
# 2018

# ANNUAL REPORT OF THE

# NATO ADMINISTRATIVE TRIBUNAL

# 2018 Annual Report of the NATO Administrative Tribunal

## Introduction

This is the sixth Annual Report of the Administrative Tribunal of the North Atlantic Treaty Organization (NATO). It covers the period 1 January 2018 – 31 December 2018 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 North Atlantic Council (NAC) 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

In 2018, the NAC reappointed the President and two members (Mr Laurent Touvet and Mr Christos A. Vassilopoulos) for a further and last five-year term. The Tribunal's composition has thus remained unchanged during the reporting period and is as follows:

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

The Tribunal was throughout the year assisted in an outstanding manner by the Registrar, Mrs Laura Maglia.

**Organizational and administrative matters**

In May 2018, the Tribunal moved to the new NATO HQ premises, where it was allocated functional and suitable space for the judges and the Registrar, as well as for its documentation. The Tribunal also welcomed its first intern, who served from March until August.

**Proceedings of the Tribunal in 2018**

The Tribunal held four sessions of oral hearings (14-16 March, 14-15 June, 20-21 September, and 14 December 2018) and rendered 27 judgments.[1]

In 2017, two cases were joined and subsequently suspended at the request of the parties in order to examine the possibilities of an amicable settlement of the dispute. This was, however, not successful and the Tribunal adjudicated on them in 2018.[2]

Two cases were withdrawn during the written procedure.[3]

The Tribunal's President issued nine Orders in 2018. In four Orders unconditional withdrawals of cases were accepted.[4]

Another Order concerned a request for suspension of the proceedings in accordance with Rule 23 of the Tribunal's Rules of Procedure in order to allow parties to explore possibilities of an amicable settlement. This was successful and the appeal was subsequently withdrawn.[5]

In two Orders cases from the same appellants were joined.[6]

[1] It rendered 26 judgments in both 2014 and 2015, 29 in 2016 and 10 in 2017.
[2] Cases Nos. 2017/1107 and 2017/1110.
[3] Case No. 2018/1261 and Case No. 2018/1264.
[4] Two Orders were issued in 2018, but concerned withdrawals in 2017 and were already mentioned in the previous annual report. These concern Cases Nos. 2017/1108 and 2017/1246. The other two Orders concern Cases Nos. 2018/1261 and 2018/1264.
[5] Case No. 2018/1261 (*cf.* footnote 4 *supra*).
[6] Respectively Cases Nos. 2018/1256 and 1257, and 2018/1266 and 1271.

One appellant submitted a request for clarification, in particular regarding the details of execution by respondent of a judgment.[7] This request was denied in an Order by the President. Appellant then lodged a new appeal. In this latter case, respondent requested that the Tribunal summarily dismiss the appeal. In accordance with Rule 10 of the Tribunal's Rules of Procedure, the President instructed the Registrar to take no further action on the case until the Tribunal's next session. The Tribunal subsequently concluded that the appeal was devoid of merit and decided to summarily dismiss it.[8]

The Tribunal itself issued four Orders. In three cases it decided to reject requests for revision.[9]

The fourth Order was issued following a first hearing in Joined Cases Nos. 2017/1127-1242. As will be explained in more detail below, the oral hearing was suspended and then resumed later, following written exchanges on the Tribunal's competence in the matter. The essence of the exchanges that took place in this first hearing was laid down in the Order, followed by a decision to suspend and to allow for additional written exchanges.

The NATO Communications and Information Agency (NCIA) was respondent in sixteen cases and the NATO International Staff (NATO IS) in four. The NATO Headquarters Airborne Early Warning and Control Force Geilenkirchen (NAEW&CF GK) was respondent in three cases. The Joint Force Command Brunssum (JFC BS) and NATO Support and Procurement Agency (NSPA) were respondent in two cases each.

