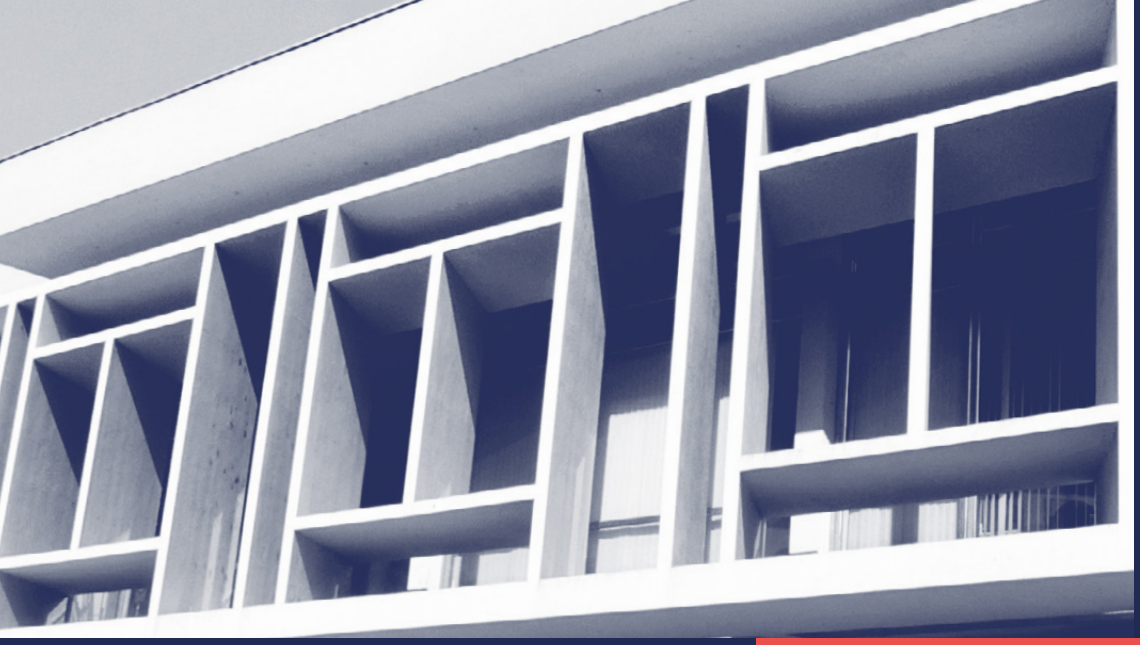

ADMINISTRATIVE TRIBUNAL
OF THE COUNCIL OF EUROPE

Activity Report 2024

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

French Edition:
Rapport d'activité 2024

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FOREWORD

PAUL LEMMENS

Chair of the Administrative Tribunal
as of 1 April 2024

NINA VAJIĆ

Chair of the Administrative Tribunal
until 31 March 2024

The Administrative Tribunal was established to provide legal protection to staff members of the Council of Europe against alleged unlawful or irregular acts or omissions.

In doing so, it upholds the principle that the Organisation, like its member States, must be governed by the rule of law (in French, l'État de droit). Through the independent and impartial exercise of its judicial function, the Tribunal safeguards the principles of legality and legal certainty in the management of the Organisation's human resources, thereby making a tangible contribution to the promotion of the rule of law within the Council of Europe itself.

The Tribunal remains committed to ensuring respect for legal standards and individual rights, while recognising that a fair balance between rights and duties lies at the heart of any civil service framework.

In 2024, the Tribunal rendered seven judgments on the merits, concerning nine appeals, as well as six orders in response to applications for a stay of execution. The cases addressed included three decisions on termination of service, three affecting the career development of staff members, and one decision concerning staff transfers in the context of risk management following the cessation of the Russian Federation's membership of the Organisation. While the overall number of rulings was modest, the Tribunal was able to establish and consolidate several legal principles with broader applicability (see Section VI of the report).

Beyond these figures, the year 2024 confirmed the Tribunal's capacity to ensure continuity in its judicial activity, with an average case processing time of just over six months. In parallel, the Tribunal continued its modernisation efforts, refining its rules and procedures to enhance access to justice (see Section II of the report).

As of 1 April 2024, the composition of the Tribunal was renewed. The appointment of members for the new term is governed by the revised Statute of the Tribunal, which entered into force on 1 January 2023. Pursuant to paragraph 3.5 of the Statute, judges are henceforth appointed for a term of four years, renewable once.

To mark its 60th anniversary, the Tribunal has undertaken the initiative of organising a conference in October 2025, open to all, on the theme of the right to a fair trial before international administrative tribunals. This event will serve as a platform for meaningful dialogue with staff members of the Organisation and other stakeholders, centred on a fundamental right that underpins the rule of law.

We invite you to explore this report, which reflects a year of transition and continued progress in the Tribunal's work.

