



2016

**ANNUAL REPORT OF THE
NATO ADMINISTRATIVE TRIBUNAL**

2016 Annual Report of the NATO Administrative Tribunal

Introduction

This is the fourth Annual Report of the Administrative Tribunal of the North Atlantic Treaty Organization (NATO). It covers the period 1 January 2016 – 31 December 2016 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 created the NATO Administrative Tribunal (Tribunal). The corresponding 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

As was mentioned in the 2013 Annual Report, lots were drawn to determine which two of the four initial Tribunal members would serve for an initial term of three years. Mrs Maria-Lourdes Arastey Sahún and Mr John R. Crook were so designated. In 2016 the NATO Council reappointed both members for a further five-year term. The Tribunal's composition has thus 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.

Towards the end of 2015 the NATO Council approved the creation of the post of Registrar and in 2016 Mrs Laura Maglia was retained for this position, thus bringing an

end to an *ad interim* solution in which everybody involved cooperated in a very collegiate way. Mrs Maglia assisted the Tribunal in an outstanding manner throughout the year.

Organizational and administrative matters

In its 2015 Annual Report, the Tribunal underlined the importance of its independence and referred in this respect to two outstanding issues. The Tribunal is happy to report that both issues, *i.e.* the location of the Tribunal and Registry within NATO's Secretariat and the Tribunal's financial independence, were satisfactorily resolved, thanks to the active and positive involvement of the respective stakeholders.

The Tribunal was also able to make substantial progress in the creation of the e-submission tool for appeal proceedings, which is now expected to be operational in 2017.

Proceedings of the Tribunal in 2016

The Tribunal again completed a substantial volume of judicial business during the year. It held four sessions of oral hearings (17-18 March, 18-19 July, 26 September, and 13-16 December). It rendered 29 judgments, eight of which concerning joined cases. In December 2016 the Tribunal held oral hearings in a record twenty-two cases. In nineteen of these, the same Agency was respondent; at the same session it also dealt with one case, in a different Agency, on the basis of the written procedure only. The oral hearings of the nineteen cases took place in Geilenkirchen; all other hearings were held at NATO Headquarters in Brussels. Although the resulting judgments were rendered in 2017, they are included in the present report. In the reporting period one case was withdrawn and two cases were summarily dismissed.

NATO Headquarters Airborne Early Warning and Control Force Geilenkirchen (NAEW&CF GK) was respondent in fifteen cases in which a judgment was rendered. Six of these were joined cases. NATO Communications and Information Agency (NCIA) was respondent in five cases. E-3A Component, NATO Joint Force Training Centre

(JFTC), and the NATO International Staff (NATO IS) were respondent in two cases each. Joint Force Command Brunssum (JFC BS) and Supreme Headquarters Allied Powers Europe (SHAPE) were respondent in one case each; both were, in fact, joined cases (two for JFC BS and nine for SHAPE). NATO Support and Procurement Agency (NSPA), and Supreme Allied Command Transformation (ACT) were respondent in one case.

The President of the Tribunal issued twelve Orders. Eight Orders joined cases.¹ Three² suspended proceedings in individual cases; the Tribunal subsequently summarily dismissed two of these cases. In the third case the appellant asked to withdraw his appeal. In an Order, the President granted this request and dismissed the appeal.

The Tribunal continued to resolve cases in an expeditious manner: eight judgments were rendered within approximately seven months of lodging of the appeal and nineteen between eight and ten months. Two cases were adjudicated in approximately five months, although they were summarily dismissed. (The duration of the written procedure alone is around four months.)

In 2016, thirty-four new appeals were lodged; as mentioned above, nineteen of these concerned similar, but not identical, situations arising from a major restructuring in the same duty station. It therefore appears that the tendency of a decrease in the number of new cases observed the previous year continues. The Tribunal further notes that the number of cases declared inadmissible has also decreased.

