2021

ANNUAL REPORT OF THE

NATO ADMINISTRATIVE TRIBUNAL

2021 Annual Report of the NATO Administrative Tribunal

Introduction

This is the ninth Annual Report of the Administrative Tribunal of the North Atlantic Treaty Organization (NATO). It covers the period 1 January 2021–31 December 2021 and is issued on the initiative of the Administrative Tribunal, pursuant to Rule 4(h) of its Rules of Procedure (ROP).

As in 2020, the Tribunal remained operational during the COVID-19 pandemic, adapting its proceedings to the circumstances.

Composition

The mandate of two judges, Ms María-Lourdes Arastey Sahún (Spain) and Mr John R. Crook (United States) ended on 30 June 2021.

In January 2020, the President of the Tribunal wrote to the Secretary General asking for the internal procedures for the appointment of the new members to be initiated. The procedure was set in motion and nominations were received by the end of April. Unfortunately, delays in the process occurred, and the two new members were officially appointed by the NAC on 24 September 2021. In the meantime, the Tribunal's September session had to be cancelled. Both new judges required security clearances, which further delayed their onboarding.

The composition of the Tribunal is now as follows:

Mr Chris de Cooker (Netherlands), President;
Mr Laurent Touvet (France), Member and Vice-President,
Ms Seran Karatari Köstü (Turkey), Member;
Ms Anne Trebilcock (United States), Member; and
Mr Christos A. Vassilopoulos (Greece), Member.

This reporting year, the Tribunal was able to continue to count on the outstanding assistance of the Registrar, Ms Laura Maglia.

Organizational and administrative matters

In 2021, the Tribunal published its new Practice Directions, replacing the earlier version in force since 2013. Under the authority of the President, they are issued by the Registrar in accordance with Rule 5(h) of the Tribunal's ROP.

The Practice Directions are provisions relating to the lodging of written pleadings and the preparation for and the conduct of the hearings. Their purpose is to assist the parties in understanding the procedures. They do not amend, and are subject to, the requirements of Annex IX to the NATO Civilian Personnel Regulations (CPR), the Tribunal's ROP, and any directions given by the Tribunal in a particular case.

The Tribunal also published on its website two supporting administrative papers: an e-brochure illustrating in a simple manner the complaints and appeal process, intended to provide a visual overview of the proceedings, and the Guidelines for the use of the AT portal, the main tool for exchanging documentation between the Tribunal and the parties.

An intern worked for the Tribunal from March 2021 to August 2021 and was subsequently extended as a temporary staff member until 15 December 2021.

In December 2021, the Tribunal welcomed its administrative assistant. She will support the Tribunal for one third of a full-time equivalent.

Tribunal proceedings in 2021

Owing to the enduring COVID-19 pandemic, the Tribunal continued to hold its sessions online, availing itself of the tools the Organization had put in place for online meetings

and in full respect of the security regulations in force. Online sessions were held on 25–26 March (30th), 14–16 April (31st), 7 May (32nd) and 25 June (33rd). On 16–17 December (34th), the session was held in person at NATO Headquarters.

The Tribunal rendered 22 judgments, five of which were delivered in 2022 and are covered in this Report.

The Tribunal's President issued six orders in 2021 and the Tribunal three (one of which was rendered in 2022 and is included in this Report).

The NATO Support and Procurement Agency (NSPA) was the respondent in eight cases, the NATO International Staff (NATO IS) in six, the NATO Communications and Information Agency (NCIA) in four, and the Centre for Maritime Research and Experimentation (CMRE), the Headquarters Allied Joint Force Command Brunssum (JFC Brunssum), the Headquarters NATO Airborne Early Warning and Control Force Geilenkirchen (NAEW&CF GK) and the Supreme Allied Command Europe (SHAPE) in one case each.

The Tribunal continued to resolve cases as expeditiously as possible under the circumstances of the pandemic. The duration of the written procedure alone is around four months and the 2019 changes to the CPR introduced two periods of judicial closure (15 December–15 January and 1–31 August).

With the exception of one case that was summarily dismissed and one for which the expedited procedure was granted, most judgments were rendered within seven to twelve months from the filing of the case.

One case, however, was registered on 9 September 2019 and the judgment was rendered on 14 June 2021. It was in fact joined with another case filed later by the same appellant. Both cases involved personal and sensitive matters for which a more advanced online tool was required. Moreover, the first hearing, held in March 2021, was suspended to allow the appellant to receive additional documentation, and the hearing resumed in May 2021.

Another case was registered on 11 August 2020 and the judgment rendered on 20 January 2022. The appellant in this case specifically asked to be heard by the Tribunal in an in-person hearing. The earliest opportunity in this respect was the December 2021 session.

In 2021, fourteen new appeals were introduced.

Cases are assigned to Panels of three judges or to the full Panel, with due consideration of the principle of rotation and 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. Until 30 June 2021, when the Tribunal's composition changed, the President and the members were assigned between 33 and 34 cases each between 2013 and 2021.

The Tribunal's case law in 2021[1]

During the period covered by this report, the Tribunal rendered the following judgments and orders, including judgments that were rendered in 2022 following the December 2021 session.

The AT President issued six orders in total:

- three withdrawal orders in Case No. 2020/1318, Case No. 2020/1319 and Case No. 2121/1331;
- a Rule 10 order in Case No. 2020/1320;
- an expedited hearing order in Case No. 2021/1323; and
- a joining order in Case No. 2021/1328 and Case No. 2021/1334.

The Tribunal issued one order in Joined Cases Nos. 2019/1290–2020/1298 suspending the hearing to allow the appellant to request and receive additional documentation from the Medical Services.

[1] The following summaries of Tribunal judgments are for information purposes only and have no legal standing. The full texts of the judgments can be found on the Tribunal's website.

Two Tribunal orders were issued following a request for clarification of judgment (Rule 30 of the Tribunal's ROP).

In Case No. 2020/1317, upon the rendering of the judgment, the respondent submitted a request to clarify some aspects of its operative provision. In particular, it requested that an interpretation of the judgment's dispositions be clarified in view of its execution. The Tribunal allowed the request and supplemented the operative part of the judgment with the requested clarification.

In Case No. 2020/1302, the appellant requested "clarification of operative provisions", the rationale of which is summarized below in the case summary.

Two sets of cases dealt with changes in the CPR following NAC-approved decisions. Five cases dealt with disciplinary proceedings and two cases each with, respectively: occupational invalidity/harassment, termination of contract, financial matters, allowances (expatriation and education allowances). One case dealt with the recruitment process and four cases had pre-litigation/admissibility issues.

Cases dealing with NAC-approved changes to the CPR

Case No. 2020/1306 and **Case No. 2020/1310** dealt with the salary adjustment method for personnel based in Luxembourg, following the 25 October 2019 NAC decision approving the reports of the Coordinating Committee for Remuneration (CCR). The cases were examined by a full panel of five judges.

Case No. 2020/1306 was submitted by 161 NSPA staff members representing B and C grades. The appellants challenged their January 2020 payslips, as the implementing tool of the NAC decision mentioned above. The decision authorized significant salary increases for A and L staff members in Luxembourg, without a corresponding increase in the salaries of B and C grades.

The matter can be summarized as follows. NATO is one of the so-called Coordinated Organizations, a cooperative mechanism involving six international organizations headquartered in Europe aiming at harmonization of rules and practices on salaries, allowances and pensions. Following the move of the respondent's predecessor agency (NAMSA) from France to Luxembourg in 1968, it was decided to use for A and L staff

in Luxembourg the same salary scales and salary adjustment method as those approved through the Coordinated Organizations process for NATO staff in Belgium. This linkage was reflected in the CPR, in particular in Article 5.1 of Annex II to the CPR, and was maintained for many years. This was initially advantageous for Luxembourg staff, as the local cost of living there was less than that in Belgium. However, this changed over time, with the cost of living in Luxembourg rising in comparison to Belgium.