The Tribunal continued to resolve cases as expeditiously as possible. Most judgments were rendered in a time-span of between six and ten months – the duration of the written procedure alone is around four months. Other cases took longer to resolve because of the complexity of the matter and because hearings had to be suspended. Lastly, and as mentioned above, proceedings were suspended in a few cases at the request of the

[7] Case No. 2017/1105.
[8] Case No. 2018/1272.
[9] Respectively Cases Nos. 2016/1102 and 2017/1104, as well as Cases Nos. 2018/1262 and 2018/1263, which were the subject of a single judgment.

parties.

In 2018, 25 new appeals were registered, *i.e.* about the same as in the previous year.

Cases are assigned to Panels of three judges with due consideration to the principle of rotation as well as equitable distribution of workload. In each case, the President designates another member of the Panel or himself to serve as judge-rapporteur, *inter alia*, to prepare a draft judgment for consideration and approval by the Panel. Taking together the years 2013-2018, the President and members have been assigned to between 25 and 28 cases each.

**The Tribunal's case law in 2018[10]**

The Tribunal rendered the following judgments. This summary includes the judgments that were rendered in 2019 following the December 2018 session.

The 2017 Annual Report mentioned that a total of 129 appeals were registered against the NATO IS, challenging an amendment to the footnote to Article 51.2 of the CPR on the financing of the medical plan. The Tribunal issued four judgments concerning them: one judgment dealt with a group of 116 joined appeals from NAEW&CF GK;[11] a single judgment covered appeals from eleven separate and self-represented NAPMA staff;[12] one judgment concerned an appeal by another separate NAEW&CF GK appellant;[13] and one judgment concerned a retiree from JFC Naples.[14]

The issue at stake can be summarized as follows. In 1967, the Organization introduced premium-free lifelong medical insurance coverage for retirees and their dependants. In order to keep this scheme financially sustainable, various amendments and conditions were subsequently introduced over time: in 1974 (qualifying ages), in 1988 (indexation

[10] 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.
[11] Joined Cases Nos. 2017/1127-1242.
[12] Cases Nos. 2017/1114-1124.
[13] Case No. 2017/1243.
[14] Case No. 2017/1126.

of premiums), in 1995 (introduction of a bridging cover), and in 2001 (the creation of a Retirees' Medical Claims Fund). Actuarial studies were conducted, in particular in 2008 and 2010, showing that remedial measures were needed to make the Fund sustainable. Several scenarios were discussed which then resulted in the NAC adopting the February 2016 amendment at the heart of these appeals.

The new provision reads as follows:

> Provided they were recruited before 1st January 2001, staff members who on 3 August 2016 have contributed to the group insurance scheme for a minimum of 25 years shall not be required to pay premium after the age of 65, under the condition they retire from service by 3 August 2016. Retired staff who have not contributed to the group insurance scheme for a minimum of 25 years by 3 August 2016 shall be required to pay a premium after the age of 65 to continue coverage under the scheme.

A total of 129 appeals were lodged challenging this new provision. Before the March hearing was convened, the President of the Tribunal sent a "*Message from the President of the NATO Administrative Tribunal to the parties*" containing several procedural instructions and requests to the parties. *Inter alia*, it requested that they "*include in their presentation arguments on the Tribunal's competence (see Article 6.2 of Annex IX to the CPR) to hear cases in the absence of a decision by the Head of the NATO body directly affecting appellants*."

In Joined **Cases Nos. 2017/1127-1242**, a hearing was convened in March 2018. It was suspended in order to allow a further exchange of pleadings between the parties and it resumed in June 2018. Within this group, a number of appellants had paid into the fund for more than 25 years, and thus would have been entitled to free lifelong medical coverage after their retirement under the previous version of the footnote, and some others had not yet paid for 25 years.

Similarly, in the eleven separate cases, **Cases Nos. 2017/1114-1124**, all appellants were active NAPMA staff members at the moment of submitting the appeal. Most of them had already contributed for 25 years.

The appellant in **Case No. 2017/1243** was an active NAEW&CF GK staff member having contributed for 28 years.