PAUL LEMMENS **NINA VAJIĆ**

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01

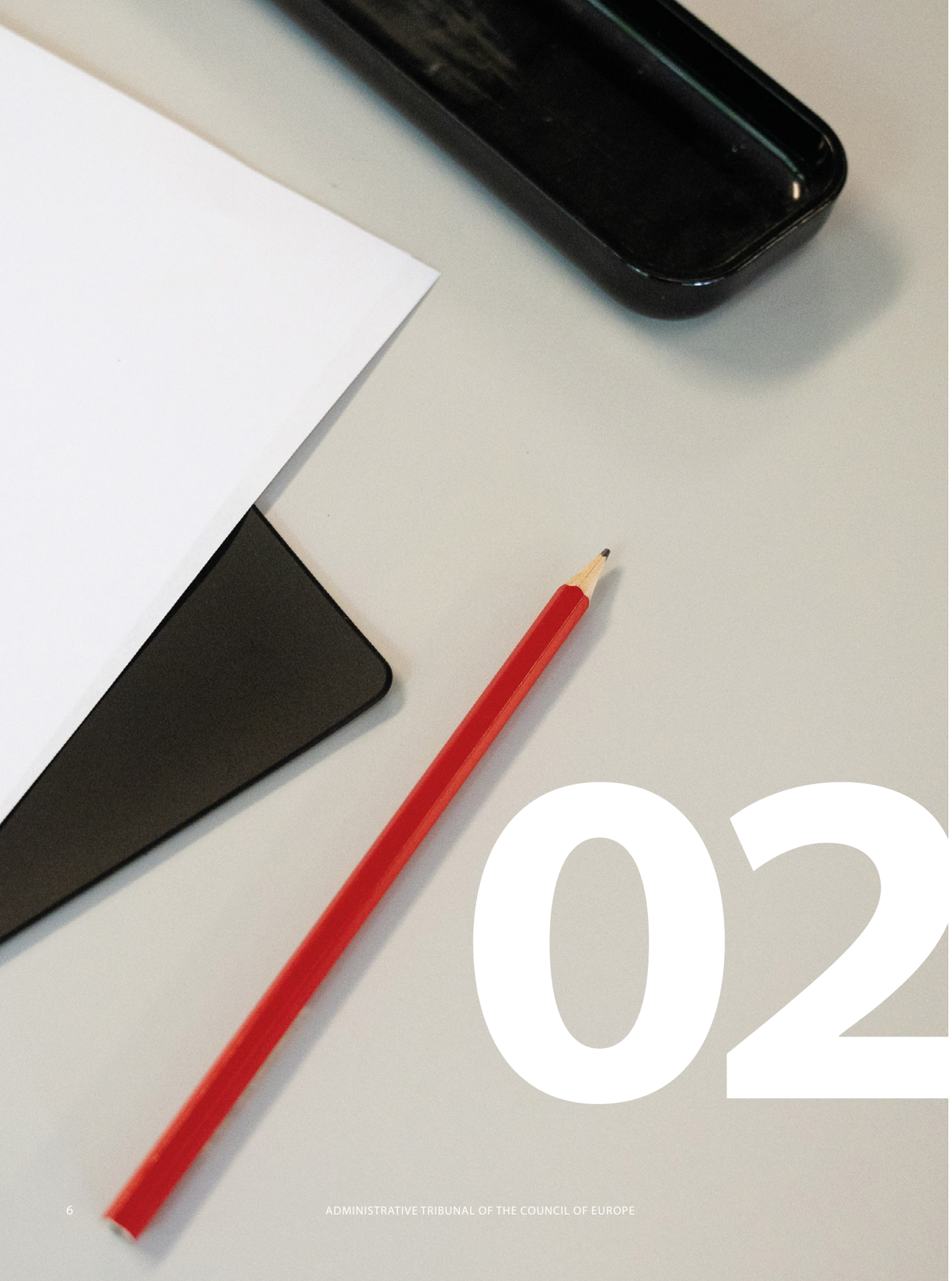
INTRODUCTION

↗ From left to right: Dmytro Tretyakov (Deputy Registrar), Christina Olsen (Registrar), Lenia Samuel (Judge), Paul Lemmens (Chair) and Thomas Laker (Judge).

This is the 13th annual report detailing the activities of the Administrative Tribunal of the Council of Europe (hereinafter "the Tribunal"). It covers the period from 1 January to 31 December 2024.

In addition to information concerning the judicial activities of the Tribunal itself, this report provides a statistical overview, for this period, 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, namely 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")[1]. As a reminder, administrative complaints constitute an internal remedy that staff members must generally exhaust before they can bring a dispute before the Tribunal.

1 — See Section 05 of the report.



02

DISPUTE RESOLUTION PROCEDURES

A detailed description of the dispute resolution procedures applicable to disputes involving the Council of Europe, the Council of Europe Development Bank, and the three intergovernmental organisations affiliated to the Administrative Tribunal, is available in the Tribunal's activity report for the year 2023.

This presentation, based on the provisions introduced by the administrative reform which entered into force on 1 January 2023, outlines in particular: the internal remedies that must be exhausted prior to referral to the Tribunal; the main stages of the judicial procedure before the Tribunal; and the rules governing requests for the suspension of the execution of an administrative decision.

In August 2024, the Tribunal adopted amendments to its Rules of procedure with the aim of enhancing the accessibility, clarity and integrity of the forms used to lodge an appeal or to request rectification, interpretation, revision or execution of a judgment. The principal change involved replacing the previous static PDF forms – designed to be completed by hand – with dynamic, fillable PDF versions that can be completed electronically. This improvement is expected to reduce errors related to handwriting and facilitate the accurate entry of information. The new forms (appeal form and rectification, interpretation, revision and execution request form) are available on the Tribunal's website.

↘ Tribunal's activity report for the year 2023

↘ Amendments to its Rules of procedure

↘ Appeal form

↘ Rectification, interpretation, revision and execution request form

03

COMPOSITION OF THE ADMINISTRATIVE TRIBUNAL

↗ From left to right: Thomas Laker (Judge), Nina Vajić (Chair in office until 31 March 2024), Lenia Samuel (Judge)

Composition of the Tribunal until 31 March 2024

In accordance with Article 2, paragraph 2, of the former Statute of the Tribunal in force until 31 December 2022, the term of office of the judges in office on 1 January 2024 ended on 31 March 2024. Until that date, the Tribunal was composed 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

NEW APPOINTMENTS

In accordance with Article 3.2. of the new Statute of the Tribunal, which entered into force on 1 January 2023, the new Chair and Deputy Chair of the Tribunal were appointed by decision of the European Court of Human Rights dated 11 December 2023. The titular judges and deputy judges were appointed by the Committee of Ministers at the 1488th and 1493rd meetings of the Ministers' Deputies, held on 7 February and 20 March 2024 respectively.

↘ CM/Del/Dec(2024)1493/11.2

↘ CM/Del/Dec(2024)1488/11.2

There shall be a Registrar and a Deputy Registrar of the Tribunal, who shall be staff members of the Council of Europe appointed by the Secretary General after consultation with the Chair of the Tribunal.

ARTICLE 4.3. OF THE STATUTE OF THE TRIBUNAL

During 2024, the Tribunal was supported by a Registrar, Christina Olsen, and a Deputy Registrar, Dmytro Tretyakov. It should be noted that the Registrar is employed on a full-time basis and devotes her full professional capacity to the management of the Tribunal's activities. On the other hand, the functions of Deputy Registrar are carried out by a staff member who, in addition to this role, performs other functions within the Organisation, notably within the Registry of the European Court of Human Rights. The Registry team also included two administrative assistants, Flore Chaboisseau and Jackie Lubelli, and one assistant providing temporary back-up, Iago Martin Menduiña. In 2024, the Registry benefited from the contribution three trainees, Morgane Touzeau, Vincent Mathiot and Célia Dusser, as part of the Council of Europe's official traineeship program, and of a study visitor, Gaïa Spadola.

↘ From left to right: Lenia Samuel (Judge), Paul Lemmens (Chair) and Thomas Laker (Judge)

Composition of the Tribunal as of 1 April 2024

In accordance with Article 3.5 of the Tribunal's new Statute, the term of office of the appointed judges will expire on 31 March 2028.

CHAIR

Paul Lemmens
Belgium

DEPUTY CHAIR

Linos-Alexandre Sicilianos
Greece

JUDGES

Lenia Samuel
Cyprus

Thomas Laker
Germany

DEPUTY JUDGES

Veronika Rita Guba
Hungary

Yves Gounin
France

JUDICIAL ACTIVITIES

04

Internal remedies at the pre–litigation stage

33 Administrative complaints at the Council of Europe

1 Administrative complaint at the Council of Europe Development Bank

Litigation before the Tribunal

4 Sessions

5 Hearings

24 Appeals registered

7 Judgments delivered

9 Cases closed

6 Orders rulings on requests for a stay of execution

THE TRIBUNAL'S SESSIONS

During 2024, the Tribunal met in Strasbourg in ordinary session on four occasions, dedicating a total of eight days to these meetings.

In 2024, the Tribunal held five public hearings, dealing with eighteen appeals. It delivered three judgments, concerning three appeals, without holding a hearing. The Tribunal also held informal videoconference meetings to discuss administrative matters relating to its activities.

JUDGMENTS

In 2024, the Tribunal delivered seven judgments concerning nine appeals.

25 JANUARY 2024

Appeal No. 737/2023

G. T. v. Secretary General of the Council of Europe

SUBJECT OF THE APPEAL

Request for annulment of the decision to terminate a temporary contract on the grounds of manifest unsuitability to perform the related duties following allegations of harassment for acts allegedly committed by the appellant while on duty.

Outcome of the appeal – Annulment of the contested decision.