Different procedures were used over the years to make annual adjustments to the salaries of NAMSA's A and L staff and B and C staff in Luxembourg. Beginning in 1974, A and L staff received the same annual adjustments as corresponding NATO A and L staff in Belgium, whose salaries are adjusted by multiplying the evolution of salaries in national civil services in a number of reference countries by the rate of inflation in Belgium. However, until 1992, B and C staff salaries were annually adjusted on the basis of periodic surveys of the best local employment conditions. Those local surveys were discontinued in 1992. Since then, B and C staff in both countries have received annual adjustments based on the same percentage. However, because the percentage adjustments have accumulated from the higher basis of B and C staff salaries in Luxembourg existing in 1992, those salaries have been higher than those of corresponding staff in Belgium.

Notably due to higher housing costs, the compensation offered to A and L grades fell below that offered by other employers in Luxembourg and at other NATO locations, contributing to significant difficulty for NAMSA to attract and retain high-quality professional staff. The issue of "breaking the link" between Luxembourg and Belgium was a recurring subject of discussion in the CCR. Ultimately, the CCR recommended, and the NAC in 2019 approved, eliminating the link between salary scales in Belgium and Luxembourg and creating a new salary scale for Luxembourg A and L staff intended to bring their compensation into alignment with that of A and L staff in other NATO locations. This involved a one-time 16% average "catch up" increase in salary levels for NSPA A and L staff in Luxembourg that became effective in January 2020.

B and C staff in Luxembourg received an annual cost-of-living adjustment of 1.6% that was reflected in their January 2020 payslips, but they did not get the much larger "catch-up" increase granted to A and L staff.

Concerning admissibility, the respondent contended, *inter alia*, that the claim was inadmissible because it contested the effects of NAC decisions determining salary scales, that the respondent was bound to implement. The Tribunal recalled that Article 6.2.1 of the CPR authorizes appeals of decisions by the Head of a NATO body "in application of a decision of the Council." It emphasized that it has jurisdiction to consider challenges implicating NAC decisions only where a decision has been applied in a manner affecting an appellant's personal interests, which was the case in the current appeal. The respondent further contended that the appeal was not filed within the time limits set by the CPR. The Tribunal underlined that an administrative decision can only be appealed after it has been applied in a concrete manner that directly affects a staff member.

With respect to the merits of the appeal, the Tribunal did not accept the appellants' contention that, having once established scales of salaries and allowances under Article 22.2 of the CPR, the NAC is perpetually barred from creating new scales and can only adjust existing salaries and allowances using the process set out in the CPR. The NAC is NATO's supreme policy-making body and, as such, it exercises the power to determine the scales of salaries and allowances, including the power to replace existing scales when judged appropriate by the collective will of member countries acting in the NAC.

The evidence showed that this is what the NAC did. On 25 October 2019, the NAC approved two separate CCR reports. The first, the 264th CCR Report, granted a 1.6% adjustment for all Luxembourg staff for 2020, using for the last time the mechanism providing for the same annual adjustments to salaries in Belgium and Luxembourg. The second document approved by the NAC, the CCR's 259th Report, amended Annex II of the CPR and established a new salary scale for A and L grades in Luxembourg. The CCR's 259th Report made clear that the intended action was to create a new salary scale for A and L staff in Luxembourg. This was the proposal approved by the NAC, and the amounts indicated were those notified to NSPA staff on 6 January 2020, which were

then reflected in the payslips being appealed.

The Tribunal did not accept the contention that the new salary scale as applied to NSPA's A and L grades in Luxembourg was merely an adjustment to salary that, under Article 5.2 of Annex II to the CPR, had to be applied in the same manner to all grades. The Tribunal held that the NAC had approved a new salary scale for A and L grades, not an adjustment.

Further, the Tribunal rejected the allegations of discrimination and unequal treatment. It held that the CPR and the NAC authorized and maintained a reasoned and never-contested distinction between situations. Compensation for A and L grade staff, often recruited internationally in competition with other prospective employers – including other NATO bodies –, aimed at providing corresponding purchasing power across NATO locations. By contrast, B and C salary scales were intended to ensure competitiveness on local labour markets. The appeal was dismissed.

In **Case No. 2020/1310,** the appellant, an A grade at the NSPA, challenged his January 2020 payslip, contending that the amounts of the annual adjustments to his salary and household allowance for 2020 were determined improperly and contrary to the CPR provisions. The factual context is the same as in Case No. 2020/1306 above. The appellant contended that the CCR and the NAC determined that linking annual adjustments of salaries and allowances of all grades in Luxembourg to those in Belgium did not ensure equal purchasing power for staff in Luxembourg with staff in other NATO locations.

In October 2019, the CCR recommended, and the NAC approved, eliminating the link between salary scales and adjustments in Belgium and Luxembourg. In addition to a new salary scale for Luxembourg A and L staff (the subject of Case No. 2020/1306 above), the NAC decided that annual adjustments to salaries and allowances in Luxembourg would no longer mirror those in Belgium. They would instead be made in the same manner as the annual adjustments to salaries and allowances of NATO staff in locations other than Belgium.

The contentions on the admissibility are similar to Case No. 2020/1306 above. Concerning the merits, the appellant's main contention was that the amended versions of Annexes II and III.K to the CPR resulting from the NAC's October 2019 decisions delinking Belgium and Luxembourg had an immediate effect, so that adjustments to salary and allowances effective as of 1 January 2020 had to be calculated in accordance with them. The appellant contended that this was not done and that the respondent violated the CPR by not approving and paying the correct adjusted amounts for 2020.

The 259th Report established a new salary scale for NSPA's A and L staff. The second, the 264th CCR Report, granted a 1.6% annual salary adjustment for all Luxembourg NATO staff for 2020, based for the last time on the mechanism providing for the same annual adjustments to salaries in Belgium and Luxembourg. Annex 3 to the latter report showed a Purchasing Power Parity (PPP) for Luxembourg of 1, the same as for Belgium. The Tribunal held that the specific amounts approved by the NAC showed that the NAC understood and intended for 2020 to be a transitional year, during which the data needed to calculate adjustments to salaries and allowances for 2021 and thereafter could be assembled. The CCR's 272nd Report (subsequently approved by the NAC for implementation in 2021) showed separate adjustment indices for the 2021 salary adjustments in Luxembourg (101.6) and Belgium (102.2), thus making it clear that in 2021, unlike in 2020, the annual salary adjustment for Luxembourg was calculated separately from that for Belgium. The Tribunal therefore considered that the amounts of the adjustments to the appellant's salary and allowances for 2020 accurately reflected decisions by the NAC, NATO's supreme legislative authority.

The appellant further contended that the NAC had determined the amounts in violation of the CPR, in particular Articles 5 of Annexes II-6 and III.K to the CPR that deal with annual adjustments. The Tribunal rejected the appellant's arguments and held that the different provisions of the CPR must be read together, in a way that gives effect to the ordinary meaning of each provision and avoids manifestly unreasonable results.

Concerning the PPP and its determination, the Tribunal observed that Article 3 of Annex II requires that the elements needed to calculate the appellant's 1 January 2020 salary adjustment had to be assembled and favorably considered by the CCR at some point prior to 30 September 2019. Compliance with Article 3 would not have been possible

under the appellant's interpretation, which appeared to assume that NATO could have determined the amount of the 2020 adjustments without engaging in the required Coordination process. The Tribunal could not accept an interpretation of the CPR that disregards significant provisions in this manner.

