a candidate in an external recruitment procedure (9 June 2023);
- ▶ Two requests to annul decisions of appointment at grade A1 instead of grade A2 following internal competitions (15 June and 25 October 2023);
- ▶ Challenge regarding the condition for appointment laid down in the internal regulatory framework preventing the recruitment of members of the close family of a serving staff member (22 June 2023);
- ▶ Request to annul the decision not to renew a fixed-term contract upon its expiry and not to convert it into an open-ended contract, as well as the decision not to grant a special leave for marriage (2 August 2023);
- ▶ Request to annul the decision not to appoint a candidate placed on a reserve list to a vacant job (7 September 2023);
- ▶ Request to annul the decision not to promote a staff member to grade A3 (20 October 2023);
- ▶ Request to annul the decision not to interview a candidate placed on a pre-selection list following written examinations and to appoint another candidate in the framework of an external recruitment procedure (12 December 2023);
- ▶ Request to reimburse social security contributions requested by national tax authorities on the pension paid by the Council of Europe (15 December 2023);
- ▶ Request to annul the decision to terminate the appointment of a staff member at the end of their probationary period (18 December 2023);
- ▶ Request to annul the decision not to adjust a leaving allowance retroactively (26 December 2023).

Within the Council of Europe Development Bank

In 2023, an administrative claim was lodged and rejected: the appellant sought the annulment of the Governor's decision to terminate his employment once his current contract expired (9 October 2023).

With regard to data protection, a complaint was lodged with the Data Protection Commissioner on 14 September 2022 by a former member of staff alleging that the Bank had violated her data protection rights in the context of her employment with the Bank, and more particularly with regard to the termination of her duties.

The Data Protection Commissioner concluded that the Bank's processing of the complainant's personal data by the relevant data controllers had been carried out in full compliance with the CEB's Data Protection Regulations. The Governor's decision, taken in accordance with the conclusions of the Data Protection Commissioner, as well as the conclusions of the Data Protection Commissioner, were notified to the former staff member on 12 January 2023.

Within affiliated organisations

No administrative complaints were filed in 2023 with regard to the affiliated organisations (CCNR, HCCH and OTIF).

Case-law overview

Jurisdiction and admissibility

To fill a legal vacuum, the Tribunal declares itself competent to consider an appeal lodged by a seconded official.

The decision delivered by the Administrative Tribunal on 25 January 2023 in Appeal No. 720/2022, *Ev. Secretary General of the Council of Europe* is interesting as it deals with the thorny issue of the right of access to a court in the case of appellants who have no employment relationship with the Organisation.

At the time of the facts, the appellant was not a staff member of the Organisation. Their legal status was that of a member state official seconded to the Council of Europe. They complained to the Tribunal of the decision not to renew their secondment after serious allegations were made about them in the press, allegations that were ultimately dismissed by the competent national courts. In justifying her decision, the Secretary General cited the need to protect the reputation and image of the Organisation.

The Tribunal found that, in the light of the applicable regulations, seconded officials did not, in principle, have standing to bring a case before the Tribunal. The appellant had argued, however, that denying them the right to be heard by the Administrative Tribunal would constitute a breach of the right of access to a court guaranteed by Article 6, paragraph 1, of the European Convention on Human Rights. The Tribunal considered that it was its task to ascertain whether, in this case, the appellant could submit their complaints to some form of judicial review.

Drawing on the case law of the European Court of Human Rights (hereafter “the Court”), the Tribunal pointed out, with regard to disputes between international officials and the international organisations employing them, that the judicial immunity of international organisations before national courts is only admissible under Article 6, paragraph 1, of the European Convention on Human Rights if the restriction it entails is not disproportionate. Therefore, it is compatible if the parties to the case have reasonable alternative means to protect their rights effectively (*Waite and Kennedy v. Germany*, 26083/94, paragraphs 68 to 74, ECHR 1999-I; *Prince Hans-Adam II of Liechtenstein v. Germany*, 42527/98, paragraph 48, ECHR 2001-VIII; *Chapman v. Belgium*, 39619/06, paragraphs 51 to 56, ECHR 2013; *Klausecker v. Germany*, 415/07, paragraphs 69 to 77, ECHR 2015, with regard to the alternative remedy of an arbitration procedure).

In applying this case law *mutatis mutandis*, the Tribunal was required to ascertain whether the appellant had a reasonable alternative means of asserting their rights.

