2014

ANNUAL REPORT OF THE

NATO ADMINISTRATIVE TRIBUNAL

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2014 Annual Report of the NATO Administrative Tribunal

Introduction

This is the second Annual Report of the Administrative Tribunal of the North Atlantic Treaty Organization (NATO). It covers the period 1 January 2014 – 31 December 2014 and is issued, on the initiative of the Administrative Tribunal, pursuant to Rule 4(h) of its Rules of Procedure.

On 23 January 2013, the NATO Council approved a number of important amendments to the NATO Civilian Personnel Regulations (NCPR), introducing a new internal justice system and creating the NATO Administrative Tribunal (Tribunal). The amended Regulations entered into force on 1 July 2013. The Tribunal's first Annual Report, covering the first six months of its existence (1 July 2013 – 31 December 2013) describes in detail the competence and proceedings of the Tribunal.

Composition

The Tribunal's composition has remained unchanged during the reporting period and is as follows:

Mr Chris de Cooker (Netherlands), President;
Mrs Maria-Lourdes Arastey Sahún (Spain), Member;
Mr John R. Crook (United States), Member;
Mr Laurent Touvet (France), Member; and
Mr Christos A. Vassilopoulos (Greece), Member.

In 2014 the Tribunal continued to be assisted in an outstanding manner by Mrs Laura Maglia as its Registrar *ad interim*.

Proceedings of the Tribunal in 2014

The Tribunal completed a substantial volume of judicial business during 2014. It held four sessions of oral hearings (12-14 March 2014, 26-27 May 2014, 22-23 September, and 8-9 December 2014), heard 16 cases and rendered 26 judgments. The NATO International Staff was respondent in ten cases in which a judgment was rendered in 2014, NSPA in eight, and NCI in five. E-3A Component, JFC Brunssum and NAPMA were respondent in one case each. Moreover, in two cases the oral hearings took place in December 2014, but the corresponding judgments were rendered in 2015; they will be covered in the next Annual Report.

Since it began operations in 2013, the Tribunal has addressed both cases initiated after 1 July 2013 governed by the new regulations and a considerable number of "carryover" cases initiated earlier and governed by the regulations previously in force. Thus, on 1 July 2013, seventeen cases that were pending before the NATO Appeals Board were transferred to the Tribunal when it began operations. In several other cases lodged after 1 July 2013, pre-litigation proceedings started before that date, so the former regulations were applied. In fact, in 2013 only two appeals were lodged to which the new regulations applied.

As it worked to resolve the "carryover" cases in 2013, the Tribunal rendered eight judgments and one Decision. It held oral hearings in 2013 in six more cases (Cases Nos. 899 – 905), but the resulting judgments were issued in 2014 and are considered in the present Annual Report.

In addition, and as reported in the 2013 Annual Report, in one other case, an appellant lodged an appeal (Case No. 906) before 1 July 2013, but then lodged another appeal (Case No. 2013/1004) after 1 July 2013 concerning the same issue; the two cases were joined by Order of the President dated 22 November 2013. Two more cases (Cases Nos. 2013/1001 and 2013/1002) were lodged at the end of June 2013, but were registered after 1 July 2013. The oral

hearings for these four cases took place in 2014. Moreover, in April 2014, the appellant in Case No. 892 lodged a new appeal (Case No. 2014/1019) on the same issue. In all these cases the “old” regulations were applied.

Further to the cases mentioned above, the proceedings in six appeals started in 2013, but were completed in 2014 (Cases Nos. 2013/1003, 1005-1009).

In 2014, thirty-three new appeals were lodged (Cases Nos. 2014/1010-1042). Four cases were withdrawn (Cases Nos. 2014/1020, 2014/1024, 2014/1025, and 2014/1038) following the Tribunal’s judgment on a similar issue (Case No. 2104/1017).

In seven cases, the President of the Tribunal suspended proceedings and the Tribunal subsequently summarily dismissed the cases because the pre-litigation procedures required by the new regulations had not been complied with (Cases Nos. 2013/1008, 2014/1010, 2014/1013-1016, 2014/1018). It is to be noted that these summary dismissals occurred early in the year, as parties and the Tribunal had to familiarize themselves with the new regulations. In two cases, however, the Tribunal denied a request for summary dismissal (Cases Nos. 2013/1009 and 2014/1027).