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 another member of the Panel or himself to serve as judge-rapporteur, *inter alia*, to prepare a draft judgment for consideration and approval by the Panel. Taking together the years 2013 - 2016 the President and members have been assigned to between 15 and 18 cases each.

¹ Respectively Cases Nos. 2015/1056 and 1064; Nos. 2016/1072 and 1073 – in a subsequent Order they were partly dis-joined -; Nos. 2016/1080 and 1092; Nos. 2016/1081 and 1096; Nos. 2016/1086 and 1093; Nos. 2016/1087 and 1091; Nos. 2016/1089 and 1094; and Nos. 2016/1090 and 1095.

² 2016/1072, 2016/1075 and 2016/1099.

The Tribunal's jurisprudence in 2016

The Tribunal rendered the following judgments.³

In its previous Annual Report the Tribunal recalled that its competence is defined by the NATO Civilian Personnel Regulations (CPR), and is limited. It has jurisdiction to decide only individual disputes 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. The Tribunal is not empowered to decide issues *ex aequo et bono*. Instead, it must make decisions according to the CPR, other pertinent rules, contracts or other terms of appointment, as they are applied to the staff in individual cases.

The new regulations emphasize these limitations on the Tribunal's competence, stating that "the Tribunal shall not have any powers beyond" those they confer.

A first group of cases adjudicated in 2016 centered on the issue of the Tribunal's jurisdiction (joined Cases Nos. 2015/1056-1064). In this series of cases, the Tribunal was seized of claims by a group of International Civilian Consultants seeking recognition of their alleged status as NATO international staff members. The cases also raised issues concerning the production of classified NATO documents and access to various internal documents the appellants deemed relevant for their claims. By an Order, the Tribunal decided, in a first stage, to limit the proceedings to the question of its jurisdiction. The Tribunal examined appellants' specific employment contracts and their provisions concerning the applicable law, and assessed whether the CPR, including access to the Tribunal, were applicable to the appellants. The Tribunal also analyzed the legal status of the Headquarters to which appellants were reporting and its link with NATO. The Headquarters concerned has a unique status and is not listed as a NATO body in the CPR. Its existence and presence instead derive from the 1995 "Dayton Accords," as authorized and implemented by successive United Nations (UN) Security Council Resolutions. The Headquarters performs various functions as directed by the UN Security Council. It also supports certain European Union (EU) activities, and the

³ The following summaries of Tribunal judgments are for information purposes only and have no legal standing.

EU provides part of its financing. The Tribunal concluded that the appeals had to be dismissed for lack of jurisdiction. It also noted the remedies available under appellants' contracts, and, *inter alia*, the possibility of creating an administrative board of enquiry to consider appellants' grievances on their merits.

The regulations concerning the Tribunal adopted in 2013 further stipulate 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 this regard, a number of decisions challenged in 2016 involved the exercise of discretionary powers given to the Head of a NATO body. Under the principles of international administrative law, the standard of review to be applied by the Tribunal in such cases is limited to verifying that there is no abuse of these discretionary powers. In several of the following judgments the Tribunal had to recall these limits to its competence.

In the Lisbon Summit Declaration of November 2010, NATO Heads of State decided on a 35% manpower saving in NATO's Command Structure. This decision was subsequently confirmed at the 2012 NATO Summit in Chicago. On 30 September 2015, the North Atlantic Council (NAC) took decisions implementing these Summit decisions. The NAC decision approved reorganization of NATO's two international military headquarters with substantial reductions of their staffing ceilings. This decision required significant staffing reductions and realignments, entailing in a number of appeals before the Tribunal challenging the procedure leading up to the NAC decision as well as to its implementation.

