

## Chapter XIV

# Administrative review, complaints and appeals

### Article 61 Administrative review, Mediation and Complaints

- 61.1 Staff members, consultants, temporary staff or retired NATO staff, who consider that a decision affecting their conditions of work or of service does not comply with the terms and conditions of their employment, including their contracts, NATO regulations governing personnel and other terms of appointment, and wish to challenge such decision, shall exhaust administrative review as prescribed in Article 2 of Annex IX to these Regulations. They may also ask to submit their grievances to mediation under the conditions described in Article 3 of Annex IX.
- 61.2 Staff members, consultants, temporary staff or retired NATO staff wishing to contest the decision after pursuing administrative review and, if applicable and requested, mediation are entitled to submit a complaint in writing to the Head of the NATO body possessing the authority to rescind or modify the challenged decision as prescribed in Article 4 of Annex IX to these Regulations.
- 61.3 Staff members, consultants, temporary staff or retired NATO staff may submit a complaint in writing to the Head of the NATO body concerning a decision taken directly by him or her, without a prior administrative review.
- 61.4 Each Head of a NATO body is authorised to designate another senior officer in the same NATO body to carry out the responsibilities and take decisions as provided in these Regulations, in which case such officer shall be considered as the Head of the NATO body for purposes of this Chapter. Such designation may be either for a fixed period or for purposes of a given complaint.

**Article 62 Appeals**

- 62.1 Following the administrative and complaints procedure under Article 61, the complainant or his or her legal successor may appeal to the Administrative Tribunal.
- 62.2 Staff members, consultants, temporary staff or retired NATO staff, and the Head of the NATO body, may also agree to submit the matter directly to the Administrative Tribunal, without a decision by the Head of the NATO body in the matter as provided in Article 4.3 of Annex IX to these Regulations.
- 62.3 The conditions under which appeals may be lodged with the Administrative Tribunal are laid down in Article 6 of Annex IX to these Regulations.

## Annex IX

# Regulations governing administrative review, mediation, complaints and appeals

Approved by the Council on 23 January 2013<sup>(1)</sup>, the present Regulations enter in effect on 1 July 2013 Any proceedings initiated before that date under the previous Regulations will continue to be governed by the previous Regulations until they are settled in a final manner.

### **Article 1 Definitions and calculation of time limits in the present annex**

- 1.1 The term “staff member” refers to the personnel included in the categories listed in paragraph B(v)(c),(d),(e) and (f) of the Preamble to the CPRs.
- 1.2 The term “claimant” refers to a staff member or a member of the retired NATO staff, who has brought a formal complaint as provided in Article 4 of this Annex.
- 1.3 The term “appellant” refers to a staff member or a member of the retired NATO staff or his or her legal successor, who has lodged an appeal with the Administrative Tribunal as provided in Article 6 of this Annex.
- 1.4 The calculation of time limits in this Annex prescribed in terms of “days”, which shall mean “calendar days”, shall not include the day of the event from which the period runs, and shall include the next working day in the NATO Body when the last day of the period is not a working day. Respect of time limits is mandatory, except in exceptional cases, such as staff members on a probationary period.
- 1.5 Where a decision is deemed to have been taken as a result of the failure to act within a specified period of time, such decision shall be deemed to have been taken on the day immediately following the expiration date of such time period.
- 1.6 Where the grievance is the result of a decision taken directly by the Head of a NATO body, the aggrieved party may lodge an appeal directly with the Administrative Tribunal.

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<sup>(1)</sup> PO(2013)0004-Rev 1

- 1.7 The claimant or appellant may determine which official language will be used during the mediation, administrative review, complaints and appeals processes. Interpretation will be provided during Administrative Tribunal hearings and, upon express request, in the mediation, administrative review and complaints processes.

## **Article 2 Administrative Review**

- 2.1 Staff members or retired NATO staff who consider that a decision affecting their conditions of work or of service does not comply with their terms and conditions of employment and decide to contest the decision, may, within 30 days after the decision was notified to them, initiate the process for seeking an administrative review of the decision. As provided in Articles 2.2-2.4, the process shall be initiated in the NATO body in which the staff member is appointed or member of the retired NATO staff was appointed, so long as the Head of that NATO body has authority to rescind or modify the contested decision; otherwise, the process shall be initiated in such other NATO body, if any, that has the authority to rescind or modify the decision in question. In cases of doubt, staff members or retired NATO staff should consult with the human resources management in the NATO body in which they are, or were last employed for guidance.
- 2.2 In cases where an administrative review is to be conducted within the NATO body to which the staff member is appointed, the following steps shall apply:
- (a) they shall, through their own immediate supervisor, seek administrative review by the official who is the immediate supervisor of the manager or other official who took the contested decision. The staff member's immediate supervisor shall respond within 21 days, except that this period may be extended with the consent of the staff member.
  - (b) those wishing to contest the decision of the immediate supervisor shall, within 21 days of receiving a response pursuant to Article 2.2(a) of this Annex, refer the matter to the Head of NATO body concerned, requesting a further administrative review and indicating the reasons for the measure(s) or other outcome they are seeking by way of remedy. The Head of NATO Body shall review the matter, including the gathering of any information he/she deems necessary to consider whether to agree to the measures or other outcome sought. The Head of NATO Body shall, within 21 days from receipt of the staff member's request, make known his/her position and shall either confirm, rescind or modify the contested decision.
- 2.3 In cases where an administrative review is to be conducted in a NATO body other than the staff member's employing NATO body, he/she shall refer the matter to the immediate supervisor of the manager or other official who took the contested decision in that NATO body, requesting an administrative review of the contested decision and indicating the reasons for the measure(s) or other outcome he/she is seeking by way of remedy. The immediate supervisor of the manager or other official who took the contested decision shall review the matter, including the gathering of any information he/she deems necessary to consider whether to agree to the

measures or other outcome sought, and within 21 days from receipt of the staff member's request, respond in writing to the staff member. The response shall make known his/her position and shall either confirm, rescind or modify the contested decision.

- 2.4 Retired NATO staff members who wish to contest a decision shall refer their request for administrative review to the official responsible for human resources management at NATO Headquarters, unless it concerns a work or career-related matter that arose during their employment, in which case it shall be referred to the equivalent official in the NATO body in which the retired NATO staff member was last employed<sup>(1)</sup>. This request shall be made within 30 days after receipt of the notification of a contested decision.
- 2.5 In the event a NATO Body receives a request for administrative review or complaint that in the opinion of the Head of NATO Body should be dealt with by another organization, it shall without delay forward the matter to the appropriate NATO Body and so inform the staff member, or member of the retired NATO staff. In the event that the two NATO bodies concerned cannot agree as to which should take action, the matter is to be forwarded for resolution at the Administrative Tribunal. The time limits for response shall apply from the date the matter is received by the appropriate service.

### **Article 3            Mediation**

- 3.1 Before submitting a written complaint to the Head of the NATO body concerned as provided in Article 4.1, staff members may request mediation. The Head of the NATO body may, but is not obligated to agree to the request.
- 3.2 Where there is agreement to mediate, the mediation shall be conducted in accordance with common rules and procedures adopted for this purpose by the Organization, which shall be consistent with this Annex. The Organization shall establish guidelines to standardize modalities of mediation procedures NATO-wide.
- 3.3 Submission of a dispute to mediation shall suspend, until the mediation has been completed, even if it is not successful, the time limits foreseen under this Annex.
- 3.4 Submission of a dispute to mediation shall not, of itself, have the effect of suspending the contested decision or any actions taken as a result thereof. However, pending completion of the mediation and at the request of the staff member, the Head of the NATO body may suspend the contested decision, and/or refrain from taking any further action that would change the circumstances within the NATO body to the detriment of the staff member, by rendering impossible or impractical the relief sought by the staff member in the event that the mediation settles the dispute.
- 3.5 The mediation, its proceedings and the mediation report shall be marked "Sensitive - Administrative Tribunal - handle in confidence." Mediation

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<sup>(1)</sup> In the event that the NATO Body has been disbanded, the request for administrative review should be submitted to the higher Military Command for NATO bodies to which the Paris Protocol applies or to the International Staff in the case of a NATO body to which the Ottawa Agreement applies.

involves the services of a neutral, qualified mediator who is appointed by the Head of NATO Body in consultation with the Staff Association and who has no direct chain of command involvement with any of the parties involved.