In three cases the President of the Tribunal denied a request for an expedited hearing (Cases Nos. 2014/1019, 2014/1021, and 2014/1039). He also issued an Order joining Cases Nos. 2014/1026 and 2014/1039.

Cases take on average slightly less than seven months from the date of the first submission to the issuing of the judgment. The duration of the written procedure alone is around four months. Cases that were summarily dismissed obviously took less time: around two and a half months. The maximum duration for cases was ten months. In one case the appellant requested to postpone the oral hearing to the following session; in another the Tribunal had to resolve first the cases that were carried forward from its predecessor, the Appeals Board.

Cases are assigned to Panels with due consideration to the principle of rotation as well as equitable distribution of workload. In each case the President designates a member of the Panel or himself to serve as judge-rapporteur, *inter alia*, for purposes of preparing a draft judgment for consideration and approval by the Panel. Taking together the years 2013 and 2014 the President and members have been assigned to between 8 and 12 cases each.

The Tribunal's jurisprudence in 2014

It is to be recalled that the Tribunal's competence is limited. It has jurisdiction to decide any individual dispute brought by a current or retired NATO staff member or his or her legal successors alleging that a decision affecting the appellant's conditions of work or service does not comply with the appellant's terms and conditions of employment. In this respect, the Tribunal is directed to make decisions according to the NCPR, other pertinent rules, contracts or other terms of appointment, as applied to the staff in individual cases. Annex IX to the NCPR affirms that the Tribunal is authorized to rule on the NCPR themselves in the event that a provision thereof "seriously violates a general principle of international public service law." The new regulations state that "the Tribunal shall not have any powers beyond" those they confer, and that nothing in the regulations "limits or modifies the authority of the Organization or the Head of the NATO body, including the lawful exercise of their discretionary authority to establish and amend the terms and conditions of employment of staff." In a number of the following judgments the Tribunal had to recall these limits to its competence.

The Tribunal rendered the following judgments in 2014[1].

In Case No. 899 appellant challenged the decision to terminate his contract after his national security authorities withdrew his security clearance certificate

[1] The following summaries of Tribunal judgments are for information purposes only and have no legal standing.

following an internal NATO investigation of a security infraction. The NCPR foresee immediate termination of a contract upon withdrawal of a staff member's security clearance. Appellant challenged the decision to withdraw the certificate before his national authorities, after which they restored his clearance. With his appeal before the Tribunal, appellant *inter alia*, sought reintegration. The Tribunal, referring to previous jurisprudence of the NATO Appeals Board, held that the termination of appellant's appointment was regular. The restoration of the security clearance was a new event that could not affect the legality of the earlier decision to terminate the appointment, which can only be evaluated as of the date it took effect. Furthermore, the exceptional circumstances required to waive time limits for a late submission were not met in the present case. The appeal was therefore declared inadmissible.

In Case No. 900 a former staff member who held a definite duration contract with a deployment clause challenged the non-renewal of her contract. Appellant submitted a petition to the Head of the NATO Body (HONB), who withdrew the non-renewal decision and offered appellant a new contract like that previously held. Appellant appealed this decision to the Tribunal. The Tribunal held that the non-acceptance of the HONB'S offer demonstrated that appellant was seeking a different contract, in particular without the deployment clause. The appeal was declared inadmissible, as it did not seek the annulment of a decision by the HONB, but rather the re-negotiation of the appellant's contract to eliminate the deployment clause.

Case No. 901 was submitted by a retired NATO staff member concerning the increase of his premiums for medical coverage as of January 2013. Appellant contested the increase, the procedure leading to the increase, and the manner and timing of notification of the increase to retirees. The appellant also alleged several procedural irregularities by NATO in the process leading to the adoption of the increase, citing in this respect general principles of the jurisprudence of the courts of the European Union. The appeal was dismissed, as appellant's claims were not substantiated in the light of the relevant NCPR provisions. The Tribunal recalled in this regard that the legal principles it is to apply are those

established by the competent NATO organs, notably the NCPR, and those that follow from decisions of the Appeals Board and of the Tribunal in applying the NCPR and similar authorities. It noted that many general principles of international public service law find expression in the NCPR, and that other related principles are clearly established in the practice of NATO and other international organizations. However, other propositions articulated and applied in the context of particular international or intergovernmental institutions are not so clearly defined or generally accepted as to be general principles of international civil service law.