Thirteen staff members from one military headquarters lodged a total of nineteen appeals; in several cases where an appellant brought two appeals, the Tribunal joined the appeals.⁴ Most appellants were offered continued employment. Several of them, however, refused to sign the new contracts they were offered, for a number of reasons, whereupon their employment was terminated after the usual notice period. Some of those who were terminated disputed the grading of the new post, contested the inclusion

⁴ Case No. 2016/1078, Case No. 2016/1079, Joined Cases Nos. 2016/1080 and 1092, Joined Cases Nos. 1081 and 1096, Case No. 2016/1082, Case No. 2016/1083, Case No. 2016/1084, Case No. 2016/1085, Joined Cases Nos. 2016/1086 and 1093, Joined Cases Nos. 2016/1087 and 1091, Case No. 2016/1088, Joined Cases Nos. 2016/1089 and 1094, and Joined Cases Nos. 2016/1090 and 1095.

of deployment clauses in the new contract, or the failure to respect of pre-existing medical conditions in the employment terms offered. Others sought payment of a loss-of-job indemnity. As explained below, the Tribunal in one case (Joined Cases Nos. 2017/1087 and 1091) annulled the impugned decision; in another case (Case No. 2016/1084) the Tribunal concluded that there was no longer a need to adjudicate. All other appeals were dismissed.

The Tribunal observed that the appeals in the joined cases, which were initiated at different times, contained different pleas and legal arguments. While they were sometimes repetitive and complementary, they were also sometimes contradictory. This raised questions concerning the admissibility of some pleas and arguments, in particular in the second appeals, which were not introduced in the first appeals or in the pre-litigation procedures. The Tribunal deemed it appropriate to adjudicate both appeals at the same time, in order to harmonize insofar as possible the resolution of inconsistent pleas and requests for relief. It accordingly gave priority to the arguments on the merits of the appeals.

The Tribunal held that a request to change the grading of a post does not fall within its competence. It referred to previous case law and consistent practice of other international administrative tribunals, whereby a discretionary decision is subject to only limited review, and tribunals will not substitute their own view for the organization's assessment. The Tribunal recalled its constant jurisprudence that it can only interfere with a discretionary decision if it was taken without authority, if a rule of form or procedure was breached, if it was based on a mistake of fact or law, if an essential fact was overlooked, if a clearly mistaken conclusion was drawn from the facts or if there was an abuse of authority.

The Tribunal analyzed whether the management process leading to the impugned grading decisions was flawed. It concluded that the Organization had made well-balanced and nuanced judgments in exercising its discretionary powers in the grading processes, and had taken into account appellants' interests when offering an indefinite duration contract following suppression of their previous positions. It observed that during the reorganization a serious and coherent process was followed to meet the requirements of a changing and downsized environment, and concluded that the

grading decisions had been regularly taken without abuse of powers or indication of arbitrariness. The Tribunal observed that the Organization had gone to great length to guarantee continued employment, which appellants declined, for which they must carry the responsibility and accept the consequences.

The Tribunal also underscored that it is established international civil service jurisprudence that, when allegations are made, it is the duty of those who make them to provide convincing proof, which appellants had failed to do in these cases.

In some cases the Tribunal recalled the duty for an Organization to have regard to the welfare of its staff, which implies that when the administration takes decisions concerning a staff member's administrative situation, it is obliged to take into account all the factors that may affect its decision, including not only the interests of the service but also those of the staff member, and in particular medical aspects of the staff member's situation. The Tribunal found that in most of the present cases respondent had struck an appropriate balance. However, in one case (Joined Cases Nos 2017/1087 and 1091), it concluded that the new job description included significant tasks and requirements that could only be performed in areas where the appellant could not work because of medical limitations known to respondent. Respondent not having taken appropriate account of essential facts or having drawn appropriate conclusions from known facts, the Tribunal annulled the decision to offer appellant a contract with conditions he could not satisfy as well as subsequent decisions, including the termination of his employment.

In a number of cases, appellants claimed that termination of their contracts during the pre-litigation phase was an adverse action prescribed by Article 5.3.1 of Annex IX to the NATO Civilian Personnel Regulations. The Tribunal rejected this claim, pointing out that the latter provision refers to the Complaints Committee and provides that "[n]o individual shall be subject to adverse action of any kind because of pursuing a complaint through administrative channels, presenting any testimony to the Complaints Committee, or assisting another staff member." The Tribunal concluded that this provision does not concern the termination of appellants' employment situations, which were in any event regular.