- 3.6 A settlement of the dispute through mediation shall be recorded in writing and signed by both parties, and retained on the staff member's personal file. Unless otherwise agreed by the parties, settlement shall preclude any further action being taken by the Head of the NATO body or the staff member in respect of the subject matter of the settlement, other than for the purpose of ensuring compliance with the terms of the settlement itself.
- 3.7 If the mediation does not result in settlement of the dispute the staff member may submit a complaint to the relevant Head of NATO body, as set out in Article 4 below.

#### **Article 4 Submission of complaints**

- 4.1 Claimants wishing to contest the decision after pursuing an administrative review as prescribed in Article 2 of this Annex, or, where applicable, mediation as described in Article 3, or if no response has been received within the applicable time limit, may make a formal complaint in accordance with the provisions of Article 61 of the Civilian Personnel Regulations. Such complaints shall be submitted to the Head of the NATO body in which the administrative review was conducted. In order to be considered by the Head of the NATO body, a complaint must be submitted to him/her within 30 days following the outcome of the administrative review or mediation, where applicable and if pursued.
- 4.2 Claimants shall be entitled to request that, before a decision is taken, the complaint be submitted to a Complaints Committee established in accordance with the provisions of Article 5 below. The Head of the NATO body shall accept the request to submit the complaint to the Complaints Committee unless, within 15 days of receiving the complaint, he/she agrees to rescind or modify the contested decision. Alternatively, Heads of NATO bodies may decide to submit a complaint to the Complaints Committee on their own initiative.
- 4.3 The Head of the NATO body and the claimant may agree to submit the matter directly to the Administrative Tribunal, for example, where the issue(s) in dispute are purely legal in nature, and both parties agree in their written submissions that there are no material facts in dispute. The Head of the NATO body shall not render a decision with respect to matters submitted directly to the Administrative Tribunal under this paragraph.
- 4.4 Claimants who are obliged to travel over 100 kilometres in order to participate in a Complaints procedure shall be reimbursed by the NATO body their reasonable travel expenses in accordance with CPR Article 40.



## **Article 5      Complaints Committee**

### **5.1      Composition**

5.1.1 In each NATO body<sup>(1)</sup>, a Complaints Committee as described in Article 5.1.3 shall be formed and shall consist of a Chair and up to six other members, that is to say:

- (a) a Chair, appointed by the Head of the NATO body concerned, after appropriate consultations with the Staff Association, for a period of two years and selected from among the personnel of that body;
- (b) one to three members designated by the Head of the NATO body from among the personnel of that body;
- (c) one to three members designated from among the same personnel by the Staff Association concerned.

5.1.2 An alternate Chair of the Complaints Committee, to replace the Chair in cases where the latter is unable to act, shall be appointed by the Head of the NATO body at the same time as the Chair, under the same conditions and for the same period.

5.1.3 Each complaint will be considered by a committee consisting of the Chair and two members, one selected by the Head of the NATO body, and one selected by the Staff Association, taking into account the grade level of the member in relation to the claimant, the availability of the member to participate in the case, and any relevant expertise the member may have. Effort should be made to ensure both national and gender diversity on the Complaints Committee whenever practicable. Any member of the Complaints Committee who has a conflict of interest in a given case shall not be competent to hear that case.

5.1.4 The Complaints Committee shall act independently and impartially in the exercise of its duties. The members shall sign a statement to this effect upon appointment or designation. Aside from the regulations set out in this Annex, no directives relating to their work on the Committee shall be given to Committee members. Committee members shall work independently of any interference by those outside the Committee. The Chair has the authority and is responsible for the organisation and conduct of the work of the Committee.

### **5.2      Procedure**

5.2.1 Within 21 days of receipt of a complaint referred by the Head of the NATO body, the Chair of the Complaints Committee shall convene a Complaints Committee in accordance with Article 5.1.3 of this Annex to consider the complaint.

5.2.2 The Complaints Committee shall proceed as it deems necessary to carry out its responsibilities for advising the Head of the NATO body, consistent

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<sup>(1)</sup> The higher Military Command for NATO bodies to which the Paris Protocol applies or the International Staff in the case of a NATO body to which the Ottawa Agreement applies. The Secretary General should be construed to be the Head of NATO body for disbanded NATO Agencies and the respective Supreme Command should identify the Head of NATO Body for International Military Headquarters which have closed.

with Appendix 3 to this Annex. The proceedings of the Committee, including the evidence and testimony presented, shall be conducted and handled by the Complaints Committee with appropriate regard to the considerations of confidentiality. The Complaints Committee will ordinarily hear claimants and other witnesses in person.

- 5.2.3 The claimant may be assisted by another staff member or someone external to the NATO body, including a member of the retired NATO staff or professional counsel, in preparing the complaint and any other submissions and in presenting his/her case at the oral hearing(s). Such other person may not, however, speak for the claimant and must, as a condition of his/her continued presence at the hearing, comply with any directive issued by the Complaints Committee concerning the conduct of the hearing.
- 5.2.4 The Complaints Committee shall provide its findings of facts, views and recommendations, including any minority views, as applicable, and recommendations in a written report to the Head of the NATO body concerned, within 45 days from the date on which the complaint was referred to it. The claimant shall receive a copy of the report of the Complaints Committee at the same time it is provided to the Head of the NATO body.
- 5.2.5 The Head of the NATO body shall take a decision and notify the claimant thereof within 30 days of receipt of the report of the Complaints Committee. Before this decision is taken, the claimant shall have the right to submit his/her views, including with respect to the findings and recommendations of the Complaints Committee, in writing to the Head of the NATO body. The Head of the NATO body will consider such views and may, but is not required to, meet in person with the claimant before taking a decision.

### 5.3 **Protection**

- 5.3.1 No individual shall be subject to adverse action of any kind because of pursuing a complaint through administrative channels, presenting any testimony to the Complaints Committee, or assisting another staff member.
- 5.3.2 Members of the Complaints Committee shall be similarly protected in the exercise of their functions.

## **Article 6 Administrative Tribunal**

### 6.1 **Composition**

- 6.1.1 On the same date as these regulations enter into force (see Preamble), there shall be established an Administrative Tribunal of the North Atlantic Treaty Organization (herein "Tribunal") composed of five members, including the President, who shall be of different nationalities. The members of the Tribunal, each of whom must be of the nationality of one of the Member states of NATO, may not be staff members or members of the retired NATO staff or of the national delegations to the Council. Each member will be appointed on the basis of merit, be a competent citizen of good character, integrity, reason, intelligence, and judgment and possess the qualifications required for appointment to high judicial office or be a jurisconsult of recognized competence in a field or fields relevant to the work of the Tribunal.