Case No. 902 concerns a former temporary staff member seeking the annulment of the HONB's decision to terminate her contract. The respondent challenged the appeal as inadmissible; the Tribunal disagreed, observing that, where there is a succession of temporary contracts with no intervals between them, an admissible dispute about the classification of the employment relationship could appear whenever the termination of the parties' contractual link became evident and definite. Concerning the merits, the Tribunal analyzed the different contracts held by appellant, recalling that the duration of temporary employment is limited to the maximum periods established by the NCPR. Appellant was in the same job, performing the same duties, with no gap between her temporary contracts. While the rules allow limited extensions of temporary contracts in exceptional situations, the Organization could not prolong the temporary status beyond these periods. In the factual circumstances presented by the appeal, the appellant's duties must be considered as being of a lasting nature. The decision to terminate the working relationship had therefore to be considered as a dismissal and appellant had the right to receive the applicable allowances, emoluments and indemnities as foreseen in the NCPR.

Case No. 903 concerns a staff member seeking cancellation of a decision not to renew his definite duration contract and of subsequent decisions regarding the consequences of the end of his contractual situation. The Tribunal noted that the only measures that can be subject of an appeal are those that have

binding legal effects impacting on appellant's interests by changing his or her legal situation in a significant way. Here, appellant's request to cancel a letter setting out an agreement between the parties on appellant's contractual situation could not be upheld, as the letter did not contain any measure adversely affecting appellant.

The appellant also contested the legality of the Performance Review and Development (PRD) system. The Tribunal observed that, while it can rule on any challenge to an individual decision taken in respect of appellant, it is not competent to rule on appellant's submissions on the legality of an applicable regulatory provision or on the general conditions of the functioning of NATO bodies, unless a regulatory provision would conflict with a general principle of the international public service. Appellant could thus plead the illegality of the PRD Directive in the framework of his individual dispute with the respondent. However, the Tribunal held that the alleged violation of the principle of equal treatment of staff by the establishment, via the PRD Directive, of a system to re-evaluate performance by means of a transparent calibration process was not substantiated. The Tribunal observed in this regard that the principle of equal treatment is violated only when two categories of persons whose factual and legal situations are essentially the same are subject to different treatment, or when different situations are treated in the same way. The Tribunal also rejected appellant's claim of manifest error of judgment in his performance rating, observing that is not up to it to substitute its own judgment for that of the administration in respect to the assessments and abilities of staff members; the judge's role is merely to rule on any manifest error of judgment or misuse of power. The conclusion of an initial three-year contract in no way guarantees *per se* that the staff member's performance will, in the light of the applicable regulations, be of a nature to justify offering him a new contract. Appellant also alleged irregularities in implementation of the PRD system. The Tribunal pointed out that a potential procedural irregularity in a contested decision could be penalized by cancellation of the contested decision only if it were established that the irregularity could have influenced the content of the contested decision. Finally, the Tribunal dismissed the appellant's submissions on compensation,

finding them closely linked with submissions on cancellation that have been dismissed as groundless.

In Case No. 904 a former staff member challenged the decision to suppress his post and terminate his appointment while he was on protracted sick leave in his home country away from his duty station. In a previous appeal before the NATO Appeals Board (decision 860), the Board upheld the appellant's complaint involving harassment and discrimination by a supervisor that harmed appellant's health. The Appellant's health subsequently deteriorated, and he left his duty station to seek better conditions of treatment in his home country. Over a period of several months, the respondent agency sought to arrange a medical control to assess the appellant's medical condition. Several attempts to accomplish this, both at the appellant's duty station and near his residence in his home country, were unsuccessful, for reasons that were disputed between the parties. The Tribunal did not put in doubt the appellant's medical condition, but observed that the NCPR require staff members on sick leave to undergo medical controls. Appellant had a responsibility to cooperate in this regard. In the absence of such cooperation, the HONB was not obliged to recognize appellant's medical certificates and could take appropriate measures in response to his extended and unjustified absence from work. Appellant's contentions were dismissed.