In all these cases, appellants made similar but not always identical submissions. They contended, *inter alia*: violation of the principle of equal treatment and non-discrimination; violation of implied contract rights; violation of the principle of the protection of legal certainly and legitimate expectations; display of negligence and violation of the principle of good administration and the duty of care; violation of an essential element of their working conditions and acquired rights of free medical cover; breach of the reciprocity of the solidarity mechanism; violation of their right to social security; violation of the principle of non-retroactivity; lack of objective reasons and upsetting of the balance of their contracts. Some appellants requested, *inter alia*, a declaration by the Tribunal of the illegality of the NAC decision to amend the footnote and the non-applicability of the decision to appellants. Others requested the reinstatement of the old footnote, or compensation for the monthly medical coverage premium to be paid, or a cap on the contribution ceiling.

Respondent submitted a single answer and a single rejoinder for the total of the 129 appeals. It contended, *inter alia*, that the system had been changed over time on the basis of objective factors and in order to preserve its financial viability. It submitted that it had demonstrated good governance to ensure preservation of the group medical program. It rejected all appellants' claimed violations outlined above. Respondent requested that the Tribunal dismiss the appeals as without merit.

The Tribunal observed that the appeals raised the important question of the Tribunal's competence, which had to be addressed before substantive legal arguments could be considered. The Tribunal held that this was not a matter left to the discretion of the parties, but that it had its own responsibility in such matters and that it may, when necessary, deal with them on its own motion. The Tribunal recalled that it is a body of limited powers and that it shall not have any powers beyond those conferred under Annex IX to the CPR. It further considered that the footnote applies to the whole of Article 6.2.3 and must be interpreted and applied in the context of the provision it modified. The Tribunal continued by noting that the footnote as such was not a stand-alone provision. It did not confer additional authority on the Tribunal to consider the legality of the NAC action in the abstract and without reference to the CPR's other requirements bearing on its competence. Citing settled case law and widely accepted principles of international administrative law, the Tribunal stressed that it can only rule

on the legality of an underlying CPR provision when it has been applied in a concrete manner in a specific decision by the HONB concerning a specific appellant. It cannot deal with potential and hypothetical cases involving situations that may arrive in the future. The Tribunal hence concluded that it has no competence to hear a challenge against a general rule and declared the appeals inadmissible.

Concerning the argument that through the pre-litigation proceedings, appellants did receive a final response from the HONB denying the request for relief, the Tribunal recalled that the overall system is designed to challenge existing decisions. The administrative review process cannot be used to create an appealable decision that did not previously exist. A staff member who disagrees with a policy cannot ask to have it reversed, have the request denied in the administrative review process, and thereby create an appealable decision where there is no concrete action applying the policy to the staff member. Further, in response to the claim that a NAC decision was implemented by being individually notified to appellants, the Tribunal held that notification of legislation in itself does not automatically affect the legal position of staff members, which only occurs when the new legislation becomes applicable in a concrete manner.

The appellant in the last case regarding the footnote, **Case No. 2017/1126,** was a retired JFC Naples staff member, who had continued to pay her medical insurance premium in accordance with the rules. She intended to do so until she fulfilled the conditions of having contributed for 25 years, in her case until 31 August 2016. However, the amended CPR footnote entered into force on 3 August 2016 and all retired NATO staff who had not contributed for the minimum of 25 years thus had to continue to pay a premium. In addition to the contentions made by the other appellants, she invoked an illegality in the Complaints Committee's procedure, since she was heard by its Chair only. In this case the Tribunal held that appellant was not challenging a provision of the CPR. Instead, she initiated the case by requesting annulment of a letter (further confirmed by the HONB) that was written to her personally to inform her that the new version of the footnote would apply to her and would change her personal situation. The appeal was thus directed against an individual decision by a HONB and in the specific case, the letter was considered as constituting grounds for grievance. However, at the oral hearing it became clear that due to an administrative mistake, which would

be corrected, the corresponding deductions had not yet occurred. The Tribunal concluded that the case therefore remained pertinent for both parties. Concerning the legality of the pre-litigation procedure, the Tribunal annulled the decision as not in compliance with the CPR provisions, which foresee that the person is heard by the Committee as a whole and not just by its Chair.

