



**2015**

**ANNUAL REPORT OF THE  
NATO ADMINISTRATIVE TRIBUNAL**

## **Introduction**

This is the third Annual Report of the Administrative Tribunal of the North Atlantic Treaty Organization (NATO). It covers the period 1 January 2015 – 31 December 2015 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**

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

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

In 2015 the Tribunal continued to be assisted in an outstanding manner by its Mrs Laura Maglia as its Registrar *ad interim*.

## **Proceedings of the Tribunal in 2015**

The Tribunal completed again a substantial volume of judicial business during 2015. It held five sessions of oral hearings (23-25 February, 27-29 May, 29 June – 1 July, 21-23 September, and 14-16 December). It rendered 26 judgments. Two judgments concerned cases in which the oral hearing had taken place in December 2014. In December 2015 the Tribunal held oral hearings in seven cases. Although the resulting judgments were rendered in 2016, they are included in the present Report.

NSPA was respondent in nine judgments, the NATO International Staff in seven, NCIA in four and NAEW&CF Geilenkirchen (former E3A Component) in three cases. ACT, JFTC, and NAGSMA were respondent in one judgment each.

In addition, the Tribunal issued three Orders: one concerned the submission of documents, another the production of a complete and un-redacted document, and in the third, the Tribunal joined a number of cases and decided that a preliminary hearing would be held on jurisdiction matters only.

The President of the Tribunal issued five Orders. Three Orders joined cases, (respectively Cases Nos. 2014/1041 and 2015/1045, Nos. 2014/1034 and 2014/1042, and Nos. 2014/1027 and 2015/1043). In one case (No. 2015/1051), he suspended proceedings and the Tribunal subsequently summarily dismissed the case, which was considered time-barred and hence inadmissible. In another case he ordered the production of documents.

Since it began operations in 2013, the Tribunal has addressed both cases initiated after 1 July 2013 governed by the new regulations and a considerable number of “carryover” cases initiated earlier and governed by the regulations previously in force. In 2015 the Tribunal adjudicated one case that was lodged in 2014, but pre-litigation procedures had started in 2013 so the old regulations applied.

The Tribunal disposed of the cases in an expeditious manner: seven judgments were rendered within seven months of the lodging of the appeal and five within eight months.

Two cases were adjudicated within five months, although one of them was summarily dismissed. One case took more than average, *i.e.* twelve months, but its oral hearing was postponed at the request of the appellant. It is recalled that the duration of the written procedure alone is around four months.

In 2015, twenty-six new appeals were lodged (Cases Nos. 2015/1043-1068). Nine of these concern the same subject matter and were joined (Cases Nos. 2015/1056-1065). This is a notable decrease in the number of new cases. It is too early to draw firm conclusions from this. The revised dispute resolution procedures that came into effect in 2013 were intended to promote resolution of disputes without recourse to litigation. The Tribunal does not know if this is occurring.

The Tribunal recalls that since 2013 a substantial number of cases had to be declared inadmissible on account of staff members' failure to comply with mandatory elements of the new procedures. In 2015 the Tribunal dealt with 30 appeals and it rendered 26 judgments – there were four joint cases. As the jurisprudence below shows, in 2015 ten out of thirty appeals were declared inadmissible and in one case the Tribunal held that it was not competent to hear the case. Of the remaining nineteen cases, seven were declared founded and twelve unfounded.

With great respect for staff members' right of appeal, the Tribunal cannot help but thinking that the issues underlying some of these might have been resolved through more constructive engagement between staff members and NATO bodies without reaching the litigation stage.

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*, for purposes of preparing a draft judgment for consideration and approval by the Panel. Taking together the years 2013 - 2015 the President and members have been assigned to between 10 and 14 cases each.

## The Tribunal's jurisprudence in 2015

It is to be recalled that the Tribunal's 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 “[T]he Tribunal shall not have any powers beyond” those they confer, and that nothing in the regulations “limit 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 being challenged in 2015 involved the exercise of the discretionary powers given to the Head of the 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 the discretionary powers. In several of the following judgments the Tribunal had to recall these limits to its competence.