Joined Cases Nos. 906 and 2013/1004 concern a former temporary staff member seeking requalification of a number of short-terms contracts into an initial contract followed by an indefinite duration contract. The two appeals raised issues of admissibility. Concerning the first appeal, the Tribunal referred to previous jurisprudence, in particular Case 902 (see above), noting that the requirement of "reasonable time" to lodge a complaint and to appeal applies to the limited periods after the employment ends and not to the longer period covered by a succession of short-term contracts. The first appeal was therefore declared admissible. The Tribunal found that the second appeal involved only a slight revision of the first appeal, claiming additional relief based on a new legal theory applied to the same facts. The Tribunal held it inappropriate to

attempt to engage multiple times in multiple theories involving the same facts and declared the second appeal inadmissible. With regard to the merits of the case, the main issue was essentially factual -- whether the evidence showed that the series of short-term contracts complied with the relevant requirements of the NCPR as temporary contracts. Based on a detailed review of the evidence, the Tribunal concluded that the appellant's various short-term contracts satisfied with the NCPR's requirements, and the appellant's claims were dismissed.

Case No. 2013/1001. The NATO Appeals Board in its Decision No. 870 cancelled appellant's dismissal on grounds of insufficient substantiation and ordered reinstatement. Following this reinstatement, the HONB terminated appellant's contract on grounds of poor performance. In Case No. 2013/1001 appellant contested the legality of this second dismissal decision, alleging error of judgment concerning his performance, illegalities in the Performance Review and Development (PRD) system and the Improving Performance (IP) Action Plan, as well as misuse of powers. The Tribunal held, following its previous jurisprudence, that it cannot substitute its own judgment for that of an administration in respect of the assessment and abilities of a staff member, and that it is to the appellant to provide sufficient evidence that an error of judgment is so manifest as to deprive respondent's judgments of all plausibility. Appellant's claims on irregularities in the implementation of the PRD and the IP Action Plan were declared unfounded, as there were no specific arguments to support the claims. On the alleged misuse of powers the Tribunal recalled that a decision could be tainted by misuse of powers only if it can be seen, on the basis of precise, objective and corroborating evidence that it was taken in order to achieve an objective other than that required. It is not sufficient to put forward certain facts in support of such allegations, but specific evidence must be provided to show that they are true. Submissions on compensation were also dismissed, as closely linked with the submissions, which had been dismissed as groundless.

Case No. 2013/1002 concerns a staff member on a definite duration contract contesting a non-renewal due to the Agency's policy of rotation. Appellant challenged the compliance of his Agency's contract policy with the relevant NCPR provisions establishing the Organization's legal framework for contracts. In particular, appellant contested the qualification of his post as "scientific" and therefore subject to rotation. The Tribunal noted that the duration of a contract may be limited, even if the establishment in which the staff member performs his/her duties is not a scientific one, if the post has been previously identified as one in which rotation is desirable for political or technical reasons. The Tribunal observed that the Organization is authorized to determine those activities where staff turnover is advisable according to its own aims and management policies. The general directives of the Organization's bodies and agencies are in principle a consistent means of defining staff rotation policies, provided they contain adequate parameters to identify the affected posts and offer thorough and assessable justification. In the present case, the Tribunal noted that appellant's contract was from the outset a definite duration one subject to rotation. There was no entitlement to an automatic renewal, and the decision not to renew it after its expiration was not unlawful. The appeal was dismissed.

Case No. 2013/1003 concerns a staff member holding an indefinite duration contract who resigned after duties and job description were modified to reflect the Section's changed needs and requirements. The Tribunal held that decisions concerning duties and job descriptions are within the discretionary power of the HONB. It recalled also that there is consensus among international administrative tribunals that a decision in the exercise of such discretion is subject only to limited review by a tribunal and that a tribunal will not substitute its own view for the organization's assessments in such cases. The decisions to amend appellant's duties were taken by the appropriate authority respecting the rules and procedures in force, and the Organization did not err in fact or in law or abuse its authority. Appellant's submission to recognise the original post as "suppressed" could not be upheld, as the Tribunal observed that is for the appointing authority to determine post suppressions or

terminations of appointment. Moreover, an entitlement to a loss-of-job indemnity is not automatic. Under the relevant NCPR articles, such an indemnity is only available if staff members are not offered a post in the same grade in the same Organization or are not appointed to a vacant post in one of the other Coordinated Organizations at comparable remuneration. Appellant's resignation placed him in a voluntary and intentional situation where the Organization could no longer pursue alternative solutions. On the claims for moral damages, the Tribunal recalled that any claim must be substantiated and detailed and that reasons must be given. The Tribunal recognised, however, a lack of proper communication between management and appellant. It considered that this lack of proper management caused appellant unnecessary and avoidable moral damages and awarded €10.000 as compensation for the injury caused.

Case No. 2013/1005 concerns a staff member on long-term sick leave at the time of submission of the appeal and holding an indefinite duration contract. Appellant contested the HONB's decision not to grant a step increase, requested nullification of his performance report, and sought communication of the Complaints Committee report. The Tribunal declared the appeal as inadmissible as appellant was effectively granted by the HONB the step increase with the contested decision. Other submissions also were dismissed. The Tribunal noted, quoting previous Appeals Board jurisprudence, that a performance report is not in itself a decision that constitutes grounds for grievance. As to the failure to communicate of Complaints Committee report, the claim could not stand as the respondent provided the report in subsequent submissions. Lastly, the Tribunal found the requested compensation for harm to be unfounded; the Tribunal recalled in this regard that such claims must be preceded by a request to the administration.

In Case No. 2013/1006 a staff member who deployed to Afghanistan sought annulment of the HONB's replies to enquiries he made regarding jurisdiction over deployed NATO civilians and concerning their wearing of uniforms, and requested monetary compensation. The Tribunal remarked that the NCPR limit

its competence to annul those decisions of the HONB that are contrary to the contracts or other terms of appointment of the staff member concerned or to the relevant provisions of the NCPR. Appellant's request for a change in NATO policy on the deployment of its NATO civilians to cover an alleged "legal vacuum" regarding the exercise of criminal jurisdiction over offences committed by NATO civilians deployed abroad was therefore manifestly outside the scope of the Tribunal's jurisdiction. His claim that NATO's policy regarding the wearing of uniforms was contrary to the applicable regulations was found to be based on a misreading of the relevant provisions, and was also rejected. The Tribunal observed that appellant's belief that the explanations given to his enquiries were not satisfactory did not convert them to "decisions" contrary to his contract or other terms of his appointment or to the relevant provisions of the NCPR. In addition, the fact that appellant regards longstanding international practice for deployment under Status of Forces agreements as "unsatisfactory" does not make it illegal or bring it within the Tribunal's mandate. The appeal was dismissed.

Case No. 2013/1007 was submitted by a former staff member concerning the non-renewal of a definite duration contract, as the post was subject to rotation. Appellant filed his appeal seven months after having been notified of the decision not to renew the contract. Within the seven months period, however, appellant exchanged correspondence with the HONB requesting review of the non-renewal decision. Appellant contended that those initiatives had to be considered as a "petition". The Tribunal observed that appellant did not formally submit a "petition", but that the initiatives undertaken, interpreted with an open mind, could be considered as such. The Tribunal reminded that in accordance with both the NCPR, and previous Appeals Board jurisprudence, the petition has the effect of interrupting the sixty-day period for submitting an appeal. However, a new sixty-day period begins with the rejection of the petition. In this case, appellant's submissions were filed after the end of this new time-frame period and the appeal was therefore dismissed.

Case No. 2013/1008 is one of the first in which the provisions of the new internal justice system fully applied. It concerns a consultant seeking requalification of a consultancy contract and the granting of an indefinite duration staff contract. The Tribunal observed that the NATO Council adopted in January 2013 a new internal dispute resolution system, which entered into force on 1 July 2013. The new system, unlike the previous one, put *inter alia* a major emphasis on pre-litigation procedures. The present case therefore had to be reviewed taking into account all aspects of the new system, and the Tribunal had to be satisfied that its pre-litigation process had been respected. Appellant contended that the new procedure, and in particular its requirement for administrative review, didn't apply because there was no decision triggering its application, and that a new decision could be requested only from the HONB, whose non-reply was an implicit decision rejecting of the request. The Tribunal observed that the most recent decision concerning appellant's contract was taken by the Head of Human Resources services, and was therefore properly subject to administrative review. It was further for appellant to identify any decisions, facts or elements affecting the conditions of work or of service associated with that decision that did not comply with the terms and conditions of the employment warranting a complaint and, ultimately, an appeal. The Tribunal therefore held that a prior administrative review is a necessary procedural requirement to bring any action before it, except in very limited situations identified in specific NCPR articles. It stressed that this procedural requirement aims to solve any dispute amicably without litigation, thereby contributing to the good administration of justice. The appeal was summarily dismissed.

In Case No. 2013/1009 a staff member contested the decision to reject his request to receive family allowances. The respondent HONB sought summary dismissal, which the Tribunal denied. Appellant sought to have additional documentation included in the record after expiry of the time limits. The Tribunal denied this request, underlining that documents in relation to a case under examination filed after the expiration of time limits set by the NCPR and the Tribunal's Rules of procedure can be considered only following application to, and approval by, the Tribunal and if the application has been made in a

reasonable time. On admissibility of the case, appellant did not submit his request for administrative review through his immediate supervisor as required by the NCPR. The Tribunal found this to be an essential procedural requirement, and, in light of its previous jurisprudence, dismissed the case because the necessary pre-litigation procedures were not pursued.

Case No. 2014/1010 concerns a former staff member on extended sick leave, whose employment contract was terminated after the HONB received an Invalidity Board report establishing that appellant was not suffering from permanent invalidity. Separation became effective immediately, with a payment *in lieu* of the notice period. Appellant contested this termination of his employment. In accordance with Rule 10 of the Rules of Procedure, the Tribunal suspended the proceedings. The Tribunal recalled that in accordance with the relevant NCPR articles and previous jurisprudence, only appeals that have exhausted all available pre-litigation channels can be entertained. This requirement is waived, in whole or in part, only when the impugned decision is taken directly by the HONB or when parties have agreed to submit the case directly to the Tribunal. Neither party can unilaterally waive the entirety of the pre-litigation procedures. The Tribunal rejected appellant's contention that the new procedure didn't apply because of a lack of information regarding it, affirming the principle that *ignorantia legis neminem excusat*. The Tribunal acknowledged that improvements could be made regarding access to necessary information by persons who do not belong to the NATO staff, but that in the present case any alleged lack of information was attributable to appellant. The case was summarily dismissed.

In Case No. 2014/1016 a staff member submitted an appeal contesting the non-renewal of an initial three-year contract. The Tribunal recalled its judgment in Case No. 2013/1018, whereby an appeal is only admissible of the appellant has properly pursued the prior administrative procedure foreseen by the relevant NCPR articles. In the present case, the contested decision was not taken pursuant to the NCPR articles authorizing the HONB to expressly designate another person to take decisions on his behalf for administrative reviews, complaints and appeals, in which case that person is considered as

the HONB for the purposes of the NCPR. This not being the case, and the appellant not having pursued administrative review, the appeal was summarily dismissed.

Cases Nos. 2014/1013, 2014/1014, 2014/1015 and 2014/1018 are a series of cases submitted in relation to the May 2013 Council decision to abolish a number of allowances and to amend the conditions of entitlement to other allowances. The first three cases submitted concerned the rent allowance and the last one the language allowance. The Tribunal referred to its earlier judgment in Case No. 2013/1008 discussing the internal dispute resolution system that entered into force on 1 July 2013. The cases were declared inadmissible and summarily dismissed, as appellants had not pursued the pre-litigation procedures required by the new NCPR regulations. The Tribunal also noted that it is not competent to annul a decision by the Council to amend the NCPR. The fact that the Tribunal has jurisdiction to determine the legality of such decision in an appeal directed against an individual decision implementing it, does not alter the requirement that appellants must seek review of the decision that directly affects them following the appropriate steps. Also, as appellants challenged their payslips, the Tribunal held that payslips are generally prepared by payroll officers and are subsequently endorsed by their supervisors (most likely the Head of Human Resources) when the latter approve the payroll. As a consequence, payslips cannot be considered as decisions adopted by the HONB.

Case No. 2014/1011 was submitted as a direct appeal pursuant to the parties' agreement under Article 4.3 of Annex IX to the NCPR. This provision, however, envisions a direct appeal by agreement of the parties in limited circumstances only, particularly where there are no material facts in dispute. The Tribunal considered that issues regarding admissibility may be raised by the Tribunal on its own motion. In the present case, the Tribunal observed that, contrary to the parties' initial statements, significant facts were at issue. Nevertheless, the appeal was considered admissible, as it complied with the formal requirements of the rule. As the factual record was insufficient on certain key issues, the

Tribunal made use of Rule 16 of its Rules of Procedure, requesting a party to provide written statements. The merits of the case concerned the non-renewal of a definite duration contact on a post occupied by seconded personnel, whose secondment required authorization by the relevant national authorities. The claim was dismissed, as the record indicated that the appellant's national authorities did not approve his continued secondment. The Tribunal also affirmed previous Appeals Board jurisprudence indicating that a staff member does not have a right to renewal of a fixed term contract, where the decision not to renew is made by a competent authority, in accordance with the proper procedures and is not based on errors of facts, law, judgment or abuse of power. Appellant's further claim that the challenged decision involved an abuse of power because it involved discrimination, was rejected, the Tribunal recalling that it is not sufficient to make allegations in support of claims; evidence of a sufficiently specific, objective and consistent nature to support the allegations must be adduced.

Case No. 2014/1012 concerns the non-renewal of a definite duration contract at its expiration. Though neither party raised admissibility issues, the Tribunal, following its previous jurisprudence (see judgment in Case No. 2014/1011), examined the issue of admissibility to establish its competence to rule on the case. The Tribunal observed that, in accordance with the NCPR, six months before the expiry of a contract, the administration must inform a staff member either that his or her contract will be renewed, or that no new contract will be offered, thus giving the staff member six months to find a new post. The Tribunal noted that although the NCPR language requires the Administration to indicate its "intention", this is in fact a "decision" that must be contested in due time by the staff member who has been informed of the Administration's intention not to renew his or her contract. The appellant was on sick leave at the time the Administration took the decision. The Tribunal affirmed in this regard that a staff member absent for health reasons must enjoy the same guarantee as a working staff member of timely prior notice that his or her contract will not be renewed. However, the open question of completing appellant's rating procedure, made difficult by the absence, and which could

have had a different outcome, did not affect the admissibility of the appeal, which was declared inadmissible for the reasons above.

Case No. 2014/1017 concerns the changes in allowances that the NATO Council (NAC) approved for serving staff, in this case in particular the rent allowance. In view of the wide impact and importance of the issue NATO-wide, the President of the AT, in accordance with the NCPR, requested that the Office of the Legal Adviser (OLA) of the International Staff provide written observations. The respondent HONB and OLA contended that the claim was inadmissible, as it should have been submitted at the moment the staff member learned about the changed policy. The Tribunal, disagreed, aligning itself with previous Appeals Board jurisprudence and the doctrine and practice of other international administrative tribunals, and holding that a policy or a change must be applied in a concrete way by a means of a decision adversely affecting the staff member in some direct and ascertainable way. A mere existence of a rule or policy before it is applied to the staff does not enable the tribunal to exercise its jurisdiction; there must be an administrative decision to trigger such jurisdiction. Concerning the merits of the case, the Tribunal analyzed the legal issue of whether or to what extent an international organization may take measures revising or reducing allowances or other elements of staff members' total emoluments without entitling the staff member to compensation. Appellant, respondent and OLA all agreed that the appropriate analytical approach is that the employer may modify unilaterally the employee's emoluments as long as it does not change the essential elements of the contract or touch the employee's acquired rights; this is also in line with previous Appeals Board jurisprudence distinguishing between provisions of general application to staff members contained in the personnel regulations, and provisions specific to the individual contained in the contract. The first type of provisions "can be modified at any time in the interest of the service, subject to the principle of non-retroactivity and limitations that the competent authority has itself places on these powers of modifications". Appellant contended that these elements were not met in the present appeal. The Tribunal disagreed, observing that the approved package was both adopted in order to make

savings “in the interest of the service” and as a more ambitious effort to globally modernize allowances to correspond to the needs of the Organization. It noted also that measures to reduce staff costs are frequently upheld to meet financial exigencies.

Moreover, the Organization introduced a transitional regime for staff members previously receiving the allowance. The Tribunal found that this regime was intended to assure, and did assure, that the notional value of affected staff members’ salary did not decline on account of the change. It rejected the staff member’s argument that he will receive less in future than he might have absent any change in the system of the allowance, implying a right to receive future allowances in amounts at least as advantageous to him as those he would have received under the prior system. This position would have denied the NAC’s ability to make prospective changes in current staff members’ allowances, contrary to the principles above. Appellant’s arguments that the Organization violated a duty of collective bargaining and failed to engage in staff consultation could not be supported either. The NCPR established a mechanism for addressing management-staff relations; the duty to consult on certain matters does not entail an obligation on the part of the administration to accept the position advocated by staff representatives.

Case No. 2014/1019: In Case No. 892 the Tribunal found in favour of appellant, as the respondent HONB did not convene a Complaints Committee to examine the submitted grievances. In Case No. 2014/1019 appellant, in a new appeal, contested the HONB’s decision rejecting her application for an A6 post, shortlisting her at a second competition round for the same post, as well as his refusal to provide a copy of the Complaints Committee’s report. The Tribunal held that candidates not retained in the first competition round cannot in a second round invoke a preferential right for eligibility based on having been shortlisted in the first competition, nor can they request a review of the first competition (see also AT judgment in Case No. 896). The Tribunal observed that owing to the political characteristics of certain posts, the selection cannot be based merely on merits, but is also subject to a certain amount of discretion. The Tribunal also noted that it is not competent to assess the suitability of

appellants to be shortlisted and, potentially, retained for a post. In such cases the function of the Tribunal is limited to reviewing the formalities of the competition to assess any error that may have resulted in violations of appellants' rights. In the present case, the Tribunal noted a lack of adequate information on the part of the respondent HONB; however, even if the exact cause for the rejection of appellant's application was not made known, both the failure to succeed in the first round and the level of the post justified rejection of the candidate. Concerning the failure to communicate the Complaints Committee report, the Tribunal observed that under the "old" rules applying here, a copy of the report does not have to be provided and the Secretary General is not obliged to take a decision on the report. Nevertheless, under the principles of good administration, a staff member may expect a decision to be taken duly and on time and to be informed thereof. The Tribunal also observed that a decision to award compensation is independent of any decision the Tribunal may take on the annulment of an administrative decision. It follows that the Tribunal's competence is not dependent on whether the Organization has taken a decision concerning a request for compensation or expressed itself otherwise in the matter.

In Case No. 2014/1023 a staff member requested redundancy status and corresponding loss-of-job indemnity after the transfer of his post to a new Agency. Appellant based his claims on the fact that the different implementation by the HONB of a small number of extra official leave days accorded by the Council as of 2003 (to reflect the change of the statutory working hours in France), and which affected appellant following the transfer to a new Agency after the 2012 Agency's reform, impacted his annual leave entitlement, thereby affecting his conditions of work and service and entitling him to redundancy. The Tribunal, recalling previous Appeals Board jurisprudence upholding the legality of the Council decision in granting the extra official leave days (and confirming that such days are official holidays and not annual leave), established that the impugned decision by the HONB to allocate the extra official leave days between Christmas and New Year was in conformity with the original Council decision. The Tribunal could not identify

any loss which impacted appellant and which would entail redundancy status. Moreover, appellant having accepted the reassignment, the conditions for loss-of-job indemnity were not met. The HONB's decision to schedule official holidays didn't upset the balance of appellant's contract, and fell within his discretionary power over which the Tribunal has only limited review.

Organizational and administrative matters

In its 2013 Annual Report the Tribunal underlined the importance of transparency, the issuing of annual reports being only one aspect of it. It emphasized the importance of the fact that justice is seen to be done. With the application of the new regulations the Tribunal has also held its first public hearings.

All judgments of the Tribunal and further information can be found on the Intranet. In 2014 the Tribunal has, with the help of many, also created its Internet website. It continued its work on the creation of an e-submission tool for appeal proceedings and of Practice Directions. It has also been preparing its judgments for publication on the website. It is expected that all these will be released in the course of 2015. In 2014 the Tribunal has also worked on a retention schedule of files, both of the Appeals Board and of the Tribunal.
As was mentioned in the 2103 Annual Report, the NCPR guarantee the Tribunal's independence. The judges are all non-resident and sit in sessions a number of times per year at NATO HQ. The Registrar has been given an ad-hoc space on NATO HQ premises and reports for administrative matters such as leave to the Secretary of the Council, who acts in consultation with the President of the Tribunal. As the NCPR provide, the expenses of the Tribunal are borne by NATO. They also provide that the Tribunal is to prepare and manage its budget independently. A beginning has been made in establishing the Tribunal's independent budget authority in 2013 and this continued in 2014, but this is still not finalized.

On 13 December 2013 the NATO Council adopted a remuneration scheme for the members of the Tribunal based on the estimated time spent on cases. The Council estimated this to be fourteen days on average, split according to a formula between the President, the judge-rapporteur and the third judge. It is the Tribunal's experience that all cases adjudicated in 2014 have required more time than the fourteen days indicated, as was the case in the previous year.

It was agreed that the overall system would be reviewed after one year. The Tribunal now has a year's experience with the new system, as do management and staff. A number of issues have been identified that could be clarified and improved. Suggestions will be made through the appropriate channels. The Tribunal recalls the example it gave in the 2013 Annual Report that, in its view, the Tribunal should in certain important cases sit in a panel of five, *i.e.* the full Tribunal, for example in cases that concern all or a large group of staff or retired staff (salaries, allowances, etc.).