- 6.1.2 The members of the Tribunal shall be appointed as follows:
- (a) The President and other members of the Tribunal shall each be appointed by the Council for a five-year term;
  - (b) The terms of office of the initial members of the Tribunal shall begin on the same date as these regulations enter into force. As a transitional measure, two of the four initial members of the Tribunal other than the President shall, as determined by drawing of lots following their appointment by the Council, serve for initial terms of three years;
  - (c) The members of the Tribunal may be reappointed for one further five-year term, following the same procedure.
  - (d) In the event a member of the Tribunal does not complete his or her term, a replacement member shall be appointed following the same procedure. A member appointed to replace a member whose term of office has not expired shall hold office for the remainder of his/her predecessor's term. Any such interim appointment shall not be taken into account when applying the term limitation.
  - (e) If persons who are current or former members of the NATO Appeals Board are appointed as members of the Tribunal, the time spent serving on the Appeals Board shall not be taken into account for purposes of the above term limits.
- 6.1.3 Each member of the Tribunal must, from the date his or her term in office begins, hold a security clearance certificate authorizing him or her to have access to information classified NATO SECRET.
- 6.1.4 The decisions of the Tribunal in a case shall be taken by a panel consisting of the President and two other members designated by the President. If the President recuses him/herself or is otherwise unable to hear a case, s/he shall name a third member to serve on the panel. In such case, the longest serving of the members of the panel shall act as President for that case, provided that if two or more members are of equal seniority, the eldest shall serve as acting President. The panel in such case shall thereupon consist of the acting President and two other members.
- 6.1.5 Any member of the Tribunal who has a conflict of interest in a case shall recuse him/herself. Each party may ask for a change in the composition of the Tribunal panel constituted in a case on account of presumed partiality. The parties may not, however, invoke the nationality of a member of the Tribunal to this effect. The two remaining members of the Panel shall take a decision on the request submitted in the absence of the member concerned and, if they disagree, the longest serving of the two shall decide.
- 6.1.6 The members of the Tribunal shall be completely independent in the exercise of their duties; they shall not receive any instructions or be subject to any constraint. They shall enjoy, so far as is necessary for the effective exercise of their functions, the privileges and immunities specified in Article 21 of the Agreement signed in Ottawa on 20th September, 1951 under the conditions laid down in that Agreement.

6.1.7 A former member of the Tribunal may not be employed as a staff member of the Organization for a period of five years after such person has served on the Tribunal.

## 6.2 Competence

6.2.1 The Tribunal shall decide any individual dispute brought by a staff member or a member of the retired NATO staff or his or her legal successor concerning the legality of a decision taken by the Head of a NATO body either on his or her own authority or in application of a decision of the Council. In this respect, the Tribunal shall make decisions according to the Civilian Personnel Regulations, other pertinent rules, contracts or other terms of appointment, as well as their interpretation and application to the staff in individual cases<sup>(1)</sup>.

6.2.2 In the event of a dispute as to whether a particular matter falls within the competence of the Tribunal as defined in section 6.2, the issue shall be settled by the Tribunal.

6.2.3 The Tribunal shall not have any powers beyond those conferred under this Annex. Nothing in this Annex shall limit or modify the authority of the Organization or the Head of NATO body, including the lawful exercise of their discretionary authority to establish and amend the terms and conditions of employment of staff.

6.2.4 The Tribunal shall establish in writing its rules of procedure in accordance with the provisions of this Annex. These rules of procedure shall be included in Appendix 1 to this Annex of the Civilian Personnel Regulations.

## 6.3 Appeals

6.3.1 Except with respect to decisions for which there are no channels for submitting complaints or where the appellant and the Head of the NATO body concerned have agreed to submit the matter directly to the Tribunal, the Tribunal shall only entertain appeals after the appellant has exhausted all available channels for submitting complaints under this Annex. In cases where channels for submitting complaints are available and have been pursued, the appeal must be submitted within 60 days of the latest of the following to occur:

- (a) the appellant has been notified by the Head of the NATO body concerned that the relief sought or recommended will not be granted; or
- (b) the appellant has been notified by the Head of the NATO body concerned that the relief sought or recommended will be granted, but such relief has not been granted within 30 days after receipt of such notice; or
- (c) the Head of the NATO body concerned has failed to notify the staff member or a member of the retired NATO staff within 30 days of receiving the report and recommendation of the Complaints Committee in the matter, which shall be considered as equivalent to a decision that the relief sought will not be granted.

<sup>(1)</sup> It is understood that the Tribunal shall have the authority to rule on the Civilian Personnel Regulations in the event that a CPR provision seriously violates a general principle of international public service law.

- 6.3.2 With respect to appeals against decision for which there are no channels for submitting complaints, or where the appellant and the Head of the NATO body have agreed to submit the matter directly to the Tribunal, the appeal must be submitted within 60 days of the notification of the decision to the appellant or agreement to submit the matter to the Tribunal.
- 6.3.3 Notwithstanding the time limits prescribed in Articles 6.3.1 and 6.3.2, and in very exceptional cases and for duly justified reasons, the Tribunal may admit appeals lodged up to a further 30 days after the time allowed.
- 6.3.4 Appeals shall be made in writing. They shall state all grounds of appeal asserted by the appellant and shall be accompanied by all documentary evidence relevant thereto including, where one has been submitted, the report and recommendations of the Complaints Committee in the matter.
- 6.3.5 Although an appeal shall not stay the execution of the decisions appealed against, pending the conclusion of the case and at the request of the staff member or a member of the retired NATO staff, the Head of the NATO body may suspend the contested decision, and/or refrain from taking any further action during the period within which an appeal may be brought or is being heard that would change the position within the NATO body to the detriment of the appellant, by rendering impossible or impractical the relief sought by the appellant, in the event of the appeal being upheld.

#### 6.4 **Administrative arrangements**

- 6.4.1 The Secretary General shall make the administrative arrangements necessary for the functioning of the Tribunal, including designating a Registrar who, in the discharge of his or her duties in support of the Tribunal, shall be responsible only to the Tribunal. The Registrar shall provide such professional, technical and administrative support as the Tribunal deems useful for its work. The Registrar may be part-time and perform other non-Tribunal duties as well.
- 6.4.2 The expenses of the Tribunal shall be borne by NATO. The Tribunal shall prepare and manage its budget independently.

#### 6.5 **Preliminary procedure**

- 6.5.1 Appeals shall be transmitted immediately by the Registrar of the Tribunal to the Head of the NATO body concerned, who shall answer the Appeal in writing within 60 days of its receipt. The answer shall be communicated by the Registrar to the appellant who may, within 30 days of its receipt, submit a reply in writing. In case the Appellant submits a reply, this reply should be communicated by the Registrar to the Head of the NATO body concerned who may, within 30 days of receipt, submit a rejoinder in writing.
- 6.5.2 Appeals, together with the documentary evidence, the comments of the Head of the NATO body, the appellant's reply and the Head of NATO body's rejoinder, if any, shall be communicated to the members of the Tribunal by the Registrar at least 30 days before the date of the session at which they are to be considered.
- 6.5.3 If the direct implementation by the Head of a NATO body of a decision of the Council is being examined before the Tribunal, the Council, on its own initiative, may submit written observations to the Tribunal. These observations shall be made available to all parties to the case.

## 6.6 Sessions

- 6.6.1 The President, in consultation with the members of the Tribunal, shall decide on the timing and agenda of the Tribunal's sessions.
- 6.6.2 The Tribunal shall hold its sessions at NATO Headquarters, unless it considers that the efficient conduct of the proceedings necessitates holding a session or sessions elsewhere.
- 6.6.3 The Tribunal shall hear appeals submitted to it not later than 90 days after the date of communication of the relevant documentation to the members of the panel.
- 6.6.4 The Tribunal shall have discretion, in exceptional circumstances, to depart from the time limits laid down both in the preceding paragraph and in Article 6.3 above. Either party may request an expedited hearing on the basis of exceptional circumstances, in particular the need to avoid irreparable harm, in which case the request will be decided by the President, taking into account the views of the other party on the matter.

## 6.7 Hearings

- 6.7.1 Unless all parties agree otherwise, appeals lodged before the Tribunal will require an audience in the form of an oral hearing where all concerned parties may be present and or represented. In accordance with the provisions of the present Annex, oral hearings may be attended by any interested staff members or retired NATO staff, or a member of the delegation of any of the member States who hold appropriate security clearance, unless the Tribunal decides, upon the request of a party and taking into account the views of the other party, that exceptional circumstances, such as the personal and private nature of the matters raised, require that the hearing be held in private. The Tribunal may adopt rules concerning attendance of hearings and conditions thereof.
- 6.7.2 Both the Head of the NATO body and the appellant may attend the oral hearings and make statements in support of the arguments put forward in their submissions. They may be aided or represented for this purpose by other persons, including counsel selected by them. However, in the event the Tribunal considers it necessary, at the request of either the Head of the NATO body, or the appellant, to take cognizance of NATO classified material and in the event this material is included in the file of the case notwithstanding the provisions of Article 6.7.5 below, the parties may only be assisted or represented by a member of the NATO civilian Staff, retired NATO staff, military personnel or by counsel who have received appropriate security clearance, unless the material is declassified.
- 6.7.3 The Tribunal may, subject to the recognition of well-accepted privileges accorded to certain types of communications, including those relating to attorney-client communications and settlement discussions, require the production of any document which it deems useful for the consideration of an appeal before it. Documents so communicated to the Tribunal shall also be communicated to the Head of the NATO body and to the appellant, respecting procedures relating to the transmission of classified information, so long as the appellant holds the appropriate security clearance with respect to the document in question.