Concerning the allegation that the NAC misused its powers and failed in the duty of care by failing to take account the interests of staff in Luxembourg, the Tribunal held that the process approved by the NAC in 2019 to "de-link" adjustments to salaries and allowances in Luxembourg from those in Belgium was taken to remedy a situation that was perceived to be inappropriate and potentially inequitable. Taking these actions reflected proper administration, and not a misuse of powers or a failure to meet the duty of care. The appeal was dismissed.

Case No. 2020/1303 and **Case No. 2020/1315** were submitted respectively by five former IS staff members and seven serving IS staff members, and concerned the amendment of Article 36 of the Coordinated Pension Scheme Rules, following the NAC's approval of the 263rd CCR report, and as reflected in the appellants' January 2020 pension/salary slip. The Tribunal's President considered that the scope of the appeal before it was such that it was advisable for the appeals to be heard by the full court. Being a Coordinated Pension beneficiary, he recused himself pursuant to Article 6.1.5 of Annex IX to the CPR, to avoid any conflict of interest. The President was replaced by the Vice-President.

The factual background can be summarized as follows.

NATO has two pension schemes, depending on whether the staff member was recruited before or after 1 July 2005. The Coordinated Pension Scheme is the one that applies to staff recruited before 1 July 2005; it is common to the six Coordinated Organizations. Following the recommendations of the Coordinating Committee of Government Budget Experts (CCG, the predecessor of the CCR), in its 127th report, the NAC adopted in 1978 the coordinated remuneration and pension scheme rules, Article 36 of which sets out the rules for the annual adjustment of pensions. Following the 150th report and after a lengthy debate, the NAC added a footnote to Article 36, which provided that pension adjustments were to be identical to salary adjustments.

This pension adjustment mechanism remained in place for nearly 40 years. The financial rules applicable to the pension scheme were often amended during that time, however. For example, the contribution rates were increased several times, and the Coordinated Pension Scheme was closed to staff recruited after 30 June 2005.

As from 2011, an initiative to enhance the financial stability of the scheme in a context of rising costs began. That initiative was met with reservations, and it was only in 2017 that the CCR formally decided “to initiate an overall review of the Coordinated Pension Scheme to bring it more in line with best practice in other pension systems, both in international organisations and more widely, and to improve the financial stability of a system whose costs have been rising significantly”.

In January 2019, five of the six Coordinated Organizations, including NATO, submitted their final proposal to the CCR: to tie pensions to inflation instead of to the salary scales, and make the conditions for entitlement to the education allowance stricter for future pension beneficiaries. On 26 September 2019, in its 263rd report, the CCR issued a recommendation accordingly. On 25 October 2019, the NAC amended Annex IV to the CPR, including Article 36 thereof.

At the end of January 2020, the pensioners received their pension slip for January 2020. The appeal was submitted directly to the Tribunal pursuant to Article 4.4 of Annex IX to the CPR. Even though the NAC decision also amended Article 28 (setting out the conditions of entitlement to the education allowance for pension beneficiaries, introducing changes for the recipient of pensions from 1 January 2030), the appeal did not cover that issue or the contribution rate; it concerned only the pension adjustment rules.

The respondent put forward several admissibility contentions, challenging the fact that different appellants had submitted a single appeal; that the information about the changes in the regulations had been circulated a long time before the receipt of the payslip, rendering the appeal time-barred; that the appeal challenged a decision of the NAC; that the decision did not affect the appellants, all of which the Tribunal considered unfounded.

The principal considerations on the merits are summarized below.

On the insufficient justification and lack of reasons for the change to Article 36

The appellants asserted that insufficient justification was given for the change to Article 36 of Annex IV to the CPR, and that it was not preceded by a proper impact study. The Tribunal observed that the change to a regulatory standard, such as the change in the calculation method used for future annual pension adjustments does not mean that all the details must be explicitly given in the impugned decision. The Tribunal considered that it is enough for those affected to be in a position to understand the reasons why the act concerning them was adopted, the purpose thereof, and the method used to establish the amount of their pension rights.

Concerning the argument that the prior studies were insufficient, the Tribunal noted that there was enough information in the file to show that studies had been conducted effectively. The NAC did not act arbitrarily and it was not for the Tribunal to examine the validity of the change in the calculation method of the adjustment, nor to compare it with other solutions that could have been implemented.

On the supposed violation of the 1994 Noordwijk agreement

The Tribunal analysed the nature of that agreement and concluded that it was not an international treaty but rather an agreement between the organizations, the staff representatives and the CCR aimed at setting out the conditions for establishing and adjusting pensions. It recalled that the decision maker is the NAC, that it could check whether there was general agreement on all the changes affecting personnel management, but that it was not required to secure the staff's agreement prior to amending the Regulations: no provision of the CPR or principle of international law gave the staff representatives joint decision-making power.

Furthermore, the Tribunal underscored that the CCR reports were merely recommendations, which the decision-making bodies of each organization might or might not apply, and observed that the succession of CCR reports on this topic showed

that it was a complex issue, and that the financial balance of the retirement scheme was the primary objective of the decisions that followed.

On the analysis of the other submissions in the appeal

The Tribunal recalled some general principles. The conditions of employment of international civil servants are usually laid down both in a contract containing certain clauses of a strictly individual nature and in the Personnel Regulations or Statutes to which the contract refers. The latter contain two fundamentally different kinds of provisions: those relating to the organization of the international civil service and to impersonal and variable benefits on the one hand, and those establishing the individual position of the staff member which were a determining factor in that staff member's decision to accept the post on the other. The first are of the nature of regulations and can be modified at any time in the interests of the service, subject to the principle of non-retroactivity and the limitations that the competent authority has itself placed on these powers of modification; however, such modifications, should their effect be to upset the balance of the contract, could entitle the staff member either to terminate the contract or to obtain compensation.

That the new pension adjustment method is of the nature of a regulation was not disputed in the present appeal. The parties disagreed, however, on the conclusions to be drawn from that, and in particular on the compensation to be awarded to staff members as a result of the change.

On the supposed violation of vested rights and the alleged upsetting of the overall balance of the contracts

To determine whether a vested pension right has been violated, international tribunals agree that three elements must be examined: the fundamental, essential nature of the change to the conditions of employment, the objective nature of the new provisions, and the scope of the consequences of the measure.

In the present appeal, it came down to whether the change in the annual pension adjustment, henceforth aligned with the price index and no longer with the salaries of

the serving staff of the same organization, did upset the balance of contracts.

The Tribunal observed that no adjustment method had been formally enshrined in an overarching text. It is up to each organization – in NATO's case the NAC – to decide the most appropriate method of guaranteeing pensioners the income to which their contributions over their period of service entitle them. This choice derives from complex, technical economic factors, which by nature are prone to evolve in accordance with the Member countries' demographics and economic situation. The fact that up until the disputed amendment, the pension adjustment had been aligned with the salary adjustment may be interpreted as the implementation of a principle of solidarity between serving and pensioned staff. That solidarity is, however, a consequence of, and not the reason for, the chosen adjustment method.

The same reasoning applies to the parallelism in the trends of the pensions and salaries in the eight reference civil services. It was never framed as an intangible principle that trends in pensions and salaries had to remain parallel; such parallelism was the consequence of that, but could be modified if the financial and economic conditions of the pension scheme were changed.

With regard to purchasing power parity, the Tribunal observed that the retirees' ability to settle in their home country, set out in Article 33 of Annex IV to the CPR, was not affected by the new Article 36.

The Tribunal considered that the new pension adjustment method was not disadvantageous to pensioners. On the contrary, by guaranteeing their purchasing power, it aimed specifically at protecting them against financial loss and could prove more protective of their income than alignment on salaries. The application of a given method over a long period does not give pensioners a vested right to have it permanently, nor does it create a custom or a general principle that the Organization's competent bodies may no longer modify.