The 2017 Annual Report already mentioned a number of judgments concerning the application of a new contract policy in the NCI Agency (NCIA). These challenges continued in 2018 and represented a major part of the Tribunal's judicial work, allowing it to give further clarifications.

It is recalled that a number of NATO agencies were consolidated into a new structure, effective 1 July 2012. The NATO Communication and Information Systems Services Agency (NCSA) was merged into the NCIA . The former NCSA had a contract policy that foresaw a career pattern of 1-3-3-3 year definite duration contracts, followed, if a further contract was offered, by an indefinite duration contract. NCIA introduced a new contract policy together with guidelines in order to attract and retain high-caliber staff and to cope with a continuously changing technical environment. It targets a median of six-years of employment in the Agency, with the best performers staying longer.

A number of appellants requested that the Tribunal examine their cases in the light of their specific and individual contractual situations, although many of them were very similar: **Case No. 2017/1112** (request for annulment of the non-renewal and award of compensation– this case was conducted by written proceedings only); **Case No. 2017/1125** (request for an indefinite duration contract or a three-year renewable contract, instead of non-renewal); **Case No. 2017/1244** (request for an indefinite duration contract or a three-year renewable contract, instead of a two-year renewal); **Case No. 2017/1252** (request for an indefinite duration contract or a three-year renewable contract, instead of a two-year renewal); **Case No. 2018/1253** (request for an indefinite duration contract or a three-year renewable contract, instead of non-renewal); **Case No. 2018/1254** (request for a one-year extension instead of non-renewal); **Case No. 2018/1255** (request for an indefinite duration contract or a three-year renewable contract, instead of non-renewal); and **Case No. 2018/1259** (request

for an indefinite duration contract or a three-year renewable contract, instead of a two-year renewal).

Apart from the specificities of each individual case, the legal arguments supporting the contentions can be summarized as follows: 1) violation of the CPR Articles concerning the granting of contracts (initial, definite duration, reassignment, indefinite duration or subsequent contracts); 2) violation of the former NCSA contract policy and the staff's legitimate expectations, as well as violation of the NCIA contract policy and Directive 2.1; 3) violation of the duty to state reasons; 4) manifest error of assessment; and 5) misuse of power.

The main lines of case law in this set of cases are briefly outlined as follows.

The Tribunal rejected the contention that the inclusion of a probationary clause is proof that the contract is to be considered as an initial contract. It held that, in accordance with the CPR provisions, the inclusion of such a clause could be either in an initial or in a definite duration contract.

Regarding the contention that the internal guidelines of the Agency and its new contract policy were in conflict with the CPR, the Tribunal held that neither the CPR nor the NCIA Contract Policy, nor even the former NCSA Contract Policy, foresaw an automatic award of a certain number of definite duration contracts, nor did they oblige the Organization to award contract extensions. The Tribunal recalled earlier case law stating that it is within the discretion of the Agency to decide on the activities where staff turnover is advisable according to its own goals and management policies. The duration of a contract may, in accordance with the CPR, be limited whenever the post has been previously identified as one in which rotation is desirable either for political or technical reasons. NCSA, and later NCIA, did develop their own specific contract policies, which included in their successive directives a general turnover clause . In these directives it became clearly established that all the civilian staff at the Agency were subject to rotation and that non-turnover was the exception.

On the contention that the changes in an agency's internal regulations can only be properly communicated to a staff member if they are expressly mentioned in the staff

member's contract, the Tribunal held that a NATO body has a responsibility to provide its employees with reliable information regarding significant aspects of their employment. However, agencies do modify their internal regulations and administrative documents with varying frequency and for varying reasons, and there is no requirement that each and every such change must be incorporated into each staff member's contract in order to be effective. Also, an agency cannot be held responsible for shortcomings of staff in familiarizing themselves with the information that is provided. The Tribunal added that there was no indication or implication in appellants' contracts that regulations or directives were frozen, in the present cases at 1 July 2012, when NCIA came into existence. On the contrary, the Tribunal continued, the Administration may, under certain conditions, amend employment conditions and this is what NCIA did by adopting its own new contract policy.