The Tribunal rendered the following judgments<sup>1</sup>.

Cases No. 2014/1021, 2015/1048 and 2015/1049 all concern the same (former) staff member. In the first case, appellant challenged management's decision not to grant him authorization to travel to his home country for medical treatment pending an assessment of the staff member's medical condition by the agency's medical services. Following this assessment, authorization was granted. Appellant requested compensation for material damages (*inter alia*, the cost of a missed flight he arranged

---

<sup>1</sup> The following summaries of Tribunal judgments are for information purposes only and have no legal standing.

before his travel was authorized) and non-material damages. The Tribunal dismissed the appeal, considering, *inter alia*, that appellant had not provided evidence showing the extreme urgency for the specific treatment chosen in the home country. It also held that the organization had fulfilled its duty of care towards appellant by making reasonable arrangements for an adequate assessment of his health by its own medical services.

In the second appeal appellant challenged the decision to dismiss him on grounds that he had, without prior notice to, or authorization by, the Agency, performed military reserve duties in his home country, and doing so while on sick leave. The Tribunal held that the disciplinary procedure had been correctly followed and that the Head of the NATO body had, in view of the circumstances and, in particular, the seriousness of the conduct alleged, taken a fair final decision.

The third appeal contests the Organization's decision not to recognize the claimed occupational nature of appellant's illness. The Tribunal observed that the complaint procedure was not initiated within the stipulated time limits and declared the appeal inadmissible.

The Tribunal dealt with two more disciplinary cases. In Case No. 2014/1031, appellant was accused of having violated his system administrator duties and of having illegally accessed his supervisor's mailbox. The Disciplinary Board recommended termination of appellant's contract and the Head of NATO body decided accordingly. The Tribunal noted, however, that the disciplinary findings were based on the premise that appellant had illegally accessed his superior's mailbox because traces of documents were found on appellant's workstation. It observed that the existence of traces could not lead to the conclusion that appellant indeed had had access to his superior's mailbox, and that the factual elements on which the disciplinary findings are based must not be presumed. It noted that the administration must demonstrate the alleged contentions clearly, efficiently and indisputably in order for the Disciplinary Board to recommend the appropriate sanction. The Tribunal therefore annulled the decision to terminate appellant's contract and awarded damages.

Joined Cases Nos. 2014/1034 and 2015/1042 concern the suspension of a staff member from duties during disciplinary proceedings against him in relation to alleged repeated security violations. The appellant was notified that the suspension would be maintained until the outcome of disciplinary and other investigations. The Tribunal observed that suspension is an extraordinary measure insofar as it involves the temporary removal of a staff member from his/her regular professional activity; it is not intended as a final disciplinary measure, but instead to enable respondent to adopt precautionary measures in order to ensure the proper conduct of an ongoing enquiry. The Organization's authority to suspend is limited by the legal requirements of the CPR; its discretionary decision-making powers are not absolute and the measures taken must be tailored to the particular circumstances of the case. The Tribunal found a lack of rational connection and proportionality between the facts and the measure adopted. The Tribunal annulled the suspension decision and ordered that appellant be compensated.

A number of cases concerned termination of appointments and reorganizations. For example, the decision to discontinue the ISAF mission in Afghanistan led to several cases (Cases Nos. 2014/1026, 2014/1028, 2014/1029, 2014/1039 and 2014/1040). Details of the cases differed, however.

In Case 2014/1028 the Tribunal noted that in accordance with the CPR, respondent has the obligation to give priority consideration to redundant staff members. However, this does not give those concerned any substantive preference in competing with other qualified candidates for vacant posts of their grade. It instead confers only a procedural advantage by requiring the Organization to consider their candidature for such posts before any recruitment. Recalling its previous case-law, the Tribunal rejected appellant's allegations of violation of the principle of good administration, the duty of care, and the claimed principle of protection of legitimate expectations. The appeal was dismissed.