The Tribunal found that arbitration, which was provided for in the agreement between the Council of Europe and the member state concerned on the appellant’s secondment as a means of settling disputes, could have been an appropriate setting in which to examine the appellant’s complaints. It pointed out, however, that as a third party to the secondment agreement, the appellant did not have direct access to this remedy, contrary to the requirements of the Court’s case law (*Gurepka v. Ukraine*, 61406/00, paragraphs 59 to 61, ECHR 2005).

In the absence of reasonable alternative remedies capable of protecting the appellant’s rights effectively, the Tribunal was required to fill the gap by declaring the appeal admissible.

The appeal was dismissed on the merits.

Order ruling that an appeal is manifestly inadmissible because it infringes the principle of *res judicata*.

In adopting the 10 March 2023 order – in the case of *C (II) v. Governor of the Council of Europe Development Bank*, the Chair of the Tribunal declared Appeal No. 728/2022 against the Council of Europe Development Bank manifestly inadmissible, under the fast-track procedure provided for this purpose. The Chair found that the appeal was contrary to the principle of **res judicata** given the Tribunal's decision of 27 January 2022 in respect of the appellant's earlier Appeal No. 673/2021.

The case concerned the number of days' leave which the appellant had left at the time when their employment ended, after they were placed on invalidity. In their previous appeal, the main purpose of which had been to challenge the Bank's decision not to recognise the occupational origin of their invalidity, the appellant had sought, *inter alia*, rectification of the calculation made by the Bank when paying them for this unused leave.

The order draws on the general principles developed by international administrative case law in matters of *res judicata*, starting with the principle that

” *res judicata* applies only where the parties, the purpose of the suit and the cause of action are the same as in the earlier case.

The Chair concluded that the purpose of the two appeals was the same, noting that in both cases, the appellant's intent was to obtain rectification of the number of days of unused leave for which they had been paid by the Bank, which was less than the number they claimed.

As to the cause of action, the Chair considered that, despite the fact that in the new appeal, the appellant had advanced new grounds, the cause of action in the two appeals was the same as regards the Bank's alleged disregard for the applicable mechanisms for arriving at a correct calculation of the appellant's leave balance.

As the fact that the parties were the same was not in dispute, the order concluded that the three conditions for *res judicata* had been met in the instant case. The appeal therefore conflicted with the principle of *res judicata* and was found to be manifestly inadmissible.

The order also reiterated the need to put forward all the grounds for challenging a decision in a pending appeal. In the light of this requirement, the order concluded that if the appellant believed that their right to information had not been respected because of the allegedly incomplete nature of the calculation provided in their first appeal, it was incumbent on them to make that point then.

This decision underlines the importance of preserving the legal stability of situations on which the Tribunal has already had occasion to rule, while at the same time reminding staff of the importance of asserting their rights – in this case the right to information – in good time, even when those rights are not subject to any particular requirement to adhere to time limits.

Candidature

Loss of the nationality of a Council of Europe member state is justification for terminating an application in a recruitment procedure.

In the case of *Gurin v. Secretary General of the Council of Europe*, the Tribunal considered whether an applicant who met the requirement to have the nationality of a Council of Europe member state at the time of applying for a recruitment procedure could be excluded if they subsequently ceased to meet that requirement.

In the case in point, the appellant was a Russian national and had passed the written examination in a recruitment procedure but following the cessation of the Russian Federation's membership of the Council of Europe, the Administration had terminated his application. He contended that since, at the time of applying for the competition, he had fulfilled the eligibility criteria, the Organisation should have stood by its earlier decision to invite him to an interview and could have included him in a reserve list in the event of a successful interview.

Key to this case is the notion that the recruitment procedure – and the different stages of which it is composed – is not an end in itself but a means aimed at enabling the Organisation to fill vacant posts and positions by appointing to them suitable external candidates. As a condition which must be fulfilled in order to be eligible for appointment to the Council of Europe, the nationality criterion is thus systematically mentioned in vacancy notices as a criterion for preselection in external recruitment procedures.

Since only candidates who satisfy the eligibility criteria may ultimately be recruited, the Tribunal held that it would not be justified to distinguish between the various stages of the procedure and to consider that the recruitment conditions apply only to the first stage, namely preselection, and not to the subsequent stages of the procedure. It therefore concluded that if a candidate who initially fulfilled the recruitment conditions subsequently ceased to satisfy one or more of those conditions, he or she was no longer eligible to continue to take part in the procedure.