On the requirement to give reasons for a decision not to renew a contract, the Tribunal observed that providing reasons for non-renewal is a sound administrative practice that gives due recognition to the interests of staff members in a matter that may be very important to them. It held that, in the cases under consideration, the Agency's management had gone to great lengths during the pre-litigation process to explain the matter in individual talks.

Concerning the contentions of manifest error of assessment and misuse of power, the Tribunal observed that in the appeals under examination, respondent did not err in assessing appellants' situations and recalled that it is settled case law that decisions in the exercise of management's discretionary powers are subject to only limited review by the Tribunal.

In addition to the above-mentioned series of cases, the Agency's contract policy was also appealed against in the following cases.

In **Case No. 2017/1249,** appellant challenged the Agency's decision to grant him a two-year renewal in a position he no longer occupied. Appellant had accepted a new offer for another position with the Agency. The Tribunal considered that, by accepting the offer, the contractual links between the previous position and appellant no longer

existed and that appellant could not continue the proceedings, requesting the annulment of a challenged decision rejecting his request for an indefinite or a three-year duration contract, in a position that he no longer occupied. Finally, appellant was granted a three-year contract in his new post and the Tribunal held that this favorable decision in his regard meant there was no purpose for him in continuing the proceedings in the context of a contractual situation which did not exist anymore. The appeal was dismissed.

In **Case No. 2017/1251**, appellant initiated pre-litigation to contest the qualification of his 2014 definite duration contract. He requested that he be granted an indefinite duration contract at its expiration. The appeal was dismissed for failure to comply with the time limits of the pre-litigation procedure.

In **Case No. 2018/1258**, appellant contested the non-renewal, after expiration, of his definite duration contract with NCIA. The Tribunal recalled its previous case law establishing that NATO bodies may not neglect the rights of staff members under the CPR, including the right to submit a complaint as per Article 61.3. However, it noted that, notwithstanding the Administration having treated appellant poorly, he was not vigilant enough in pursuing his case with either the Tribunal or further with the Administration. The appeal had been submitted too late, even when allowing for the most sympathetic interpretation of appellant's actions, and was declared inadmissible.

Similarly, in **Case No. 2018/1260**, appellant contested the non-renewal of his definite duration contract with NCIA. The Tribunal declared the appeal inadmissible as it had been lodged well after the time limits required under the CPR. It recalled previous case law expecting the Agency to consider and treat complaints properly in accordance with Article 61.3 of the CPR, and to comply with the time limits in the event of an implicit refusal decision by respondent.

Other judgments rendered relate to a variety of matters such as the granting of allowances (hazard allowance and expatriation allowance), non-extension of contract and redundancy status, sick leave and termination of contract, harassment and *res judicata*, recruitment process, and abuse of the appeals procedure.

Joined **Cases Nos. 2017/1107 and 2017/1110** concerned, respectively, respondent's decision to terminate appellant's employment contract with immediate effect on account of extended sick leave and appellant's medical arbitration proceedings. In 2017, the parties requested a suspension of the proceedings in order to explore possibilities for an amicable settlement. This was unsuccessful and in April 2018 the Tribunal resumed its proceedings. Case No. 2017/1110 concerned the request, following the outcome of a medical examination, for appellant to resume duties. Respondent had also withdrawn its offer of medical arbitration. The Tribunal recalled that appeals may be brought against decisions producing binding legal effects with a direct and immediate impact on the interests of the staff member concerned, such as in the case of measures bringing about a distinct change in a staff member's legal position. The Tribunal considered also that, although some preparatory decisions may constitute grounds for grievance for the staff member concerned insofar as they might influence the content of a subsequent decision that may be challenged, such decisions may not be the subject of a stand-alone appeal and must be contested at the same time as the appeal against that subsequent decision, stating, if required, that the preparatory decision was illegal. Appellant's contentions did not specifically meet these conditions and the appeal was dismissed. In Case No. 2017/1107, the Tribunal referred to its case law in Case No. 2015/1055. As the Tribunal stated, the implementation of Article 45.7.3 of the CPR requires that the staff member regarding whom the Administration is preparing a decision to terminate the contract must be able to discuss that decision before receiving notification of the decision and before it takes effect. In the circumstances of the present case, respondent had terminated appellant's contract with immediate effect two days before the period of 21 consecutive months of extended sick leave had ended. The Tribunal annulled that decision and set the start date of the termination to be the first day of the month following notification of the decision.