25 JANUARY 2024

Appeal No. 738/2023

C. A. v. Secretary General of the Council of Europe

SUBJECT OF THE APPEAL

Request for annulment of the decision to appoint a staff member to grade A1 rather than A2 following an internal recruitment procedure, on the grounds that the staff member did not meet the requirement of at least six years of professional experience in duties analogous to those performed by category A staff members.

Outcome of the appeal – Appeal unfounded.

22 MARCH 2024

Appeals Nos. 739/2023, 740/2023 and 741/2023

E. T. and Others v. Secretary General of the Council of Europe

SUBJECT OF THE APPEAL

Request for annulment of the decisions to transfer, on a supernumerary basis, staff members of French and Russian nationality holding A4 jobs to jobs at grades A1/A2/A3, in the context of a risk management exercise following the cessation of the Russian Federation's membership in the Organisation.

Outcome of the appeal – Appeal unfounded.

22 MARCH 2024

Appeal No. 742/2023

I. S. v. Secretary General of the Council of Europe

SUBJECT OF THE APPEAL

Request for annulment of the decision refusing to renew a staff member's fixed-term contract, or to convert it into an open-ended contract, on the grounds of the loss of nationality of a Council of Europe member State, following the cessation of the Russian Federation's membership in the Organisation.

Outcome of the appeal – Appeal unfounded.

JUDGMENTS

22 MARCH 2024

Appeal No. 745/2024

Z. G. v. Secretary General of the Council of Europe

SUBJECT OF THE APPEAL

Request for annulment of the decision to appoint a staff member at grade A1 rather than grade A2, following an internal recruitment procedure, on the grounds that the staff member did not meet the requirement of at least six years of professional experience in duties analogous to those performed by category A staff.

Outcome of the appeal – Appeal unfounded.

14 AUGUST 2024

Appeal No. 744/2024

I. S. V. v. Secretary General of the Council of Europe

SUBJECT OF THE APPEAL

Request for annulment of the decision refusing to promote a staff member to grade A3, on the grounds that the staff member had not met the required condition of six years of service at grade A2.

Outcome of the appeal – Appeal unfounded.

25 NOVEMBER 2024

Appeal No. 743/2024

B. S. v. Governor of the Council of Europe Development Bank

SUBJECT OF THE APPEAL

Request for annulment of the decision to terminate a staff member's employment upon expiry of his final fixed-term contract, in view of his performance and competencies assessed in relation to the Bank's operational needs.

Outcome of the appeal – Appeal unfounded.

The complete list of judgments delivered by the Tribunal since its first decision of 20 August 1968[2] is available on the Tribunal's website.

2 — Decision of 20 August 1967, delivered by the Appeals Board of the Council of Europe in the case of Terrain v. Secretary General of the Council of Europe (appeal No. 1/1967).

↘ Complete list of judgments

↗ From left to right: Christina Olsen (Registrar), Lenia Samuel (Judge), Paul Lemmens (Chair) and Thomas Laker (Judge)

ORDERS RULING ON REQUESTS FOR A STAY OF EXECUTION

In 2024, six orders ruling on requests for a stay of execution were delivered.

ORDER OF 15 JANUARY 2024

Request for a stay of execution No. 3/2023

M.–L. L. v. Secretary General of the Council of Europe

SUBJECT OF THE REQUEST

Suspension of the implementation of the decision not to renew a fixed-term appointment, following a probationary period deemed unsuccessful.

Outcome of the request – Request dismissed.

ORDER OF 27 MARCH 2024

Request for a stay of execution No. 1/2024

M. M. N. v. Secretary General of the Council of Europ

SUBJECT OF THE REQUEST

Suspension of the implementation of the decision to terminate the staff member's appointment, prior to completion of the probationary period, on the grounds of unsatisfactory performance.

Outcome of the request – Request dismissed.

ORDERS RULING ON REQUESTS FOR A STAY OF EXECUTION

ORDER OF 14 MAY 2024

Request for a stay of execution No. 2/2024

B. S. v. Governor of the Council of Europe Development Bank

SUBJECT OF THE REQUEST

Suspension of the implementation of the decision not to renew a fixed-term contract.

Outcome of the request – Request dismissed.

ORDER OF 22 MAY 2024

Request for a stay of execution No. 3/2024

L. D. (I) v. Secretary General of the Council of Europe

SUBJECT OF THE REQUEST

Suspension of the implementation of the decision not to renew a fixed-term appointment, following a probationary period deemed unsuccessful.

Outcome of the request – Request dismissed.

ORDER OF 10 SEPTEMBER 2024

Request for a stay of execution No. 4/2024

L. D. (II) v. Secretary General of the Council of Europe

SUBJECT OF THE REQUEST

Suspension of the implementation of the decision to terminate the staff member's appointment, as well as of the entry into service of the staff member designated as her replacement in the Registry of the European Court of Human Rights.

Outcome of the request – Request dismissed.

ORDER OF 30 DECEMBER 2024

Request for a stay of execution No. 5/2024

C. V. v. Secretary General of the Council of Europe

SUBJECT OF THE REQUEST

Suspension of the implementation of the decision not to renew a fixed-term appointment, following a probationary period deemed unsuccessful.

Outcome of the request – Request dismissed.

A table listing all orders issued since 2009 in connection with requests for a stay of execution is available on the Tribunal's website.

↘ Complete list of orders

05 ADMINISTRATIVE COMPLAINTS

To provide as comprehensive a framework as possible for litigation, the Tribunal's activity reports also include data on administrative complaints lodged with the Council of Europe, the Council of Europe Development Bank and the affiliated organisations.

These data are supplied by the Legal Advice and Litigation Department of the Directorate of Legal Advice and Public International Law - in the case of the Council of Europe -, the Directorate of Legal Affairs - in the case of the Council of Europe Development Bank -, and the respective legal departments of the affiliated organisations.

WITHIN THE COUNCIL OF EUROPE

The Legal Advice and Litigation Department of the Directorate of Legal Advice and Public International Law is responsible for responding, on behalf of the Secretary General, to administrative complaints lodged under Article 14.4 of the Staff Regulations.

In 2024, 33 complaints were submitted. One complaint was partially upheld, while the remaining 32 were rejected in their entirety. The claims raised in these complaints were as follows:

- Request to annul the decision not to shortlist a candidate in an external recruitment procedure (21 February 2024);
- Request to annul the decision to terminate the appointment of a staff member during their probationary period (12 March 2024);
- Seventeen requests from pensioners seeking reimbursement of social security contributions requested by national tax authorities on the pension paid by the Council of Europe (18 March - 23 April 2024);
- Two requests to annul decisions not to invite candidates to the next stage of an external recruitment procedure because they failed to pass the written tests (9 April and 1 July 2024);
- Request to annul the decision not to extend the period of validity of the reserve list established following an external recruitment procedure (6 May 2024);
- Two requests to annul decisions to terminate the appointment of staff members at the end of their probationary periods (6 May 2024 and 20 December 2024);
- Request to annul a temporary assignment decision (16 May 2024);
- Request to annul the decision not to place a candidate on the pre-selection list drawn up following written examinations in an external recruitment procedure (19 June 2024);
- Request to annul the decision not to recruit a candidate placed on a pre-selection list in an external recruitment procedure following interviews (19 June 2024);
- Request to annul the assessment report concluding that the staff member's performance was unsatisfactory (2 July 2024);
- Request to annul the decision to place on unpaid leave a staff member who became a candidate for public office of a political character (17 July 2024);
- Request to annul the decision not to pursue a harassment complaint and the decision not to disclose the investigation report (19 July 2024);
- Two requests to annul decisions not to select a candidate following an internal competition (16 August and 17 December 2024);
- Request to annul the decision not to pursue a harassment complaint and the decision not to disclose the unredacted version of the investigation report (20 September 2024).