Amdt 12/May 2013

- 6.7.4 The Tribunal may hear any witnesses, including persons whose attendance has been requested by a party in writing, whose evidence it deems may be useful in the proceedings. Any official, whether civilian or military, of NATO called as a witness, shall appear before the Tribunal and may not refuse the required information, except under the conditions laid down in the Tribunal's rules of procedure.
- 6.7.5 If the interests of the Alliance necessitate the use of classified information or documents in the Administrative Tribunal, the Secretary General, acting in his/her capacity as Chair of the Council, may, either on his/her own initiative or at the request of the Head of a NATO body concerned, personally decide that certain information or documents shall not be communicated to the Tribunal or may instruct a member of his staff not to reply to certain questions. Classified material originating from a Member state shall not in any event be disclosed without the consent of the Member state concerned. Recourse to the provisions of the present article shall in no case be interpreted to the disadvantage of the appellant. The Tribunal shall use all appropriate means to ascertain the validity of reasons given for not providing the requested information or documents and shall ultimately decide on the validity of such reasons, whether the requested information or documents shall be provided and whether a member of the staff shall reply to all questions.
- 6.7.6 All those attending a hearing of the Tribunal shall preserve the utmost secrecy concerning the facts which come to their knowledge and the views expressed during the hearing.
- 6.7.7 The Tribunal shall deliberate alone and in secret.
- 6.7.8 The Office of the Legal Adviser of the International Staff shall, at the request of the President of the Tribunal, or may, on its own initiative, submit written observations, attend and participate in the hearing, or both. Any such observations shall be made available to all parties in the case.
- 6.8 Judgments**
- 6.8.1 Judgments of the Tribunal shall be taken by majority vote. They shall be delivered in writing and shall state the grounds on which they are based. They shall be circulated by the Registrar, particularly for the benefit of national delegations and Heads of NATO bodies.
- 6.8.2 In cases where it is admitted that there were good grounds for the appeal, the Tribunal shall order the NATO body to reimburse, within reasonable limits, justified expenses incurred by the appellant; provided, that the appellant shall not be entitled to recover the expenses incurred by reason of being assisted by another staff member or a member of the retired NATO staff in respect of his/her own time incurred in pursuing the appeal. The Tribunal may also order the NATO body to reimburse the justified expenses incurred by witnesses who have been heard, within the limits to be fixed by the Tribunal.
- 6.8.3 In cases where the Tribunal finds that the appellant intended to delay the resolution of the case or harass NATO or any of its officials, or that the appellant intended abusive use of the appeals procedure, it may order that reasonable compensation<sup>(1)</sup> be made by the appellant to the NATO body in question. If so ordered, the amount awarded by the Tribunal shall be collected

by way of deductions from payments owed by NATO to the appellant or otherwise, as determined by the Head of the NATO body in question.

6.8.4 (a) The judgments of the Tribunal shall be final and not subject to any type of appeal by either party, except that the Tribunal may be requested by either party within 30 days from the date of the judgment to rectify a clerical or arithmetical mistake in a judgment delivered.

(b) Either party may petition the Tribunal for a re-hearing should a determining fact not have been known by the Tribunal and by the party requesting a re-hearing at the time of the Tribunal's judgment. Petitions for a re-hearing must be made within 30 days from the date on which the above-mentioned fact becomes known, or, in any case, within 5 years from the date of the judgment. With the consent of the parties, the Tribunal may decide in a given case that no oral hearing is required and a decision can be taken on the basis of the written record before it.

6.8.5 The Tribunal shall decide in each case whether in light of the written record before it, a decision can be taken on the petition without the need for an oral hearing.

#### 6.9 Award of remedies

6.9.1 If the Tribunal concludes that the appeal is well founded in whole or in part, the Tribunal may grant, in whole or in part, the remedies sought by the appellant, including annulment of such decisions of the Heads of NATO bodies as are contrary to the contracts or other terms of appointment of the staff member concerned or to the relevant provisions of NATO regulations governing personnel, and specific performance of an obligation such as a pay increase, promotion, transfer or reinstatement of employment, and the payment of monetary relief. It may also order the NATO body to pay compensation for the injury resulting from any irregularity committed by the Head of the NATO body.

6.9.2 Nevertheless, where the Head of NATO body concerned or, as regards those bodies to which the Paris Protocol applies, the Supreme Commander concerned, affirms that the annulment of a decision or specific performance of an obligation is not possible or would give rise to substantial difficulties, the Tribunal shall instead determine the amount of compensation to be paid to the appellant for the injury sustained.

6.9.3 In cases where the judgment of the Tribunal includes annulment of the contested decision that applies or gives effect to a rule, regulation or other decision of general applicability to a staff member or a member of the retired NATO staff which the Tribunal declares to be invalid, in whole or in part, such rule, regulation or decision or invalid portion thereof may not thereafter be applied to similarly-situated staff members or retired NATO staff.

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<sup>(1)</sup> Which shall in no case exceed 50% of one month's basic salary for the staff member.



#### 6.10 **Transitional provisions**

Appeals pending before the NATO Appeals Board on 30 June 2013 shall be transferred to the NATO Administrative Tribunal. Appeals that were submitted to the Appeals Board prior to the date when these regulations enter into force, but not decided by that date, shall be decided by the Tribunal in accordance with the provisions of Annex IX in effect prior to when these regulations enter into force.

#### 6.11 **Final provisions**

- 6.11.1 The original of each judgment shall be filed in the archives of NATO. A copy of the judgment, attested to by the President, shall be delivered to each of the parties concerned and to the Office of the Legal Adviser of the International Staff.
- 6.11.2 A copy shall also be made available by the Registrar to any interested staff member or a member of the retired NATO staff, provided that the President may decide that the identities or any other means of identification of the appellant or other persons mentioned in the judgment shall be deleted from the judgement, which would be made available to staff members and retired NATO staff in an appropriate electronic format.



## **Appendix 1 to Annex IX**

# Rules of procedure of the Administrative Tribunal

Adopted on 1 July 2013 according to PO(2013)0356

## **Chapter I**

# General provisions

### **Rule 1            General provisions**

1. These Rules of Procedure (hereinafter "Rules") shall apply to the Administrative Tribunal (hereinafter "Tribunal") of the North Atlantic Treaty Organization (hereinafter "NATO").
2. These Rules shall be subject to the provisions of the NATO Civilian Personnel Regulations, in particular Annex IX thereto (hereinafter "Annex IX").
3. These Rules are established by the Tribunal in accordance with Article 6.2.4 of Annex IX and will apply to all appeals that may be submitted to it after 1 July 2013. They may be amended by the Tribunal.
4. The Tribunal, or, when the Tribunal is not in session, the President of the Tribunal (hereinafter "the President") after giving notice to the Parties and after consultation, where appropriate, with the other members of the Tribunal or of a Panel, may, in exceptional cases and in accordance with Article 6.6.4 of Annex IX, depart from any applicable time limits.
5. The Tribunal or, when the Tribunal is not in session, the President may deal with any matter not expressly provided for in the present Rules.

### **Rule 2            Organization of the Tribunal**

1. The Tribunal is composed of the President and four other members.
2. The Tribunal shall seek to conduct its affairs so that the President and all of its other members may meet together at least once a year.