In Case No. 2014/1029 appellant, after having lodged his appeal, signed a further definite duration contract of one year with the Organization. Appellant withdrew his claim for monetary compensation but maintained the appeal, contending that he was

not reassigned as legally required. The Tribunal noted that appellant's submissions regarding his current contractual situation were not part of his initial appeal and, as they constituted new claims, were inadmissible. It also dismissed the appeal in the absence of any material or moral injury.

In Case No. 2014/1040, the staff member challenged both the decision to suppress his post and his staff report. Appellant had previously lodged an appeal with the Appeals Board (Case No. 898) against the decision to terminate his contract based on a "mediocre performance" note in his 2012 staff report. This appeal was subsequently withdrawn, and appellant was offered a new definite duration contract. In 2014, respondent notified appellant that his post would be suppressed due to closure of the ISAF mission. Appellant criticized this decision, but did not formulate any clear claim or follow the CPR's mandatory requirements for administrative review. The Tribunal accordingly found the claim inadmissible. The Tribunal also found inadmissible appellant's request to annul his performance report, recalling previous case-law establishing that a performance report is not in itself a decision constituting grounds for grievance. It is instead a preparatory act that can only be invoked in support of submissions directed against a subsequent act causing an appellant harm, such as a disciplinary action, a refusal to renew a contract, or a decision to terminate a contract.

Appellant in joined Cases Nos. 2014/1026 and 2014/1039 held an indefinite duration contract, when, in 2013, he was informed that his post would be suppressed at the end of 2014, *i.e.* the end of the ISAF mission in Afghanistan. As of mid-2014 appellant was placed on sick leave and, due to his state of health, never returned to work. Respondent terminated appellant's contract, pronouncing it null and void from the very beginning, on the grounds that appellant had failed to indicate in his medical history that he suffered from an illness. The Tribunal annulled this decision for lack of legal grounds, pointing out that the CPR only foresee contract termination with prospective effect, so that employment already performed in the Organization cannot be erased or be rendered null and void. It also noted that fraudulent medical statements at the time of recruitment might justify disciplinary action or termination on grounds of being "incapacitated for service," but do not authorize the Head of NATO body to rescind a contract for a past period. Further, concerning the suppression of appellant's post, the Tribunal noted that



this action was based on an error of fact, as the suppressed post was recreated starting from the same date under another title. The Tribunal annulled the two contested decisions and ordered payment of material and non-material damages.

Appellant in Case No. 2014/1030 held an indefinite duration contract when his post was suppressed following the NATO agency's 2015 Organizational and Personnel Establishment proposal. The Tribunal pointed out that the decision to suppress a post remains entirely within the discretionary powers of the Organization. It is a decision that is subject to limited review and can only be annulled for abuse. On appellant's redundancy status rights, the Tribunal recalled its earlier judgment in a similar case, affirming that the regulations confer on the Organization only the obligation to consider redundant staff members' applications in priority, which cannot be automatically implemented without a declaration of interest from the redundant staff member. Appellant also disputed several other decisions subsequent to the ones challenged in his appeal. The Tribunal recalled that it cannot decide on the accuracy and legality of different decisions outside the framework of the ones appealed against. The Tribunal dismissed the appeal.

Case No. 2014/1033 involved another post suppression following a NATO Agency's 2015 Organizational and Personnel Establishment proposal. The appeal was, however, received and filed after the time limits mandated by the CPR and was therefore found inadmissible. The Tribunal observed that the responsibility to comply with the deadlines includes the responsibility to verify that an appeal was lodged properly.

In Case No. 2014/1035, three staff members sought annulment of respondent's decision not to act favorably upon their three applications for a single post of a higher grade. The Tribunal found the appeal time-barred and hence inadmissible. It added that appellants had also not contested the appointment of another candidate to the post in question.