In the instant case, from the moment the appellant was no longer eligible because he no longer held the nationality of a member state of the Organisation, the latter was bound to apply its own rules which limited participation in recruitment procedures only to those candidates who fulfilled the recruitment conditions.

The Tribunal accordingly took the view that not only was the Administration competent to disqualify the appellant under the rules, but also the decision was necessary to preserve the regularity of the ongoing recruitment procedure. The appeal was therefore dismissed as unfounded.

Non-renewal of a contract

A fixed-term contract may not be renewed if in the meantime the staff member has ceased to have the nationality of a Council of Europe member state.

In *Orekhova and Others v. Secretary General of the Council of Europe*, the appellants challenged the decision not to renew their contracts on the ground that they no longer possessed the nationality of a Council of Europe member state following the cessation of the Russian Federation's membership of the Organisation.

The appellants argued that the decision was based on an error of law insofar as, in their view, the nationality eligibility criterion referred to in the Staff Regulations was applicable only at the time of recruitment following an external competitive selection procedure and did not apply in the case of contract renewal.

The appellants further contended that the decision not to renew their contracts discriminated against them on the ground of their nationality and violated their legitimate expectation of obtaining an extension of their contracts, especially given the fact that they had satisfactorily completed their probation and/or received excellent appraisals.

The Tribunal began by reiterating the general principle that a staff member under a fixed-term appointment is not entitled to the renewal of their contract insofar as such decisions are a matter for the discretionary power of the Secretary General (ATCE, Appeals Nos. 469/2010 and 473/2011, *Seda Pumpyanskaya (II) and (III) v. Secretary General*, decision of 20 April 2012, paragraph 57, and Appeals Nos. 587/2018 and 588/2018, *Jannick Devaux (II) and (III) v. Secretary General*, decision of 9 October 2018, paragraph 109).

First and foremost, the Tribunal considered whether the nationality criterion should apply also to the renewal of the appellants' contracts. Starting from the assumption that the very purpose of a fixed-term contract is to render the eligibility criteria applicable to its renewal, the Tribunal held that the nationality criterion must be seen as a condition inherent to the very purpose of a fixed-term contract. That being so, it was legitimate to require that this condition be met at the time the appellants were to be confirmed in their employment.

The Tribunal further observed that by its very nature and as an objective condition which applies to any recruitment

” the nationality criterion leaves no room to the discretion of the Administration: in the absence of such a condition, a recruitment would not be legally possible.

It concluded that not only was the Secretary General entitled to enforce the nationality criterion upon the appellants, but the absence of this condition left her with no other choice than to refuse to renew the appellants' contracts. The Tribunal therefore rejected the appellants' ground of appeal alleging an error of law.

The Tribunal also rejected the appellants' contention that there had been discrimination. Since the appellants no longer met the nationality criterion, which was an objective condition that applied equally to all staff members, they could not claim to be in an analogous situation to those who possessed the nationality of a member state of the Council of Europe. The Tribunal therefore concluded that the decision not to renew their contracts on this ground was not discriminatory.

The appeals were held to be unfounded and were dismissed. The Tribunal applied the same reasoning, *mutatis mutandis*, in *Izyumenko v. Secretary General of the Council of Europe* and *Zaytseva v. Secretary General of the Council of Europe*.

Scope of the Tribunal's review

The Tribunal may review the material accuracy of the facts relied upon by the Organisation to justify a discretionary decision in matters relating to the salary adjustment.

In the case of *Frossard (II) and others v. Secretary General of the Council of Europe*, the appellants challenged the Secretary General's decisions to award them only part of the annual salary adjustment recommended by the Co-ordinating Committee on Remuneration (CCR). The impugned decisions arose from the decision by the Committee of Ministers to only partially follow the CCR's recommendation for 2022, and to invoke the affordability clause provided for in the Organisation's salary adjustment method. The appellants argued that in applying the affordability clause, the Committee of Ministers had failed to comply with the conditions for implementing this clause and in so doing had committed a manifest error of assessment.

In examining this ground of appeal, the Tribunal was called upon to consider whether the objective conditions on which the applicability of the affordability clause depended had been met in the instant case. According to the salary adjustment method in force at the material time, the affordability clause could be triggered only if there were "specific budgetary and/or economic circumstances" whose existence did not depend on an entirely subjective assessment but on verifiable, objective criteria which were obviously present.