The Tribunal further observed that the economic context had changed a great deal over the decades owing to the constant rise in pensions paid and much faster growth in the number of pensioners than that of serving staff. Thus, the NAC could lawfully, without

upsetting the balance of contracts or violating vested rights, change the rule on future pension adjustments to ensure the financial stability of this pension system and guarantee the purchasing power of the pensions paid to each pensioner.

On the violation of the principle of legal security, non-retroactivity and no unjust enrichment

The appellants claimed that the change to Article 36 affected legal security by unilaterally changing the pension adjustment method for staff. The staff members paid contributions throughout their entire careers on the basis of the benefits that they were expecting at that time.

When the staff members joined the Organization, their contract and the CPR guaranteed the existence of a future pension and pension adjustments for them. However, in the Tribunal's view, they were not given any entitlement to a specific pension adjustment method, which by nature depends on evolving criteria, particularly over the very long period that can elapse between a staff member joining, retiring and dying. The change in the pension adjustment method does not jeopardize the situation of the appellants, who continue to draw a pension, which is an integral part of their contract, and to have it adjusted annually.

The appellants alleged retroactivity since the change to Article 36 applied to staff who retired before 1 January 2020, and are thus seeing their pension adjustment change in the future. The Tribunal recalled that the Coordinated Pension Scheme is based on the solidarity principle, wherein pension rights are not calculated as a deferred return of contributions paid by staff over the course of their career, but rather to maintain a standard of living in accordance with their past job and to secure the future of the system. The competent bodies of the Organization are therefore allowed to modify the pension adjustment rules for the future by applying this new method to previously pensioned staff. Yet viewing that as retroactivity would make it impossible to change the pension rules for staff who are already retired, and would give the Administration little room to manoeuvre, which would produce very slow, delayed effects that could threaten the financial balance of the system.

Lastly, the Tribunal concluded that there was no unjust enrichment of the Organization, because the serving staff's rates of contribution and the pension adjustment arrangements did not have the effect of retroceding any money at all to the Organization but rather of ensuring the internal balance of the pension scheme. The Tribunal dismissed the appeal.

In **Case No. 2020/1315** the appellants, who were serving staff members, sought the annulment of the amendment to Article 36 of the Coordinated Pension Scheme Rules, a decision that was allegedly reflected in their January 2020 salary slip with regard to both the pension adjustment and the education allowance. The Tribunal examined the case sitting in the same composition as in Case No. 2020/1303.

For the main factual elements, reference is made to Case No. 2020/1303 above. Reference is also made to above regarding the respondent's admissibility contentions and the main considerations on the merits.

With regard to the pension adjustment method, the Tribunal observed that at the time the appellants lodged their appeal, each of them was a serving staff member. None was consequently affected by the change in the adjustment method for a pension that they were not yet drawing. Their January 2020 salary slip was in no way affected by the change in the pension calculation method. Even if their contributions to the pension scheme gave them a future entitlement to a pension, they were not yet drawing one, and the rules on adjustment of that future pension had not yet had any effect on their income nor, more broadly, on their personal situation. They therefore had no interest in disputing their January 2020 salary slips, which were unaffected by the change in Article 36 with respect to the annual adjustment of pensions alone.

With regard to the new conditions of entitlement to the education allowance, six of the seven appellants were not receiving the allowance and did not claim to be entitled to it. They therefore had no capacity to dispute the application thereof to themselves. For the seventh appellant, this statutory change will only enter into force ten years after the decision on it; there was nothing to indicate that he will still be entitled to this allowance, and in any case his January 2020 salary slip was not affected by this change. None of the appellants, therefore, had an interest in acting against their January 2020 salary slip

by invoking application of future changes to Article 28 of Annex IV to the CPR. The Tribunal dismissed the appeal.

Cases dealing with disciplinary proceedings

Case No. 2021/1323 was the subject of an expedited procedure in accordance with Article 6.6.4 of Annex IX to the CPR. The facts occurred in early March 2020, at the beginning of the COVID-19 pandemic. The appellant, a Senior Technician employed by NAEW&CF Geilenkirchen, was deployed on mission to Turkey. Upon his return, having been in the same building as one of the mission members who tested positive to the virus, he was instructed not to return to work before a certain date, to consult his general practitioner and to inform the NAEW medical adviser. When the appellant visited the NATEX grocery store on the base on 22 April, he was immediately suspended with half pay pending a disciplinary procedure. He was dismissed six months later.

The case file contains extensive details about the regulations in force at the Base, the appellant's health status – he never tested positive - and the communications between him and the principals at NAEW. The appellant contended that he did not violate the applicable COVID-19 regulations and medical instructions; the respondent submitted that he did.

The record shows that the appellant followed, apart from the events on 22 April 2020, the guidance given to him by NAEW's medical adviser or his own GP. He repeatedly asked for information and informed the Medical Service of his negative COVID test results. The Tribunal considered that it may be that he could have done more in this respect, but whatever shortcomings there may have been must be viewed in the context of the respondent's failure to timely, sufficiently and clearly advise the appellant of the regulatory framework around COVID-19, given that the appellant was on mission and then on sick leave and without access to his internal network apart from for a few hours during the entire period from 2 March until 4 May. The Tribunal held that this shortcoming weighed, on balance, heavier than any possible shortcomings on the part of the appellant and concluded that the appellant was not adequately and timely informed by the respondent on the details of the COVID regulations in force.

The Tribunal took account of the process leading up to the disciplinary action. It noted that the disciplinary process appeared to have been initiated rapidly, and in order to achieve an ordained result. On the other hand, it continued for six months until the end of October. It recalled that disciplinary proceedings must be thorough and careful, but also expeditious. It noted that it took the respondent a month and a half to constitute, on 8 June 2020, a Disciplinary Board (DB). The DB then did not hear the appellant until 28 August 2020 and submitted its report on 8 October 2020, upon which the Commander took his disciplinary decision on 27 October 2020. The respondent did not provide convincing justifications for these long delays. The appellant was left in an uncertain situation with reduced pay for six months and the Tribunal considered this to be in violation of the principles of good administration and the duty of care.

In his pleadings, the appellant requested production of the DB report. The respondent, referring to Annex X to the CPR, submitted that the appellant's right of defence did not entitle him to access to the full text of the DB's report. The Tribunal held that such communication was not foreseen in the CPR, but it also noted that DB reports were frequently provided to an affected staff member and played an important role in the Tribunal's understanding of a situation involving contested disciplinary actions. It added that international administrative tribunals heavily relied on the finding of facts by peer bodies, such as complaints committees and disciplinary boards. Not providing a DB report without providing adequate reasons might deprive a tribunal of valuable information. It might, furthermore, give rise to suspicions that certain elements in a report should not be brought to the attention of a tribunal, or an appellant.

At the oral hearing, the respondent offered to provide the DB report. The Tribunal, however, held that it had sufficient elements at its disposal to make an adequate assessment in law.

The Tribunal annulled the Commander's decision and ordered the appellant's full reinstatement in his functions effective the day following the notification of the judgment. It also ordered compensation of three months' emoluments for non-material damages.

Case No. 2020/1317 concerned the appellant's suspension from duties. The appellant joined the NSPA in 2013 under a series of definite duration contracts, and as of 2017

was serving as Special Project Section Chief responsible, inter alia, for technical instructions and procurement requirements. On 10 July 2020, the NSPA received an order issued by an Italian judge regarding preliminary criminal proceedings, containing specific allegations against the appellant and unlawful acts he was accused of having committed. On the same day, the General Manager suspended the appellant from his duties without emoluments. The decision was taken on the basis of two provisions of the CPR: Article 60.2 of the CPR and Article 3.5 of Annex X to the CPR on disciplinary procedures. The appellant lodged the appeal against this decision.