3. A Panel consisting of the President and two other members of the Tribunal shall consider an appeal or a group of appeals. Decisions of such Panels shall be deemed to have been taken by the Tribunal.
4. The members of the Tribunal shall be assigned to Panels consisting of the President and two other members each. The President shall assign each of the other members in rotation to a Panel with each of the other three members. The President shall assign cases to Panels with due consideration to the principle of rotation as well as equitable distribution of workload.
5. In each case the President shall serve as judge-rapporteur or designate another member of the Panel as such, *inter alia*, for purposes of preparing a draft judgment for consideration and approval by the Panel.
6. The seat of the Tribunal shall be at NATO Headquarters in Brussels, Belgium. The President may decide to hold one or more particular sittings in a place other than at the Tribunal's seat, in accordance with Article 6.6.2 of Annex IX.

### **Rule 3            Official languages**

The official languages of the Tribunal shall be English and French.

### **Rule 4            President**

The President, or if the President is recused or is otherwise unable to perform his or her functions, the member of the Tribunal identified in accordance with Article 6.1.4 of Annex IX, shall direct the work of the Tribunal. In particular the President shall:

- (a) perform the functions entrusted to the President by Annex IX and by these Rules;
- (b) preside over the consideration of the cases by the Tribunal;
- (c) make such orders as may be required for the conduct of the proceedings;
- (d) convene the Tribunal and fix its order of business;
- (e) direct the Registrar of the Tribunal in the performance of the Registrar's functions;
- (f) represent the Tribunal in its administrative and related matters;
- (g) when the Tribunal is not in session deal with any matter not expressly provided in the present Rules; and
- (h) prepare an annual report on the activities of the Tribunal.

### **Rule 5            Registrar**

Under the authority of the President, the Registrar of the Tribunal shall:

- (a) receive appeals instituting proceedings and related documentation for each case before the Tribunal;

- (b) be responsible for transmitting all documents and making all notifications required in connection with each case;
- (c) make for each case a dossier which shall record all actions taken in connection with the case, the dates thereof, and the dates on which any document or notification forming part of the procedure is received in or dispatched from the Registrar's office;
- (d) attend hearings and meetings of the Tribunal;
- (e) keep the minutes of these hearings and meetings as instructed by the President;
- (f) have the custody of the archives of the Tribunal;
- (g) expeditiously perform the functions entrusted to the Registrar by Annex IX and these Rules and carry out tasks as assigned by the President; and
- (h) issue practice directions relating to the lodging of written pleadings and to the preparation for and conduct of hearings.

#### **Rule 6 Recusal**

1. The President or other members of the Tribunal shall recuse themselves:
  - (a) in cases involving persons with whom the member has a personal, familial or professional relationship;
  - (b) in cases concerning which the member has previously been called upon in another capacity, including as advisor, representative, expert or witness; or
  - (c) if there exist other circumstances such as to make the member's participation seem inappropriate.
2. Any recused member shall immediately inform the President of the Tribunal. If the President is recused, the President shall immediately inform the members of the Panel and name a third member to serve on the Panel in accordance with Article 6.1.4 of Annex IX.

#### **Rule 7 Representation**

Each party may at any time choose to be assisted by counsel or other representatives, whose designation shall be notified to the Registrar.

#### **Rule 8 Sessions**

The President shall, in consultation with the other members of the Tribunal and taking into account the caseload, fix the dates and agendas of the Tribunal's sessions.

## Chapter II

# Written Procedure

### Rule 9 Appeal

1. An appeal shall be filed by the appellant or the appellant's duly authorized counsel or other representatives.
2. An appeal instituting proceedings shall be submitted to the Tribunal through the Registrar. Each appeal shall contain:
  - (a) the name and official status of the appellant;
  - (b) the name of the appellant's counsel other representative, if any;
  - (c) the decision being challenged, and the Head of NATO Body concerned for the decision;
  - (d) the channels of administrative review and complaints, as applicable, that the appellant has pursued in accordance with the relevant provisions of Annex IX and the results thereof;
  - (e) the legal grounds on which the appeal is based;
  - (f) a statement of the supporting facts and any supporting evidence and documents, including, where appropriate, statements of any supporting witness;
  - (g) the relief or remedy that is being sought, including (i) the amount of compensation, if any, claimed by the appellant or the specific performance of any obligation which is requested, or both, and (ii) costs as the Tribunal may award;
  - (h) any request for production of documents.
3. The appeal, the supporting evidence, and any other documents being produced that are essential for the appeal must be submitted in one of the official languages of the Tribunal. If a document other than the appeal is not in one of the official languages, the appellant shall attach a certified translation into one of these official languages. Any translations into the other of these languages shall, if necessary, be prepared under the responsibility of the Registrar. The appellant shall include as attachments relevant portions of all documents cited in the appeal in an original or in an unaltered copy. The appellant shall also attach a copy of any report and recommendation of the Complaints Committee in the matter. The pages of all documents submitted shall be consecutively numbered.
4. The appeal shall be signed on the last page by the appellant or the counsel or other representative, if any, designated in accordance with Paragraph 1 above. In the event of the appellant's incapacity, the required signature shall be furnished by the appellant's legal representative.
5. The date of filing shall be considered the first of the two following dates:



- a. the date on which the Registrar has received an electronic copy of the appeal, and its complete enclosures, at mailbox.tribunal@hq.nato.int. A complete paper copy of the appeal shall be dispatched by mail to the Tribunal no later than the first business day following submission of the electronic copy; or
  - b. the date on which the Registrar has received by mail one paper copy, and its complete enclosures, of the appeal. However, a complete electronic version of the appeal shall be submitted by e-mail to the Registrar at mailbox.tribunal@hq.nato.int.
6. If following review of the appeal, the Registrar determines that the appeal contains minor defects or omissions the Registrar shall advise the appellant and prescribe a reasonable period of time, not to exceed 15 days, to correct the defects or omissions.
  7. If this is done within prescribed time, the appeal shall be considered filed on the original date. If corrections are not made in the time specified by the Registrar, but are made at a later date, the filing date shall be the later date on which the corrected document is filed.
  8. Upon receipt of the appeal, or following correction of any minor defects or omissions in accordance with the preceding paragraphs the Registrar shall transmit the appeal to the President of the Tribunal, and communicate a copy to the Head of NATO Body concerned (hereinafter "HONB") and the Office of Legal Affairs of the International Staff (hereinafter "OLA").

### **Rule 10                      Summary dismissal**

1. Where the President considers that an appeal is clearly inadmissible, outside the Tribunal's jurisdiction, or devoid of merit, the President may instruct the Registrar to take no further action on it until the next session of the Tribunal. Such ruling shall suspend all procedural time limits.
2. After notifying the appellant and considering any additional written views of the appellant, the Tribunal at the next session may either summarily dismiss the appeal as being clearly inadmissible, outside its jurisdiction, or devoid of merit, stating the grounds therefor, or it may decide to proceed with the case in the normal way.

### **Rule 11                      Anonymity**

1. An appellant may request at any time prior to judgment that his or her name or other information not be made public by the Tribunal.
2. The HONB may request in the answer that the name of any other individual not be made public by the Tribunal. An intervener may request anonymity in the application for intervention.
3. The parties shall be given an opportunity to present their views to the Tribunal in response to a request for anonymity.

4. The Tribunal shall grant a request for anonymity if good cause has been shown for protecting the privacy of an individual from public disclosure. However, a grant of anonymity does not extend to the parties or to the oral procedure.

## **Rule 12                      Answer**

1. After an appeal has been transmitted by the Registrar to the HONB, the HONB shall answer the appeal within 60 days of receipt unless, upon request by either party with notice to both, the President sets another time limit, in accordance with Rule 1, Paragraph 4. The HONB's answer shall be submitted to the Tribunal and to the appellant through the Registrar. The HONB shall include as attachments the relevant portions of all documents referred to in the answer in accordance with these Rules, unless the document has been attached to the appeal, in which case reference should be made to the page number. The pages of all documents submitted shall be consecutively numbered.
2. The answer shall be signed on the last page by the representative of the HONB.
3. The date of filing shall be considered the first of the two following dates:
  - a. the date on which the Registrar has received an electronic copy of the answer, and its complete enclosures, at mailbox.tribunal@hq.nato.int. A complete paper copy of the answer shall be dispatched by mail to the Tribunal no later than the first business day following submission of the electronic copy; or
  - b. the date on which the Registrar has received by mail one paper copy, and its complete enclosures, of the answer. However, a complete electronic version of the answer shall be submitted by e-mail to the Registrar at mailbox.tribunal@hq.nato.int.
4. Upon ascertaining that the formal requirements of this Rule have been met, the Registrar shall transmit a copy of the HONB's answer to the President of the Tribunal, to the appellant and, as appropriate, communicate a copy to OLA. If these requirements have not been met, Rule 9, Paragraph 6 shall apply *mutatis mutandis* to the answer.
5. The HONB shall include in the answer a response to any requests for production of documents or anonymity that the appellant has included in the appeal.