WITHIN THE COUNCIL OF EUROPE DEVELOPMENT BANK

In 2024, one administrative complaint was lodged: the complainant sought the payment of the settling-in allowance in the context of his long-term mission (23 December 2024).

DATA PROTECTION

In 2024, no complaints were lodged with the Bank's Data Protection Commissioner.

WITHIN THE AFFILIATED ORGANISATIONS

In 2024, no administrative complaints were lodged with the affiliated organisations (CCNR, HCCH and OTIF).

CASE-LAW OVERVIEW[3]

06

ADMISSIBILITY OF THE APPEAL

An administrative act may only constitute a challengeable decision triggering the time limits if it produces direct legal effects on the individual and current situation of the staff member concerned.

The case of I. S. V. v. Secretary General of the Council of Europe (judgment of 14 August 2024 concerning appeal No. 744/2024) led the Tribunal to clarify the conditions under which an administrative act may constitute an administrative decision capable of triggering the relevant time limits for contesting it.

↘ Judgment of 14 August 2024

In this case, the appellant had challenged the decision not to promote her to grade A3, on the grounds that her years of service prior to a contract interruption were not taken into account in the calculation of her seniority[4]. A series of exchanges between the appellant and the Directorate of human resources (DHR) had taken place on this matter in 2022. In July 2023, an official request for promotion was submitted by the Head of the Main Administrative Entity (MAE) to which the appellant was assigned. The Administration responded on 14 September 2023, rejecting this request. It was this latter decision that the appellant challenged through her appeal.

In examining the admissibility of the appeal, the Tribunal considered whether the email exchanges between the appellant and the DHR in September and October 2022 could constitute a final administrative decision, as claimed by the Administration. In those emails, the appellant had been informed that her employment with the Council of Europe from November 2013 to June 2015 could not be taken into account in determining her eligibility for promotion to grade A3 and that, as a result, she would not be eligible for promotion to grade A3 before 1 January 2025. On this basis, the Administration contended that the time limit for lodging a complaint had begun to run in October 2022, rendering the appeal submitted in January 2024 time-barred.

3 — This overview of cases related to the case law of 2024 has been prepared by the Registry and is not binding on the Tribunal.

4 — An analysis of the Tribunal's assessment of the merits of this case is provided below, page 32, "Administrative practice".

The Tribunal rejected this interpretation, highlighting several decisive factors. First, it noted that the 2022 emails had been sent by an administrative assistant of the DHR, who did not hold formal administrative authority to issue a decision on a promotion request, a competence that lies exclusively with the Director of human resources (§ 47 of the judgment). It further noted that, at the time of the 2022 exchanges, no formal promotion procedure had been initiated, since the appellant was not entitled to initiate such a process herself. Under the applicable rules, a promotion can only be proposed by the Head of the MAE to which the staff member is assigned (§ 47 of the judgment).

The Tribunal also observed that the 2022 emails had not produced any immediate legal effect on the appellant's situation: they merely indicated that a promotion might be possible as of 2025, subject to the fulfilment of certain conditions. The communication was therefore considered an indicative advice, expressing a future and conditional hypothesis, without any decisional value:

"(...) the e–mail in question did not carry direct legal consequences on the appellant's existing position and was not of such a nature as to affect her adversely, since it addressed a future hypothetical situation in which, as of 1 January 2025, the appellant could possibly be promoted. In those circumstances, the appellant could not be expected to complain in abstracto about the practice followed by the Administration in the application of the relevant rules"

§ 48 OF THE JUDGMENT

The Tribunal concluded that the only administrative decision that could be subject to an appeal was that of 14 September 2023. That decision, taken in the context of a regular procedure by a competent authority, had direct and individual legal effects and therefore constituted a prejudicial act (§ 49 of the judgment).

Accordingly, the Tribunal rejected the objection of inadmissibility and declared the appeal admissible in its entirety. Nevertheless, the appeal was dismissed on the merits[5].

This case illustrates the Tribunal's protective approach to staff rights. The Tribunal held that, in such circumstances, the time limit for lodging an appeal only begins to run once the Administration acts within the framework of a formal procedure (in this case, the 14 September 2023 response to the Head of MAE's proposal for promotion), and issues a decision which concretely affects the legal situation of the staff member concerned.

5 — IBID

TERMINATION OF A TEMPORARY CONTRACT

Notice of termination of a temporary contract for manifest unsuitability cannot serve as a substitute for a written warning.

The judgment of 25 January 2024 in the case of G. T. v. Secretary General of the Council of Europe (appeal No. 737/2023) provides important clarifications regarding the requirements related to the right to be informed and the right to be heard in cases of termination of a temporary contract on the grounds of manifest unsuitability.

In this case, the Tribunal was called upon to interpret the relevant provisions of the Secretary General's Rule no. 1234 of 15 December 2005, amended on 30 December 2022, laying down the conditions of recruitment and employment of locally recruited staff in Council of Europe duty stations outside France. In particular, Article 8 c) allows for the termination of a temporary contract for manifest unsuitability or unsatisfactory work subject to "one month's notice and after a written warning", while Article 9 provides that the staff member concerned must first be heard by their hierarchical superior.

In the case at hand, following the reporting of alleged harassment, although the victim declined to lodge a formal complaint, the appellant was summoned to a meeting with his hierarchical superior to answer questions about the alleged conduct. One month later, he was notified of the termination of his contract.

The Organisation took the position that the notice of early termination of the contract also constituted the written warning required under the rules.

The appellant, by contrast, maintained that in the absence of such a prior warning, he had been deprived of the opportunity to effectively defend his interests.

In resolving the dispute, the Tribunal recalled that a written warning serves a specific purpose: to inform the staff member of the consequences they face if they fail to improve in areas of concern, particularly regarding behavior or performance, and to put them on notice that measures, such as dismissal, may result (§ 36 of the judgment). Drawing on its own case law and that of international administrative tribunals, the Tribunal specified that

"(…) the written warning should therefore enable staff members in situations of manifest unsuitability or unsatisfactory work to understand the criticisms levelled against them and attempt to remedy the shortcomings, in the knowledge that they risk losing their jobs if they fail"

§ 36 OF THE JUDGMENT

With regard to the right to be heard, the Tribunal emphasised that this right not only entitles the staff member to put forward their arguments, but also requires the Administration to carry out a complete assessment of the case, taking the staff member's observations into account (§ 37 of the judgment).

In the absence of prior notification of the intention to terminate the contract, the Tribunal found that the Organisation had failed to comply with the requirement of issuing a written warning by merely serving a notice of termination. Furthermore, the Tribunal held that the appellant's right to be heard had been breached, since he had not been informed during the meeting of the scope of the allegations against him or of the risk they posed to the continuation of his employment.

Accordingly, the Tribunal annulled the contested decision on the grounds of a procedural defect.