**Case No. 2017/1247** was the second appeal by a former NSPA staff member alleging that the Organization had not properly addressed her harassment complaint. The Tribunal examined the relationship between the submissions in this case and those that were subject to the Tribunal's previous judgment (Case No. 2014/1033) and concluded that, despite appellant's attempts to reframe the claims, the principle of *res judicata* was

fully applicable, the triple identity requirements (same parties, same subject matter and same cause of action) being in place. The appeal was dismissed.

**Case No. 2017/1248** and **Case No. 2017/1250** were introduced by NAEW&CF GK aircraft technicians in relation to their deployment to Konya Airbase. During the deployment, appellants received austere conditions allowance and dislocation allowance but not hazard allowance. Appellants claimed entitlement to the hazard allowance on the basis of the criteria established in a 2005 Council document. In their view, the 2005 document was still applicable and was not superseded by a 2010 Council document, on which the contingent Commander had based the decision not to grant the allowance. The Tribunal recognized that the old and new criteria for the allowance were not consistent and ruled that the more detailed and later criteria must govern. Appellants did not dispute the security assessment underlying the Commander's decision not to grant the allowance, and the Tribunal also recalled that it can only interfere in such decisions if they were taken without authority, if a rule of form or procedure was breached, if it was based on a mistake of fact or law, if an essential fact was overlooked, if a clearly mistaken conclusion was drawn from the facts or if there was an abuse of authority. The appeals were dismissed.

After the release of the two judgments, a further case on the same matter, which was pending with the AT, was withdrawn by that appellant.

Joined **Cases Nos. 2018/1256** and **2018/1257** were submitted by the same appellant, a former NCIA staff member. In Case No. 2018/1256, appellant contested the decision dismissing his request to be granted redundancy status. In Case No. 2018/1257, he asserted, *inter alia*, that the NCIA decision not to renew his contract had been taken in breach of the Agency's Contract Policy. Concerning the first claim, the Tribunal noted that appellant was aware of the limited duration of his contract (a three-year non-renewable period, extended by a few months for personal reasons at appellant's request) and consequently did not meet the conditions to be considered redundant, a status that, under Article 57.2 of the CPR, is applicable to a staff member who holds an indefinite duration contract, a series of definite duration contracts covering ten or more years' continuous service, or a definite duration contract terminated before the date laid down by the contract. Concerning appellant's second claim – that the renewal of his

contract did not follow the Agency Contract Policy, and, in particular, that there was no consultation with the Civilian Personnel Management Board (CPMB) – the Tribunal observed that this was a wrong assumption, as the issue was effectively brought before the CPMB when the extension was requested. The appeals were dismissed. A subsequent request for a re-hearing was denied.

In **Cases Nos. 2018/1262** and **2018/1263**, two former NAEW&CF GK staff members claimed that new elements and new developments had come to fore since the Tribunal rendered its judgments on their previous appeals on 17 March 2017.[15] The Tribunal highlighted that appellants had already twice sought the review of the March 2017 judgments and that two corresponding Orders dismissing those requests had been issued. The Tribunal pointed out that, whatever new facts may have occurred since March 2017, no implementing decision related to the alleged new facts affected appellants, who consequently did not have actionable rights. The Tribunal recalled the finality of its judgments and deemed appellants' overall conduct and this third request as abusive. The appeals were dismissed.

Subsequently, appellants submitted a request for re-hearing on the basis of a 2005 document, claiming that it contained a determining fact not known by the Tribunal at the time of the October 2018 judgment. By a Tribunal Order, the Tribunal denied the request for a re-hearing and stressed again the abusive nature of this fourth attempt to enter into a discussion on the Tribunal's judgments, which are final.

In **Case No. 2018/1267**, appellant, an NSPA staff member holding an indefinite duration contract, had applied for a position with JFC Brunssum. He was invited for a test and interviews, and was subsequently informed that he was the selected candidate for the post. During the finalization of the transfer process, JFC Brunssum ended the recruitment and informed appellant that he was not considered fit for the job on offer. Respondent did so on the basis of unexpected findings that came to its attention – regarding sick leave – and that, in its view, represented a non-acceptable breach of the NATO Code of Conduct. The Tribunal observed that the way in which the selection process developed obliged the Organization to find and prove that exceptional and

[15] In Joined Cases Nos. 2016/1080-1092 and 2016/1081-1096 respectively.

significant circumstances emerged, which justified breaching appellant's legitimate expectations. The evidence offered in the pleadings and at the oral hearing were sufficient to render the factual assessments underlying the decision implausible. The manifest error of assessment led the Tribunal to annul the decision. Appellant was also granted €10,000 for non-material damage.

**Case No. 2018/1265** concerned appellant's extended sick leave and return to work. Before the end of appellant's extended sick leave period, an Invalidity Board was convened, which determined that he was not permanently incapacitated for work and therefore not entitled to an invalidity pension. Appellant resumed work but respondent, in accordance with the provisions of Article 45.2 of the CPR, required him to first undergo a medical examination attesting that he was fit for work. Appellant was found temporarily unfit and respondent terminated his contract in accordance with the provisions of Article 45.7.1 of the CPR. The Tribunal held that while the Administration may terminate the staff member's contract once the 21-month period mentioned has expired, it may only do so from that point forward and not by taking a decision with retroactive effect. The Tribunal annulled the decision insofar as it took effect on an earlier date.

Appellant in **Case No. 2018/1268** was initially hired by NCIA as a consultant. When he was recruited as a staff member he claimed, *inter alia*, entitlement to expatriation allowance submitting that he was not resident at the duty station when he was a consultant. Appellant was granted 30 additional days for submitting the appeal for exceptional family reasons. On the merits of the case, referring also to its 2017 case law,[16] the Tribunal held that the conditions of Article 28.4.1 of the CPR were not met, appellant's residence at the duty station being continuous. The appeal was dismissed.

**Case No. 2018/1272** was the fifth case submitted by the same appellant, who is a former staff member of JFC, the other cases having been adjudicated in 2016 and 2017. [17] In the present appeal, appellant requested the annulment of the Administration's decision to omit retirement pension contributions from the calculation

[16] Case No. 2017/1103.
[17] Cases Nos. 2016/1072, 2016/1073, 2016/1099, and 2017/1105.

of the compensation for non-material damage stemming from the Tribunal's judgment in Case No. 2017/1105. The appeal was suspended under Rule 10 of the Tribunal's Rules of Procedure. The Tribunal recalled that, in its judgment in Case No. 2017/1105, it had noted two different types of damage: material damage and non-material damage. The material damage was established based on total remuneration, including allowances, benefits and pension contributions, whereas the non-material damage was established based on salary, allowances and benefits. "Pension contributions" were not mentioned. It held that the judgment was clear and that the Administration did not err when it did not include pension contributions in the calculation of the non-material damage. It summarily dismissed the appeal as manifestly devoid of merit.

In **Case No. 2017/1245**, appellant contested NCIA's decision not to renew her contract after seven years of service. The proceedings were suspended pending resolution of a dispute on performance management. The oral hearing in this case took place in December 2018. The Tribunal observed that the time limits in the pre-litigation process in 2017 had not been respected and dismissed the appeal as inadmissible.