In this instance, the two circumstances that had been referred to in the contested decision of the Committee of Ministers included, firstly, the economic uncertainties faced by member states as a result of the Covid-19 pandemic, and, secondly, the consideration that applying the CCR's recommendations in full would cause a variation in total staff expenditure of such magnitude that it would jeopardise the functioning or mission of the Organisation in 2022.

The Tribunal pointed out that while it was not for it to substitute its assessment for that of the Committee of Ministers and the Secretary General, it did have the authority to review the accuracy of the facts relied on to justify the use of the affordability clause, as recognised in the relevant international case law (General Court of the European Union, [judgment of 7 September 2022](#), Case T-470/20, DD v. European Union Agency for Fundamental Rights (FRA), paragraph 211 and case law cited). As part of that review, the Tribunal examined the evidence relied on by the Secretary General to demonstrate the existence of the aforementioned circumstances and checked whether this evidence was capable of substantiating the findings drawn from it.

At the close of this examination, the Tribunal concluded that the Secretary General had not satisfied this requirement to provide proof in the case of the first circumstance on which the contested decision relied, namely economic uncertainties. It concluded that "economic uncertainties, though undeniably present at the time when the contested decision was adopted, were not enough in themselves to constitute an objective circumstance warranting the deployment in this case of the affordability clause."

With regard to the second circumstance on which the contested decision relied, namely the fact that applying the CCR's recommendations in full would have caused a variation in total staff expenditure of such magnitude that it would have jeopardised the functioning and mission of the Organisation in 2022, the Tribunal held that the Secretary General had not envisaged specific scenarios enabling her to assess the impact that the full application of the CCR recommendation would have had on the Organisation's mission and functioning, the arguments she had submitted to the Tribunal being no more than theories.

The Tribunal therefore concluded that the Secretary General had failed to prove to the requisite legal standard that material circumstances existed which could warrant the use of the affordability clause, meaning that the facts she had relied on before the Tribunal were an insufficiently legitimate basis for the contested decision. It accordingly held that the contested decision of the Ministers' Deputies and the Secretary General's individual decisions based on this were unlawful in that they failed to comply with the regulatory provisions governing the use of the affordability clause.

On this basis, the appeals were declared well-founded.

Recruitment procedure

Technical problem during an online test: who is responsible?

The Tribunal's decision in *Conrad (III) v. Secretary General of the Council of Europe* provides a valuable insight into the principles governing external competitions and the question of how to deal with any technical problems that may arise during online tests.

In this particular case, the appellant objected to her results in an external competition after she encountered a technical problem while taking a written test online under the supervision of the company TestReach. During the test, the document she was working on rotated 90 degrees, preventing her from reading it for 10 to 15 minutes.

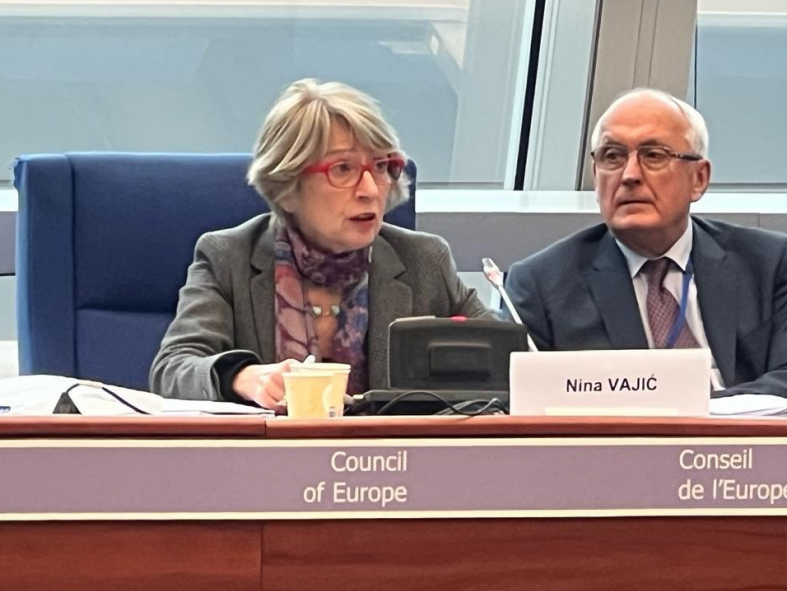
In her appeal, the appellant maintained that the problem, to which the TestReach invigilator had been slow to respond, had created unfair conditions, adversely affecting her performance. She criticised the Administration for failing to take this circumstance into account when determining her results. The Secretary General, for her part, submitted that the screen rotation function was an option available to all candidates, as demonstrated by the fact that the appellant had eventually managed to resolve the issue by herself. The Secretary General further pointed out that if the appellant had wanted more time to make up for the inconvenience suffered, she could have made a specific request to that effect.

In its decision, the Tribunal recognised that the Administration had wide discretion in organising competitive examinations and emphasised the importance of treating all candidates on an equal footing. It held that, although there had been a delay in providing technical support, it was for the candidates themselves to work out how to resolve difficulties of the kind experienced by the appellant.

The Tribunal accordingly concluded that the appellant had not been treated in an unequal manner and that the Administration could not be held responsible for the loss of time experienced by the appellant during the test. Consequently, the appeal was declared unfounded.

This decision highlights the importance of candidates' self-reliance and personal responsibility in resolving technical problems during online examinations. It reaffirms the Administration's broad discretion in organising competitions, while stressing the need to ensure equal treatment for all candidates. It also, however, underscores the expectations placed on candidates to deal with technical contingency and the extent to which the Administration should take steps to mitigate such circumstances.

The Registry publishes all decisions, orders striking appeals off the list and rulings of manifest admissibility on the Administrative Tribunal website 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.



Dialogue with stakeholders

Inspired by what other international administrative tribunals have done, the Tribunal held its first-ever meeting with stakeholders on 7 November 2023.

The meeting was attended by members of the Tribunal as well as Registry staff, staff representatives, representatives of the Administration of the Council of Europe and the Council of Europe Development Bank, the Council of Europe mediators, the Council of Europe and Development Bank Data Protection Commissioners and various lawyers who often appear in cases before the Tribunal.

The judges and other participants thus had an opportunity to make comments and observations on a number of issues relating to proceedings before the Tribunal, such as the exhaustion of internal remedies, the amicable settlement of disputes, personal data protection, applications for a stay of execution, compensation in the context of execution of judgments and new developments in proceedings before the Tribunal in general.





Network of international administrative tribunals

In June 2023, members of the Tribunal took part in a ceremony to mark the 10th anniversary of the NATO Administrative Tribunal in Brussels. The ceremony, presided over by the outgoing President of the NATO Administrative Tribunal, Chris de Cooker, was an opportunity for judges and registry staff from the various international administrative tribunals to continue their ongoing dialogue on matters of mutual interest and to share their experiences. At the public conference held on 29 June, the Chair of the Council of Europe Administrative Tribunal, Nina Vajić, sat on a panel dedicated to the procedures applicable before international administrative tribunals, while Judge Thomas Laker chaired the panel on the judicial review of harassment cases.

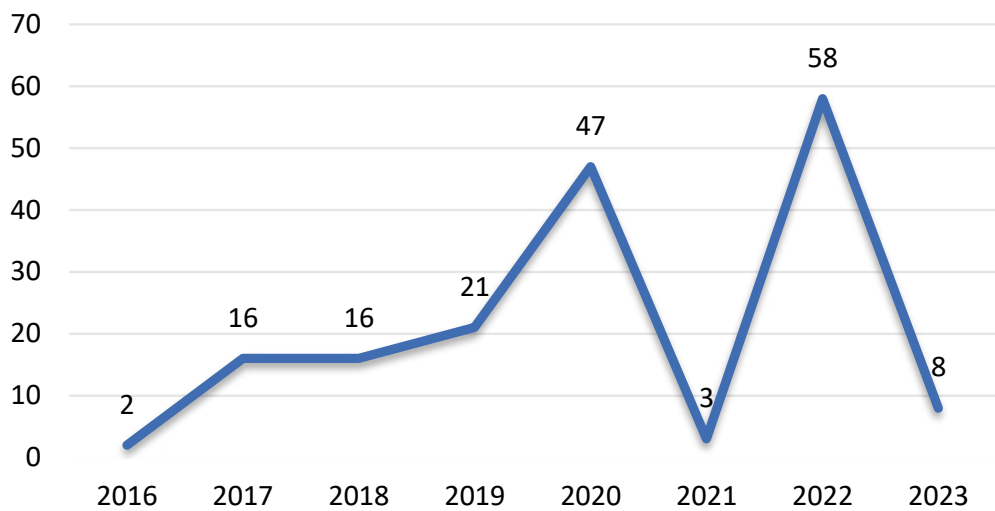
Participation in other events

On 2 May 2023, Judge Laker spoke at a conference on the general principles of law applicable to the international civil service, organised by the Staff Committee and the Permanent Representation of Portugal. The conference was aimed at members of the Permanent Representations to the Council of Europe and staff members. Judge Laker spoke on the subject of international civil service litigation.

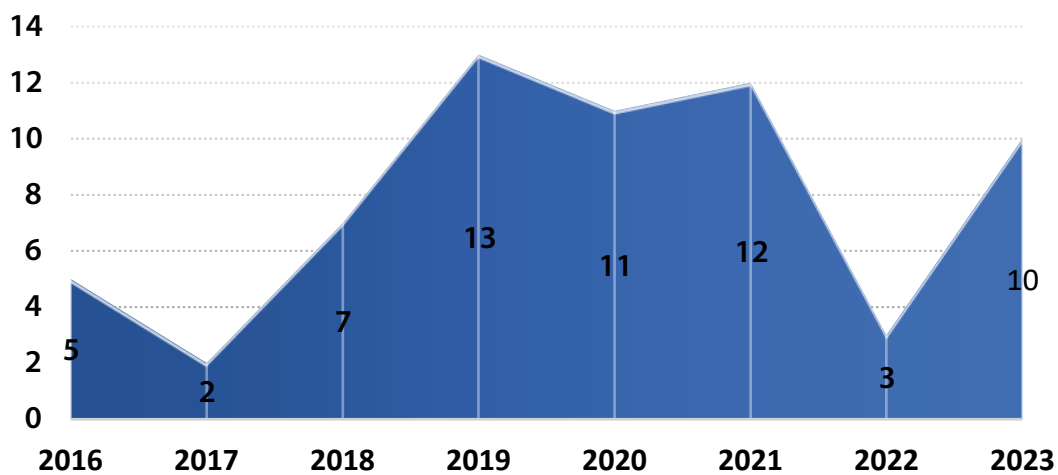
Statistics

Anual statistics, from 2016 onwards, concerning the number of appeals lodged, decisions delivered and orders adopted in respect of stays of execution are provided below to illustrate trends in litigation before the Tribunal.

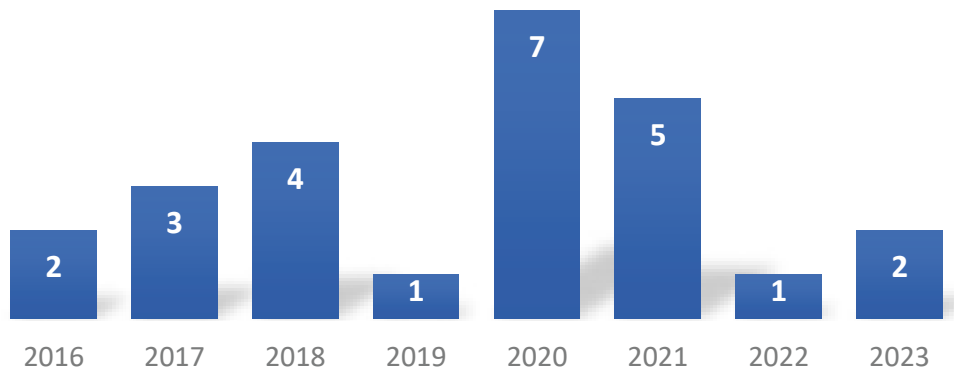
Number of appeals registered



Number of decisions delivered



Orders issued on requests for stays of execution



The Administrative Tribunal of the Council of Europe (ATCE) is an international administrative tribunal 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.

In addition to information about the Tribunal's judicial activities, the report provides for this period a statistical overview of administrative complaints lodged with the Council of Europe and the Council of Europe Development Bank, as well as complaints and conciliation procedures within the international organisations that have recognised the jurisdiction of the Tribunal which are the Central Commission for the Navigation of the Rhine (CCNR), the Hague Conference on Private International Law (HCCH) and the Intergovernmental Organisation for International Carriage by Rail (OTIF).

 www.coe.int/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.