## **Rule 13                      Transmission of a case to a Panel**

1. After the Registrar receives both the appeal and the answer, the President shall assign the case to a Panel in accordance with Rule 2, Paragraph 4, and the Registrar shall transmit the appeal and answer to the members of the Panel. Thereafter, the Registrar shall transmit the reply and rejoinder to the Panel as each is received.
2. The Registrar shall inform the parties of the composition of the Panel. Each

party may, in accordance with Article 6.1.5 of Annex IX, within 15 days ask for a change in the composition of the Panel constituted in a case on account of presumed partiality. The two remaining members of the Panel shall take a decision on the request in the absence of the member concerned, and if they disagree, the longest serving of the two shall decide. No further requests for a change in composition may be submitted unless on the basis of new information or developments.

3. The Tribunal or, when the Tribunal is not in session, the President may decide to join cases.

#### **Rule 14                      Reply**

1. The appellant may file with the Registrar a reply to the answer within 30 days from the date on which he or she received the answer, unless, upon request, the President sets another time limit in accordance with Rule 1, Paragraph 4.
2. The relevant portion of any document referred to in the reply shall be attached in accordance with the Rules established for the appeal in Rule 9, unless the document has been attached to an earlier pleading in which case reference should be made to the page number. The pages of all documents submitted shall be consecutively numbered.
3. The requirements of Rule 9, Paragraph 4 shall apply to the reply.
4. The date of filing shall be considered the first of the two following dates:
  - a. the date on which the Registrar has received an electronic copy of the reply, and its complete enclosures, at mailbox.tribunal@hq.nato.int. paper copy of the reply shall be dispatched by mail to the Tribunal no later than the first business day following submission of the electronic copy; or
  - b. the date on which the Registrar has received by mail one paper copy, and its complete enclosures, of the reply. However, a complete electronic version of the reply shall be submitted by e-mail to the Registrar at mailbox.tribunal@hq.nato.int.
5. Upon ascertaining that the formal requirements of this Rule have been met, the Registrar shall transmit a copy of the reply to the President of the Tribunal and the other members of the Panel, to the HONB and, as appropriate, communicate a copy to OLA. If these requirements have not been met, Rule 9, Paragraph 6 shall apply *mutatis mutandis* to the reply.

#### **Rule 15                      Rejoinder**

1. The HONB may file with the Registrar a rejoinder to the reply within 30 days from the date on which the reply is received from the Registrar, unless, upon request, the President sets another time limit in accordance with Rule 1, Paragraph 4.
2. The relevant portion of any document referred to in the rejoinder shall be attached in accordance with the Rules established for the appeal in Rule 9, unless the document has been attached to an earlier pleading in which case reference should be made to the page number. The pages of all documents

- submitted shall be consecutively numbered.
3. The requirements of Rule 12, Paragraph 2, shall apply to the rejoinder.
  4. The date of filing shall be considered the first of the two following dates:
    - a. the date on which the Registrar has received an electronic copy of the rejoinder, and its complete enclosures, at mailbox.tribunal@hq.nato.int. A complete paper copy of the rejoinder shall be dispatched by mail to the Tribunal no later than the first business day following submission of the electronic copy; or
    - b. the date on which the Registrar has received by mail one paper copy, and its complete enclosures, of the rejoinder. However, a complete electronic version of the rejoinder shall be submitted by e-mail to the Registrar at mailbox.tribunal@hq.nato.int.
  5. Upon ascertaining that the formal requirements of this Rule have been met, the Registrar shall transmit a copy of the HONB's rejoinder to the President of the Tribunal and the other members of the Panel, to the appellant and, as appropriate, communicate a copy to OLA. If these requirements have not been met, Rule 11, Paragraph 7, shall apply *mutatis mutandis* to the rejoinder.
  6. Without prejudice to Rule 16 below, after the rejoinder has been filed, no further pleadings shall be received.
  7. The HONB shall include in the rejoinder a response to any requests for costs or other matters that the appellant has included in the reply.

### **Rule 16 Additional pleadings**

1. In exceptional cases, and if necessary, the President may, *sua sponte*, or at the request of a party, call upon the parties to submit additional written statements or additional documents within a period which the President shall fix. The additional documents shall be furnished in the original or in an unaltered copy and accompanied by any necessary certified translations.
2. The requirements of Rule 9, Paragraphs 4 and 5, or Rule 12, Paragraphs 2 and 3, as the case may be, shall apply to any written statements and additional documents.
3. Upon ascertaining that the formal requirements of this Rule have been met, the Registrar shall transmit a copy of any additional written statements or additional documents to the President of the Tribunal and the other members of the Panel, to the parties and, as appropriate, communicate a copy to OLA. If these requirements have not been met, Rule 9, Paragraph 6 shall apply *mutatis mutandis*.

### **Rule 17 Withdrawal**

Should the appellant withdraw the appeal, the President may accept the withdrawal without convening the Tribunal or a Panel for this purpose, provided the withdrawal is unconditional.

## Chapter III

# Additional Participants

### Rule 18 Third parties

The President may decide that the appeal should be communicated to a third party who should be invited to participate in the proceedings, and shall fix the time limit within which such third party may submit comments. Should the third party accept this invitation and submit comments within the time limit fixed, he or she shall become a party to the proceedings and have the same rights, *mutatis mutandis*, as the appellant and the HONB. The third party's comments shall be communicated by the Registrar to the President and other members of a Panel, to the parties, and, as appropriate, to OLA.

### Rule 19 Office of the Legal Adviser

In accordance with Article 6.7.8 of Annex IX, OLA shall, at the request of the President, or may, on its own initiative, submit written observations, within a week after receiving the rejoinder or other final pleadings. Any such written observations shall be made available to all parties in the case. At the request of the President or on its own initiative, OLA shall or may attend and participate in the hearing.

### Rule 20 Intervention

1. Any person who could be materially affected by the judgment and who wishes to express views on an issue or issues in a case potentially affecting his or her interests may draw up an application for intervention and file it with the Registrar of the Tribunal.
2. Applications in intervention must be filed no later than 30 days after the filing of the reply.
3. The Tribunal shall rule on such a request in its judgment.
4. The Registrar shall send a copy of the intervention document to the President and other members of the Panel and to the parties and, as appropriate, communicate a copy to OLA.
5. The intervener is not a party to the case, may not file additional documents, and is not bound by the judgment solely by reason of having intervened.

### Rule 21 Council's observations

In accordance with Article 6.5.3 of Annex IX, any observations by the Council shall be received at the latest 30 days before the hearing.

### Rule 22 *Amicus curiae*

The Tribunal may, at its discretion, permit any person or persons, including the

duly authorized staff representatives, and the Confederation of NATO Retired Civilian Staff Associations, to communicate written views to the Tribunal as *amici curiae*. The Tribunal may permit an *amicus curiae* access to the pleadings of the parties. The Tribunal shall enable the parties to submit timely observations on an *amicus* brief.

## Chapter IV

# Measures

### Rule 23 Amicable Settlement

1. The Tribunal or, when the Tribunal is not in session, the President shall rule on any request made by the parties for suspension of the proceedings for the purpose of examining the possibilities of an amicable settlement of the dispute.
2. The Tribunal or, when the Tribunal is not in session, the President may at any time encourage negotiation aimed at putting an end to the dispute and adopt appropriate measures with a view to facilitating such settlement. With the consent of the parties, the proceedings may be suspended for a time specified by the Tribunal or the President. If an agreement is not reached within this period of time, the proceedings will continue.
3. No opinion expressed, suggestion made, proposal put forward, concession made or document drawn up for the purposes of the amicable settlement may be relied on for any purpose by the Tribunal or the parties in the contentious proceedings.