In Case No. 2014/1036 a staff member challenged, *inter alia*, the reorganization of his service, the temporary appointment of individuals in acting supervisory capacities, and the violation of his contract following a change in his duties. The Tribunal noted that the

acting supervisors were appointed to serve temporarily in addition to their other duties, and that respondent carried out open competitive recruitment processes - in which appellant did not participate - to select permanent incumbents. It determined this to be a reasonable management practice that did not conflict with the CPR or the Agency's appointment directive. The Tribunal also found the appellant's claims of violation of the terms of his contract following the reorganization, said to include his assignment into a new organizational unit and extra-contractual changes in his responsibilities, to be unproven. The Tribunal observed in this regard that a staff member, particularly a professional in an organizational component that deals with evolving requirements, cannot expect his specific tasks and responsibilities to remain static. The Tribunal dismissed the appeal.

Case No. 2015/1046 is a follow-up of Appeals Board Cases Nos. 863 and 864. While appellant was on extended sick leave, her contract was terminated after an invalidity procedure determined a permanent invalidity of less than one third. Appellant requested respondent to investigate whether her invalidity was occupationally related and, upon the latter's refusal, took the issue to the Appeals Board. In its decision in Case No. 864, the Appeals Board instructed respondent to take the necessary actions for such an investigation. This was done, and the group insurer determined that appellant's illness was not occupationally related. Subsequently, the group insurer re-examined appellant's health and decided, independently of any action or request by a NATO body, to grant appellant an invalidity pension for non-occupational reasons. Appellant alleged that respondent's refusal to investigate the request for an invalidity pension led to a delay of 16 months and nine days in receiving pension benefits, for which compensation was requested from respondent. Respondent refused. The Tribunal observed that the two requests for an invalidity pension had a distinct legal basis and that there was no causal link between the decisions and conduct of the administration in refusing to grant her a professional invalidity pension, on the one hand, and the delay which appellant claims occurred in her receipt of a non-professional invalidity pension on the other hand. The Tribunal dismissed the case.

The appellant in Case No. 2015/1050 was on long periods of sick leave, parts of which were contested by respondent and the insurance company. A medical arbitration

determined that the staff member was fit to return to work half-time. Further to an exchange of e-mails, the staff member opted to resign and to receive his pension rather than return to work. He subsequently challenged the decision accepting his resignation, contending, *inter alia*, that he was placed under inappropriate pressure by the respondent's demands that he return to work or face termination. The Tribunal was not convinced by appellant's arguments, and dismissed the appeal. It also dismissed a claim by respondent for reimbursement of the full compensation he received during the period when the physician-arbitrators concluded he could work half-time with the argument that appellant was responsible for the delays in that procedure. The Tribunal pointed out that a staff member can only be ordered to pay compensation in the limited and exceptional circumstances indicated in the CPR. Respondent failed to prove the existence of such circumstances, and the record did not justify such a claim.

Appellant in Case No. 2015/1054 also was on long periods of sick leave, and ultimately was terminated after reaching the maximum period of sick leave allowed under the CPR. Appellant argued that the termination of her contract resulted from the respondent's mismanagement of her situation. The Tribunal observed that, in order to assess the respondent's accountability, it must determine what the Organization's conduct should have been. It held that appellant's submission must be justified both by evidence of an irregularity or a violation of a legal rule, and by the link between the alleged misconduct and the existence of real damage. The Tribunal concluded that appellant had not provided either a clear description of the claimed misconduct or evidence in this regard. It concluded that the Organization had dealt with this situation in a manner consistent with the regulations. In particular, the record shows that respondent had made substantial efforts to accommodate the appellant's situation by arranging reductions of her working time, medical evaluations, two medical arbitrations, and by maintaining her emoluments throughout this process.

Another group of cases concerned family and other allowances.