In accordance with Article 60.2, a decision to suspend a staff member requires three cumulative conditions: there must be a charge of serious misconduct, the charge must be *prima facie* well founded and the staff member's continuance in office may prejudice the Organization. The Tribunal held that in the present case all three conditions were met. The appellant was accused of disclosing price information to a company. A second decision by the Italian criminal court on 31 July 2020 (after the decision to suspend the appellant was taken), showed that the judge had decided against ordering provisional measures not because the charges against him were insufficient but because NATO's decision to suspend him was sufficient to remove him from the service and to avoid a recurrence of the situation. The Tribunal further considered it truly prejudicial to the Organization to keep a staff member in post where he is responsible for procurement matters and is being accused of bias and of disclosing information to potential suppliers.

In accordance with Article 3.5 of Annex X, for a staff member to be suspended there must be a criminal proceeding against him/her. The Tribunal noted that the preliminary proceedings act of 26 June 2020, which the respondent used as the basis for taking the impugned decision, was a judicial act at the beginning of a process that may lead to a criminal conviction. Even though the proceedings were not yet in the trial stage, these were still criminal proceedings that corresponded to the criminal proceedings mentioned in Article 3.5 of Annex X.

With regard to the principle of the suspension, it was the Tribunal's view that the respondent had not applied the CPR harshly toward the appellant, but instead used its authority to preserve the Organization's security and reputation. It held that a decision not in a staff member's favour did not necessarily entail a violation of the duty of care,

therefore the appellant did not have grounds to seek annulment of the decision suspending him from his duties.

The contested decision, however, also stipulated that the staff member would not be receiving any emoluments during the suspension. The appellant disputed this by citing its disproportionate nature. The respondent underscored the severity of the allegations against the appellant and the anticipated long duration of the criminal proceedings in the Italian courts.

The Tribunal considered that it was not sufficient to justify taking away the pay of a staff member who had served at NATO for more than ten years, about whom there had been no concerns up to that point. Although the incidents were serious, it was the criminal proceedings that could result in his losing his income; yet at the suspension stage it was still too early to decide that. The Tribunal considered it disproportionate to deprive a staff member of all pay over an indefinite period, very likely more than one year, based on accusations that a court had not ruled on definitively. Such deprivation of pay was not necessary to protect the Organization's interests. The Tribunal therefore annulled the General Manager's decision insofar as it deprived the staff member of his pay. The appellant was awarded €5,000 for non-material damages suffered.

Case No. 2021/1322 is about an NSPA staff member working as a buyer in the Procurement Division, under a definite duration contract. In July 2019, an informal complaint was filed by a buyer deployed to Afghanistan against the appellant on the grounds that he had demanded a kickback in exchange for a contract with the Agency. The case was referred to senior stakeholders and, due to the seriousness of the allegations, the NSPA started an investigation. In March 2020, the respondent informed the appellant that the Agency had received allegations that he might have been involved in possible misconduct in violation of Articles 12 and/or 13 of the CPR and of the NATO Code of Conduct and that a disciplinary procedure was being launched. In November 2020, the GM informed the appellant of the findings of the DB and confirmed his intention to apply the proposed disciplinary action, dismissal pursuant to Article 59.3 of the CPR. On 20 November, the GM considered that no mitigating circumstances could be retained to justify a different position and decided to dismiss the appellant with immediate effect.

The Tribunal recalled that the legality of any disciplinary action required that the veracity of the facts with which the person concerned is charged be established. Once the facts had been established, in view of the wide discretionary power enjoyed by the administration in disciplinary matters, judicial review was limited to verifying the absence of a manifest error of assessment or misuse of power.

Having established that the appellant had purchased equipment from a commercial company doing or seeking to do business with the Agency, the Tribunal held that the respondent had not committed an error of assessment that could vitiate the legality of the challenged decision.

With regard to the allegations relating to the disclosure of confidential information in the form of a bidder's proposal to an unauthorized party, the appellant acknowledged having disclosed the concerned information but said that he had received authorization to do so. The Tribunal recalled that the NSPA procurement Operating Instructions (OI) contained a general prohibition on non-disclosure of information and that authorization for disclosure of information was required.

The Tribunal held that, being an exception to the general prohibition of disclosure of information, the authorization in question had to be interpreted narrowly and consequently given in writing, prior to disclosure. In the present case, it was not disputed that there had been no prior and written authorization for the appellant.

Regarding the investigations carried out, the Tribunal observed that these were not fully in line with the procedure of Article 5.3 of Annex X to the CPR. However, it held that such investigations were valid if the staff member concerned was timely informed, and thus had the possibility to exercise his rights of defence, which did indeed happen in the present case.

Regarding the proportionality of the disciplinary action in relation to the alleged facts, the appellant considered that the principle of proportionality had been violated by applying the most severe action without taking into account of his very fragile medical situation. The Tribunal concluded, however, that, given the seriousness of the facts

complained of, no lesser severe action could be pronounced. The appeal was dismissed.

Case No. 2021/1326 dealt with a suspension from duties before the appellant resigned and started employment with another NATO body. The appellant, an IS staff member since 2015, received a letter on 1 July 2020 from the Deputy Assistant Secretary General for Human Resources suspending him from duties, following receipt of a memo by the Financial Controller alleging serious misconduct in relation to accounting discrepancies in the 2019 Financial Statements.

The respondent contended that the appeal was inadmissible as the suspension decision had ceased to exist when the appellant transferred to another Agency on 1 October 2020. The fact that he was subsequently retained for another post, with a promotion, indicated that he was not adversely affected by the suspension decision. The Tribunal recalled its case law stating that a decision to suspend is a decision that causes grievance against which an appeal can be lodged.

The Tribunal underlined that the impugned decision was a discretionary decision and referred to its constant jurisprudence that a discretionary decision is subject to limited review only. The Tribunal can only interfere with a 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 abuse of authority. It had also constantly held that it would not substitute its own view for the Organization's assessment in such cases.

The Complaints Committee (CC) in the present case concluded that the suspension decision was regular and in accordance with Article 60.2 of the CPR. It held that the discretionary decision was taken based on the available facts and a *prima facie* assessment pending further investigation. The CC further recognized the need for NATO to preserve its ability to act in order to avoid any kind of prejudice to the Organization.

The CC, however, emphasized that, given the gravity of a suspension decision and its potentially far-reaching consequences, a suspension should be considered a last resort

after having carefully considered other options. It emphasized that the complainant's rights needed to be carefully considered and preserved. It was the Committee's view that the implementation of the decision should have been accompanied by a set of tailored "duty of care" measures taking into account the possible short-, medium- and long-term implications for the complainant, including possible negative consequences on his mental health and professional reputation.

The Tribunal recalled that international tribunals had constantly held that where a decision-making authority intended to disregard the conclusions and recommendations of an advisory body it has itself created, it must state clearly in its decision the objective grounds that led it to opt for a divergent conclusion. By ignoring the conclusions and recommendations referred to in the CC report without any motivation, the respondent failed in its obligations. The giving of reasons is a fundamental requirement for good administration as well as for the good administration of justice.

Concerning the merits of the case, the Tribunal referred to the CPR requirements of Article 60 and Annex X to the CPR that a charge of serious misconduct must be made by the HONB concerned. It held that it could not be brought by another staff member, whatever his or her status. Staff members could be officers reporting alleged misconduct, but they were not prosecutors.

The Tribunal observed that the 1 July 2020 letter suspending the appellant was unnecessarily succinct and, as also the Complaints Committee noted, the information that was provided to the complainant was insufficient to meet the minimum standard of the Organization's duty of care. Moreover, the decision did not properly motivate why the appellant's continued presence in the office would hamper the investigation or otherwise be prejudicial to the Organization. Suspension is a very serious decision and should be a decision of last resort. The main reasons for a suspension are the risks that a staff member may tamper with evidence or influence witnesses. The risk that the appellant would, or even could, tamper with accounts that were already settled was, however, minimal and did not outweigh the adverse effect that the suspension had on him.