↘ Judgment of 25 January 2024

CONVERSION OF A FIXED-TERM CONTRACT INTO AN OPEN-ENDED CONTRACT

The refusal to convert the fixed-term contract of a staff member who no longer holds the nationality of a Member State into an open-ended contract constitutes the legitimate application of an objective criterion for recruitment.

In the case of I. S. v. Secretary General of the Council of Europe (judgment of 22 March 2024, appeal No. 742/2023), the Tribunal was called upon to rule on the lawfulness of the Organisation's decision not to renew, nor to convert into an open-ended contract the fixed-term contract of a staff member who had lost the nationality of a Member State following the cessation of the Russian Federation's membership in the Council of Europe in March 2022. In this case, the appellant, a Russian national, had been employed by the Organisation since 2014 under successive fixed-term contracts. The appellant's most recent contract covered the period from 1 January 2022 to 31 August 2023.

To settle this dispute, the Tribunal reaffirmed the position it had adopted in an earlier judgment (Orekhova and others v. Secretary General of the Council of Europe, judgment of 4 April 2023, appeals Nos. 722/2022, 731/2022, 732/2022 and 733/2022). It recalled that the nationality requirement must be fulfilled not only at the time of initial appointment, but also on the occasion of any renewal or conversion of a fixed-term contract into an open-ended contract. Since the appellant no longer met this condition, it was legally impossible for the Organisation to offer him/her a new contract (§ 31 of the judgment). The Tribunal also reiterated the position it had expressed in Orekhova and Others, according to which the application of this criterion could not be considered discriminatory, as the appellant was not in a comparable situation either to Russian nationals holding indefinite contracts, or to staff members of other nationalities under fixed-term contracts (§ 43 of the judgment).

Finally, the Tribunal rejected the appellant's claim that the Organisation had failed in its duty of care in view of the alleged risk of retaliation by the Russian authorities. It noted that the appellant had not indicated any concrete protective measures that he/she expected from the Organisation, other than the conclusion of a new employment contract.

The Tribunal thus affirmed that, irrespective of the legal impossibility of offering the appellant a new employment contract, the Organisation's duty of care towards its staff members does not entail an obligation to provide continued employment (§ 46 of the judgment). The Tribunal, therefore, dismissed the appeal as unfounded.

↘ Judgment of 22 March 2024

↘ Judgment of 4 April 2024

SUPERNUMERARY TRANSFER

The supernumerary transfer of staff members, based on their nationality and carried out in the context of a risk management exercise, falls within the Administration's discretionary power. Such discretion, however, remains subject to procedural safeguards and compliance with the principle of equal treatment.

The judgment of 22 March 2024 in the case of E. T. and others v. Secretary General of the Council of Europe (appeals nos. 739/2023, 740/2023 and 741/2023) concerned the supernumerary transfer of three permanent A4 grade staff members of the Council of Europe, as part of a risk management process implemented following the cessation of the Russian Federation's membership in the Organisation. The appellants, who held dual Russian and French nationality, had been transferred to posts at a lower grade (A3), while retaining their grade and remuneration.

↘ Judgment of 22 March 2024

Arguing that these measures had been adopted solely on the basis of their Russian nationality, and that they infringed the principles of non-discrimination, equal treatment and good administration, the appellants lodged appeals before the Administrative Tribunal.

In its assessment, the Tribunal confirmed that Article 590.1 of the Secretary General's Rule of 30 December 2022 on career development, concerning supernumerary transfers, constitutes a valid legal basis for the impugned decisions. It held that this provision, which derogates from the requirement of grade equivalence in transfers without competition, must not be interpreted restrictively and is not limited to situations in which a post has been abolished or a staff member returns from unpaid leave. It applies in cases where no vacant post exists at the staff member's grade (§§ 65 and 66 of the judgment). As such, the Tribunal found that the Secretary General had acted within the applicable legal framework and had complied with the texts in force, in particular by consulting the persons concerned in advance, while preserving their grade and level of remuneration.

As regards the alleged discrimination on grounds of nationality, the Tribunal acknowledged that the appellants' Russian nationality had played a decisive role in the disputed decisions. However, it considered that this difference in treatment pursued a legitimate aim, namely to safeguard the Organisation's proper functioning and reputation, in an exceptional institutional context. The Tribunal acknowledged that the concerns raised by several Member States regarding the presence of Russian staff members in sensitive posts justified the Administration's decision to prioritise this category of staff in the initial implementation of risk mitigation measures. Since the difference in treatment of the appellants was proportionate to the aim pursued, the Tribunal concluded that the contested measures did not amount to a breach of the principle of equal treatment (§§ 70 to 78 of the judgment).

Regarding the conduct of the risk assessment, the Tribunal noted that it fell fully within the Secretary General's discretionary authority to define the risks to be addressed, determine the criteria for assessing their severity, and select appropriate mitigation measures. At the same time, it pointed out that this power was not exempt from control, insofar as the Tribunal could verify that the decisions taken were not arbitrary and that they respected the guarantees of international civil service law. In the present case, the classification of the appellants' posts as "sensitive" and the associated risk evaluation were found to be based on relevant and objective criteria. While the Tribunal acknowledged that the Administration could have better communicated the precise modalities of the exercise, it found no legal basis to invalidate the decisions on that ground (§§ 79 to 83 of the judgment).

The Tribunal also dismissed the appellants' allegations concerning a failure to state reasons and an alleged breach of the Organisation's duty of care. It noted that one appellant had already been reassigned to a position corresponding to their grade after the appeal had been lodged, and that the Administration remained under an obligation to reassign the remaining two as soon as a suitable vacancy arises. The Tribunal therefore dismissed the appeals as unfounded.

This judgment illustrates the need to strike a balance between the management imperatives of an international organisation in times of crisis and the protection of staff members' rights. It confirms that, even when decisions are taken in a tense geopolitical context, the principles of legality, procedural fairness, proportionality, and equal treatment remain essential checks on the exercise of administrative discretionary power.

ADMINISTRATIVE PRACTICE

The Administration did not exceed the limits of its discretionary power in developing and applying the administrative practice according to which, when a staff member is appointed to a post in another category, only the years of experience acquired as a permanent staff member at grades B5 and B6 are taken into account as relevant experience in the performance of duties similar to those carried out by category A staff.

↘ Judgment of 25 January 2024

↘ Judgment of 22 March 2024

In the cases of C. A. v. Secretary General of the Council of Europe (judgment of 25 January 2024, appeal No. 738/2023) and Z. G. v. Secretary General of the Council of Europe (judgment of 22 March 2024, appeal No. 745/2024), the appellants – permanent category B staff – had successfully passed internal competitions for category A posts (grade A1/A2/A3). They were appointed at grade A1, but claimed entitlement to appointment at grade A2, based on their professional experience acquired either within the Council of Europe or outside the Organisation.

In both cases, the contested decisions were based on paragraph 340.4 of the Secretary General's Staff Rule of 30 December 2022 on classification of jobs, read in conjunction with paragraph 440.2 of the Secretary General's Staff Rule on entry into service, applied mutatis mutandis, and on an established administrative practice. According to that practice, for the purposes of appointment at grade A2, only the years of experience as a permanent staff member at grades B5 and B6 are counted towards the six years of professional experience required in duties similar to those performed by category A staff. In light of this practice, the appellants had not met the requisite number of qualifying years and were therefore appointed at grade A1.