In 2014 the Tribunal ruled in a number of cases challenging the 2013 NATO Council decision to revise the allowance structure for civilian staff members. It generally upheld that decision and its implementation (see, in particular, Case No. 2014/1017). In a new

case (Case No. 2014/1037), appellant alleged, in her reply and at the hearing that the Tribunal failed to consider certain issues in its earlier judgment in light of the jurisprudence of other courts and tribunals. The Tribunal, while recalling that such claims introduced at a late stage of the proceedings are not admissible, noted that the issues raised by appellant were decided in the prior case following full written and oral proceedings in which the prior appellant was represented by the same law firm, and that it does not reconsider its prior judgments. The appellant in the present case, however, was promoted to a new position and had received the corresponding increase in remuneration. Concurrently, the indemnity *in lieu* of the rent allowance was reduced following application of the transitional measures. The Tribunal observed that the Organization's document governing the transitional rent indemnity authorized its reduction only in cases where staff members receive periodic step increases or annual adjustments to remuneration. It did not authorize offsets against increases in a staff member's compensation following a change in grade or when assuming a new post at a higher grade. The Tribunal annulled respondent's application of the transitional measure to reduce appellant's rental allowance, and directed that appellant be compensated accordingly.

In Case No. 2015/1047, a staff member requested a special hardship exception under the CPR provisions on family allowances and to be authorized payment of allowances in respect of his son, who was not in school and was above the normal age of eligibility for dependent children's allowance, but resided with appellant and could not at the time legally work in the country of residence. The Tribunal remarked that it was not clear as to whether appellant was seeking dependent children's allowance or other dependants' allowance. Having clarified the matter at the hearing, the Tribunal noted that new arguments had been introduced at a late stage of the proceedings and determined that this was neither appropriate nor fair for either party. The appeal was declared inadmissible because appellant did not comply with the applicable time limits for submitting the request for review.

In Case No. 2015/1051 appellant requested to be reimbursed at the higher "exceptional" education allowance rate for the costs of a second master's degree for his son. Appellant received the educational allowance at the standard rate for the years 2008-

2012. In July 2012 he applied for reimbursement of the expenses for a second master's degree at the exceptional rate for the 2012-2013 year, urging that imperative educational reasons involving the need to obtain a second advanced degree at a more prestigious (and expensive) institution justified payment at the higher rate. The request was denied in August 2012. The Tribunal determined that the appeal was lodged beyond the mandatory time limits and summarily dismissed it.

In 2014 the Tribunal declared Case No. 2013/1009 inadmissible because appellant had not previously pursued the mandatory pre-litigation procedures. That case, in which appellant sought annulment of the decision not to grant him family allowances with respect to children from an earlier marriage of his partner, returned to the Tribunal as Case No. 2015/1053. The Tribunal observed that the relevant rules provide that the dependent children's allowance shall be paid to staff members, whether married or not, for each child under 18 years of age who is mainly and permanently maintained by the unmarried staff member. The Tribunal concluded that in this case, the staff member may have been a main support for a period of time, but that it could not be considered permanent, since the relationship between the partners had already ceased in 2014, an important fact that appellant had failed to mention during the oral hearing at that time. The appeal was dismissed.

As in previous years, the Tribunal also had to adjudicate on requests by staff members seeking requalification of their contractual status.

Case No. 2014/1022 is a follow-up of Case No. 897, in which appellant challenged the rejection of her request for requalification of her contractual status after having served a number of successive temporary contracts. In Case No. 897 the Tribunal held that respondent had not properly substantiated its decision, and annulled the impugned decision. A new decision was taken, in which appellant was advised that she was hired to replace a staff member on sick leave and that her duties were temporary in nature. The Tribunal considered that, with regard to the performance of temporary duties and with a view to good management of the service, an administration has broad discretion to decide the conditions that apply to the recruitment of temporary staff. It also noted that individual circumstances of the service and the urgency of

accomplishing its tasks, may justify that a temporary staff member need not have the same profile as the person being replaced, and it is therefore up to the service, within its powers of discretion, to decide which duties and responsibilities the temporary staff member should perform in the framework of the replacement. The Tribunal concluded from the file that in the present case appellant was indeed replacing a staff member on long-term sick leave and that it clearly was respondent's intention to offer a temporary employment. The Tribunal dismissed the appeal.

Joined Cases Nos. 2014/1027 and 2015/1043 concern appellant's requests for conversion of a temporary employment relationship into an indefinite duration contract. Appellant concluded a series of temporary contracts with the Organization and, at the time of the appeal, held a definite duration contract. In Case No. 2014/1027, appellant was seeking the cancellation of the implicit decision by the respondent to dismiss his request for the conversion of his temporary contract into an indefinite duration contract. The Tribunal recalled its case-law and dismissed the appeal as inadmissible in the absence of a decision taken against appellant relating to his contractual situation. In appeal No. 2015/1043 appellant was seeking the cancellation of the respondent's refusal to offer him a definite duration contract from the beginning. Respondent had, in fact, recently offered to convert the temporary employment relationship into a definite duration contract. The Tribunal recognized appellant's several successive contracts to be of a permanent nature that are to be covered by the relevant CPR provisions. It determined that appellant should have had an initial contract from the beginning followed by a definite duration contract and ordered appellant to be compensated accordingly.

In joined Cases Nos. 2014/1041 and 2015/1045 appellant sought requalification of several consultancy contracts into a permanent contract status, and separately challenged the Organization's decision not to renew the consultancy contract. In an earlier case between the parties (Case No. 2013/1008), the Tribunal summarily dismissed the appeal for failure to comply with the mandatory pre-litigation process required by the CPR. Regarding the two current cases, the Tribunal noted that in Case No. 2013/1008 it had not entertained any other question than the non-respect of the pre-litigation procedures. Concerning appellant's submission that the Tribunal should

apply by analogy the rules for staff in the European Union that empower a staff member to request, at any time, that the employer take an administrative decision that can subsequently be challenged, the Tribunal noted that no such provision exists in NATO or in other international organizations, and that it constitutes a specific statutory provision for a very specific organization that does not constitute customary international civil service law. It observed that administrative review is an integral part of the overall justice system under which a staff member can challenge an existing decision, but the staff member cannot through this process solicit a decision that did not yet exist. The Tribunal dismissed the first appeal (Case No. 2014/1041), since appellant failed to identify a specific decision or event in violation of the CPR or the terms of the contracts. Concerning the second appeal regarding the termination of appellant's consultancy contract, the Tribunal examined whether appellant's characterization of the employment relationship and the type of contracts were appropriate and, as a corollary, whether appellant's final contract had ended correctly. The Tribunal concluded that the contracts did not make any reference to the CPR, and that they must be considered *sui generis* contracts for the provision of services, governed by their own provisions and containing a specific dispute resolution mechanism, namely arbitration. The Tribunal found itself not competent to hear Case No. 2015/1045.

Appellant in Case No. 2015/1052 sought requalification of his status after having held several temporary personnel contracts. The Tribunal determined that the pre-litigation process was initiated after the mandatory time limits. It did not accept appellant's claim that he did not have a copy of the CPR and could not have been aware of its provisions. The Tribunal concluded that the CPR were available and that appellant had never asked for them. The appeal was declared inadmissible.

Also in 2015 the Tribunal had to rule on the consequences of the withdrawal or non-renewal of staff members' security clearance by their respective national authorities.

Despite reminders from NATO's security personnel, the national authorities of appellant in Case No. 2014/1032 did not renew his security clearance, and his employment was terminated. The Tribunal, with detailed reference to the jurisprudence of the European Court on Human Rights, rejected appellant's claim that the Tribunal did not meet the

standards of the European Convention on Human Rights and ruled itself competent to hear the case. The Tribunal was not convinced by appellant's argument that exceptional circumstances justified an exception to the time-limits for seeking administrative review because he was in shock after having received the termination decision. In this respect, it did not accept as conclusive evidence a medical certificate, signed the day before the appeal was lodged, by a medical practitioner, who, as was confirmed at the hearing, had not seen, and *a fortiori* not treated, appellant prior to that date, and who merely reproduced a statement made by appellant ("*à ses dires*"). The Tribunal, moreover, noted that another counsel had represented appellant immediately after termination of his employment. It declared the appeal time-barred and inadmissible.

Case No. 2015/1044 concerned an immediate termination of contract due to withdrawal of appellant's security clearance by his national authorities. The Tribunal dismissed the request for compensation for untaken annual leave, recalling the relevant CPR provisions, as well as a claim to extend the employment period for calculating appellant's loss of job indemnity with the six months' notice period. The Tribunal observed in this regard that the six months following the end of the contract are not an extension of employment paid without a physical attendance requirement, but a period during which the person is no longer a staff member. As such, it cannot be taken into account in calculating the period of employment on which the loss of job indemnity is based. The Tribunal declared time barred and inadmissible the additional claim to annul the decision to terminate of contract, noting that this request was not preceded by the required pre-litigation procedures. The Tribunal also recalled that in accordance with the CPR, the Tribunal's well-settled case-law, and that of its predecessor, the Appeals Board, withdrawal of a security clearance obliges the NATO Agency to terminate the contract with immediate effect. It further added that national authorities' reasons for such actions can only be challenged by initiating a procedure before the appropriate national authorities.



## **Organizational and administrative matters**

In its 2013 Annual Report, the Tribunal underlined the importance of transparency, the issuing of annual reports being only one aspect of it. It emphasized the importance of the fact that justice is seen to be done.

All judgments of the Tribunal as well as further information on its functioning can now be found on the Intranet. In 2014 the Tribunal has, with the help of many, also created its Internet website. The Tribunal was able to complete preparation of its judgments for publication on the website and in 2015 its judgments have indeed been made available on the Internet website, thereby further guaranteeing equality of arms, in particular for those appellants that do not have access to Intranet and for appellants' counsels. Utmost care is made to protect the privacy of the persons involved in the proceedings. The Tribunal also welcomes that the CPR can now be consulted on line. All these measures enhance the equality of arms of potential litigants and their counsels.

The Tribunal has made technical progress in its work to create an e-submission tool for appeal proceedings and a set of Practice Directions, but practical implementation of the e-submission tool is still hampered by the lack of financial independence.

As was mentioned in previous annual reports, the CPR guarantee the Tribunal's independence. The judges are all non-resident and sit in sessions several times per year at NATO HQ. The Registrar has been given an ad-hoc space on NATO HQ premises and reports for administrative matters such as leave to the Secretary of the Council, who acts in consultation with the President of the Tribunal. This is under the circumstances the best guarantee for the Tribunal's independence and should not be changed.

Article 6.4.2 of Annex IX to the CPR provides that the expenses of the Tribunal are borne by NATO. In order to enhance the Tribunal's independence the same Article provides that "[T]he Tribunal shall prepare and manage its budget independently". This is also normal practice for administrative tribunals in other Organizations. The Tribunal more than regrets that after almost three years, no progress has been made in

establishing the Tribunal's independent budget authority. This leads to operational problems. This is a matter of great concern that must be remedied without any further delay.

On 13 December 2013 the NATO Council adopted a remuneration scheme for the members of the Tribunal based on the estimated time spent on cases. The Council estimated this to be fourteen days on average, split according to a formula between the President, the judge-rapporteur and the third judge. It is the Tribunal's experience that also the cases adjudicated in 2015 have required more time than the fourteen days indicated, as was the case in the previous years.

It was agreed that the overall system would be reviewed after one year. The Tribunal undertook to submit proposals for improvement and clarification after one year's experience with the new system. The Tribunal has sent its proposals in this respect to the Secretary General in August 2015.

The Tribunal was created with the intention of creating a fair, predictable, expeditious and transparent appeals process based on the legal principles enunciated in the CPR. The Tribunal has worked hard in pursuit of this objective. The results have not been satisfactory to all, not least to the too many appellants who, particularly in the Tribunal's early days, either were unaware of, or disregarded, the requirements of the administrative review process created by the Council.