The Tribunal concluded that the suspension decision was not only irregular but also disproportionate. It annulled it and compensated the appellant with € 5,000 for non-material damages.

Case No. 2020/1308 was initiated in 2020, but following the explicit request of the appellant for an oral hearing in-person, the earliest opportunity to do so was in December 2021.

The appellant, who held an indefinite duration contract, joined the IS in 1997. On 25 November 2019, whilst leaving an informal meeting between colleagues, he met a female staff member of another intergovernmental institution in a dark corridor. She was on the phone. He kissed her on the cheek, put his arm around her waist and whispered in her ear, taking her by surprise. The next day that staff member lodged a complaint with the Secretary General, who decided to take disciplinary action against the appellant. On 29 January 2020, the appellant was suspended. In March, a Disciplinary Board was convened and, on 8 June 2020, the Secretary General terminated the appellant's contract with immediate effect.

The parties brought forward contentions relating to facts occurred in 2016–2018. The Tribunal underscored that events that occurred in 2016 and were subject to disciplinary action in 2018 could not be taken as grounds for the disciplinary action in question because they were not among the allegations notified to the appellant at the start of the proceedings.

With regard to the events of 25 November 2019, the Tribunal considered that at least the surprise kiss in the dark was established, and that it was very probable that the appellant had whispered words in the complainant's ear, although the content of those words could not be determined with any certainty. The events having been established, the question that remained was that of their legal characterization. In the Disciplinary Board's view, the appellant's conduct on 25 November 2019 constituted sexual harassment, and violated NATO's Code of Conduct and Articles 12.1.4 and 13.2 of the CPR. The appellant challenged this, and denied that a kiss on the cheek, which he considers customary including in professional relations at NATO, could be qualified as harassment or discourteous behaviour.

The Tribunal observed that a kiss on the cheek was neither a sexual act nor sexual harassment. But as the Disciplinary Board found, by kissing the complainant without her consent, the appellant made her feel very uncomfortable, given the element of surprise and the darkness at that time. This was therefore a failure by the appellant of the duty to treat colleagues with respect and courtesy, as required by Article 12.1.4 of the CPR.

The appellant considered that the punishment was disproportionate to the alleged events. The Tribunal recalled that for serving staff, there were five levels of disciplinary actions set out in Article 59.3 of the CPR: reprimand, written censure, postponement of a salary increment, temporary suspension from duties (with emoluments partly or wholly withheld), and dismissal. As the appellant had reached the last step of his grade, postponement of a salary increment was not possible. Thus four possible disciplinary actions remained.

The administration chose the most serious disciplinary action. However, although the action in question showed a lack of respect towards a colleague as well as a lack of self-control, it was done in private, not publicly, and did not inflict physical harm on his colleague. It was a routine, frequent act that the two protagonists had done frequently under other circumstances, in particular at the start of the informal meeting they had just left at the time of the incident. The Tribunal held that a kiss on the cheek of a colleague, even by surprise and accompanied by a few words whispered in her ear, did not justify terminating a working relationship of over 20 years between the appellant and the respondent. Even noting that two years earlier the appellant had already received two warnings about behaving too familiarly with his colleagues, the most serious disciplinary action – dismissal – was clearly disproportionate to the appellant’s actions.

As a consequence, the Tribunal annulled the decision for being both unlawful and disproportionate. The administration having invoked Article 6.9.2 of Annex IX to the CPR barring reinstatement, the Tribunal determined the amount of compensation to be paid for the injury sustained. Given the circumstances in which the dismissal was ordered, the duties that the appellant had been fulfilling, the harm in the small world of international organizations, the respondent’s refusal to reinstate him, and the significant

loss of income since his dismissal, the Tribunal ordered to pay him 24 months of his final salary for his material and non-material damages.

Cases dealing with occupational invalidity/harassment

Case No. 2020/1311 is the appellant's third appeal. The first two, Cases Nos. 2018/1266 and 2018/1271, were joined and concerned, respectively, the appellant's claim for promotion to grade A5 and for compensation for damages he allegedly suffered as a result of persecutory and retaliatory acts by the former CMRE Director. The corresponding judgments were rendered in 2019, and in them the Tribunal declared the first case inadmissible and unfounded, and dismissed the second because of lack of convincing evidence in support of the claims. The present case dealt with the appellant's request to annul the respondent's decision not to recognize him as an occupational invalid.

In January 2019, the appellant, a NATO pensioner, following a period of sick leave requested the respondent to initiate invalidity proceedings. A first meeting of the Invalidity Board (IB) occurred in February 2019 and delivered a report in May of the same year. The report stated that the appellant was suffering from a permanent invalidity totally preventing him from performing his duties and that the determining and direct causes were the exercise of his profession. The respondent however raised inconsistencies in the process and questioned the unilateral character of the proceedings referring the case back to the IB in October 2019. The IB rendered its report in June 2020 and stated that there were no workplace harassment conditions in the determination of the illness and that the criteria to determine an occupational disease were not completely met.

In the context of the present appeal, the Tribunal noted that most of the appellant's claims regarded matters involved his prior cases, which were remedied by the new Director, and that these matters were now moot. Moreover, the appellant was barred from raising them again. In its judgment of 3 April 2019, the Tribunal concluded that neither the evidence brought by the parties, nor the findings of the external investigator, supported the allegations of harassment,

Concerning the referral back to the IB, the Tribunal recalled that the appellant, by virtue of his former position at the Centre had a great deal of experience in the matter and must have been or should have been aware that the documentation before the IB was incomplete and imbalanced. The Centre was thus fully justified in referring the matter back to the IB and seeking a further and more accurate finding from the Board on the basis of a complete record.

The Board did not alter its view that the appellant was suffering from permanent invalidity that totally prevented him from performing his occupational duties. This conclusion did, however, not financially affect the appellant's current status as a former staff member in receipt a NATO retirement pension. The Board, on the other hand, confirmed that there were no workplace harassment conditions and that the conditions to determine an occupational disease were not met.

The Tribunal noted that that this was the conclusion of medical experts and recalled that the powers of the Tribunal to review a medical opinion were very limited. In the present case there was no indication or evidence that the Invalidity Board manifestly erred in its assessment. The Tribunal dismissed the appeal.

Cases Nos 2019/1290 and 2020/1298 were submitted by the same appellant and were joined. The first appeal contested the respondent's decision not to recognize the occupational origins of the appellant's invalidity. The second appeal contested the respondent's determination that the appellant did not experience harassment, bullying or age discrimination. The appellant, an IS staff member under an indefinite duration contract, joined NATO in 2004 after many years of military service as an officer during which he served in a variety of worldwide locations. The appellant faced multiple medical challenges and alleged that despite being under medical orders his workload had substantially increased. He also deployed several times to Iraq and contended that these deployments were the cause of his Post-Traumatic Stress Disorder (PTSD).

Concerning the invalidity case, the Tribunal examined the appellant's claims in the light of the structure involving the Invalidity Board which rendered a unanimous decision that the appellant's invalidity was not occupationally caused.

The appellant did not dispute that the Board had rendered its decision in the form required by the CPR, but contended that this was not legally sufficient. The Tribunal explained that it did not accept that the principle that administrative decisions ought to be motivated allowed it to set aside the careful balance of interests in the system for conducting Invalidity Boards adopted by the NAC and reflected in the CPR. Requiring the respondent to ascertain and provide the Board's reasons, or requiring the Board to do so itself, would fundamentally change the confidential nature of the IB process established by the CPR.

The appellant further contended that the Board's decision that his invalidity was not occupationally related reflected a manifest error of appreciation. The appellant requested that the Tribunal adopt as a "benchmark" certain rules relating to determination of occupational invalidity under the internal law of the European Union. The Tribunal did not accept that it could apply the rules adopted by other international organizations in its decision-making, highlighting that the applicable rules were those specified in Article 6.2.1 of Annex IX to the CPR.