### Rule 24 Interim measures

At any time during the proceedings, the Tribunal or, when the Tribunal is not in session, the President may request that the HONB consider taking action under Article 6.3.5 of Annex IX.

## Chapter V

# Oral Procedures

### Rule 25 Convening of hearings

1. There shall, unless all parties agree otherwise, be a hearing of all parties. The President shall in consultation with the parties determine the sequence of the hearing.



Amdt 14/July 2013

2. The dates of hearings shall be decided by the President after consulting the members of the Panel and the parties. Dates shall be notified by the Registrar to the members, parties, interveners and the staff representatives, as a general rule, at least 30 days in advance. The President shall rule on any request for a hearing to be postponed.
3. As soon as the time limit for submitting written documents has expired, the Registrar shall inform the parties who then have seven days in which to notify the Registrar in writing of the names and description of the witnesses they wish to have called, together with the reasons why they wish to question them. The Registrar shall notify each party of the witnesses the other wishes to have called; each party may within seven days offer any observations on whether witnesses named by the other should be called.
4. If the Tribunal considers that their evidence would be useful, witnesses cited by the parties shall be summoned by the Registrar, as a general rule, at least two weeks before the day of the hearing. The Tribunal may authorize witnesses to be heard using videoconferencing, Internet telephony, or other similar techniques.
5. Where a witness is not in a position to appear before the Tribunal for reasons of health or other reasons acceptable to the Tribunal, the Tribunal may decide that the witness shall reply in writing to the questions of the parties. The parties shall, however, retain the right to comment on any such written reply.
6. The Tribunal or, when the Tribunal is not in session, the President, may also call witnesses and experts to appear at the hearing.

## **Rule 26                      Hearing**

1. The hearing of the Tribunal shall be held in accordance with Article 6.7.1 of Annex IX. The Tribunal or, when the Tribunal is not in session, the President, at the request of either party, may decide that part or all the hearing may be held in camera. Hearings in any case involving matters of discipline shall be held in camera.
2. The language used in the proceedings shall be English or French. Any party will be provided with interpretation unless otherwise agreed.
3. The Tribunal may hold the hearing in the absence of one of the parties, provided that the date of the meeting has been duly notified to both parties.
4. The President and each of the other members may in the course of the hearing:
  - (a) put questions to the parties; and
  - (b) invite the parties themselves to express their views on certain aspects of the case.
5. The parties or their counsel or other representatives may make statements and, under the direction of the President, put questions to the witnesses and experts.
6. Each witness or expert shall be requested to give an undertaking to reply fully

and accurately to the questions put to him.

7. The President is empowered to issue orders and decide such matters as are necessary for the fair and orderly conduct of the hearing, including on objections raised concerning the examination of witnesses and experts or the introduction of documentary evidence.
8. The Tribunal may limit hearings to the oral arguments of the parties and their counsel or representatives, where it considers the written evidentiary record to be adequate.

## Chapter VI

# Judgments

### Rule 27 Judgments

1. The Tribunal shall deliberate in closed session. All deliberations of the Tribunal shall be confidential.
2. Judgments shall be adopted by majority vote. They shall be in writing and address the grounds relied upon by the parties and state the reasons on which they are based. A member of the Panel may attach a dissenting opinion.
3. Once the final text of a judgment has been approved and adopted, it shall be signed by the President and the Registrar. It shall contain the names of the members who have taken part in the judgment.
4. Judgments shall be delivered in one of the official languages and, under the responsibility of the Registrar, translated into the other one. The only authentic text shall be the original version.
5. Judgments shall be transmitted to the parties, OLA, the Confederation of NATO Civilian Staff Associations, interveners and *amici curiae*. The Registrar shall arrange for their expeditious publication.
6. The Registrar may communicate judgments to any person who so requests. However, the Tribunal may decide that a judgment shall not be communicated until the name of the appellants or any person mentioned therein and any identifying information, or any classified or other sensitive information has been deleted.
7. Subject to Article 6.8.4 of Annex IX, judgments are final and binding.

### Rule 28 Rectification of error

Clerical and arithmetical errors in the judgment may be corrected by the Tribunal on its own initiative or at the request of a party.

**Rule 29 Revision of Judgments**

In accordance with Article 6.8.4 of Annex IX, either party may petition the Tribunal for a re-hearing should a determining fact not have been known by the Tribunal and by the party requesting a re-hearing at the time of the Tribunal's judgment. Petitions for a re-hearing must be made within 30 days from the date on which the above-mentioned fact becomes known, or, in any case within 5 years from the date of the judgment. With the consent of the parties, the Tribunal may decide in a given case that no oral hearing is required and a decision can be taken on the basis of the written record before it.

**Rule 30 Clarification of Judgments**

1. After a judgment has been rendered, a party may, within three months of the notification of the judgment, request from the Tribunal a clarification of the operative provisions of the judgment.
2. The request for clarification shall be admissible only if it states with sufficient particularity in what respect the operative provisions of the judgment appear obscure, incomplete or inconsistent.
3. The Tribunal shall, after giving the other party or parties a reasonable opportunity to present its or their views on the matter, decide whether to admit the request for clarification. If the request is admitted, the Tribunal shall issue its clarification, which shall thereupon become part of the original judgment.

**Annex A to the Rules of Procedure for the Administrative Tribunal (Reserved)**

## **Annex A to the Rules of Procedure for the Administrative Tribunal**

# NATO Administrative Tribunal Guide to preparing Appellant's Application

### **Part I            General Information**

- a) Information concerning the personal status of the appellant:
  - Last name, first name;
  - Date and place of birth;
  - Nationality, marital status and dependent children, insofar as relative to the case; and
  - Postal address, e-mail address and telephone number for the purposes of the proceedings.
- b) Information concerning the appellants' professional or other representative, if applicable:
  - Last name, first name;
  - Status and chamber of practice (if any); and
  - Postal address, e-mail address and telephone number for the purposes of the proceedings.
- c) Information concerning the official status of the appellant:
  - NATO Organization to which the appellant belongs; if different from the Organization at the time of the challenged decision, indicate both;
  - HONB which took the challenged decision;
  - Date of the challenged decision;
  - Date of entry into service with the Organization;
  - Type of contract, grade and position occupied at the date of the challenged decision; and

- Channel(s) of Administrative Review of the challenged decision pursued by the appellant, including Complaints Committee and Mediation, including their dates and results.

## **Part II Plea**

- Reasons why the appellant challenges the decision;
- Indication of how Annex IX requirements for Administrative Tribunal to consider the appeal have been met (jurisdiction, admissibility);
- Legal grounds on which the appeal is based;
- Supporting facts, evidence and documents including statements of supporting witnesses (if any);
- Relief or remedy sought, including the amount of compensation (if any), and/or the specific performance of any obligation, and any request for costs;
- Any request for production of documents;
- Any request for written proceedings, in accordance with Article 6.7.1 of Annex IX;
- Any request for anonymity, in accordance with Administrative Tribunal Rule 11; and
- Date and signature (hand written).

## **Part III Annexes**

Annexes (i.e. the relevant portions of all documents cited in the appeal) shall be:

- Preceded by a table of contents indicating the annex number, title, nature and date;
- Clearly identified by an identifying number ("Annex 1 ", "Annex 2", etc);
- Attached in chronological order;
- Attached in original or in an unaltered copy;
- Provided in one of the two official languages of the Tribunal, or failing this, attaching a certified translation; and
- Have clearly indicated the topic in the plea to which they refer.