The Administrative Tribunal upheld, in both judgments, the legality of this administrative practice, considering it consistent with the applicable texts and the general principles of international civil service. It stated:

"[By interpreting] the relevant provisions, i.e. paragraph 340.4 of the Staff Rule on classification of jobs and paragraph 440.2 of the Staff Rule on entry into service applicable mutatis mutandis (…), in such a way that only duties performed by staff at grades B5 and B6 are considered similar to duties performed in category A, for the purposes of calculating the six years required for appointment to grade A2. (…) the Administration merely put a particular construction on those provisions within the scope of its discretionary power"

§ 32 OF THE JUDGMENT OF 25 JANUARY 2024; SEE IN THE SAME SENSE § 31 OF THE JUDGMENT OF 22 MARCH 2024

The Tribunal held that paragraph 440.2 of the Staff Rule on entry into service does not preclude the Administration from specifying, through practice, the duties it considers similar to those of category A staff members. It further considered that the grade held by a staff member is an objective and reasonable criterion for assessing the level of responsibility attached to their duties, especially in light of the Administration's obligation to assign duties consistent with the grade held (see §§ 34 to 37 of the judgment of 25 January 2024 and § 32 of the judgment of 22 March 2024). The Tribunal also dismissed the claim that the practice was discriminatory vis-à-vis internal and external candidates participating in a competition for an A-grade job, affirming that the two groups are not in comparable situations and may therefore be subject to distinct systems for recognising relevant experience. It recalled that the professional experience of internal staff members prior to joining the Organisation or while under temporary contract status had already been taken into account upon recruitment (§§ 38 to 40 of the judgment of 25 January 2024 and § 33 of the judgment of 22 March 2024).

These two judgments confirm that the grade held by a staff member is a valid and relevant benchmark for assessing professional experience when moving to a job in another category. The Organisation's practice of of limiting such recognition to grades B5 and B6, for the purposes of appointment to grade A2 in the event of a move to a category A job, is therefore legally well-founded, provided that it is applied consistently and transparently.

ADMINISTRATIVE PRACTICE

Administrative practice cannot introduce a condition not provided for in the text – uninterrupted service is not an implicit requirement for promotion to grade A3.

↘ Judgment of
14 August 2024

In I. S. V. v. Secretary General of the Council of Europe (judgment of 14 August 2024 concerning appeal No. 744/2024), the appellant, a staff member at grade A2, challenged the decision refusing her promotion to grade A3. Although the appellant had completed six years of service in this grade as required by the applicable rule, the Administration had not considered this period sufficient, on the grounds that it had not been uninterrupted – a condition which the latter considered to be implicitly required. The appellant had first been employed on a fixed-term contract from 2013 to 2015 and was reappointed in 2017, following a contractual interruption due to budgetary constraints.

The central legal issue in the dispute was the interpretation of paragraph 540.1 of the Secretary General's Staff Rule of 30 December 2022 on career development, which states that staff members "may be promoted to grade A3 after six years of service at grade A2, upon a proposal to the Director of Human Resources by the Head of their Major Administrative Entity and subject to satisfactory performance and conduct during the three consecutive years immediately preceding the proposal".

The Tribunal held that the Administration's interpretation - excluding periods of service prior to a break in employment - could not lawfully serve as the basis for a decision adverse to a staff member. It found that the rule did not stipulate any requirement of continuity with respect to the six-year period of service, whereas it explicitly required that the condition of satisfactory performance and conduct be assessed over three consecutive years.

The Tribunal inferred that this divergence in wording reflected a deliberate legislative choice, which administrative practice could not override.

"The lack of any specification in the applicable rule as to the continuous nature of the six year period of service appears to be a deliberate choice of the legislator. (…) The administrative practice in question, rather than clarifying the law to which it relates, deviates from it by introducing an additional condition not provided for in the applicable provisions"

§§ 57 AND 59 OF THE JUDGMENT

The Tribunal accordingly concluded that the Administration had erred in its interpretation of the rule and set aside the first ground for the contested decision. However, it upheld the second ground and ultimately dismissed the appeal, as the appellant had not satisfied the condition of three consecutive years of satisfactory performance prior to the promotion proposal.

This judgment brings a significant clarification: in the absence of explicit wording in the applicable rule, the requirement of "six years of service" at grade A2, for the purposes of promotion to grade A3, does not imply uninterrupted service.

DUTY TO STATE REASONS FOR AN ADMINISTRATIVE ACT

In certain circumstances, a decision may be sufficiently reasoned if it contains the beginnings of a statement of reasons at the time it is issued and is subsequently supplemented with adequate explanations at the stage of the decision dismissing the administrative complaint.

In its judgment of 25 November 2024 delivered in the case of B. S. v. Governor of the Council of Europe Development Bank (appeal No. 743/2024), the Tribunal clarified the scope of the obligation incumbent upon the Administration to provide reasons for administrative acts that are likely to adversely affect staff members.

↘ Judgment of 25 November 2024

The case concerned a challenge to a decision terminating the appellant's employment at the end of his fixed-term contract. The appellant argued, inter alia, that the decision lacked sufficient reasoning. The decision in question, issued by the director of Human resources, merely stated that, in view of the appellant's level of performance and skills in relation to the Bank's needs, no request had been made to convert his fixed-term contract into an open-ended contract, The needs in question were not identified, nor were the reasons for the mismatch between the appellant's profile and those needs. After recalling that in principle,

"the reasons for an act must (…) be communicated to the staff member at the same time as the decision adversely affecting them",

the Tribunal emphasised that this principle may be qualified, in accordance with the applicable case law, by the possibility of supplementing a summary statement of reasons in the initial decision with a more detailed reasoning at the stage of the rejection of the administrative complaint. In this context, it is for the Tribunal to assess whether, on the one hand, the elements contained in the initial decision suffice to constitute an initial statement of reasons, and whether, on the other hand, the explanatory elements subsequently provided in the decision rejecting the administrative complaint have enabled the appellant to exercise their rights, in particular the right of appeal to the Tribunal, and to defend their interests in full knowledge of the facts (§ 56 of the judgment).

Applying these principles to the present case, the Tribunal found that the appellant had been able, on the basis of the information initially provided, to lodge an administrative complaint contesting the alleged inadequacy of his profile in terms of competencies and performance in relation to the Bank's needs. Although those needs had not been specified in the initial decision, they were subsequently described in sufficient detail in the decision dismissing the administrative complaint, taken by the Governor of the Bank. This decision indicated that, in the longer term, the Bank was seeking a more autonomous profile, with demonstrated management and reporting skills. As regards the appellant's competencies, the rejection decision further stated that the appellants performance, although satisfactory, had not reached the higher level expected for the award of an open-ended contract (§ 57 of the judgment).

Following this examination, the Tribunal concluded that "the disputed decision, as complemented by the decision to dismiss the appellant's administrative complaint", adequately, albeit succinctly, set out the reasons that had led to the termination of the appellant's employment. It had thus provided sufficient information to enable the appellant to assert his rights, and to allow the Tribunal to exercise its judicial review (§ 58 of the judgment).

The Tribunal accordingly rejected the appellant's plea alleging a failure to state reasons for the contested decision, finding it to be unfounded. Having also rejected the other pleas raised, it declared the appeal as a whole to be without merit.