The Tribunal further recalled that the CPR's structure for determining invalidity placed the relevant decisions in the hands of a Board of medical professionals, not in the hands of Secretariat officials or Administrative Tribunal judges. The appellant identified no obvious factual errors in the Board's decision, and none were evident to the Tribunal.

The appellant contended that he developed PTSD at some point after 2016 as the direct result of his stressful working conditions and his exposure to dangerous conditions in the course of multiple deployments to Iraq. The Tribunal, however, did not find that the evidence in the case files showed that the respondent failed to meet its duty of care by failing to understand and properly respond to the appellant's medical challenges.

Concerning the harassment case, the Tribunal assessed the specific conduct complained of in relation to the applicable standards. The Tribunal found that the specific facts provided no basis to set aside the respondent's conclusion that there was no harassment, intimidation or age discrimination within the meaning of the relevant NATO standards.

The Tribunal recalled that its role did not extend to assessing the appellant's allegations of misfeasance or misconduct by persons involved in addressing his claim. The issue of the appeal was whether the specific circumstances cited by the appellant constituted harassment, intimidation or age discrimination within the meaning of NATO's relevant regulations. Based on of its own assessment of the record, the Tribunal concluded that it did not. The record also showed that the respondent had made significant efforts to investigate the appellant's concerns through successive inquiries (by the NATO's Psycho-social Prevention Adviser and Mediator, the external investigator, and the Complaints Committee). All three concluded that the circumstances did not violate relevant NATO standards. The Tribunal also agreed and dismissed both appeals.

Cases dealing with termination of contract

Case No. 2021/1324: the appellant joined the NSPA in 2002 and had been employed as a technician within the Internal Audit Service since 2017. On 8 June 2020, upon returning from extended sick leave, his manager informed him that his post had been proposed for suppression on 30 June 2020 and his notice period started. The planned reorganization was postponed until 31 December 2020 and the appellant, although his contract would be terminated, was assured that he would be considered for any vacant post of the same grade matching his qualifications. On 6 October 2020, the General Manager decided to replace part of the contractual notice period with compensation in lieu of notice, on the grounds that no post matching his qualifications would be available in the Agency between then and 31 December 2020. The contract was terminated that same day.

The appellant contended that the reason for the early termination of his contract was a desire to deprive him of opportunities to find a vacant post of the same grade at the NSPA. He identified in particular two posts matching his skills and qualifications for which he could have been selected. The Tribunal, analysing the two options and the respondent's position, concluded that for at least one of those two posts, the respondent could not claim on 6 October that there was no prospect for the appellant to be appointed before 31 December. This decision was therefore tainted by an error of fact. Furthermore, the possibility remained that another post that matched the appellant's

skill set would open up between 6 October and 31 December, for instance if a staff member in a given post on 6 October were to resign or accept a transfer.

The Tribunal did not see a reason of general interest for terminating the staff member's contract early if he did not want that, had not committed any offence and wanted to serve out the six-month period. No reason of general interest had been put forward by the respondent to justify why the contract suddenly had to be terminated early – neither the interests of the service, nor the financial interests of the Organization.

The evidence made it clear that the General Manager terminated the contract early to keep the appellant from being able to apply to other posts. The Tribunal therefore annulled the decision on grounds of misuse of power insofar as it brought forward the effective date of contract termination. Further, given the circumstances in which the termination was ordered, the lack of certainty that the staff member would be appointed to another post, the arbitrary period for him to remain a salaried Agency employee, and the replacement income declared, the Tribunal condemned the NSPA to pay the appellant €60,000 in compensation for the missed opportunity to be appointed to another post at NATO and the non-material damage caused by the early termination of his contract.

Case No. 2020/1309: the appellant joined the NSPA in 1989 and as from 1 October 2007 was a Senior Internal Auditor. On 8 April 2020, the appellant was called to his manager's office for a routine reason. He went there the following day and his manager announced that he was being terminated effective immediately and not being paid the loss-of-job indemnity (he would receive the six months' notice period as an indemnity). He submitted an appeal against the decision to be terminated without being granted the loss-of-job indemnity. The respondent criticized the appellant for unsatisfactory performance and justified not granting the indemnity on the basis that he was guilty of negligence or intentionally having given poor unsatisfactory performance, in accordance with the provisions of Article 1(4) of Annex V to the CPR. The Tribunal considered that it was not possible to find that the staff member was deliberately negligent without this constituting a disciplinary offence or was committing an offence. It noted that the performance reports of 2018 and 2019 did show that the appellant's performance constituted unsatisfactory performance, but did not reveal negligence or a deliberate

intention of wrongdoing to the point that it satisfied the condition contained in Article 1(4) of Annex V to the CPR to exclude payment of the loss-of-job indemnity. The Tribunal, recalling that it could only rule on the submissions referred to it, annulled the General Manager's decision refusing to grant the appellant the loss-of-job-indemnity following his termination.

Cases dealing with financial aspects

Case No. 2020/1316 is the follow-up to Case No. 2020/1309. In April 2020, the NSPA General Manager decided to dismiss the appellant without the payment of the loss-of-job indemnity. In May 2020, the appellant filed a complaint against this decision, pointing out the contradiction between the decision to dismiss him for unsatisfactory performance in April and his step advancement in October, which he believed was proof that his professional performance had been good. In June, the NSPA General Manager explained that the step advancement had been an error and told the appellant that he would have to reimburse the administration for the corresponding overpayment (€5,090.48 in total). The appellant contested the step demotion and the request for reimbursement.

The Tribunal considered it necessary to determine who was responsible for the situation in dispute. From the sequence of events (in October 2019 the appellant was granted the step increment; in November 2019 the administration went back to the previous step; in December 2019 the step advancement was granted again; the situation remained unchanged until May 2020 when the appellant complained about his dismissal and the administration considered that the step increment should have never been granted), the Tribunal concluded that the responsibility was with the respondent, which was responsible for issuing payslips and ensuring that they were correct. The administration had made a mistake without realizing it. It was the appellant who pointed out in November that there was a contradiction and the administration confirmed its first decision. It was not until the staff member once again commented on it that the respondent backtracked eight months after first granting the benefit. The Tribunal held that whether there were grounds or not, three consistent interventions by the administration had given the staff member a legitimate expectation of benefiting from the step advancement. The appeal was upheld.

Case No. 2020/1307 is the appellant's third appeal to the Tribunal stemming from the respondent's January 2018 decision not to appoint him to a position following a selection process during which he had initially been informed that he would be appointed. The Tribunal upheld his first appeal (Case No. 2018/1267) annulling the respondent's decision not to appoint him and awarded non-material damages of €10,000. The respondent then repeated the selection process and again determined not to appoint the appellant to the position. The appellant appealed a second time (Case No. 2020/1282). The Tribunal upheld the second appeal, annulling the decision not to appoint him, denying his claims for material and punitive damages and awarding non-material damages of €20,000. In its second judgment, the Tribunal stated "The Tribunal requires that the respondent avoid a repetition of the judicial controversy and calls upon both parties to reach a solution by themselves by means of a mutual agreement". On May 2020, the respondent's acting Chief of Staff wrote to the appellant and his counsels stating that the negotiations to determine a final settlement had not been successful but it maintained its final offer of €15,000 to settle the outstanding dispute. He expressed at the same time his consent to submit the issue directly to the Administrative Tribunal for final resolution in order to determine the appropriate amount to be awarded to the appellant. The Tribunal noted that the appellant's claims for damages in this appeal were similar, if not identical, to the claims for damages put forward in the two previous appeals and which were rejected by the Tribunal. To the extent that the appellant's claims in the present judgment were not barred by the finality of the Tribunal's judgments and the *res judicata* effects of the first and second judgments, the Tribunal expressed its substantial doubts on their legal basis. The Tribunal considered that given the unusual circumstances, the amount offered by the respondent (which was still an offer remaining in effect) was not in conflict with the Tribunal's instruction in the second judgment to seek a mutually agreed settlement, or to be unreasonable or to demonstrate a lack of care. The appeal was dismissed.