## **Appendix 2 to Annex IX**

# List of the NATO bodies referred to in Article 1 of Annex IX

### **I. Bodies subject to the Ottawa Agreement**

#### **1. International Staff**

#### **2. Bodies under the Military Committee**

- International Military Staff
- NATO Defence College
- Research and Technology Agency (RTA)

#### **3. Production and Logistics Organizations**

- NATO Maintenance and Supply Organization (NAMSO)
- Central Europe Pipeline Management Organization (CEPMO)
- NATO HAWK Production and Logistics Organization
- NATO Eurofighter 2000 and TORNADO Development, Production and Logistics Management Organization (NETMO)
- NATO Medium Extended Air Defence System Design and Development, Production and Logistics Management Organization (NAMEADSMO)
- NATO Airborne Early Warning and Control Programme Management Organization (NAPMO)
- NATO Helicopter for the 1990s Design and Development, Production and Logistics Management Organization (NAHEMO)
- NATO Alliance Ground Surveillance Management Organization (NAGSMO)
- NATO Airlift Management Organization (NAMO)

#### **4. Other organizations subject to the Ottawa Agreement**

- NATO Consultation, Command and Control Organization (NC3O)
- NATO Air Command and Control System Management Organization (NACMO)
- NATO Battlefield Information Collection and Exploitation Systems Organization (NBO)
- NATO Standardization Organization (NSO)

## **II. Bodies subject to the Paris Protocol**

### **1. Supreme Headquarters or equivalent**

- Supreme Headquarters Allied Powers Europe (SHAPE)
- Headquarters Supreme Allied Commander Transformation (SACT)

### **2. Subordinate Headquarters**

- Air Command Headquarters Izmir (Air Cmd HQ Izmir)
- Air Command Headquarters Ramstein (Air Cmd HQ Ramstein)
- Force Command Headquarters Heidelberg (FC HQ Heidelberg)
- Force Command Headquarters Madrid (FC HQ Madrid)
- NATO Airborne Early Warning Force Command (NAEW FC)
- Joint Analysis and Lessons Learned Centre (JALLC)
- Joint Force Command Headquarters Brunssum (JFC HQ Brunssum)
- Joint Force Command Headquarters Lisbon (JFC HQ Lisbon)
- Joint Force Command Headquarters Naples (JFC HQ Naples)
- Joint Force Training Centre (JFTC)
- Joint Warfare Centre (JWC)
- Maritime Command Headquarters Naples (Mar Cmd HQ Naples)
- Maritime Command Headquarters Northwood (Mar Cmd HQ Northwood)
- NATO Airborne Early Warning & Control Force E-3A Component
- NATO Joint Electronic Warfare Core Staff (NATO JEWCS)
- NATO Undersea Research Centre (NURC)

## **Appendix 3 to Annex IX**

# Implementing procedures applicable to Complaints Committees

### **1. Purpose**

Article 61 of the NATO Civilian Personnel Regulations and Articles 4 and 5 of Annex IX to those Regulations set out *inter alia* the right of staff members, consultants, temporary staff and retired staff members to submit within a reasonable time to the Head of the NATO body concerned a written complaint seeking to have altered or annulled an administrative decision taken with respect to them by a subordinate authority. This complaint procedure is not applicable to administrative decisions taken directly by the Head of the NATO body or by the Council.

The purpose of this text is to set out the implementing procedures applicable to Complaints Committees, whose terms of reference, composition and procedures are laid down in Articles 4 and 5 of the above-mentioned Annex IX (Regulations governing complaints and the Complaints Committees).

### **2. Initiation of the Complaints Committee procedure**

Upon receipt of a written complaint from a staff member or a member of the retired NATO staff, unless the claimant and the administration agree to submit the matter directly to the Administrative Tribunal, the Head of the NATO body concerned shall within five days of receipt refer the complaint to the Chair of the Complaints Committee for the NATO body in question, along with a request that the Committee make findings of fact and recommendations in respect of the complaint including, where appropriate, proposals to resolve the matters in dispute.

### **3. Role of the Complaints Committee**

It is clear from the provisions of Article 5.2.2 of Annex IX of the Civilian Personnel Regulations that a Complaints Committee is not a judicial body with powers of adjudication.



The Complaints Committee will provide its findings of fact and recommendations to the Head of the NATO body concerned in order to enable him/her to take a decision regarding a complaint against an administrative decision taken by a subordinate authority.

#### **4. Complaints Committee procedure**

(a) Notification

A claimant whose complaint is submitted to a Complaints Committee will be notified as soon as possible of the members comprising the panel in his/her case.

(b) Composition of the Complaints Committee

The composition of the Complaints Committee and the designation of panels to hear cases are prescribed in Article 5.1 of Annex IX of the Civilian Personnel Regulations. The claimant may, however, request a change in the composition of the Complaints Committee in his/her case by making out a prima facie case of bias, or for some other serious reason.

The Chair will be the sole judge of the validity of the challenge, unless the challenge concerns the Chair, in which case the matter will be decided by the two other members of the Committee.

In the event that the claimant's challenge results in the withdrawal of the Chair, this withdrawal is deemed to be an inability to act within the meaning of Article 5.1.2 of Annex IX of the Civilian Personnel Regulations, and the Chair will accordingly be replaced by the alternate Chair. In the event that the claimant's challenge results in the withdrawal of a member of the Complaints Committee, the Chair will select another member in his/her place from the members designated by the same authority (i.e., the Head of the NATO body or the Staff Committee of the Staff Association, as applicable), upon which selection the time limit specified in Article 5.2.1 of Annex IX shall recommence.

(c) Competence of the Complaints Committee

The Complaints Committee is authorized to consider complaints by claimants who consider that they have been adversely affected by a decision that was inconsistent with NATO regulations governing personnel and their conditions of service, including whether the relevant policies and procedures were correctly interpreted and applied. It is understood that the Committee's views and recommendations in this regard are advisory in nature, and that the interpretation or application of the regulation in question may be confirmed or overruled either by the Head of the NATO body or by the Administrative Tribunal.

(d) Fact-finding powers of the Complaints Committee

Before delivering its report, the Complaints Committee must hear the claimant.

The Complaints Committee has broad authority and discretion to hear witnesses whose testimony appears necessary or useful and is not required

to interview all witnesses suggested by the complainant. Any staff member who is requested to appear before the Complaints Committee and give testimony is required to do so.

The Committee has access to any document or information deemed essential to its consideration of the complaint.

These measures are designed to enable the Committee to be in full possession of the facts of the case so that it may make findings of fact and give the Head of the NATO body a reasoned opinion.

(e) Assistance to the claimant

The claimant may be assisted by another staff member or someone external to the NATO body, including a member of the retired NATO staff or external professional counsel, in preparing the complaint and any other submissions and in presenting his/her case at the oral hearing, provided that such other person may not speak for the claimant and must, as a condition of his/her continued presence at the hearing, comply with any directive issued by the Complaints Committee concerning the conduct of the hearing.

## **5. Final report of the Complaints Committee**

- (a) The Complaints Committee will issue its report to the Head of the NATO body, with a copy to the claimant, normally within 45 days from the date on which the complaint was referred to it. The report should be drafted clearly and concisely and should set out the Committee's findings of fact, views and recommendations with respect to the complaint, including, where appropriate, proposals to resolve the matters in dispute in order to assist the Head of the NATO body in reaching a decision on the matter. At the same time, it should provide the claimant with a clear understanding of the basis for the Committee's findings, views and recommendations.
- (b) Furthermore, the report should not contain any statement not relevant to the matter under review; nor should it contain any statement expressing a judgment on the character of the claimant unless such a judgment has a significant bearing on an essential element of the case.
- (c) The report will be signed by all members of the Committee. In the event of a difference of opinion over the facts, or over the recommendations to be submitted to the Head of the NATO body, a special annex shall be attached to the report.
- (d) All relevant documentary evidence should be included as an annex to the final report.

## **6. Decision by the Head of the NATO body - Rights of appeal**

- (a) Before the Head of the NATO body takes a decision on a complaint against an administrative decision, the claimant may submit his/her views, including with respect to the report of the Complaints Committee, in writing to the Head of the NATO body within 5 days of receiving the report. The Head of the NATO

body will consider such views and may, but is not required to, meet in person with the claimant before taking a decision.

- (b) The claimant has the right to appeal the decision of the Head of the NATO body to the NATO Administrative Tribunal by filing an appeal within 60 days from the date of notification of the decision.