Most appellants claimed to be entitled to a loss-of-job indemnity, invoking various arguments in support of this claim. It is recalled that in accordance with Annex V to the NATO Civilian Personnel Regulations, a loss-of-job indemnity may be awarded to any staff member who holds a firm contract and whose services are terminated for any one of the following reasons:

- (a) suppression of the budget post occupied by the staff member;
- (b) changes in the duties of the budget post occupied by the staff member of such a nature that he no longer possesses the required qualifications;
- (c) general staff cuts including those due to a reduction in or termination of the activities of an Organization;
- ...
- and who
- (a) is not offered a post in the same grade in the same Organization, or
- (b) is not appointed to a vacant post in one of the other Coordinated Organizations at a comparable remuneration,
- ...

In a first submission, some appellants contended that the post that was offered to them should have been graded at a higher grade. They therefore argued that the post offered was not “in the same grade”, thus, in their view, entitling them to the loss-of-job indemnity. The Tribunal disagreed: in addition to concluding that the grading of the new posts was regular, which rendered the claim anyway groundless, it found that a claim for the regrading of a post for the sole purpose of claiming a termination of appointment with the payment of a loss-of-job indemnity would be inappropriate and abusive. It added that it would defy all logic to consider continued employment with a promotion as loss of employment entitling a staff member to indemnities.

Several appellants submitted that they did not have the required qualifications for the posts they were offered. Respondent, on the other hand, was confident that appellants had the necessary qualifications and could perform the functions satisfactorily. In addition, it also offered training whenever necessary. The Tribunal found that there was no *prima facie* evidence that appellants did not have the required qualifications, which could, moreover, not be established in actual practice following appellants’ refusal to countersign the contracts and at least try to perform the duties of the posts. Appellants failed to convincingly substantiate their submission in this respect.

In a further argument, some appellants contended that the post offered was not in the same organization and that they were therefore entitled to the loss-of-job indemnity. The Tribunal also disagreed on this point. It held that it might be true that a reorganization was under way and that some units were being replaced with others, but this was taking place within one of the six Coordinated Organizations, the North Atlantic Treaty Organization. The words “same Organization” in Annex V to the Civilian Personnel Regulations therefore refer to NATO as a whole.

Lastly some appellants contended that the new contracts contained mandatory deployment clauses, which differed significantly from those in their previous contracts, thus allegedly entitling them to a loss-of-job indemnity. The Tribunal compared the offered clauses with those in appellants’ previous contracts and found that the clauses were either identical or similar and dismissed also this claim.

In a related case (**Case No. 2016/1084**), appellant contested the termination of his employment following the reorganization. However, during the course of the proceedings, he was recognized by an Invalidity Board as suffering from a permanent invalidity totally preventing him from performing his duties. He received the corresponding indemnities and is currently receiving an invalidity pension. As a new situation had arisen during the proceedings, the Tribunal ruled that there was no longer need to adjudicate on the parties’ respective contentions and it deemed it appropriate in the circumstances of the case to compensate appellant for the costs of retaining counsel.

In another case (**Case No. 2016/1083**), appellant, who held a B-5 post, was assigned to another B-5 post following the restructuring. He, however, contested that he was not considered for an A-2 position he had applied for and for which he considered himself qualified and entitled. The Tribunal held that there is no automatic entitlement for a staff member to be appointed to a post he applies for, and, *a fortiori*, not to a post at a higher level. The Tribunal recalled that it can only interfere with a non-selection decision if it was taken without authority, if a rule of form or procedure was breached, if it was based on a mistake of fact or law, if an essential fact was overlooked, if a clearly mistaken conclusion was drawn from the facts or if there was an abuse of authority. Regarding appellant’s plea that a detailed and substantiated written statement be provided of all

the criteria he did not meet in relation to his application, the Tribunal noted that Respondent had during the proceedings very candidly and in great detail outlined the reasons why it had concluded that appellant was not suitable for the post. This explanation also confirmed that appellant's application for the post had indeed been considered. The Tribunal concluded that the non-selection decision was regularly taken in the exercise of management's discretionary powers and dismissed the appeal.