This judgment is significant insofar as it clarifies that, where the administrative complaint against an initial decision has been dismissed, the object of the appeal before the Tribunal is the initial decision as complemented by the decision dismissing the administrative complaint.

PARTICULAR URGENCY IN A REQUEST FOR A STAY OF EXECUTION

For a stay of execution to be granted, the condition of particular urgency must be met in addition to that of serious and irreparable damage. To satisfy this condition, the applicant must demonstrate that they acted diligently, and that the urgency invoked does not stem from their own conduct.

↘ Order of 10 September 2024

↘ Order of 14 May 2024

↘ Order of 22 May 2024

"the onus is on the appellant to demonstrate the particular urgency of the case and the timeliness of their actions. The requirement of particular urgency will not be satisfied if the urgency was caused by the appellant"

§ 23 OF THE ORDER

The orders delivered in 2024 on requests for a stay of execution contributed to clarify the scope of the new regulations introduced by the 2023 administrative reform.

The Staff Regulations, in force since 1 January 2023, introduced a new requirement for granting a stay of execution, namely the existence of particular urgency. This condition comes in addition to that of the serious and irreparable damage likely to result from the immediate implementation of the contested decision (see Article 14.8 of the Staff Regulations of the Council of Europe and the Development Bank). The cumulative nature of these two conditions was expressly confirmed in the order of 10 September 2024 in the case of L. D. (II) v. Secretary General of the Council of Europe (§ 28 of the order).

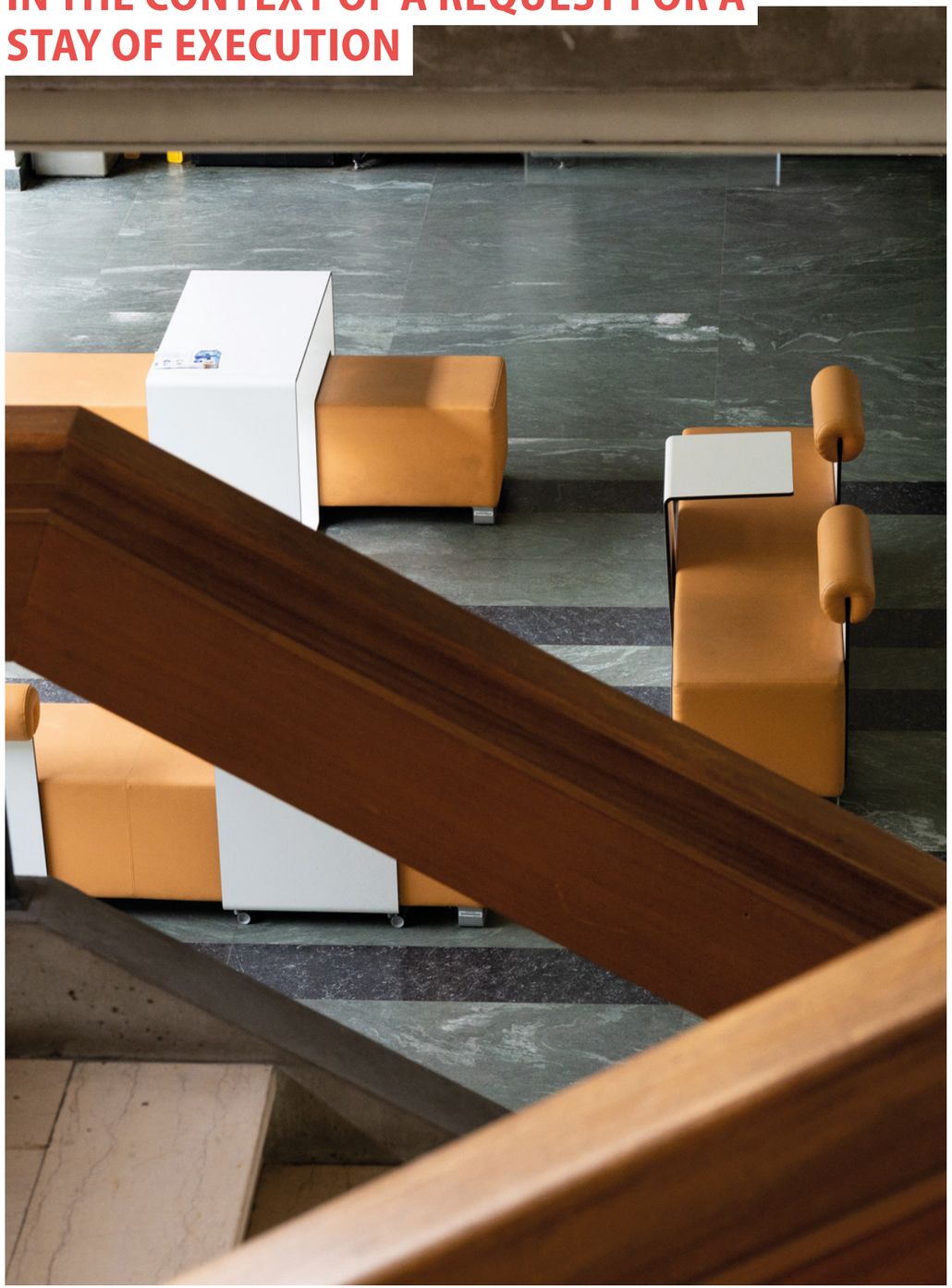
With regard to the condition of particular urgency, the order of 14 May 2024 in the case of B. S. v. Governor of the Council of Europe Development Bank clarified that, although the applicable texts do not set a specific time limit for lodging a request for a stay of execution, such a request must nevertheless be submitted "at the first available opportunity, taking the particular circumstances of [the] case into account". Recalling the relevant case law, the Chair of the Tribunal stressed that:

In the case in question, the staff member had submitted a request for a stay of execution on 29 April 2024, the day before the expiry of his fixed-term contract, although he had been informed of the non-renewal decision as early as 8 September 2023. In the intervening period, he had lodged an administrative complaint on 9 October 2023, followed by an appeal to the Tribunal on 8 January 2024. The staff member concerned argued that it was only upon receiving notice of the appeal hearing on 24 April 2024, that he became certain that no ruling on the merits would be delivered before the expiry of his contract.

The Chair of the Tribunal rejected this argument. Considering that the urgency invoked was attributable to the staff member's own behavior, he concluded that the condition of particular urgency had not been met.

In the order of 22 May 2024 case of L. D. (I) v. Secretary General of the Council of Europe, the Chair of the Tribunal held that the condition of urgency was met in a situation where the staff member concerned had submitted her request for a stay of execution one week after being notified of the end of her employment, even though her contract had already expired when the request was submitted. In that case, the decision had taken effect on the same day it was notified, which led the Chair to consider that the staff member had acted with due diligence (§ 35 of the order).

SERIOUS AND IRREPARABLE DAMAGE IN THE CONTEXT OF A REQUEST FOR A STAY OF EXECUTION



The termination of a staff member's employment before the completion of an investigation into their formal harassment complaint does not, in itself, establish the existence of serious and irreparable damage that would justify granting a stay of execution.

↘ C. V. v. Secretary General of the Council of Europe

In the order issued on 30 December 2024 in the case of C. V. v. Secretary General of the Council of Europe (request for stay of execution No. 5/2024), the Chair of the Tribunal examined, for the first time, the relationship between a decision to terminate employment and the ongoing investigation into a formal harassment complaint lodged by the same staff member.