Cases dealing with allowances

Case No. 2021/1302 dealt with the expatriation allowance. The appellant worked as a contractor with different companies for the NCIA under a series of definite duration contracts from April 2016 to 20 December 2018. In August 2018, the appellant applied

for a post and, following a successful selection process in October 2018, was issued a Selection Letter, which included a salary simulation not including the expatriation allowance. The appellant signed the “Confirmation of Acceptance” and started engaging with the administration about his eligibility to the allowance. The appellant started working with the Agency in April 2019, continued to engage with the administration and, ultimately, pursued the pre-litigation procedure and submitted an appeal. The Tribunal recalled its established jurisprudence that no matter what the nationality of the staff member, the vital element for assessing eligibility for the expatriation allowance remained whether that person was working and living in the territory of the duty station when the recruitment procedure started. It further underscored that for the purpose of Article 28.4.1(ii) of the CPR, it is irrelevant that the newly recruited agent kept various links with his country of origin (i.e. taxation, social security benefits, maintenance of a home, family, or administrative residence in it). The Tribunal noted that it was beyond doubt that the appellant had been continuously working in the duty station since April 2016 and that this was his situation when he received the Selection Letter and accepted the offer. His residence was therefore to be considered as continuous for more than a year and the Tribunal dismissed the appeal. In July 2021, the appellant wrote to the Tribunal requesting “clarification of operative provisions” challenging several points of the AT rendered judgment. The Tribunal observed that all the elements put forward by the appellant had been known at the time of the judgment and would not justify a request for a re-hearing or a request for clarification. The Tribunal considered that the appellant was seeking none other than a re-opening of a debate on the conclusion of the Tribunal, which is at variance with the rule that the Tribunal’s judgments are final and binding. The Tribunal issued an Order dismissing the appellant’s request

In **Case No. 2020/1321** the appellant requested the annulment of the NSPA General Manager’s decision to apply the exceptional rate of 90% to his education allowance for the year 2019–2020 and not for the previous periods starting in 2016. In September 2016, the appellant had submitted a request to be granted the education allowance for the expenses incurred in relation to his son’s university studies for 2016–2017, the request was accepted and the appellant was awarded the reimbursement of 70% of the admissible educational costs. The same occurred for the academic years of 2017–2018 and 2018–2019. In December 2019, the appellant discovered that another NSPA staff member had been granted the exceptional rate reimbursement in an establishment

similar to the one attended by his son. He therefore asked for information and started engaging with the administration. His request for the 90% reimbursement was accepted for 2019–2020 but the administration rejected the appellant's requests to be granted the exceptional rate also for the previous years on the ground that he had not been informed before December 2019 about such a possibility. The Tribunal observed that it was only in January 2020 that the appellant expressly requested that the 70% rate be corrected for the periods 2016–2017, 2017–2018 and 2018–2019. He had not challenged the application of the rate, nor asked for the exceptional rate to be applied, within the deadlines provided for by the CPR. The appeal was dismissed.

Other cases

Case No. 2021/1325 concerns recruitment. The appellant joined the Allied Joint Force Command South in Verona in 2001 and subsequently served in JFC Naples when he was appointed as Financial Controller in 2009. His contract was renewed several times and ended in 2021. Before the expiry of his final contract, he applied for the position of Financial Controller, Director of Finance and Acquisition at SHAPE. The selection process was completed at the end of 2020 and the Selection Board concluded that someone other than the appellant was the most qualified candidate for the post. The respondent followed the recommendation and, in accordance with the provisions for the appointment of Financial Controllers, asked the Budget Committee (BC) to approve the appointment of the selected candidate. The appellant was informed that he had been selected as the alternate for the position. At the end of October 2020, the respondent withdrew the recommendation to the Budget Committee and decided to reopen the post for competition. The appellant re-applied for the position and was shortlisted but in March 2021 was informed that he had not been successful. With his appeal, the appellant contended primarily that the respondent had unjustifiably exceeded its discretionary power by not offering him the position after the withdrawal of the proposal to appoint the first candidate in violation of the principle of legitimate expectations and that the decision to re-advertise the position without offering him the post as alternate was in violation of the principle of good administration and duty of care. The Tribunal held that the appellant's claims were based on erroneous premises, as the Selection Board had selected only one candidate for the disputed post and consequently, only one name had been submitted to the BC for approval. Notwithstanding informal

messages or congratulations on the performance of the appellant at the interview, there is no record that he was qualified and screened by the Selection Board as an alternate candidate for the position. The Tribunal also recalled that for the position in question, the procedural requirements for the appointment of a selected candidate were stringent and depended on consequent approvals at different stages of the procedure by different decision-making authorities. The Tribunal dismissed the appeal.

Case No. 2020/1312, **Case No. 2020/1313** and **Case No. 2020/1314** were individually examined by the Tribunal and a judgment was rendered for each of the appellants. The facts presented were very similar and are summarized here below for ease of reference. The appellants were NCIA staff members, alleging fraud, abuse and lack of diligence during a recruitment process in violation of the Agency's Code of Conduct. The appellants joined the Agency in June 2006 under a definite duration contract further extended until May 2022. In September 2019, the Agency decided to restructure the service in which the appellants were employed. They all participated in the recruitment process but were not selected. The NCIA notified them of their unsuccessful applications and offered different employment options, one of which was the termination of contract with the payment of the loss-of-job indemnity, which they accepted. In May 2020, the appellants submitted a "formal group complaint" requesting an investigation in relation to an external consultant who was a member of their selection panel that did not retain their applications and who was ultimately appointed to one of the positions they applied for. The investigation report concluded that the allegations of bias of the external consultant were unfounded and that there was no evidence of conflict of interest. The Tribunal observed that the appellants' submissions directed against various acts were in fact challenging the appointment of the external consultant to the restructured service. However, it noted that in none of their submissions did the appellants request the annulment of the decision to appoint the consultant, rather generally denouncing facts allegedly prohibited by the Agency's Code of Conduct. The Tribunal concluded that the submissions seeking the annulment of the appointment were made after the expiry of the 60-day time limit for lodging an appeal and dismissed the appeals.

Lastly, one case was summarily dismissed under Rule 10 of the Tribunal's ROP. In **Case 2020/1320** the appellant, an IS staff member submitted a request for assistance to the Secretary General concerning matters of fraud and harassment allegedly perpetrated by IS staff members, including senior officials and her supervisor at the time. The Organization followed up on that request, undertaking an internal and an external investigation, and the appellant was informed of their outcome. During the internal investigation, some security-related issued emerged and the NATO Office of Security initiated an investigation against the appellant. The appellant put forward concerns of retaliation, threat and intimidation with regard to the investigation opened against her, and upon notification of its outcome, requested an administrative review. The Organization replied and the appellant was notified with a decision on 14 July 2020. On 2 October 2020, the appellant further wrote to the Secretary General requesting her allegations of retaliation to be investigated. Further exchanges followed with the administration and, on 8 December 2020, the appellant submitted an appeal with the Tribunal. The Tribunal held that the administrative decision notified on 14 July 2020 had not been contested within the mandatory 30-day time limit given in Article 4.2 of Annex IX to the CPR, the appellant having waited until 2 October 2020 to write to the Secretary General to request for a further investigation. Furthermore, even if that request was to be considered as a complaint for the purposed of the CPR procedures, it was out of time. The appeal was dismissed.