In a number of cases involving other NATO bodies, the Tribunal had to rule on the compliance of internal directives with the Civilian Personnel Regulations or on the interpretation of the directives' own terms. Several of these cases concerned the renewal or non-renewal of contracts.

Case No. 2015/1055 dealt with the termination of a staff member's employment after extended sick leave. Appellant contested the form by which the termination was received and the applicable notice period. The Tribunal held that a notification by email of a written document satisfied the provisions of Article 9.2 of the Civilian Personnel Regulations, that the termination was carried out in compliance with the Regulations, and that appellant's possible return to work in the near future had been duly taken into account. The Tribunal noted furthermore that the procedure for termination for extended sick leave follows specific rules that do not leave any room for the notice period given to a staff member in an ordinary situation. However, in the present case, the termination decision was taken with retroactive effect. The Tribunal postponed the effect of that decision until the first day of the month following the notification of the decision and compensated appellant for the illegal retroactivity of the decision. The remainder of the contentions was dismissed.

In **Case No. 2015/1065**, appellant contended that at the expiry of her contract she was entitled to an indefinite duration contract and that the Organization's offer of a new definite duration contract of one year was illegal. The Tribunal considered that the wording of the first contract was in line with Articles 5.2 and 5.5.3 of the Civilian Personnel Regulations (CPR) governing definite duration contracts - and not those of an initial contract – and therefore the Agency did not err in offering appellant a one-year duration contract. The Tribunal also analyzed the contention that language contained in

appellant's vacancy notice contained undertakings that were not honored. It noted that simple words contained in a vacancy notice, drafted in conditional language, and that recall rules or regulations, cannot be considered to extend staff members' rights beyond those in the CPR, or to preserve them from subsequent changes to the CPR. The appeal was dismissed.

Case No. 2015/1066 concerned the granting of the installation allowance to a staff member who was employed as a member of his national armed force in the same NATO Body before taking up duties as a staff member. Appellant claimed the granting of the full installation allowance in accordance with Article 26.1 of the Civilian Personnel Regulations (CPR, in the version applicable to him), and not just the reimbursement of some goods and appliances he had received from the administration under the special regime of hardship exceptions provided for in Article 26.3. The Tribunal noted that appellant, after having requested to benefit from the regime of exceptions provided by Article 26.3 of the CPR because of his special hardship, which was granted by respondent, could not in good faith continue to claim the granting of the full installation allowance under Article 26.1 of the CPR. In any event, the Tribunal considered that, with the challenged decisions, respondent did not commit an error, considering that appellant did not fulfill the conditions of eligibility for the ordinary regime of Article 26.1 of the CPR. The Tribunal stated that it is precisely in compliance with the requirement of good administration that respondent validated the reimbursement of several of appellant's expenses, on the basis of the exceptions regime of Article 26.3. The Tribunal dismissed the appeal.

In **Case No. 2015/1067**, appellant challenged the compatibility of Directive 060-050 "NATO Travel on International Duty" with Article 41 of the CPR regarding the granting of the subsistence allowance for a mission to a location where no NATO canteen was available. The Tribunal held that a systematic and comprehensive interpretation of the relevant Civilian Personnel Regulations and Directive provisions leads to the conclusion that duty travels to destinations where no NATO canteen was available require the granting of the corresponding allowance.

Case No. 2016/1069 concerned the withdrawal of appellant's resignation. The Tribunal noted that, in accordance with the provisions of Article 8 of the Civilian Personnel

Regulations (CPR), a resignation is irrevocable when there is mutual agreement between the parties. The Tribunal observed further that the Regulations do not give indications on the applicable regime in case such resignation is withdrawn but that, according to the principle of parallelism of forms, a mutual agreement must also be reached in such a case. Appellant did not deny the existence of an agreement when he resigned, but argued that, being under stress, he did not exercise his free consent when he resigned. After analyzing the appellant's submissions, the Tribunal concluded that he did not establish that his consent was vitiated and, more generally, under the discretion that respondent enjoys on the basis of the provisions of Article 8 of the CPR, that respondent had not made an obvious error of judgment nor violated the CPR when rejecting appellant's request to withdraw his resignation. The appeal was dismissed.

Cases No. 2016/1070 and **No. 2016/1076** were respectively the 4th and 5th appeals submitted by the same appellant, the previous ones being dealt with in 2015. In Case No. 2016/1070 appellant challenged respondent's interpretation of the Civilian Personnel Regulations (CPR) concerning the costs of an Invalidity Board procedure, and in particular, regarding his claim for reimbursement of travel and subsistence expenses he and his accompanying spouse incurred to travel to an examination required by this Board. The Tribunal dismissed the appeal on the basis of the clear dispositions of the regulations in this respect. Case No. 2016/1076 concerned the findings of the Invalidity Board. Appellant claimed various irregularities in the proceedings of the Board, which, in his view, lead to an erroneous assessment of the situation leading to the Board's decision not to grant an invalidity pension. The Tribunal considered that the decision not to recognize appellant's right to an invalidity pension, which was preceded by the Board's unanimous findings, was in accordance with the CPR dispositions. The CPR provide that the Secretary/Director General must grant the invalidity pension in accordance with the findings of the Invalidity Board, unless there is an "obvious factual error" in the proceedings or conclusions of the Board, which was not the case. Concerning appellant's request for disclosure of certain medical documentation prepared by an independent physician who participated in the Board's proceedings, the Tribunal observed that, whilst it is clear that there is no secrecy for the staff member himself about his own medical situation, it cannot shape the concrete items or documents in which a medical practitioner could have collected appellant's

medical data. In any case, the doctor's opinion was reflected in the Board's report. The appeal was dismissed.

In **Case No. 2016/1071** appellant's definite duration contract was renewed by two years. The essential point raised by the appeal was whether an Agency can adopt its own contract policy. The Tribunal, recalling previous Appeal Board case law, acknowledged that Agencies may, in certain circumstances, adopt different rules than those in the Civilian Personnel Regulations (CPR), but stressed that special rules may not diminish the rights that staff members have under the CPR. In the present case, the Tribunal held that a NATO body was, under certain conditions, free to grant a contract extension or not, but that, once it had decided to grant an extension, it was in the present case bound to give an indefinite duration contract. The Tribunal annulled the decision granting appellant a definite duration contract.

Cases Nos. 2016/1072 and **2016/1073** were submitted by the same appellant in the framework of a disciplinary procedure. Case No. 2016/1072 was summarily dismissed, as the Tribunal held that appellant challenged preparatory acts that formed part of the disciplinary proceedings and were not administrative decisions directed at him. Case No. 2016/1073 concerned the suspension of appellant during the disciplinary proceedings. The Tribunal observed that Article 60.2 provides that "Members of the staff against whom a charge of serious misconduct is made may be suspended immediately from their functions ...". The suspension having been decided before the charges against appellant were brought, the Tribunal, without prejudice to its position in law on the substance of the disciplinary case, annulled the decision suspending the staff member.

Case No. 2016/1074 concerned appellant's offer of a definite duration contract instead of an indefinite duration one, based on the criteria established by Article 5.5.3 of Civilian Personnel Regulations (CPR) and the ACT NATO Civilian Personnel Contract Policy Directive No. 50-6. The Tribunal held that, in the framework established by this Article, an internal directive may be adopted with the intention of guaranteeing the same treatment between the staff members and other civil servants concerned. In this regard, an internal Directive, such as Directive N° 50-06, must be regarded as a rule of conduct, which the NATO Body imposes on itself within the broad discretion conferred by the

regulations. It therefore may not depart from such rules since the principle of equal treatment would otherwise be infringed. In the present case, the Tribunal considered that appellant fulfilled the criteria established by the Directive mentioned above on the basis of which an indefinite duration contract must be offered to the staff member concerned and annulled the respondent's decision not to grant him such a contract.

In **Case No. 2016/1077** appellant contested the refusal by respondent to reimburse the payment of a fee for the renewal of a security clearance, which had been introduced in the national legislation of one NATO member state. In this regard, appellant claimed discrimination because of the diverging practices existing in different locations of respondent's services regarding the payment or reimbursement of these fees. The Tribunal rejected the appeal on its merits ruling, firstly, that there is no obligation under the Civilian Personnel Regulations for respondent to pay these fees and that the payment or reimbursement of these fees depends on the national legislation. Secondly, and in contrast with appellant's contentions, the Tribunal considered that there is no established practice concerning the payment or the reimbursement of these fees, which is uniformly applicable in all the respondent's locations and creates a binding obligation for respondent to reimburse or to pay these fees. It further observed that the Tribunal has no jurisdiction to give interpretations of a national law.

Case No. 2016/1097 was, following the agreement of the parties, decided on the basis of the written proceedings only. In 2015 appellant petitioned the NATO Secretary-General to reconsider the 2006 decision to terminate his contract and to grant him an invalidity pension. He referred to changes introduced in 2008 to the pension rules of another, European, organization and jurisprudence of one national court concerning those changes. The Tribunal observed that no valid grounds had been provided to annul a decision more than ten years after the event. It held that pension schemes of other international organizations or changes thereto cannot be the basis for annulling a decision validly taken under NATO's pension scheme and that the pension rules as laid down in the Civilian Personnel Regulations were correctly applied in appellant's case. Moreover, it recalled that it is not for the Tribunal to change the rules or to apply and interpret them beyond their ordinary meaning. The Tribunal dismissed the appeal. It recalled, however, management's special responsibility in the dispute resolution

process to assist staff and former staff, and to explain to them the correct procedure to be followed or the correct person or instance to be addressed.

In **Case No. 2016/1098**, appellant challenged the offer of a further definite duration contract that added a transfer clause to another location at an unspecified date. The Tribunal considered that there was no provision that prevents the administration from offering a staff member, when renewing his or her contract, that certain conditions may vary from those that applied to a previous contract. The Tribunal held, however, that when doing so, the administration must anticipate the possibility that the staff member may not agree to those modifications, by giving him the option to refuse the renewal and to receive the corresponding loss-of-job indemnity. The Tribunal noted that this was done in the present case. Furthermore, during the proceedings, developments had taken place and, at the time of the hearing, appellant had effectively moved to the new location. The Tribunal dismissed the remaining submissions of the appeal.

Two cases concerned the failure to respect or exhaust the pre-litigation procedures.

In **Case No. 2016/1068** appellant contested a decision not to grant an invalidity pension. Appellant initiated the pre-litigation procedure, but had not fully exhausted it. The Tribunal, on the basis of its previous case law and the Civilian Personnel Regulations, upheld respondent's contention that decisions communicated through another authority cannot be considered as decisions "taken directly" by the Head of the NATO Body. The Tribunal underlined the increasing practice in national and international administrations to indicate to appellant the next steps in the procedure in case a staff member is not satisfied with the reply received. It noted, however, that in the present case, appellant had taken her decisions in awareness of the rules, albeit with an erroneous interpretation thereof, for which she carried the responsibility. The appeal was dismissed.

In **Case No. 2016/1075** appellant lodged an appeal with the Tribunal indicating that the pre-litigation procedure would be followed with retroactive effect. The Tribunal recalled its consistent case law about the need to exhaust the pre-litigation steps before an appeal can be lodged. It declared the appeal clearly inadmissible and summarily dismissed it.