In the case at hand, the applicant's contract was due to expire at the end of a probationary period deemed unsuccessful. Prior to this, the applicant had lodged a formal complaint of harassment concerning her direct supervisor. As the corresponding investigation had not yet been concluded, the applicant sought suspension of the decision terminating her appointment, claiming that its immediate implementation would cause both serious prejudice to her professional and financial situation, and irreparable harm to her rights under the ongoing harassment procedure.

The Chair rejected the applicant's arguments relating to financial and professional harm, in line with the Tribunal's established case law, considering that such damage – if any - could be remedied by financial compensation and therefore did not meet the threshold of serious and irreparable damage (§ 34 of the order).

As to the alleged risk of damage linked to the harassment procedure, the Chair found that the immediate execution of the termination decision did not deprive the applicant of her right to have her harassment complaint effectively investigated. In this respect, he stressed that:

"[t]his right requires the Secretary General to take all necessary measures arising from the conclusions of the investigation, including, where appropriate, redress, should it be established that the complainant has been the victim of harassment (see, in particular, paragraph 7.4.7 of the Policy on Respect and Dignity at the Council of Europe and paragraph 82 of the Rule on investigations)"

§ 36 OF THE ORDER

The Chair further noted that the applicant retained the ability to meaningfully contribute to the ongoing investigation, and that her departure from the Organisation did not hinder the exercise of this right (§ 37 of the order).

After recalling that the applicant had access to effective remedies in the event of an infringement of her rights, including before the Tribunal, the Chair concluded that she had not demonstrated the existence of harm of such gravity, that a subsequent annulment of the decision would be incapable of providing redress. The request for a stay of execution was therefore rejected.

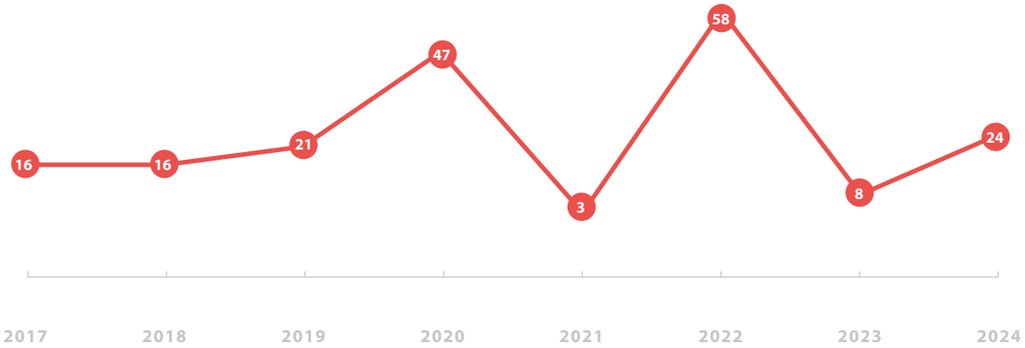
STATISTICS

Annual statistics on the number of appeals lodged and examined, judgments delivered, and orders adopted in connection with requests for stays of execution are provided below to illustrate litigation trends before the Tribunal.

07

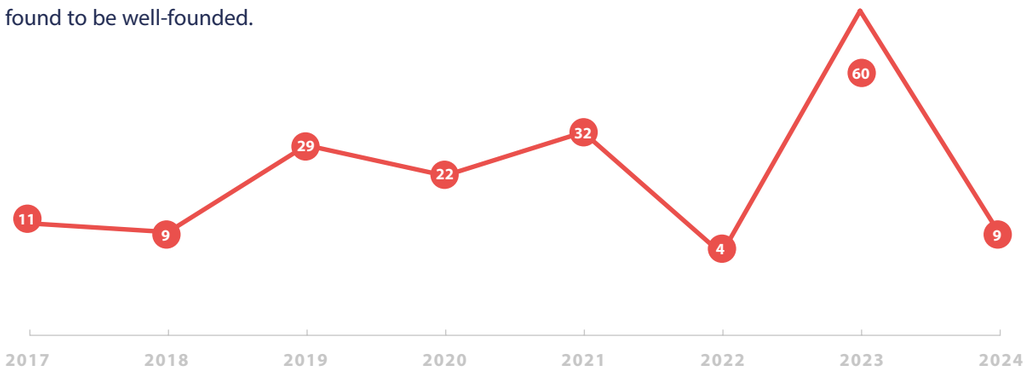
NUMBER OF APPEALS LODGED

In 2024, the Administrative Tribunal registered 24 appeals concerning the Council of Europe. No appeals were lodged in the same year concerning the Council of Europe Development Bank or the organisations affiliated to the Administrative Tribunal.



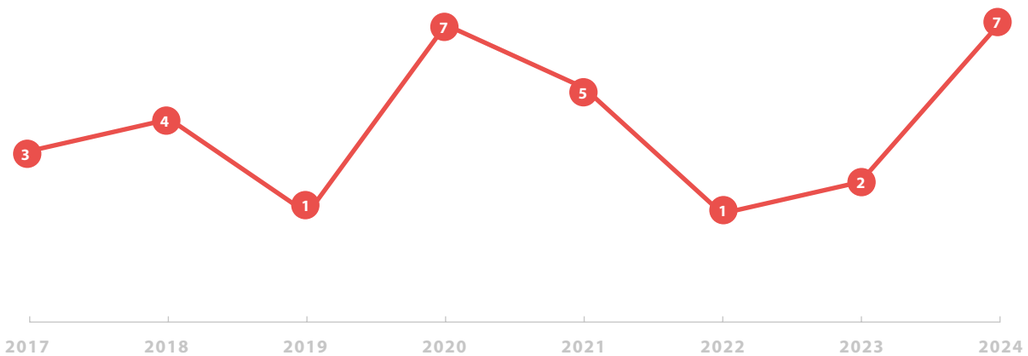
NUMBER OF CASES CLOSED

In 2024, the Tribunal completed its examination of nine appeals, seven of which had been registered in 2023 and two in 2024. Only one of these cases was found to be well-founded.

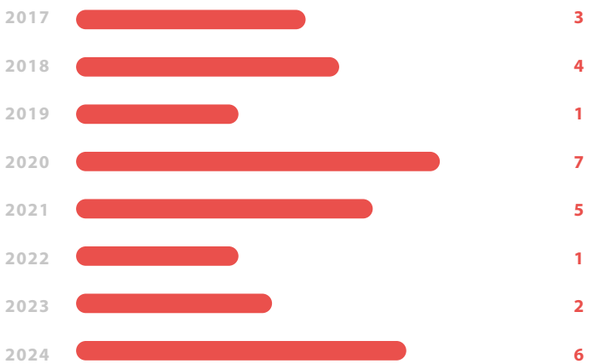


NUMBER OF JUDGMENTS DELIVERED

In 2024, the Tribunal delivered seven judgments, six of which concerned the Council of Europe and one the Development Bank. It should be noted that one judgment may relate to several joint appeals.



ORDERS DELIVERED ON REQUESTS FOR A STAY OF EXECUTION



In 2024, six orders were delivered in response to requests for a stay of execution. All of the requests concerned the suspension of decisions terminating the fixed-term appointments of the staff members involved. None of the requests for a stay of execution were granted.

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**

ENG

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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.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE