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ORIGINAL: FRENCH **GRAMEF(2013)xxxxx**

21 March 2013

**Compendium**

of the DECISIONS of the

NATO

**Appeals Board**

Decisions from 1966 to 31 March 2013 inclusive

(all the decisions up to 879 apart from 865, 871 and 877)

Laurent TOUVET

Conseiller d’Etat

Member of the NATO Appeals Board

March 2013

**NATO UNCLASSIFIED**

If one of these decisions is reproduced, even partially, the appellant's name must not be mentioned.

**Compendium**

of the DECISIONS of the

NATO

**Appeals Board**

#### From its creation in 1965 to 31 March 2013,the NATO Appeals Board delivered 623 decisions ruling on 876 appeals lodged with it.

**Composition of the Board since its creation:**

**President:**

Mr Jean Toutée (1966-1968)

Sir Christopher Steel (1968-1973)

Dr Hans-Joachim von Oertzen (1974-2003)

H. E. Ambassador Sergio Balanzino (2004-

**Members:**

Mr Jean Toutée (1966-1968)

Sir Christopher Steel (1966-1973)

Dr Hans-Joachim von Oertzen (1966-2003)

Mr Gilbert Guillaume (1968-1979)

Mr William Laurence Craig (1974-1976)

Sir Robin Hooper (1977-1985)

Mr Michel Barton (1979-1986)

Mr Steven C. Nelson (1986-2003)

Mr Jean Groux (1987-1994)

Mr Ronny Abraham (1995-2000)

Mr Hubert Legal (2001)

Mr Stéphane Gervasoni (2002-2005)

H. E. Ambassador Sergio Balanzino (2004-

Mr Kevin John Chamberlain (2004-

Mr Laurent Touvet (2006-

**Secretary:**

Mr A. Synadino (1966-1967)

Mr Jacques Leconte (1968-1977)

Mrs Michelle Van den Bulcke (1977-1978)

Mr Nigel Park (1978-2003)

Ms Elizabeth Van Campen (2004-

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# Chapter 1: Acts of NATO bodies

This chapter sets out the general regulations which apply to the acts of NATO authorities: international or NATO-specific standards, general principles and the regulations governing authorization to take decisions concerning the civilian personnel.

## 1-1 International agreements

1-1-1 **Ottawa Agreement of 20 September 1951**

**Immunity of NATO from legal process (Article 5)**

Conformity of this immunity from legal process with the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 18 February 1999, *Waite & Kennedy v. Germany*, No. 26083/94).

This judgment was given in respect of the European Space Agency, which was established by the Convention of 30 May 1975. Article XV, para.2 and Annex I (Article IV, para.1 a) of the Convention state that the Agency shall enjoy immunity from legal process. Item VIII of the Agency's staff regulations (articles 33 to 41) provides for an independent appeals board “to hear disputes relating to any decision taken by the Agency and arising between it and a staff member, a former staff member or persons entitled under him”. By analogy, we may regard the immunity from legal process enjoyed by NATO (Article 5 of the Ottawa Agreement), which also applies to most other international organizations, as being in line with the European Convention for the Protection of Human Rights (even though the European Convention applies only to those international organizations that decide to join it, and NATO has not decided to join it (NATO AB, No. 729, *Lauret*, 10 July 2008)).

In para 63 of its judgment of 18 February 1999, The European Court of Human Rights ruled that “the attribution of privileges and immunities to international organisations is an essential means of ensuring the proper functioning of such organisations free from unilateral interference by individual governments”, that the according of immunity from legal process is “a long-standing practice established in the interest of the good working of these organisations”, and that “the rule of immunity from jurisdiction… has a legitimate objective”.

The Court continued its analysis (para.68) with a specific examination of the legal means available to the staff of the international organization who had taken action under the national legal system but had been confronted by the immunity from legal process enjoyed by the organization. It noted (para.69) that the applicants, arguing an employment relationship with the international organization, could and should have had recourse to the organization’s Appeals Board. It commented (para.72) that “to read Article 6, para.1 of the Convention and its guarantee of access to court as necessarily requiring the application of national legislation in such matters would, in the Court’s view, thwart the proper functioning of international organisations and run counter to the current trend towards extending and strengthening international cooperation”.

Finally, the European Court concluded (para.73) that “taking into account in particular the alternative means of legal process available to the applicants, it cannot be said that the limitation on their access to the [national] courts with regard to ESA impaired the essence of their “right to a court” or was disproportionate for the purposes of Article 6, para.1 of the Convention”.

Consequences – NATO staff not within the ambit of national legislation and entitled to have recourse to the NATO Appeals Board (No. 133, *Weiss*, 13 May 1981)

Secretary General's rejection of the request for the waiver of immunity from legal process invoked by Germany in a German court to which a NATO staff member had had recourse with a view to obtaining the application of a German law (No. 133, *Weiss*, 13 May 1981)

**Obligation for the Organization and Member States to cooperate to facilitate the proper administration of justice (Article 3)** – Scope

Provision which does not oblige a State’s legal authorities to notify NATO in advance of any action to be taken against one of its staff members; the immunity from legal process of staff members without diplomatic status applies only to actions taken by them in their official capacity –

Case of a Belgian judicial decision concerning the legal separation of a staff member and his spouse (No. 344, *Gasparini*, 17 July 1997)

 Immunity to which the staff or former staff of NATO or its bodies are not entitled – Immunity claimed to evade the payment of debts contracted by them in the course of their private activities and in no way connected with the Organization – Consequence – Lawfulness of the decision by the Head of NATO body to withhold money from the pension of a former staff member with a view to cooperating with the execution of a legal decision by a Member State (no. 768, *Somville*, 7 July 2010)

**Enjoyment of the same privileges as diplomatic staff as regards immigration and registration formalities (Article 18, b)**

Provision interpreted in a narrow sense and not granting general immunity from legal process in civil cases (No. 344, *Gasparini,* 17 July 1997)

Provision covering only registration formalities and granting fiscal exemption only for those taxes for which the Agreement has expressly provided such exemption (No. 361, *Gasparini,* 4 December 1997)

**Tax exemption (Article 19)**

Subjective rights for staff members which these staff members are entitled to plead before the Appeals Board in support of an appeal against an act by the Organization (No. 361, *Gasparini*, 4 December 1997; No. 362, *Trécat*, 4 December 1997; No. 432, *Trécat*, 5 September 2002; No. 679, *Trécat*, 30 June 2005)

Scope

Exemption not valid in cases where the staff member’s own decisions place him in a situation such that his emoluments are subject to taxation, for example by establishing his domicile in a State which is not party to the Agreement (No. 384, *Neschke*, 10 March 1999)

Exemption covering only the taxes specified, whether they are levied by a State or a commune (No. 61, *Gasparini*, 4 December 1997)

Exemption covering only the taxes specified by the Agreement and not those which are not based on income (No. 361, *Gasparini*, 4 December 1997)

Exception – Secretary General has the power to waive the immunity in question (No. 361, *Gasparini*, 4 December 1997; No. 679, *Trécat*, 30 June 2005)

Wage restraint in the form of a levy (191st Report of the Coordinating Committee, approved by the Council on 2 March 1983) – Levy constituting neither a tax nor a para-fiscal charge – Not at variance with the Ottawa Agreement (No. 174, *Evans and others*, 14 February 1985)

American staff employed by the US Government – Reimbursement by the United States of the tax they have had to pay – Customary rule not applicable to NATO, since Article 19 of the Ottawa Agreement applies (No. 251, *Amaral*, 16 November 1989)

**Failure by a Member State to grant one of the privileges or immunities guaranteed by Articles 17 to 23** – Consequences – Duty for NATO to provide suitable protection for staff members – Omission – Fault incurring liability

Established, as NATO failed to follow up the staff member’s request that it intercede with the American authorities in his lawsuit with the American tax administration – Damage suffered owing to taxes wrongly paid and costs incurred in defending his case in the American courts (No. 251, *Amaral*, 16 November 1989)

Not established in the specific case, as the immunity from legal process of staff members without diplomatic status applies only to actions taken by them in their official capacity – Case of a Belgian judicial decision concerning the legal separation of a staff member and his spouse (No. 344, *Gasparini*, 17 July 1997)

Not established in the specific case, since the state acted legitimately in subjecting the staff member to a tax not based on income (No. 361, *Gasparini*, 4 December 1997)

Definite damage not established, since the party concerned had brought an action in the national courts, citing breach of the Ottawa Agreement, and international agreements take precedence over national law in these courts, even subsequent law (No. 362, *Trécat*, 4 December 1997)

None in the specific case, given the national court decisions ruling on the compliance of the national law with the Ottawa Agreement (No. 679, *Trécat*, 30 June 2005)

1-1-2 London Agreement of 19 June 1951

Applies only to local civilian labour requirements – Not applicable to a member of the international civilian staff (No. 729, *Lauret*, 10 July 2008)

1-1-3 Agreements between NATO and Member States

**Agreement of 25 February 1953 on the conditions for recruitment of American citizens by NATO bodies** – Agreement which could not be repealed or amended by the exchange of letters dated 13 and 14 April 1972, which was not approved by the Council – Recruitment subject to the conditions of the 1953 Agreement

Requirement to submit application to the American authorities (No. 91(a), *Atma*, 10 March 1978)

American authorities refuse to accept the applicant – Consequence – NATO body unable to recruit him (No. 91(b), *Atma*, 2 February 1979)

**Soldov - de Vries Agreement of 13 and 14 April 1972 between NATO and the United States**

Agreement intended to permit NATO to hire American nationals living outside the United States (No. 91(a), *Atma*, 10 March 1978)

NATO is under an obligation to honour the contract signed by staff members in good faith, including in respect of tax exemption (No. 251, *Amaral*, 16 November 1989)

**Agreement of 12 *September 1995 between NATO and the United States concerning the secondment to NATO of American officials*** – Agreement does not establish any entitlement for staff – Staff member has no capacity to invoke breach of this Agreement (No. 359, *Baldwin*, 3 June 1997)

**Agreement of 15 March 1967 between NATO and Canada, based on Article 19 of the Ottawa Agreement** – Effects – Benefit provided for in Canadian regulations is regarded as being of the same nature as the education allowance provided for in the NATO CPR (Nos.196-197, *Langdon & Rein*, 15 May 1985)

## 1-2 Regulations regarding the authority of the performer of the act

1-2-1 Authority of the North Atlantic Council

**Authority to amend the CPR** – Salary adjustment (159th report of the Coordinating Committee, approved by the Council on 9 March 1979)

Amendment of Annex II to the CPR (No. 174, *Evans and others*, 14 February 1985)

Authority to decide on the expediency of a wage restraint levy, in addition to the triennial review (No. 174, *Evans and others*, 14 February 1985)

**Authority regarding definition of posts** – Grade assigned to a post

Authority to approve the budgets of NATO civilian and military bodies each year – Approval includes the civilian personnel establishment paid from international funds by international military headquarters – The Appeals Board has no authority to amend the personnel establishment or, more particularly, the grade of a staff member (No. 94, *de Sangro*, 6 July 1978; No. 95, *Siddi*, 8 December 1978; No. 145, *de Sangro*, 4 December 1981, ; - no. 843, *Axelsen*, 9 March 2012)

The NATO Secretary General has no authority to define the grade that should be assigned to a post (No. 667, *Archer*, 10 December 2003; No. 675, *Lenti and others*, 30 June 2005)

The head of a NATO body has no authority to define the grade that should be assigned to a post (No. 668, *Kohns*, 25 June 2004; No. 674, *Hanssen*, 25 May 2005; No. 691, *Veltri*, 8 March 2006; - no. 806, *Gadaleta*, 27 May 2011)

Powers of the head of a NATO body – Proposal put to the North Atlantic Council for the reclassification of posts (No. 674, Hanssen, 25 May 2005; No. 691, Veltri, 8 March 2006; - no. 806, *Gadaleta*, 27 May 2011; - no. 843, *Axelsen*, 9 March 2012)

Authority to delete posts and determine the date when such deletions take effect (No. 331 (b), *Nijman*, 8 January 1997; No. 332 (b), *Van Soldt*, 8 January 1997; No. 334, *Murzi*, 24 September 1996; No. 336, *Shields*, 24 September 1996; No. 343, *Selvanizza*, 5 February 1997; No. 345, *Cooper*, 6 February 1997)

Exception – Board of Directors or Management Committee of the agency (No. 141, *Goderniaux*, 3 December 1981; No. 142, *Ivoy*, 3 December 1981; No. 161(b)-168, *Brégain*, 1 March 1984; No. 316, *Bindges*, 18 October 1995)

Exception – Decision of the Council to adopt a report under the terms of which the personnel establishment of NC3A is the result of the agency’s workload and the contracts it is likely to enter into – Competent budgetary authority – Military Budget Committee (No. 716, *Caplan*, 14 December 2007)

1-2-2 Hierarchy of rules

**Recommendations of the Coordinating Committee of Government Budget Experts of the Coordinated Organizations**

Type and basis (Nos.218 to 227, *Eden and others,* 26 March 1987)

Adoption by the North Atlantic Council – Deliberations remaining legally independent from those of the decision-making bodies of the other Coordinated Organizations – Deliberations of the other organizations not creating entitlements for NATO staff members – Illegal discrimination not established (Nos.218-227, *Eden and others*, 26 March 1987)

**Joint Consultative Board** – Advisory body tasked with forwarding recommendations to the Secretary General and the Supreme Commanders – Administration not required to follow its recommendations (No. 136, *Topliss*, 22 October 1981; No. 138, *Davies*, 22 October 1981)

**Power of a NATO body to establish local rules** – Rules not yet established – Non-enforcement of rules established by another NATO body (No. 672, *Photopoulos*, 3 March 2005)

**Capacity of a NATO body offered two options by the NATO CPR to choose one and dismiss the other** (No. 719, *Kirby*, 21 September 2007)

**Instructions of the Secretary General concerning the calculation of pension rights and in implementation of Article 52 of the NATO CPR**

Authority of the Secretary General in the absence of provisions in the NATO CPR (No. 134, *de Raffaele*, 14 May 1981)

Individual decisions taken in implementation of instructions must not conflict with these instructions (No. 152, *Aktay*, 1 December 1982)

Instructions which must be applied unless such application leads in a particular case to a result that runs counter to sound and equitable administration (No. 307, *Turatus*, 25 January 1995; No. 308, *Bewilogua*, 25 January 1995; No. 309, *Neumeyer*, 26 January 1995; No. 382, *Lambie*, 16 July 1998; No. 383, *Fracassi*, 28 January 1999)

**Capacity of heads of NATO bodies to establish more detailed procedures (Preamble, vii) – Conditions of legality – Guidance on interpretation**

Scope – Capacity does not apply to the Pension Scheme – Implementation measures may be decided only by the NATO Secretary General (No. 113, *Crosby*, 10 January 1980)

Principle – Illegality of directives adopting binding rules which would be in addition to those provided for by the CPR and annexes or, a fortiori, which would modify these (No. 376, *Doling*, 8 May 1998; No. 386, *Dols*, 11 March 1999; No. 394, *Löwen*, 25 February 2000)

Criteria to be implemented (No. 386, *Dols*, 11 March 1999)

"While these provisions do not allow the Secretary General and the Heads of NATO Bodies to adopt binding rules which, as far as the rights of staff members are concerned, would be in addition to those provided for by the CPR and annexes or, a fortiori, which would modify these, they do, however, authorize them to develop, for the Administration tasked with implementing the Regulations, guidance on interpretation which must not have the effect either of altering the meaning of the provision being interpreted or of relieving the Administration of the responsibility to review each individual situation on which it is called upon to rule. In particular, in the case where the applicable text confers some latitude for discretion in judgement on the Administration, the latter may, if it so desires, identify criteria to be used in exercising its judgement, with a view to better observing the principle of equality among staff members. These criteria must be appropriately and reasonably commensurate with the Regulations to be applied and must not have the effect of restricting the rights conferred by them on staff members. The Administration is, in principle, justified in implementing the criteria it has defined unless it can be determined, on exceptional grounds, that their application in a particular case would have undue consequences."

Illegality of directives altering the meaning of the provisions of the NATO CPR or removing the responsibility to review each individual situation (No. 376, *Doling*, 8 May 1998; No. 386, *Dols*, 11 March 1999; No. 394, *Löwen*, 25 February 2000)

Illegality of directives, on the modalities of challenging administrative decisions, that restrict staff members' right to an appeal arising from the provisions of Article 61 of the CPR and of Annex IX thereto (no. 772, *Marin Ortega*, 10 December 2010; no. 773, *Iannace*, 10 December 2010; no. 775, *Pavesi*, 4 February 2011)

Case of other dependant’s allowance – Criterion of the level of the dependant’s resources – Appropriate criterion – Level, in the specific case, not tainted with any obvious error (No. 386, *Dols*, 11 March 1999)

Administration unable to provide the text or the content of directives which may have been issued – Consequence – Only NATO CPR provisions are applicable (No. 753, *Ianacce*, 30 October 2009)

Exception – Regulations which are more favourable for staff members – Consequences

Administration obliged to comply with the regulations which it put into effect, unless it amends or repeals them for the future (No. 733, *Atienza-Corralo*, 14 March 2008; No. 745, *Austin*, 31 October 2008; No. 754, *Zarantonello*, 10 July 2009)

Capacity of every staff member to take advantage of this directive in order to oppose an individual decision which concerns him (No. 733, *Atienza-Corralo*, 14 March 2008; No. 745, *Austin*, 31 October 2008; No. 754, *Zarantonello*, 10 July 2009)

 Application – Renewal of a contract

NATO CPR provide, if certain conditions are met, for a straightforward option of renewal, and the directive established an obligation – Legality of the directive (No. 733, *Atienza-Corralo*, 14 March 2008; No. 754, *Zarantonello*, 10 July 2009)

NATO CPR provide for the option of offering a new contract to a staff member whose first contract is coming to an end, and the directive states that this new contract must be of three years’ duration – Legality of the directive (No. 745, *Austin*, 31 October 2008)

**Capacity of heads of NATO bodies to diverge from the provisions of these regulations** – Need for prior approval of the Council (No. 136, *Topliss*, 22 October 1981; No. 138, *Davies*, 22 October 1981; No. 407, *Trost*, 11 July 2001)

Circulars of NATO bodies must not conflict with NATO CPR (No. 695, *Korsten*, 29 June 2006)

Heads of NATO bodies must interpret the provisions of the NATO CPR in the light of the specific situation which may be brought to their attention (No. 407, *Trost*, 11 July 2001)

**Obligation for the administration to comply with its own procedural and basic regulations** (No. 233, *de Monts de Savasse*, 14 January 1988; No. 234, *Broadbent*, 14 January 1988)

**When a contract does not cover a particular issue, the Regulations must apply** – Contract does not cover the air travel required of the staff member – Legality of the order given to the staff member examined solely in the light of the NATO CPR (No. 215, *Andrews*, 4 February 1987; No. 216, *McGaughey*, 4 February 1987)

**Boards of Directors of certain NATO agencies**

Authority of a management committee to delete posts and determine the date when deletions take effect (implicit solution) (No. 316, *Bindges*, 18 October 1995)

Charter of a NATO agency designates the “Management Committee” as the budgetary authority – General Manager of an agency obliged to implement the decisions of the Management Committee (No. 141, *Goderniaux*, 3 December 1981; - No.142, *Ivoy*, 3 December 1981)

Charter of a NATO agency authorizes the General Manager to implement the decisions of the Board of Directors – General Manager authorized to terminate the contract of the holder of a post which has been deleted by the Board of Directors (No. 161(b)-168, *Brégain*, 1st March 1984)

Authority of the decision-maker not to renew the contract – Authorized in the specific case – NATO Secretary General (No. 217, *Besques*, 22 October 1986)

1-2-3 Delegation of signature

Decision taken by the Head, Civilian Personnel Administration Service, NATO International Staff – Delegation agreed by the NATO Secretary General – Decision analysed as having been taken by the head of a NATO body, in accordance with the NATO CPR (No. 670, *Charlier*, 15 September 2004)

Consequence – Obligation for the delegate, when delegation is for a short period, to refrain from taking important or non-urgent measures (No. 31, *Cauchie*, 29 October 1971)

Decision of a subordinate authority confirmed by the head of a NATO body following a complaint – Decision taken by the competent authority (No. 172, *Keohane*, 5 December 1984)

1-2-4 Organization of NATO administrations

### **Head of a NATO body – Concept**

Agency whose incorporating charter provides for the appointment of a General Manager and reliance to "the maximum extent possible" on "any administrative assistance that can be extended to it by NATO Headquarters" – General Manager to be regarded as the Head of a NATO body, within the meaning of Article 4.3.1 of Annex IX to the CPR (No. 80, *Salançon and others*, 16 November1977)

### NATO body dissolved - Liquidator to be considered the Head of the NATO body in the sense of Annex IX to the CPR (No. 780 (a), *Girard*, 4 February 2011)

### **Powers of a hierarchical superior**

Power to issue reminders of general rules to particular staff members who do not respect them (Nos. 698, 700 and 701, *Kirby*, 14 September 2006)

Issue of a NATO identity card – Withdrawal of this card – Grounds – Suspended staff member whose presence in the NATO building might endanger the smooth running of the criminal investigation concerning him (Nos. 698, 700 and 701, *Kirby*, 14 September 2006)

## 1-3 Procedural and formal requirements for taking action

1-3-1 Time limit prescribed for the administration to take a decision

Decision of the Secretary General ruling on a complaint put to him against the head of a NATO body

 Application of 15- and 30-day time periods in Annex IX to the NATO CPR – No (No. 681, *Staff Association, Goyens & Hill*, 12 September 2005)

 Duty to respond diligently to a complaint – No action taken for seven months – Lack of diligence – Silence signifies rejection of complaint (No. 681, *Staff Association, Goyens & Hill*, 12 September 2005)

1-3-2 Consultation procedure

Decision cancelling the award of an invalidity pension – Decision given following the opinion of the Invalidity Board

Verdict of the Invalidity Board based on an incomplete file – Substantial formality – Illegality of the decision taken following this opinion (No. 434, *Girsch*, 17 July 2002)

Invalidity Board having given an unjustified opinion – Illegality of the decision taken based on that opinion (No. 434, *Girsch*, 17 July 2002)

Invalidity Board having ruled on the staff member’s inability to perform his duties based solely on the rate of invalidity – Error of law – Incapacity must be assessed in the light of the duties to be performed – Illegality of the decision taken based on that opinion (No. 434, *Girsch*, 17 July 2002)

1-3-3 Substantiation of actions

Non-compulsory substantiation – Non-renewal of a contract – Exception in exceptional cases where, by reason of special circumstances *de jure* or *de facto*, the holder of the contract being performed is in a *de facto* situation similar to that of the holder of a contract of indefinite duration (No. 368, *Brookfield*, 24 April 1998; No. 416, *Vedel and Badin*, 22 January 2002; No. 419, *Corso-Leclercq*, 22 January 2002; No. 433, *Flachaire*, 23 January 2002; No. 480, *Sterken*, 29 January 2003)

Compulsory substantiation

Termination of a contract

Compulsory substantiation provided by the reading of a document stating the grounds (No. 135, *Prud’homme*, 8 July 1981)

Substantiation restricted to mentioning Article 9.1 (i) of the Civilian Personnel Regulations regarding unsatisfactory performance – Lack of substantiating fact – Grounds given insufficient (No 870, *Smouts*, 7 February 2013)

Rejection of a staff member's complaint claiming harassment or discrimination

Decision restricted to reference to the conclusions of the Complaints Committee, without attaching that document – Substantiation insufficient (No. 764, *Cool*, 6 May 2010; No. 876, *Trickett*, 17 January 2013)

Decision indicating no grounds at all (No. 860, *Petrillo*, 6 July 2012)

Compulsory substantiation not provided owing to the fact that the staff member was informed of the grievances by consulting his performance report or in the context of the complaints procedure (No. 368, *Brookfield*, 24 April 1998)

## 1-4 Applicable legal rules

1-4-1 Application of non-NATO rules

**Application of international legal rules**

Application of general principles of litigation procedure in international courts (No. 203(a), *Bremer*, 29 November 1985)

Application of the principles established by international administrative tribunals – Yes – Tribunals of the UN and the ILO and the Appeals Board of the OEEC – Yes (No. 57, *Warren*, 11 December 1974; No. 690, *Bengi*, 29 June 2006)

Application of the principles established by the World Health Organization and taken up by the Council of the European Communities – Yes – Cases of AIDS – Protection against all forms of stigmatization or discrimination (No. 248, *X*, 28 June 1989)

**Application of European Union law**

Reference to the rulings of the Court of Justice of the European Communities concerning full compensation for damage (No. 461(a), *Sutherland*, 9 October 2002)

Application of CJEC rules of competence concerning decisions of the Council of the European Communities – No (No. 169 (b), *de Sangro*, 24 October 1984)

Application of statutory rules governing officials of the European Communities – No (No. 353, *Guyot and Ludwig*, 17 July 1997)

Application of the European Social Charter – No mandatory force – Not applicable, in any event (No. 729, *Lauret*, 10 July 2008)

Application of a European regulation – No (No. 768, *Somville*, 7 July 2010)

**Application of the European Convention for the Protection of Human Rights**

As this was a case of a structural deficiency rather than a particular decision, the European Court of Human Rights had the jurisdiction to investigate whether the conflict settlement system in use at the NATO Appeals Board was marred by a “manifest deficiency”.

As NATO is not party to the European Convention for the Protection of Human Rights, the Court inevitably enjoys less authority than it does under the terms of Article 6 concerning procedures in use at internal tribunals of Convention States Parties.

In reality, it had to ascertain whether, at the time of joining NATO and transferring certain sovereign powers to it, States had been able, in good faith, to judge that the system for resolving internal work conflicts at NATO was not in flagrant breach of the terms of the Convention.

Asked to rule on the fact that the Appeals Board's proceedings are not made public, the Court found that this was justified on two grounds – the fact that the questions put to it concern technical issues and require a rapid decision, and the fact that hearings have to remain dispassionate in the specific context of an organization such as NATO.

Article 4.16 of Annex IX allows appellants to contest the partiality of Appeals Board members. When they approved the Civilian Personnel Regulations, the Member States had good reason to judge that these Regulations provided for a tribunal in accordance with Article 6 of the European Convention for the Protection of Human Rights.

(ECHR, 12 May 2009, *Gasparini v. Italy and Belgium*, no. 10750/03).

Convention applies to international organizations only if they decide to join it – NATO has not decided to join it – Staff member not in a position to invoke the provisions of the European Convention for the Protection of Human Rights (No. 729, *Lauret*, 10 July 2008)

Reference to the rulings of the Commission on Human Rights – Rulings may be invoked – Ruling dismissed in this case, as the issue was the power of the administration to amend a statutory allowance (No. 145, *de Sangro*, 4 December 1981)

**Application of national law**

No (No. 24, *Stievenart*, 25 March 1971; No. 353, *Guyot and Ludwig*, 17 July 1997; Nos. 693-697, *Angus*, 14 September 2006)

Application of French law protecting pregnant women – No (No. 90, *Perrier*, 10 March 1978)

Rulings of the Italian Constitutional Court – No (No. 707, *Calcagni*, 14 December 2006)

1-4-2 Decisions of the North Atlantic Council

**Civilian Personnel Regulations**

*Regulations governing complaints and appeals, approved by the North Atlantic Council on 20 October 1965 by decision C-R (65) 44: Chapter XIV and Annex IX*

Application of its provisions regardless of the severity of some of them, which are rarely found in the personnel regulations of other international organizations (No. 172, *Keohane*, 5 December 1984)

**Board has no authority to annul decisions of the North Atlantic Council** (No.°57, *Warren*, 11 December 1974; No.°145, *de Sangro*, 4 December 1981; No.°169 (b), *de Sangro*, 29 October 1984; No.°174, *Evans and others*, 14 February 1985; No.°424, *Gasparini*, 5 September 2002; No.°730-731, *Kneip & Hassink*, 11 July2008; Nos.°784 to 794, 797 to 804 and 807 to 809, *Hill and others*, 4 October 2010; No.°814, *Hohenforst*, 13 July 2011)

**Capacity to invoke, as an exception, the illegality of decisions of the North Atlantic Council**

Authority of the Board to assess the legality of decisions of the North Atlantic Council when an appeal is made against a decision taken by the head of a NATO body and this decision merely reproduces the Council’s decision (No. 6(d), *Aldus and others*, 19 December 1967; No. 57, *Warren*, 11 December 1974; No. 77, *Vandenberghe and others*, 25 February 1977; No. 174, *Evans and others*, 14 February 1985)

Jurisdiction of the Board to verify that a decision by the Council as the budgetary authority to delete a post was not taken based on an irregular procedure or founded on facts that were tainted by errors of law (No. 343, *Selvanizza*, 5 February 1997; No. 345, *Cooper*, 6 February 1997)

Authority of the Board to assess the legality of decisions of the North Atlantic Council when an appeal raises the argument that such a decision by the Council did not comply with the current rules of the NATO CPR (Nos. 437 and others, *Kleidorfer and others*, 20 November 2002; Nos. 705 and 706, *Roden & Valkenberg*, 25 May 2007; Nos. 708-711, *Synadinos & Michaux*, 25 May 2007; Nos. 730-731, *Kneip & Hassink*, 11 July 2008; Nos. 757-759, *Hassink, Kneip & Holzschuh*, 30 October 2009; Nos. 784 to 794, 797 to 804 and 807 to 809, *Hill and others*, 4 October 2010; No. 814, *Hohenforst*, 13 July 2011)

Board has no authority to insist, as an exception, that the general legal principles governing the international civil service override the provisions of the NATO CPR (Nos. 730-731, *Kneip & Hassink*, 11 July 2008; No. 814, *Hohenforst*, 13 July 2011)

Exceptions – In the event that the NATO CPR makes no provision, or if its provisions are unclear and have to be interpreted, or if these provisions are in serious conflict with one of these principles (Nos. 730-731, *Kneip & Hassink*, 11 July 2008; No. 814, *Hohenforst*, 13 July 2011)

Authority of the Board to decide that a decision of the North Atlantic Council which does not recognize established rights shall not be applied (No. 6(d), *Aldus and others*, 19 December 1967)

Interpretation by the Appeals Board as not authorizing any deviations from the principle of equitable treatment that are not based on objective differences in circumstances (No. 692, *Abernethy*, 10 May 2006)

1-4-3 Charters of NATO agencies

Application of the charter of a NATO body approved by the Council (No. 141, *Goderniaux*, 3 December 1981; No. 142, *Ivoy*, 3 December 1981; No. 161(b)-168, *Brégain*, 1 March 1984; No. 311, *Koletzko*, 6 April 1995; No. 724, *Barbieri*, 25 October 2007)

Charters may not act as obstacles to the application of Council decisions (Nos. 437 and others, *Kleidorfer and others*, 20 November 2002)

1-4-4 General legal principles – Equal treatment of public officials

**Equality of job candidates**

Choice of a candidate whose application was accepted, or even prompted, by the Administration after expiry of the prescribed deadline – Violation of the principle of equal treatment – Point of substance (No. 203(b), *Bremer*, 16 April 1986)

**Duties performed**

Equivalent duties performed by staff members of different grades – Principle of equitable treatment not violated (No. 674, *Hanssen*, 25 May 2005)

**Staff members treated differently from other staff members without justification**

Staff members who failed to bring their case to the Board within the specified time limits – Objective difference in situation from those staff members who brought such a case – Principle of equitable treatment not violated (No. 370, *Gilbert, Wiig and Zacharacopoulos*, 23 April 1998)

Staff member unable to invoke the fact that an indefinite duration contract had been offered to others in a situation comparable to his own (No. 157, *Bayraktar*, 26 May 1983), or that an indemnity had been wrongly paid to others in the same situation as himself (No. 366, *Lombardi*, 10 November 1997; No. 702, *Hoenjet*, 8 November 2006)

**Implementation of the Evaluation and Transfer System (SHAPE)**

Dismissal with payment of indemnity for loss of job, granted to some members of staff and not to others – Decision based on the interests of the Organization – No discriminatory or arbitrary treatment in the specific case (No. 404, *Lawn*, 25 October 2000)

Medical insurance contributions – Solidarity mechanism – Consequences – Legality of a single contribution rate when access to benefits is not the same for everyone (Nos. 437 and others, *Kleidorfer and others*, 20 November 2002)

**Continued Medical Cover scheme**

Staff with at least 25 years of reckonable service exempted from contributing – No justification for that ceiling – Illegality (No. 425, *Hadler*, 10 October 2001; No. 426, *Prideaux*, 10 October 2001)

Institution of a contribution payable by staff members who retire after 31 December 2000 – No discrimination (No. 430, *Milhoux-High*, 1 March 2002)

**Equality of purchasing power**

Difference in situation with only minor breach of the principle of equality – Identical scale used in Belgium and Luxembourg although the cost of living in Luxembourg has become 5% higher than in Belgium – Board cannot dismiss these clear and unambiguous NATO CPR provisions (Nos.730-731, *Kneip & Hassink*, 11 July 2008)

**Salary adjustment**

Equal adjustment in Belgium and Luxembourg (187th Report of the Coordinating Committee on Remuneration) – Rule applicable only for annual adjustment and not for special adjustments – Consequences – Difference between the increases in the two countries is short-lived, since the annual increase is deducted from the special increase and the increase from one 1 January to the next remains the same in both countries (Nos.757-758-759, *Hassink, Kneip & Holzschuh*, 30 October 2009)

**Allowances**

Household allowance – Allowance paid to married staff members (Article 29.1.1)

 Allowance reserved for married staff members, even if they are married to a person of the same sex – Exclusion of staff members who have had a lengthy civil partnership with another person, although marriage is reserved for members of the opposite sex by the civil legislation of their country – No violation of the principle of equality – Case of civil partnerships registered under the German law of 16 February 2001 (No. 814, *Hohenforst*, 13 July 2011)

Education allowance

Distance of 80 km between the home and the workplace

Arbitrary difference between staff members – Not established – Issue is one of policy within the exclusive jurisdiction of the Council (No. 239, *Varlese*, 25 May 1988; No. 252, *Quoirin*, 7 March 1990)

Allowance payable not only to parents whose children attend an establishment within their national education system, but also to those whose children attend an establishment outside this national system because there is no establishment within an 80 km radius providing this programme of instruction or equivalent (No. 252, *Quoirin*, 7 March 1990)

Threshold beyond which education expenditure is reimbursed 70% or 90% by the Organization – Threshold should be the same for all staff, regardless of the school attended by the children of staff when they are obliged, for educational reasons, to choose one school over another (No. 692, *Abernethy*, 10 May 2006)

Expatriation allowance – Allowance continued to be paid under previous regulations to staff members who would suffer a loss as a result of new measures – Principle of equality not disregarded (No. 80, *Salançon and others*, 16 November 1977)

**Pensions**

Establishment of two different schemes depending on the date when staff members are recruited – Principle of equality not infringed (Nos. 853, 854, 856 and 859, *Azevedo and others*, 21 September 2012; Nos. 855, 857 and 858, *Bicego and others*, 21 September 2012)

1-4-5 General legal principles – Principles of legitimate trust and fair dealing

Application of the regulations on retirement pensions which require ten years of service before the age of 65 – Regulations already in force when a staff member aged over 55 begins work – Principles of legitimate trust and fair dealing complied with (No. 707, *Calcagni*, 14 December 2006)

Equal adjustment in Belgium and Luxembourg (187th Report of the Coordinating Committee on Remuneration) – Rule applied to appellants pre-dates the rejection decision contested by them – No entitlement to the preservation of previous regulations – No breach of principle of legitimate trust (Nos. 757-758-759, *Hassink, Kneip & Holzschuh*, 30 October 2009)

1-4-6 General legal principles – Compliance with right of defence

Principle applicable, even without text, to the initiative taken by NATO in providing national authorities with an evaluation of the manner in which a staff member was performing his duties – Violation of this right – Irregularity of the procedure – Consequence – None, as the Appeals Board is not competent to rule on the only ensuing decision, i.e. the non-renewal of the staff member’s secondment (No. 144, *Mathieu*, 4 December 1981)

Principle not applicable to the withdrawal of security clearance (No. 442, *Melchior*, 8 October 2002)

1-4-7 General legal principles – Right to privacy of all individuals

Interference with the privacy of a staff member owing to the disclosure of information, by NATO staff members who learned of it in the course of their duties, about a staff member’s state of health – Disclosure of that information not necessary to protect the staff’s legitimate interests – Fault by the Organization (No. 248, *Mr X.*, 28 June 1999)

1-4-8 General legal principles – Protection of AIDS sufferers from all forms of stigmatization and discrimination

Stigmatization of a staff member owing to the divulgation of information on his state of health by NATO staff who had acquired this information in the course of their duties – Divulgation of this information not required for the protection of the staff’s legitimate interests – Organization at fault (No. 248, *Mr X*., 28 June 1999)

1-4-9 General legal principles – No

Principle claimed preventing the termination of a staff member’s contract while he is on sick leave (No. 379, *Mock*, 1 October 1998)

Alleged general principle of international civil service requiring that persons joined together by a civil partnership should have the same rights as married persons (No. 814, *Hohenforst*, 13 July 2011)

## 1-5 Application within time limits

1-5-1 Applicability of rules

**Principle**

Applicability of NATO CPR and the Implementing Instructions, without the Administration being required to notify staff members individually (No. 382, *Lambie*, 16 July 1998; No. 383, *Fracassi*, 28 January 1999)

 Rules on the granting of allowances – Application of rules of which staff members have not been informed – No (No. 753, *Iannace*, 30 October 2009)

Individual act – Amendment to a contract – Amendment stipulating rules for advancement to a higher step which differ from the previous rules – Staff member not notified of the date when this amendment would take effect – Inapplicability of new advancement rules (No. 323, *Campanelli*, 25 January 1996)

**Exceptions**

Particularly complex rules which are vulnerable to misinterpretation – Taking account of previous service for the calculation of pension rights – Requirement for the administration to ensure that staff members are adequately informed about their rights and implementation of these rights

Formality complied with in the specific case (No. 307, *Turatus*, 25 January 1995; No. 308, *Bewilogua*, 25 January 1995; No. 309, *Neumeyer*, 26 January 1995; No. 382, *Lambie*, 16 July 1998)

Formality not complied with in the specific case – Consequence – Rule not enforceable against staff member (No. 276, *Lohkamp*, 5 November 1992; No. 383, *Fracassi*, 28 January 1999)

Rules applied by the administration according to a consistent policy owing to which staff members could be entitled to believe that the rules did not apply to them (No. 307, *Turatus*, 25 January 1995; No. 308, *Bewilogua*, 25 January 1995; No. 309, *Neumeyer*, 26 January 1995)

1-5-2 Entry into force subject to application of implementing measures

Decision of the North Atlantic Council – Application on the dates stipulated by the Council, even if these decisions have not been incorporated in the NATO CPR (No. 57, *Warren*, 11 December 1974)

1-5-3 Principle of legal certainty

Authority of the Board to decide that a decision of the North Atlantic Council which does not recognize established rights shall not be applied (No. 6(d), *Aldus and others*, 19 December 1967)

Impossibility, beyond the two-month submission deadline, of challenging the method of calculating salaries of previous years – Submissions which, if accepted, would seriously comprise the legal certainty of salaries for the entire staff of the Organization (No. 737, *Suarez-Gonzalez,* 23 May 2008)

1-5-4 Non-retroactivity of administrative acts

**Position of staff members vis-à-vis NATO – Division between regulations and contract conditions:**

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

(No. 57, *Warren*, 11 December 1974; No. 77, *Vandenberghe and others*, 25 February 1977; No. 80, *Salançon and others*, 16 November 1977; No. 92, *Skingle*, 14 August 1978; No. 93, *Mills*, 6 July 1978; No. 145, *de Sangro*, 4 December 1981; Nos. 174 and others, *Evans and others*, 14 February 1985; No. 328, *O’Shea*, 5 December 1996; No. 338, *Murzi*, 5 December 1996; No. 425, *Hadler*, 10 October 2001; No. 426, *Prideaux*, 10 October 2001; No. 430, *Milhoux-High*, 1 March 2002; Nos. 437 and others, *Kleidorfer and others*, 20 November 2002; No. 689, *Moroso*, 9 March 2006; No. 723, *Van der Laan*, 12 July 2007; No. 726, *Oudega*, 12 July 2007)

**Possibility of new provisions upsetting the balance of a contract** – Entitlement to an indemnity – Concept of upsetting the balance of a contract and thus opening up entitlement to compensation

Upsetting the balance of a contract

Institution of a premium of 2.591% payable up to the age of 65 by staff members leaving the Organization between the ages of 55 and 65 (No. 338, *Murzi*, 5 December 1996) – Illegality of establishing a premium of 2.591% payable entirely by the staff member, since the sharing of premiums by the Organization and the staff member is an essential element in employment contracts (No. 328, *O’Shea*, 5 December 1996)

Abolition of the continuing insurance guarantee (No. 328, *O’Shea*, 5 December 1996; No. 437 and others, *Kleidorfer and others*, 20 November 2002)

No upsetting of the balance of a contract

Contract which provides for the possibility of a pension scheme – Subsequent introduction of this scheme with retroactive effect does not upset the balance of the contract, since the application of the disputed provision resulted in a loss to the appellant of only about 10%, whereas he would have received greater benefits in the event of other developments in his personal situation (No. 92, *Skingle*, 14 August 1978)

Staff member who has received a compensatory allowance (No. 57, *Warren*, 11 December 1974)

Institution of a levy of 1.5% for three years, with a guarantee of nominal basic salary (No. 174 and others, *Evans and others*, 14 February 1985)

Salary adjustment between 1974 and 1976 (123rd Report of the Coordinating Committee) – Increase equivalent to 80% and then to 2/3 of the increase in the cost of living, while the provisions in force when the contract was signed stipulated adjustment “to meet the full change in the cost of living” (No. 93, *Mills*, 6 July 1978)

Salary adjustment on the basis of changes in net salaries in the civil services of certain Member States (254th Report of the Coordinating Committee) – More precise definition without substantive amendment of the provisions previously in force (No. 293, *Kermis*, 5 May 1994; No. 296, *Daenes*, 5 May 1994; No. 297, *Salaün*, 5 May 1994)

Amendment of conditions for household allowance (No. 145, *de Sangro*, 4 December 1981)

Pensioners’ contribution to the continuing medical insurance guarantee – Measure undertaken owing to longer life spans and the increasing cost of health care (No. 328, *O*’*Shea*, 5 December 1996; No. 425, *Hadler*, 10 October 2001; No. 426, *Prideaux*, 10 October 2001; No. 430, *Milhoux-High*, 1 March 2002)

Increase in the rate of contribution to continued medical coverage from 2.591% to 3% of the pension – Increase necessitated by rising healthcare costs and longer life expectancy – Balance of the contract not upset so long as the proportion of one third for the staff, two thirds for the Administration is maintained (No. 723, *Van der Laan*, 12 July 2007; No. 726, *Oudega*, 12 July 2007)

Increase from 0.41% to 0.46% in the premiums for supplementary insurance which serves to increase the level of medical reimbursements from 90% to 100% – Amendment intended to apply the guarantee to all NATO personnel, with the serving staff remaining essentially responsible for financing the scheme (No. 417, *Seldon*, 11 July 2001)

Amendment of pension scheme contribution rate – Rate raised from 8% to 8.3% (No. 424, *Gasparini*, 5 September 2002)

Introduction of new funding arrangements for medical insurance for retired members of staff (No. 328, *O*’*Shea*, 5 December 1996; Nos. 437 and others, *Kleidorfer and others*, 20 November 2002)

Amendment of contribution rate for medical insurance for pensioners – Increase from 1.217% to 1.50% (Nos. 437 and others, *Kleidorfer and others*, 20 November 2002)

**Entitlement to a consistent, objective and transparent rule on determining the salaries of international civil servants** (Nos. 705-706, *Roden & Valkenberg*, 25 May 2007; Nos. 708-711, *Synadinos & Michaux*, 25 May 2007; Nos. 784 to 794, 797 to 804 and 807 to 809, *Hill and others*, 4 October 2010)

Decision to revise salaries, taken in March 1983 and notified to staff in May 1983, but implemented in March 1984 to take effect from 1 July 1983 – No retroactivity (No. 174, *Evans and others*, 14 February 1985)

**Consideration of claims for allowance (Article 24.6 of the NATO CPR)** – Events which took place more than three months before the claim is made cannot be taken into account (Article 24.6)

Claim submitted on 6 December can be met only with effect from the previous September (No. 204, *Faurie*, 28 November 1985)

Claim considered on the basis of a *de facto* situation existing in February 1986 – Entitlement to allowance could be granted only as from the previous 1 November (No. 232, *Watkins-Robino*, 2 October 1987)

Exception in special circumstances – Not established in the specific case (No. 204, *Faurie*, 28 November 1985)

1-5-5 Retroactivity of disputed annulments

Consequence – Administration cannot regard as professional experience the time served in a post by virtue of a decision subsequently annulled by the Appeals Board (No. 241, *Green*, 15 February 1989; No. 244, *de Monts de Savasse*, 15 February 1989; No. 245, *Broadbent*, 15 February 1989)

1-5-6 Withdrawal of illegal decisions

Obligation for the administration to revoke an illegal decision retroactively – Withdrawal can be made only within a reasonable period of time which must be determined on a case-by-case basis taking into account the nature of the decision, the circumstances in which it was taken and the rights acquired by the beneficiaries of the decision (No. 106, *Van der Laan*, 31 October 1979; No. 107, *Maseng*, 31 October 1979; No. 108, *Lorentzen*, 31 October 1979; No. 111, *Wilhelm*, 15 February 1980)

 Decision made definitive three years previously (No. 204, *Faurie*, 28 November 1985)

Interval of two years – Interval cannot be regarded as reasonable (No. 106, *Van der Laan*, 31 October 1979; No. 107, *Maseng*, 31 October 1979; No. 108, *Lorentzen*, 31 October 1979; No. 111, *Wilhelm*, 15 February 1980)

Withdrawal of a decision which is the subject of a complaint to the Appeals Board – Legality (Nos. 161(b)-168, *Brégain*, 1 March 1984)

# Chapter 2: Rules applicable to NATO personnel

This chapter covers Appeals Board decisions interpreting the basic rules applicable to NATO staff members, presented in the order of CPR chapters.

## 2-1 Scope of the CPR (Preamble)

2-1-1 Staff covered by the NATO CPR

International civilian personnel (Preamble A and B) – Nationality and residence not the only criterion, in application of the 1952 Paris Protocol, Annex I to the CPR (No. 235, *Iazzetti-Brown*, 12 November 1987)

Staff members having signed a contract with NATO that refers to the civilian personnel regulations

Yes, apart from exceptions that are explicitly enumerated: military personnel, national experts and local civilian workers (No. 666(a), *Shaw-Aerts*, 9 December 2003)

Freelance interpreter (No. 666(a), *Shaw-Aerts*, 9 December 2003)

Staff of AGARD – Application of the CPR from 1 January 1956 (No. 102, *Willaume*, 19 July 1979)

Temporary personnel and consultants (Article 1 of Annex IX resulting from decision of 15 December 1973) (No. 53(b), *Osy de Zegwaart*, 10 May 1974; Nos. 852 & 861, *Puibaraud*, 25 October 2012)

Officials of the United States Government, paid by the latter and placed at the disposal of a military organization (agreement of 18 September 1963) – Competence of Board, except regarding decisions taken by the United States authorities (No. 38, *Lew*, 24 February 1972; No. 91(a), *Atma*, 10 March 1978)

Staff not resident in the United States during the 18 months preceding their employment – Direct recruitment by the NATO body – Personnel entirely governed by the CPR (No. 91(a), *Atma*, 10 March 1978)

Consequence – Inapplicability of the London Agreement of 19 June 1951, only applicable to local civilian labour requirements (No. 729, *Lauret*, 10 July 2008)

2-1-2 Staff not covered by the NATO CPR – Appeals Board not competent

Exceptions explicitly enumerated – Military personnel, national experts and local civilian workers (No. 666(a), *Shaw-Aerts*, 9 December 2003)

Local labour (Preamble A and B)

Governed by provisions of contract (No. 5, Micarelli, 18 December 1967)

Defined by the 1952 Paris Protocol, Annex I to the CPR (No. 235, *Iazzetti-Brown*, 12 November 1987)

International civilian consultant of the Stabilization Force (SFOR) – CPR not mentioned either by the SFOR Civilian Personnel Policy or by the staff member’s contract (No. 732, *Jensen*, 31 October 2008)

Staff member not filling a post appearing on the establishment (No. 26, *Capocci*, 10 June 1971)

Staff member not filling a post on the establishment table – Temporary staff member (Article 1 of Annex IX before its modification by decision of 15 December 1973) (No. 53(a), *Osy de Zegwaart*, 18 October 1973)

## 2-2 Recruitment (Chapter I)

2-2-1 Nationality

Principle of recruitment – Necessity of having highly competent staff (CPR, Article 1.2) – Reconciliation of this principle with the aim of equitable geographical representation – Latter aim secondary to the necessity expressed in Article 1.2 (No. 65 (a), *Ferrier*, 13 November 1975)

Recruitment of nationals of a NATO member country excluded in principle – Illegality (No. 65 (a), *Ferrier*, 13 November 1975)

2-2-2 Examination of applications (Article 57.1) – Procedure

**General rules**

Absence of statutory procedural rules (No. 203(b), *Bremer*, 16 April 1986)

Freedom to establish a procedure, on condition that independence and impartiality are guaranteed (No. 152, *Aktay*, 1 December 1982)

Obligation to comply with the recruitment rules laid down by the Head of a NATO body, even if he/she was not obliged to make them, so long as those rules remain in force (No. 152, *Aktay*, 1 December 1982; No. 203(b), *Bremer*, 16 April 1986)

 Exception in the case of rules not involving a point of substance (No. 203(b), *Bremer*, 16 April 1986)

**Process of examining candidates**

Obligation to mention, in a job vacancy notice, what internal procedures will be used to examine the candidates – No (No. 422, *Biondi*, 28 February 2002)

Possibility of examining external and internal applications at the same time (No. 34, *Smith*, 19 November 1971)

Submission of an application form – Form replaced by a letter in support of the application – No adverse effect on the fair treatment of the candidates or the choice made by the Selection Board (Nos. 838 and 848, *Iannace*, 6 July 2012; No. 846, *Marin Ortega*, 6 July 2012)

Consideration of the candidates on the basis of presentation sheets prepared by the administration – Legality, in that the Selection Board members were not refused access to the candidates' files themselves (Nos. 838 and 848, *Iannace*, 6 July 2012; No. 846, *Marin Ortega*, 6 July 2012)

Interview or hearing

Obligation to interview all candidates for a position – No (No. 339, *Twyman*, 9 January 1997; No. 352, *Jackson*, 5 June 1997; No. 407, *Trost*, 11 July 2001)

Interviewing only the candidates who meet the pre-established criteria – Legality (No. 292, *Falch*, 27 January 1994; No. 389, *Woodcock*, 24 September 1999)

Refusal to interview a candidate on the grounds that he does not offer a qualification that is not listed in the job description – Irregularity (No. 389, *Woodcock*, 24 September 1999)

Freedom, in the absence of any particular procedure, to take whatever advice is appropriate (No. 152, *Aktay*, 1 December 1982)

**Selection Board**

Establishment of a Selection Board

Institution which is nowhere provided for in the CPR (No. 96, *Evans*, 8 December 1978)

Absence of internal directive of the NATO body laying down rules for the constitution and procedure of the Selection Board – Legality (No. 96, *Evans*, 8 December 1978)

Board meetings

Selection Board improperly constituted in view of the directives instituting it – Illegality of the appointment, since it has not been demonstrated that a Board with the proper composition would have arrived at the same conclusion (No. 291, *Togayli*, 27 January 1994; No. 292, *Falch*, 27 January 1994)

Composition of the Board modified during the procedure – Modification not prohibited by any provision, and not affecting the Board’s assessment of the candidates’ merits – Modification not tainting the legality of the recruitment procedure (No. 739, *Koelewijn*, 12 December 2008)

Composition of the Selection Board

Possibility for the administration to nominate a person who is not one of its staff members in this case (Nos. 838 and 848, *Iannace*, 6 July 2012; No. 846, *Marin Ortega*, 6 July 2012)

Nomination of the staff association representative – No pressure exerted, the time being required to find a staff member with sufficient authority and objectivity to assess the various candidates – No irregularity (Nos. 838 and 848, *Iannace*, 6 July 2012; No. 846, *Marin Ortega*, 6 July 2012)

Informal panel including in particular a person whose secretary was a candidate – Lack of impartiality (No. 152, *Aktay*, 1 December 1982)

Board chaired by the Head of the NATO body – Lack of impartiality – No (No. 359, *Baldwin*, 3 June 1997)

Board having possession of all necessary information (No. 339, *Twyman*, 9 January 1997)

Selection Board rejecting a candidate staff member whom it had invited for interview, but who was unable to attend because he had been involved in an accident – Board incorrectly considering that this staff member had withdrawn his candidacy (No. 288, *Harvey*, 24 November 1993)

Administration can legitimately amend the ranking established by the Selection Board (No. 844, *Garcia Cidoncha*, 1 June 2012) – Opinion not binding the administrative authority (No. 846, *Marin Ortega*, 6 July 2012)

 Head of NATO body can take account of the opinion of his legal adviser without being bound by it (No. 846, *Marin Ortega*, 6 July 2012)

**Choice of candidate**

Procedure not conferring on NATO staff members an absolute priority over outside candidates, but solely giving them preference when their qualifications and suitability are not substantially inferior (No. 339, *Twyman*, 9 January 1997)

Procedure not giving staff members already in the specific NATO body that is recruiting any preference over staff members of other NATO bodies (No. 359, *Baldwin*, 3 June 1997)

Procedure giving priority to the NATO civilian staff member who needs to be redeployed – Case where none of the candidates have all the qualifications and skills required – Administration can then prefer an external candidate to one who needs to be redeployed (No. 846, *Marin Ortega*, 6 July 2012)

Freedom to circulate vacancy notices to the national delegations at the same time as to NATO bodies – Obligation to first consider the suitability of serving staff members before turning to other candidates – Illegality of appointing an outside candidate if one or more candidates from inside are considered suitable for the post (No. 75, *Yardas*, 2 July 1976; No. 76, *Westerhof*, 17 November 1976; No. 96, *Evans*, 8 December 1978) – Possibility of recruiting outside if it is decided that no inside candidate is suitable for the post (No. 81, *Atma and Delor*, 16 November 1977)

Choice of a candidate whose application was accepted, or even prompted, by the Administration after expiry of the prescribed deadline – Violation of the principle of equal treatment – Point of substance (No. 203(b), *Bremer*, 16 April 1986)

Appointing authority informing a staff member who has applied internally of his preference for another candidate – This information forcing the inside candidate to choose between maintaining her application despite the preference expressed by the appointing authority and withdrawing her application – Vitiated procedure (No. 148, *Schweser*, 28 April 1982)

Administration’s refusal to tell candidates why their application has been rejected – Legality (No. 422, *Biondi*, 28 February 2002)

2-2-3 Examination of applications – General conditions

**Condition of receiving security clearance** (Article 3 CPR) – Withdrawal of the staff member’s security clearance certificate by the authorities of the country of which he/she is a national - Consequence

Legality of dismissal (no. 40, *Petit*, 19 April 1972)

Immediate termination or dismissal (former Articles 65 and 66 CPR) (No. 18, *Panella*, 3 June 1970; No. 125, *de Heering*, 29 October 1980; No. 200, *Simons*, 18 July 1985; No. 388, *NETMA*, 22 April 1999)

Administration required to terminate the contract without notice (CPR Article 9.1), without being able to assess the merits of the withdrawal of clearance (No. 125, *de Heering*, 29 October 1980; No. 200, *Simons*, 18 July 1985; No. 286, *Hambli-Balter*, 26 May 1993; No. 442, *Melchior*, 8 October 2002; No. 729, *Lauret*, 10 July 2008) or the validity of the judgements made by the national authorities (No. 200, *Simons*, 18 July 1985; No. 729, *Lauret*, 10 July 2008)

Administration obliged to inform the staff member that the grounds for termination of contract is the withdrawal of security clearance (No. 286, *Hambli-Balter*, 26 May 1993) – Illegality of dismissal covering the period from the date it came into effect until the date when the staff member was informed of the reason (No. 286, *Hambli-Balter*, 26 May 1993)

Staff member’s security clearance subsequently restored by the decision of a national jurisdiction – Consequence – No right to reinstatement – Possibility of applying for a new vacancy in a NATO body (No. 200, *Simons*, 18 July 1985)

**Obligation to respect the conditions laid down in the vacancy notice** – Verification of the linguistic ability required in the job description (No. 201, *de Monts de Savasse*, 19 July 1985)

**Condition relating to understanding of a language that is “desirable”** – Criterion which must be secondary to the understanding of a mandatory language – Weight given to a “desirable” language not affecting the results unduly (No. 413, *Bressan*, 29 May 2001)

**Physical suitability of candidates** (CPR Article 3) (No. 44, *Godin*, 9 November 1972)

Condition relating to the"deployability" of the staff member, i.e. whether he can be sent to a theatre of military operations – Evaluation of medical certificates – Certificates in agreement that candidate is not deployable – Legality of decision not to recruit the candidate, either for the posts where the job descriptions stated that the post was deployable, or for those where this was indicated as a possibility (Nos. 838 and 848, *Iannace*, 6 July 2012)

**Rejection based on over-qualification for the job in question** – Lawful reason in a small structure – Particular consideration of the case of the individual concerned (No. 422, *Biondi*, 28 February 2002)

2-2-4 Particular case of redundant staff members (Article 57.2)

Rights of redundant staff – No guarantee of a post – Mere possibility of submitting applications which will be given priority (No. 141, *Goderniaux*, 3 December 1981; No. 142, *Ivoy*, 3 December 1981; Nos. 161(b)-168, *Brégain*, 1 March 1984)

No preference for obtaining a new job – Mere procedural advantage requiring the Administration to consider their candidature for vacant posts of their own grade before other recruitment is put in hand (No. 306, *Andersen*, 16 November 1994; No. 725, *Caplan*, 14 December 2007)

Failure to fulfil this obligation – Compensation for the non-material damage only, since the staff member had no particular right to be appointed (No. 306, *Andersen*, 16 November 1994)

2-2-5 Juridical review by the Board

Verification that the procedure for examining applications and selecting a candidate for the post was properly carried out (No. 201, *de Monts de Savasse*, 19 July 1985; No. 389, *Woodcock*, 24 September 1999; No. 844, *Garcia Cidoncha*, 1 June 2012)

 Review of compliance with rules particular to the NATO body concerned (No. 203(b), *Bremer*, 16 April 1986; No. 699, *Sgueglia*, 13 September 2006)

Review of whether the criteria applied by the Selection Board matched those stipulated in the job vacancy notice (No. 233, *de Monts de Savasse*, 14 January 1988; No. 234, *Broadbent*, 14 January 1988)

Review of whether the selected candidate’s qualifications matched those laid down in the job vacancy notice (No. 233, *de Monts de Savasse*, 14 January 1988; No. 234, *Broadbent*, 14 January 1988; No. 413, *Bressan*, 29 May 2001)

Review of the linguistic ability called for in the job description (No. 201, *de Monts de Savasse,* 19 July 1985; No. 413, *Bressan*, 29 May 2001)

Review of the medical suitability required by the job description – Condition relating to the"deployability" of the staff member, i.e. whether he can be sent to a theatre of military operations – Evaluation of medical certificates – Certificates in agreement that candidate is not deployable – Board unable to substitute its assessment for that of the medical authorities – Legality of decision not to recruit the candidate, either for the posts where the job descriptions stated that the post was deployable, or for those where this was indicated as a possibility (Nos. 838 and 848, *Iannace*, 6 July 2012)

Review of whether the subject matter of the tests was part of the requirements laid down in the post vacancy notice (No. 413, *Bressan*, 29 May 2001)

##### 2-3 Appointments and contracts (Chapter II)

Date of taking up duties – Date when contract takes effect (No. 106, *Van der Laan*, 31 October 1979; No. 107, *Maseng*, 31 October 1979; No. 108, *Lorentzen*, 31 October 1979; No. 111, *Wilhelm*, 15 February 1980)

Date when contract takes effect – Date stipulated in the contract itself (Nos. 693-697, *Angus*, 14 September 2006)

Date of end of contract – Date implicit in the terms of the contract itself (No. 173(a), *Buyle*, 5 December 1984; No. 217, *Besques*, 22 October 1986)

Impossibility of employing a staff member under a contract which was legally terminated by a decision deemed to have been properly taken (No. 165, *Léger*, 30 November 1983)

2-3-1 Conditions of appointment – Balance between CPR and individual contract

Consequences – Freedom to modify the CPR at any time, subject to the principle of non-retroactivity and the limitations that the competent authority has itself placed on these powers of modification (No. 57, *Warren*, 11 December 1974; No. 80, *Salançon and others*, 16 November 1977; No. 328, *O’Shea*, 5 December 1996; No. 338, *Murzi*, 5 December 1996; No. 417, *Seldon*, 11 July 2001; No. 425, *Hadler*, 10 October 2001; No. 426, *Prideaux*, 10 October 2001; No. 430, *Milhoux-High*, 1 March 2002; No. 437 and others, *Kleidorfer and others*, 20 November 2002; No. 689, *Moroso*, 9 March 2006)

**Notion of upsetting the balance of the contract** cf. above in section 1-5-3: non-retroactivity of administrative acts

**Validity of the contract**

Existence of the contract – Comparison of the different versions produced by the parties – Inconsistency of one version – Other version regarded as the authentic contract (No. 330, *Neschke*, 25 June 1996)

Administration obliged to comply with the terms of the contract entered into, even if it is unlawful and too favourable to the staff member, since the latter could not have been aware of this irregularity when she signed the contract (No. 278, *Clark*, 13 January 1993)

Amendment to a contract – Amendment providing for different rules for advancement to a higher step from the previous ones – Failure to notify the staff member of the date when this amendment was to take effect – New rules for advancement to a higher step inapplicable against her (No. 323, *Campanelli*, 25 January 1996)

Series of contracts – Signature of a second contract by the same staff member with the same NATO body for the same period – Implicit termination of the previous contract by mutual agreement (No. 766, *Wilkin*, 9 July 2010)

Contract laying down a grade – North Atlantic Council alone has authority to reassign a post to the grade that best matches the duties performed by the staff member (No. 667, *Archer*, 10 December 2003)

2-3-2 Definition of functions

Job description – An implicit element of the contract (No. 713, *Sellers*, 12 July 2007; No. 817, *Roberts*, 27 May 2011; No. 835, *Lieber*, 11 November 2011)

Staff members having to be recruited on the basis of their qualifications (Article 1.1 CPR) – Duties generally set out in the description of the post assigned to them – May be required to perform other duties – Conditions

Duties connected with the staff member’s main activity (No. 199, *Vanderbeeken*, 18 July 1985)

Other essential duties to be performed to meet special circumstances – No legal basis if they become permanent – Legality if they are only allocated for a reasonable period, to meet an administrative and financial problem (No. 199, *Vanderbeeken*, 18 July 1985)

Staff member seeking compensation for extra workload but having signed a new contract several months earlier that indicated that his duties would be changed significantly – No definite damage resulting from NATO’s fault in not having changed the contract again (No. 375, *Brenner*, 17 July 1998)

Staff member misled when he was recruited about the nature of the responsibilities which he would have to take on, but informed of the real scope of his duties the day after he took up his post, and not then taking action or objecting (No. 669 (b), *Slater*, 26 November 2004)

Substantial changes to the content of the post and the responsibilities of the staff member – Appointment that must be regarded as distinct from the previous one – Consequence – Necessity of deleting the previous post, terminating the previous contract and carrying out the recruitment procedure laid down by the CPR (no. 817, *Roberts*, 27 May 2011)

2-3-3 Length of the contract

**Scientific staff** – Possibility of offering them contracts of definite duration, even after more than 10 years of service

Reasons for this recruitment policy (No. 136, *Topliss*, 22 October 1981; No. 138, *Davies*, 22 October 1981; no. 778, *Pinto*, 4 February 2011)

Situation in which, after well over ten years, the Administration decides not to renew the contract of a staff member who is relatively old, because of the need for staff turnover – Possible *ultra vires* abuse of process – Not established in this case, as the staff member was 44 years old and was informed of the decision not to renew his contract 13 months in advance (no. 136, *Topliss*, 22 October 1981) – Same applicable to a staff member aged 45 who was informed at least 2 years before the date on which his services were terminated (no. 138, *Davies*, 22 October 1981) – Same applicable to a staff member informed of the decision not to renew his one-year contract prior to the entry into force of that contract – No obvious error of judgment in not renewing the contract after 12 years of service (no. 778, *Pinto*, 4 February 2011)

Dismissal of the reproach of illegality directed against Article 5.4.3 of the CPR establishing that possibility (no. 778, *Pinto*, 4 February 2011)

**Seconded staff** – Duration fixed by CPR Article 5.2 – Duration not exceeding the length of the approved secondment – Organization required, when notified of a decision by a national administration to terminate a secondment, to limit the period of the staff member’s contract to the period of the secondment (No. 118, *Cambier*, 13 May 1980; No. 255, *Lops*, 17 May 1990; No. 337, *Melas*, 25 October 1996; No. 717, *Flora*, 13 December 2006)

2-3-4 Definite duration contract

Inclusion of a termination clause – Circumstance not having the effect of transforming the contract into a contract of indefinite duration (No. 45, *de Leeuw*, 9 November 1972)

Contract comparable to an indefinite duration contract

Contracts of definite duration for staff filling posts that were obviously permanent – Practice not in accordance with CPR Article 5.31 (No. 368, *Brookfield*, 24 April 1998)

Contracts renewed several times when the NATO body, after the initial phase of its creation, could not properly make general use of definite-duration contracts (No. 416, *Vedel and Badin*, 22 January 2002; No. 419, *Corso-Leclercq*, 22 January 2002; No. 433, *Flachaire*, 23 January 2002; Nos. 852 and 861, *Puibaraud*, 25 October 2012)

Definite duration contract redesignated as an initial contract – Contract for which none of the conditions in Article 5.2 was fulfilled, in particular the prior notice of the desirability of turnover for the post (No. 771, *Maretti*, 12 March 2010)

2-3-5 Renewal or non-renewal of the contract **(see also 2.4 below**)

**No right to renewal of a contract** (no. 38 *Lew*, 24 February 1972; - No. 173(a), *Buyle*, 5 December 1984; - No. 680, *Hunt*, 13 September 2005; - No. 745, *Austin*, 31 October 2008; - No. 769, *Varcol*, 17 September 2010; - No.782, *Prema*, 29 October 2010; - No. 841, *Le Bescond*, 6 July 2012)

No right to renewal of a contract for the same period (No. 47, *Cocks*, 21 March 1973)

No right to renewal of a contract, even when the staff member has been employed for eleven years by NATO (No. 59(b), *Rasmussen*, 4 June 1975; No. 63, *Laval*, 4 June 1975; No. 88, *Allan*, 20 January 1978)

 Obligation to offer a contract of indefinite duration only if the Administration intends to retain the staff member’s services (No. 88, *Allan*, 20 January 1978; No. 103, *Weech*, 13 August 1979; No. 157, *Bayraktar*, 26 May 1983)

Contract including a clause stipulating that it will not be renewed beyond a date which it indicates – Contract not renewed beyond that date – Legality – Application of the contract (No. 139, *Hardenbol*, 9 July 1981)

Duration of a renewed contract – Period must be based on the interests of the service (Article 5.34) – Administration not presenting any serious reason, while the staff member alleges that the period of renewal, which has the effect of fixing the total duration of his services at nine years and ten months, was chosen with the intention of depriving him of the health insurance coverage and retirement pension to which he would have been entitled if the length of his services had reached ten years – Cancellation (No. 414, *Neitzel*, 25 April 2001)

Exception – Right to renewal of contract when a directive (para. vii of the Preamble) lays down this right (No. 733, *Atienza-Corralo,* 14 March 2008; No. 754, *Zarantonello*, 10 July 2009; No. 771, *Maretti*, 12 March 2010)

**No renewal of contract**

Reason – Staff member unable to adapt to her new duties (No. 72, *Van Duin*, 11 May 1976)

Review of reasons – Checking that there were not errors of fact or obvious errors of judgement (No. 72, *Van Duin*, 11 May 1976)

2-3-6 Reassignment contract

Difference from an initial contract – Duration of period of notice (No. 72, *Van Duin*, 11 May 1976)

Impossibility of deciding, when such a contract is signed, that it will not be renewed (No. 97, *Baylac*, 6 March 1979)

Contract not providing for possible renewal – One-year contract of definite duration – Yes – Reassignment contract – No (No. 97, *Baylac*, 6 March 1979)

Non-renewal – Form of the decision – Not obligatory to give reasons (No. 693-697, *Angus*, 14 September 2006)

2-3-7 Contracts with seconded staff

Nature of the contract – Contract between the staff member and NATO – Contract to which the national authorities are not a party – Amendment to the contract not needing the approval of these national authorities (No. 717, *Flora*, 13 December 2006)

Duration of the contract – Duration fixed by CPR Article 5.2 – Duration not exceeding the length of the approved secondment (No. 118, *Cambier*, 13 May 1980; No. 337, *Melas*, 25 October 1996; No. 717, *Flora*, 13 December 2006)

 Case of the secondment of a member of the Belgian judiciary, for whom the national regulations limit the length of the contract to one year (No. 173(a), *Buyle*, 5 December 1984)

Seconded staff member reaching retirement age in his national administration – Circumstance not preventing renewal of his contract with NATO on a different basis (No. 752, *Leisge*, 12 December 2008)

#### 2-3-8 Probationary period

**Ability to terminate the contract at any time** (No. 842, *Antonsen*, 24 February 2012)

**Notice** – Period – Period of 30 days

Period fixed by the contract – Period not respected in the specific case – Payment of compensation for the late notice given to the staff member, equal to the salary he should have received until the end of the period of notice (No. 158, *Menet*, 8 July 1983)

Period of notice respected in the specific case (No. 209, *Bisschop*, 6 May 1986)

**Refusal to extend the probationary period**

Need to provide adequate grounds for termination of the contract (No. 11, *X*, 25 October 1968; No. 90, *Perrier*, 10 March 1978)

Review by the Appeals Board – Yes – Grounds – Lack of the essential qualities for the post – Legality of the refusal to extend the period (No. 158, *Menet*, 8 July 1983)

Rights of the defence

Rights of the defence – Rights to be respected in case of termination at the end of the probationary period, even if it is accepted that the staff member has to exercise them within a relatively short deadline (No. 209, *Bisschop*, 6 May 1986; No. 842, *Antonsen*, 24 February 2012)

Rights not respected when the staff member's contract is terminated prematurely at the end of the meeting at which he is informed of the intention to terminate it (No. 842, *Antonsen*, 24 February 2012)

Communication of the performance report

Formality not necessary (No. 209, *Bisschop*, 6 May 1986 ; - No. 842, *Antonsen*, 24 February 2012)

Reassignment contract – Contract ending at the end of the probationary period – Performance report not required (No. 158, *Menet*, 8 July 1983)

**Decision to extend the probationary period**

Decision to extend the probationary period taken after the end thereof (Art. 6.4) – Consequence – Confirmation of the contract (No. *Wilkin*, 9 July 2010; No. 765, *Drexler*, 17 September 2010)

**Right to the indemnity for loss of job** – No (No. 670, *Charlier*, 15 September 2004)

##### 2-4 Separation(Chapter III)

#### 2-4-1 Deletion of the post

Only obligation of the Administration – Informing the staff member of the date on which his or her contract will be terminated (No. 141, *Goderniaux*, 3 December 1981; No. 142, *Ivoy*, 3 December 1981)

Procedure – Observance of an adversarial procedure – Not a requirement (No. 716, *Caplan*, 14 December 2007)

Form – Obligation to provide grounds – None (No. 716, *Caplan*, 14 December 2007)

Grounds – NC3A Agency where the creation and deletion of posts are decided in accordance with the contracts secured with customers – Misuse of powers – None in this case, as the activity in question lacked funding within the foreseeable future (No. 716, *Caplan*, 14 December 2007)

Consequence – General Manager bound to apply the decision by the budget authority – Transfer of staff member or termination of contract (No. 141, *Goderniaux*, 3 December 1981; No. 142, *Ivoy*, 3 December 1981)

2-4-2 Resignation (Art. 8.1 & 8.2)

**Termination decided by agreement between the parties** – Contract stipulating that it could not be terminated unilaterally by either of the parties – End of contract legally possible (No. 198, *Ross*, 14 May 1985)

**Resignation by a staff member with a definite-duration contract** – In principle no resignation following confirmation of a contract on the expiry of the probationary period

Administration may, if it thinks fit, take disciplinary action against the staff member where it considers itself to have suffered from the breaking of the contract (No. 210, *Green*, 7 May 1986)

 Obligations of the parties after the resignation – Neither the staff member nor the Organization is bound to comply with the obligations arising from that part of the contract which has not been performed – Administration not bound to pay the staff member’s return journey and removal expenses to which she would have been entitled if her contract had expired at its stipulated term (No. 210, *Green*, 7 May 1986)

**Resignation – Date of effect** – Date of acknowledgement by the employing body (No. 281, *Ariman*, 4 March 1993)

Announcement, between the sending of the resignation letter and its acknowledgement, that a voluntary departure scheme would be implemented – Possibility for the staff member to withdraw his resignation in order to benefit from this voluntary departure scheme – Yes (No. 284, *Munns*, 4 March 1993; No. 295, *Munns*, 9 March 1994)

Announcement, after the acknowledgement of the resignation, that a voluntary departure scheme would be implemented – Possibility for the staff member to withdraw his resignation in order to benefit from this voluntary departure scheme – No – Resignation irrevocable (No. 281, *Ariman*, 4 March 1993)

 Staff member learning, after the acceptance of his resignation, that a colleague had been offered a contract of indefinite duration – Staff member able to take back his resignation – No – Possibility of claiming that the resignation clause was null and void as a consequence of vitiated consent – Yes (No. 157, *Bayraktar*, 26 May 1983)

 Withdrawal of resignation subject to review of a request for voluntary departure – Request considered by the Administration – Legality of termination of employment (No. 295, *Munns*, 9 March 1994)

**Forced resignation akin to a dismissal**

Not established in this case

Investigation not showing that the resignation was obtained in such a way as to vitiate the staff member’s consent (No. 157, *Bayraktar*, 26 May 1983; No. 198, *Ross*, 14 May 1985)

Staff member misled when he was recruited about the nature of the responsibilities which he would have to take on, but informed of the real scope of his duties the day after he took up his post, and not then taking action or objecting (No. 669 (b), *Slater*, 26 November 2004)

**Voluntary departure** (Council decision dated 27 November 1991) – Staff members requested to state their preference for departure in 1992, 1993 or 1994 – In view of the importance to a staff member of the date on which he would be required to terminate his employment, obligation on the Head of the NATO body to inform the staff member that the date he had requested might not be accepted – Failure to observe the implicit agreement arising from the Administration’s silence for over a year regarding the departure date requested by the staff member (No. 300, *Konuk*, 10 March 1994; No. 301, *Tunca*, 10 March 1994)

2-4-3 Non-renewal of a definite-duration contract – Procedure

Need to prepare a performance report – No (“regrettable though this may be”) – Procedure not irregular for this reason (No. 217, *Besques*, 22 October 1986)

Need to prepare a staff report (Annex VIII.A, Article 2.6) (No. 782, *Prema*, 29 October 2010) and to hold the meeting stipulated in Article 2.7 (No. 680, *Hunt*, 13 September 2005)

Need to prepare a staff report (Annex VIII.A, Article 1.3.3) and to hold the meeting with the staff member stipulated in Article 2.8 (No. 694, *Rovder*, 14 December 2006)

Requirement to complete the performance review procedure, i.e. to draw up the staff report and offer the staff member the chance to discuss it (Art. 1.1.1, 2.6 and 2.7 of Annex VIII) (No. 841, *Le Bescond*, 6 July 2012)

Requirement to carry out the performance review (Art.55.5 and Annex VIII.B, Art.1.1) (No. 769, *Varcol*, 17 September 2010) – Staff member who had only had one review in 3 1/2 years, sixteen months before the decision not to renew his contract (No. 769, *Varcol*, 17 September 2010)

Requirement, if the staff report is adverse, to convey its substance to the staff member so that he can discuss it (No. 79, *Hintz*, 6 May 1977; No. 85, *Shimell*, 8 December 1977; No. 87, *Appleton*, 11 January 1978)

 Failure to communicate able to be repaired by communicating the report during the complaints procedure – Validity of the procedure (no. 87, *Appleton*, 11 January 1978) (cf. for disciplinary action no. 698-700-701, *Kirby*, 14 September 2006)

2-4-4 Failure to renew a contract – Grounds

Dismissal of a pregnant woman – Question not judged (appeal time-barred) (No. 133, *Weiss*, 13 May 1981)

**Legal grounds**

NATO body’s wish to have staff turnover (No. 59(b), *Rasmussen*, 4 June 1975; No. 63, *Laval*, 4 June 1975; No. 136, *Topliss*, 22 October 1981 (sol. impl.); No. 138, *Davies*, 22 October 1981 (sol. impl.); No. 713, *Sellers*, 12 July 2007)

 Turnover having to be indicated before the initial contract is signed (no. 754, *Zarantonello*, 10 July 2009; No. 835, *Lieber*, 11 November 2011) – Organization not allowed to invoke turnover on the grounds that an appellant's previous contract was subject to it, when the previous contract concerned another job in another division of the same body (No. 771, *Maretti*, 12 March 2010)

 Turnover of research staff in scientific establishments (No. 778, *Pinto*, 4 February 2011)

 Turnover of staff with highly specialized technical expertise – International Staff contract policy of 2003 – Posts of 3 years' duration renewable for a maximum duration of 5 years (No. 835, *Lieber*, 11 November 2011)

Staff member having accepted a letter attached to his initial contract, by which he undertook not to request the renewal of his contract – Undertaking not tainted by wilful misrepresentation or any other error which would invalidate it (No. 99, *Kester*, 2 February 1979)

NATO’s decision to terminate the mission of the group responsible for a project, in this case the construction of the new NATO Headquarters, and to entrust it to an agency from outside NATO – Consequence – Reorganization of services and termination of the activity of the persons assigned to that mission (No. 694, *Rovder*, 14 December 2006)

Under the Charter for the Central Europe Pipeline Management Organization (CEPMO), renewal subject to the agreement of all CEPMO member nations – Lack of agreement in the Board of Directors – General Manager obliged to terminate the staff member’s employment (No. 410, *Bellec*, 25 April 2001) (not the case if the charter does not stipulate such unanimity: No. 752, *Leisge*, 12 December 2008)

Reorganization of the NATO body no longer requiring a post to be maintained – Legality (Nos. 852 & 861, *Puibaraud*, 25 October 2012)

Changes to the personnel establishment subject, under the NATO HAWK Production and Logistics Organization (NHPLO) Charter, to the unanimous decision of the NHPLO Board of Directors

Lack of unanimity – Improper deletion of post (No. 161(b)-168, *Brégain*, 1 March 1984)

New unanimous resolution – Legality of the decision to delete the post then taken, amounting to withdrawal and replacement of the previous irregular decision (No. 161(b)-168, *Brégain*, 1 March 1984)

Removal of the post by the NATO body’s Board of Directors – Limited powers of the General Manager as regards renewal of the contract (No. 329, *Valkanas*, 26 June 1996; No. 716, *Caplan*, 14 December 2007)

Loss of trust

Loss of trust between the Head of the NATO body and a very high-ranking member of his immediate staff (No. 684, *Johnson*, 11 May 2006)

Loss of confidence in the staff member by his superiors, due to his repeated initiatives to undermine the authority of his superior and act without the latter’s knowledge, his accusing his superior of fraud, and his failure in his duty to render an account to his superior (No. 693-697, *Angus*, 14 September 2006)

Staff member reaching 65 years of age (Articles 7 and 11) – Necessity of terminating contract – Obligation for the Administration although the staff member has not been informed 6 months before as laid down in Article 5.5.1 (No. 744, *Glaremin*, 8 May 2009)

Appeals Board recognizing one of the reasons adduced as legal, without stating it (No. 173b, *Buyle*, 19 April 1985)

**Illegal grounds**

Staff member’s nationality – Illegality, even though the dismissal would ensure a better geographical representation (No. 65 (a), *Ferrier*, 13 November 1975)

Opposition by a representative on the agency’s Board of Directors, when the body’s charter contains no provision to this effect (No. 752, *Leisge*, 12 December 2008)

Deletion of the post held by the staff member – Error of fact in this case (No. 21, *Schuhmacher*, 26 November 1970)

Administration’s intention to deprive the staff member of the health insurance coverage and retirement pension to which he would have been entitled if the length of his services had reached ten years (No. 416, *Vedel and Badin*, 22 January 2002; No. 419, *Corso-Leclercq*, 22 January 2002)

Application of a rigid policy not to renew definite-duration contracts (No. 280, *de Castalbajac*, 4 March 1993)

Staff member not giving satisfactory service (CPR Article 9.1) – No valid reason in this case, in view of staff reports of previous years (No. 480, *Sterken*, 29 January 2003)

Administration seeking vengeance on a staff member who had reported the misconduct of her immediate supervisor (No. 745, *Austin*, 31 October 2008)

Administration refusing to inform the Appeals Board of the grounds for dismissal – Consequence – Termination of contract regarded as improper (No. 24, *Stievenart*, 25 March 1971; No. 25, *Dumont*, 25 March 1971; No. 42, *Castiau-Thiry*, 8 November 1972)

2-4-5 Failure to renew a contract – Stating grounds

**No requirement to state grounds** (No. 173(a), *Buyle*, 5 December 1984 ; - No. 812, *Ferkinghoff*, 8 April 2011)

Non-renewal because of deletion of post (No. 716, *Caplan*, 14 December 2007)

One-year contracts (the only possibility in this case, for a member of the Belgian judiciary seconded to NATO) renewed for 17 consecutive years (No. 173(a), *Buyle*, 5 December 1984)

Post of head of library which is ongoing in nature (No. 480, *Sterken*, 29 January 2003)

Three-year contract (No. 694, *Rovder*, 14 December 2006)

Reassignment contracts (No. 693-697, *Angus*, 14 September 2006)

Contracts of research staff in scientific establishments (No. 778, *Pinto*, 4 February 2011)

**Compulsory substantiation**

Case where the contract itself allows the possibility of renewal or where such a possibility results clearly from the negotiations preceding the signature of the contract (No. 173(a), *Buyle*, 5 December 1984)

Exceptional cases where, because of particular circumstances of law or fact, the incumbent of a running contract finds himself in a de facto situation comparable to that of the incumbent of an indefinite-duration contract (No. 173(a), *Buyle*, 5 December 1984; No. 368, *Brookfield*, 24 April 1998; No. 416, *Vedel and Badin*, 22 January 2002; No. 419, *Corso-Leclercq*, 22 January 2002; No. 433, *Flachaire*, 23 January 2002; No. 480, *Sterken*, 29 January 2003; No. 693-697, *Angus*, 14 September 2006; No. 694, *Rovder*, 14 December 2006)

Definite-duration contracts renewed for 8 years in a NATO body, although there is doubt about the continuation of this body – Contracts akin to indefinite-duration contracts (No. 416, *Vedel and Badin*, 22 January 2002; No. 419, *Corso-Leclercq*, 22 January 2002; No. 433, *Flachaire*, 23 January 2002; No. 779, *Wild*, 17 September 2010)

Staff member employed for 8 years under successive 3-month contracts – Contract comparable to an indefinite duration contract – Staff member who should have been employed from the outset on the basis of an initial contract followed by an indefinite duration contract (No. 779, Wild, 17 September 2010; no. 822, *Bürgstein*, 30 September 2011)

Staff member employed for more than 4 years under successive 3-month contracts – Article 5 of the CPR necessarily applying to the contract – Staff member who should have been employed from the outset on the basis of such a contract (No. 813, *Dohms*, 27 May 2011)

Contracts of definite duration for staff filling posts that were obviously permanent (No. 368, *Brookfield*, 24 April 1998)

**Time allowed to furnish reasons** – Administration required to give reasons, and indicating at the hearing that it is ready to communicate the grounds for non-renewal of contract – Period of one month granted for it to do so (No. 173(a), *Buyle*, 5 December 1984)

**Substance of the grounds** – Fact that allegations were brought to the staff member’s attention when reviewing his performance report and during the complaints procedure does not take the place of the required statement of grounds (No. 368, *Brookfield*, 24 April 1998)

2-4-6 Failure to renew a contract – Staff member then on sick leave (Article 45)

**Scope** – Provisions of Article 45 only applicable to staff members absent owing to sickness or accident on the date of the decision, but not to those who subsequently produce a medical certificate stating that they were not then in a fit state to work (No. 262, *Lops*, 31 January 1991)

**Effective date**

Contract legally extended (CPR Articles 45.71 and 45.73 then in force) until the end of the period in which the staff member continues to receive emoluments under the group insurance policy (No. 69, *de Raffaele*, 28 January 1976)

Contract legally extended (CPR Articles 45.71 and 45.73) until the end of the sick leave, that is until the date when the medical expert declares the staff member fit to restart work (No. 84, *De Raffaele*, 13 January 1978; No. 381 (a), *Mercier*, 13 November 1998; No. 381 (c), *Mercier*, 22 March 2001; No.385, *Fracassi*, 29 January 1999; No.678, *Bosca*, 29 June 2005; No. 721(b), *Pongiluppi*, 14 March 2008; No. 741, *Demir*, 8 May 2009; No. 847, *Vankrunkelsven*, 24 February 2012) or when the staff member is found to be permanently incapacitated (No. 272, *Quarto*, 17 September 1992)

**Powers of the Administration**

To require a staff member to undergo a medical control to verify the validity of the medical certificate submitted by that person (No. 385, *Fracassi*, 29 January 1999; No. 678, *Bosca*, 29 June 2005)

To terminate the sick leave on the date when the staff member is recognized to be fit to work and regarding the contract as terminated as of that same date (No. 385, *Fracassi*, 29 January 1999; No. 678, *Bosca*, 29 June 2005)

**Obligations of the Administration**

Termination of the contract at the end of the sick leave (No. 408, *Papanaklis*, 21 March 2001)

Notice – Staff member on sick leave and then on extended sick leave – Period of notice beginning on the date when the staff member should have recommenced his activities, being recognized as able to return to work (No. 847, *Vankrunkelsven*, 24 February 2012)

**Dispute** – Inadmissibility of the appeal seeking cancellation of the date of effect of dismissal, since the staff member was on sick leave on the earlier date and on extended sick leave on the later date – Date of effect having no consequence for the pecuniary rights of the staff member in this case (No. 333, *Szlanyinka*, 24 September 1996)

2-4-7 Contract termination – Authority

Staff member having been transferred from one NATO body to another without entering into a new contract – Responsibility of the body having signed the only contract in force – Head of the second NATO body not having the requisite authority to terminate it (No. 274, *Cooper*, 4 November 1992)

2-4-8 Contract termination – Procedure

**Rights of the defence**

No obligation to formally invite the staff member to make her observations, since convening the Invalidity Board showed the Administration’s intention to terminate the contract for reasons of unfitness (and took the place of such an invitation) (No. 379, *Mock*, 1 October 1998)

Rights respected in this case (No. 656, *Van Spronsen*, 3 June 2003)

Rights to be respected in case of termination at the end of the probationary period, even if the staff member may have to exercise them within a relatively short deadline (No. 209, *Bisschop*, 6 May 1986; No. 842, *Antonsen*, 24 February 2012)

**Termination to be preceded by the performance report (CPR Article 55)**

Formality not required when the termination is based on the deletion of the post (No. 343, *Selvanizza*, 5 February 1997; No. 862, *Wendel*, 20 December 2012)

Formality not required for termination at the end of the probationary period (No. 209, *Bisschop*, 6 May 1986; No. 842, *Antonsen*, 24 February 2012)

Irregularities vitiating earlier performance reports, but not the most recent one – Circumstance having no bearing (No. 171, *Markey*, 23 October 1984)

**Requirement to hear the staff member before termination** – Formality not required when the termination is based on the deletion of the post (No. 324, *Parisotto*, 29 February 1996; No. 862, *Wendel*, 20 December 2012)

**External consultation**

Termination requiring the agreement of the Board of Directors under the Charter of the NATO body in question – Consultation not performed and agreement not received – Cancellation of termination of contract (No. 724, *Barbieri*, 25 October 2007)

Termination because of frequent absences on health grounds – Medical examination – Consideration of the case history sufficient, even without a clinical examination (No. 172, *Keohane*, 5 December 1984)

Staff member on extended sick leave – Obligation for the Administration to inform the staff member that she may set in motion the arbitration procedure in Article 7 of the agreement between Vanbreda International and NATO, or to implement it itself if the staff member has so requested (Nos. 840, 845 & 849, *Pilot-André*, 1 June 2012)

**Period of time** – Short time between the date on which the staff member was informed and the date termination became effective – Two days – Legality (No. 135, *Prud’homme*, 8 July 1981)

**Date termination becomes effective – Staff member on sick leave or extended sick leave**

Date of dismissal put off until the end of the sick leave – Sick leave ending for example when the permanent invalidity of the staff member is recognized (No. 272, *Quarto*, 17 September 1992)

Effective date of the termination postponed to the end of the period of sick leave (No. 84, *De Raffaele*, 13 January 1978; No. 90, *Perrier*, 10 March 1978)

Staff member shown as supernumerary personnel on the establishment table and accruing pension rights (No. 326, *Michler*, 17 April 1996)

Impossibility of the Administration postponing the effects of termination until a later date (No. 235, *Iazzetti-Brown*, 12 November 1987)

2-4-9 Contract termination – Form

**Obligation to state grounds**

Decision substantiated by reading out a document indicating the grounds – Sufficient substantiation in this case (No. 135, *Prud’homme*, 8 July 1981)

Written explanation of the factual and legal grounds – Substantiation provided when staff member is informed verbally in a sufficiently clear, precise and complete fashion (No. 402, *Neto*, 12 December 2000)

Grounds limited to staff member not being “fit to occupy the post assigned to him” – Insufficient grounds, preventing the Board from exercising its control (No. 670, *Charlier*, 15 September 2004)

Substantiation restricted to mentioning Article 9.1 (i) of the Civilian Personnel Regulations regarding unsatisfactory performance – Lack of substantiating fact – Grounds given insufficient (No 870, *Smouts*, 7 February 2013)

2-4-10 Termination of the contract – Grounds which may justify it

Principle preventing the contract of a staff member on sick leave from being terminated – Not established (No. 272, *Quarto*, 17 September 1992; No. 379, *Mock*, 1 October 1998)

**Frequent recurrence of short periods of illness (Art. 45.4)**

Regulations governing national and international civil servants not generally containing comparable stipulations of equal severity – Rarity not preventing their application (No. 172, *Keohane*, 5 December 1984)

Absence of approximately 60 days per year (No. 44, *Godin*, 9 November 1972)

Staff member absent 67 times in 7 years, for a total of 466 days – Termination despite the staff member’s professional qualities (No. 172, *Keohane*, 5 December 1984)

Frequent absences, likely to recur – Power to terminate the contract after a further medical examination of the staff member to assess his fitness for performing his duties normally in future (No. 172, *Keohane*, 5 December 1984)

Frequent absences – Discretionary latitude to decide to terminate the contract when such absences are likely to be detrimental to the interests of the department (No. 402, *Neto*, 12 December 2000)

Prolonged absences owing to illness – Staff member only having worked for 4½ months in the previous year (No. 69, *De Raffaele*, 28 January 1976)

**Continued absence due to sickness or accident extending over more than three months** (CPR Article 45.67) (No. 52(e), *Drossart-Devos*, 10 December 1974)

**Extended sick leave** (CPR Article 45.7.3) (see also, section 2-10-4 of this compendium)

Yes (No. 163, *Hoyas*, 9 May 1984)

Yes – No bar in principle, but need to verify the foreseeable further duration of the sick leave (No. 409, *Krieps*, 12 December 2000)

Yes, in view of the staff member’s continuous absence for more than 18 months, and the need to recruit temporary staff to ensure continuity in the missions of the service (No. 429, *Krieps*, 17 July 2002)

Period of 21 months from the start of the illness (No. 682, *Lelling*, 27 October 2005)

Date separation becomes effective – At the end of 33 months or on the date the staff member is found to be fit to resume his duties or permanently incapacitated, whichever occurs first (No. 272, *Quarto*, 17 September 1992)

**Physical inability** to perform a full-time job (No. 84, *De Raffaele*, 13 January 1978; No. 379, *Mock*, 1 October 1998)

**State of alcoholic intoxication** with numerous relapses (No. 656, *Van Spronsen*, 3 June 2003; No. 695, *Korsten*, 28 June 2006)

**Service being reorganized in order to reduce staff numbers** – Possibility for the Administration, until it notifies the staff member that his contract is being terminated on that ground, to dismiss him for another reason, subject to review by the Appeals Board – Case of a dismissal on grounds of incapacity for service (No. 398, *Driscart*, 12 July 2000)

**Deletion of the post concerned – Conditions**

Reorganization of the NATO body no longer requiring a post to be maintained – Legality (No. 862, *Wendel*, 20 December 2012)

Decision taken by the competent budgetary authority, and date termination becomes effective not preceding the actual deletion of the post (no. 21, *Schumacher*, 27 November 1970; - No. 316, *Bindges*, 18 October 1995; - No. 331 (b), *Nijman*, 8 January 1997 ; - No. 332 (b), *Van Soldt*, 8 January 1997; - No. 343, *Selvanizza*, 5 February 1997; - No. 345, *Cooper*, 6 February 1997; - No. 349/356, *Verdoni*, 20 November 1997, and on the same date: No. 355, *Chiavacci*; No. 357, *Garibbo*; No. 358, *Menelli*; - No. 716, *Caplan*, 14 December 2007)

Illegality of the decision when the date the dismissal takes effect is before the deletion of the post (No. 334, *Murzi*, 24 September 1996; No. 336, *Shields*, 24 September 1996)

Validity although the decision to terminate the contract was taken before the final decision of the budgetary authority, since the date the termination became effective did not precede the deletion of the post (No. 316, *Bindges*, 18 October 1995; No. 331 (b), *Nijman*, 8 January 1997; No. 332 (b), *Van Soldt*, 8 January 1997; No. 349/356, *Verdoni*, 20 November 1997, on the same day: No. 355, *Chiavacci*; No. 357, *Garibbo*; No. 358, *Menelli*; No. 716, *Caplan*, 14 December 2007)

Obligation, when several posts appear identical and only some of them are deleted, to apply objective criteria to select the staff members whose contracts will be terminated (No. 331 (b), *Nijman*, 8 January 1997; No. 332 (b), *Van Soldt*, 8 January 1997; No. 360(a), *Bizzarri*, 19 November 1997)

Error by the Administration in not taking account of the criterion of the place of work and the acceptance or rejection by the staff members concerned of a possible change in their place of work (No. 331 (b), *Nijman*, 8 January 1997; No. 332 (b), *Van Soldt*, 8 January 1997)

Objective nature of criteria of interchangeability among the staff members and of social insurance coverage (No. 360(b), Bizzarri, 6 March 1998)

**Staff member not giving satisfactory service** (CPR Article 9.1) (No. 86, *Dussart*, 7 December 1977; No. 135, *Prud’homme*, 8 July 1981; No. 246, *Dale*, 16 March 1989)

Lack of loyalty of a staff member who complained to outside bodies about alleged illegalities committed by his organization, in order to exert pressure on his own organization – Impairment of the relationship of trust between the Organization and its legal adviser (No. 205, *de Sangro*, 31 January 1986) (for a failure to renew a contract, see: No. 684, *Johnson*, 11 May 2006)

Staff member whose work is of insufficient quality, who is warned of the need to improve it and who, during the termination procedure, neither contests nor comments on the reports drawn up by the Administration – Professional inadequacy considered to be established (No. 86, *Dussart*, 7 December 1977)

Staff member whose work is of insufficient quality, who is given the chance to remedy the situation by a warning to this effect – Period indicated for improvement having to be respected – Consequence of termination too early – Allowance compensating for the termination taking place too early (No. 229, *Wagner*, 15 November 1987)

Staff member not capable of adequately performing the duties attached to her post, despite the efforts noted (No. 259, *Niedercorn*, 20 September 1990)

**Situation throwing discredit on the Organization** – Staff member’s indebtedness causing creditors to approach the Organization with numerous requests for the recovery of sums owed (No. 153, *Iacono*, 1 December 1982)

**Decision of the national authority to end the secondment of a seconded staff member** – NATO body obliged to terminate the contract, without observing the contractual period of notice (No. 118, *Cambier*, 13 May 1980; No. 255, *Lops*, 17 May 1990; No. 337, *Melas*, 25 October 1996)

2-4-11 Termination of the contract – Grounds which do not justify it

**Staff member not giving satisfactory service**

Substantial evolution of functions required – Consequence – The Organization may not require the staff member to acquire different skills from those needed for the post held – Illegality of termination (No. 70, *Groeneveld*, 29 January 1976)

Materially inaccurate facts – Muddled state of affairs ascribed to the staff member by persons not qualified to do so, and resulting from the inaction of other services (No. 155, *Meurer*, 7 July 1983)

**Retirement age – Consequences**

Impossibility of concluding a new permanent staff contract (CPR Article 67) – Temporary contract possible (CPR Article 77) – Remuneration – No entitlement to be paid at the previous rate (No. 53 (b), *Osy de Zegwaart,* 10 May 1974)

End of extended sick leave (No. 247, *Santoro*, 29 June 1989)

Termination with a loss-of-job indemnity replaced by a termination for extended sick leave – Misuse of powers (No. 242, *Mari*, 4 November 1988).

**Other grounds**

Dismissal on the basis of nationality – Nationality of a NATO member country – Illegality (No. 7, *Kermabon*, 22 May 1968)

Termination decided just six days before the end of a period covered by a medical certificate – No urgent necessity to replace the staff member – Illegality of the termination without the Administration ascertaining the anticipated length of the sick leave in question (No. 409, *Krieps*, 12 December 2000) (for termination when the staff member’s extended sick leave was about to end, see: No. 721(a), *Pongiluppi*, 22 June 2007)

Contradictory grounds – Decision based both on the deletion of the post and on the staff member’s insufficient professional capability – Appeals Board unable to determine the decisive ground for the dismissal – Illegality of the decision (No. 267, *de Oliveira*, 14 November 1991)

2-4-12 Notice

Period of notice appearing from the clauses of the contract – Period of six months in this case (No. 217, *Besques*, 22 October 1986)

Actual benefit – Period of 3 months (Article 7.2 then in force) not given to a sick staff member whose medical treatment did not allow him to seek new employment – Illegality (No. 2, *L’Hostis*, 13 October 1966)

Need to respect the period of notice – Termination of a contract because of repeated absences on the grounds of ill health (No. 172, *Keohane*, 5 December 1984)

Moment when the period of notice begins to run – Date of notice to the staff member of the decision terminating his contract (No. 349/356, *Verdoni*, 20 November 1997, on the same day: No. 355, *Chiavacci*; No. 357, *Garibbo*; No. 358, *Menelli*)

Notice – Staff member on sick leave and then on extended sick leave – Period of notice beginning on the date when the staff member should have recommenced his activities, being recognized as able to return to work (No. 847, *Vankrunkelsven*, 24 February 2012)

Period of notice prior to termination of the contract of a staff member on long-term sick leave who is unable to resume working owing to permanent invalidity – No – Notice period incompatible with possible developments in the staff member's state of health (Nos. 839-863-864, *Cauchie*, 7 February 2013)

**Substitution of an allowance for all or part of the contractual period of notice (Article 10.5)**

Yes, on the basis of CPR Article 65.2 then in force (No. 42, *Castiau-Thiry*, 8 November 1972)

Yes, on the basis of CPR Article 10.5 (No. 135, *Prud’homme*, 8 July 1981; No. 141, *Goderniaux*, 3 December 1981; No. 142, *Ivoy*, 3 December 1981)

Discretionary power of the Head of the NATO body (No. 141, *Goderniaux*, 3 December 1981; No. 142, *Ivoy*, 3 December 1981)

Head of NATO body having thought he was bound to apply the provisions of Article 10.5 and replace the contractual notice period by granting an allowance in lieu of notice – Error of law – Cancellation of that decision alone – Consequence – End date of the contract postponed – Board’s observation that the allowance in lieu of notice received by the staff member was equal to the pay that would have been received had the contract run until its expiration date – No material damage (No. 141, *Goderniaux*, 3 December 1981; No. 142, *Ivoy*, 3 December 1981)

This allowance not payable – Death of the staff member before the specified date of termination of the contract (No. 348, *Cozzolino and Imre*, 24 April 1997)

Indemnity pension owed to staff member with permanent invalidity – Indemnity equal to half the emoluments owed for the remaining period up to 180 days (Nos. 839-863-864, *Cauchie*, 7 February 2013)

**Information 6 months beforehand of the decision not to renew a definite-duration contract (Article 5.34, now Article 5.5.1)**

Information given to the staff member more than 6 months before the expiry of the contract – No right to an allowance (No. 139, *Hardenbol*, 9 July 1981)

Information given to the person concerned after the meeting of the Scientific Personnel Committee more than six months before the expiry of the contract, even if it was subsequently confirmed less than six months before the expiry of the contract (No. 125, *de Heering*, 29 October 1980)

Obligation to inform the staff member not entailing nullification of a decision not to renew the contract in the event of failure to so inform him – Guarantee which may entitle the staff member to damages – Information given three months and sixteen days late – Damages equal to three months and sixteen days of net basic salary granted (No. 410, *Bellec*, 25 April 2001)

Requirement to formulate this information in unambiguous terms

Information not sufficiently clear in this case (No. 12, *Ferrari*, 1 April 1969)

Statement in the specific case that is hypothetical and lacks the degree of certainty needed (No. 410, *Bellec*, 25 April 2001)

Information in the specific case that was quite unambiguous (No. 435, *Warnet*, 4 September 2002)

Possibility for the Administration to reconsider, less than six months before the expiry of the contract, its initial decision not to renew it (No. 348, *Cozzolino and Imre*, 24 April 1997; No. 435, *Warnet*, 4 September 2005)

**Termination of contract at the end of the probationary period (Articles 6.3 and 10.1)** – 30 days’ notice

Period fixed by the contract – Period not respected in the specific case – Payment of compensation for the late notice given to the staff member, equal to the salary he should have received until the end of the period of notice (No. 158, *Menet*, 8 July 1983)

Period of notice respected in the specific case (No. 209, *Bisschop*, 6 May 1986)

**Termination of contract before expiry - 90 days’ notice (Article 10.2)**

Starting point – Deletion of a post – Decision to delete must precede the decision to terminate the contract – Starting point for the period of notice may not be fixed before the decision to terminate the contract (Nos. 687-688, *Bundgaard and Moller*, 27 October 2005)

**No right to notice**

Decision of the national authority to end the secondment of a seconded staff member – NATO body obliged to terminate the contract, without observing the contractual period of notice (No. 255, *Lops*, 17 May 1990; No. 337, *Melas*, 25 October 1996)

Withdrawal of the staff member's security clearance certificate by the authorities of the country of which he/she is a national – Consequence – Immediate termination or dismissal (Art. 65 and 66 of the CPR) (No. 18, *Panella*, 3 June 1970; No. 125, *de Heering*, 29 octobre 1980; No. 200, *Simons*, 18 July 1985; No. 388, *NETMA*, 22 April 1999) – Administration required to terminate the contract without notice (CPR Art. 9.1), without being able to assess the merits of the withdrawal of clearance (No. 125, *de Heering*, 29 October 1980; No. 200, *Simons*, 18 July 1985; No. 286, *Hambli-Balter*, 26 May 1993; No. 442, *Melchior*, 8 October 2002)

2-4-13 Termination – Particular rules applicable to certain contracts

**Staff members in a particular situation**

Termination of an interpreter’s contract – Reasons duly justified, but based on facts which had not prevented employment under a previous contract – Compensation of the appellant who had legitimate reason to believe that these facts would not stand in the way of a new contract and had left the job he held in the interval (No. 11, *Mr X*, 25 October 1968)

Possibility of terminating the contract of a staff member on extended sick leave – Yes – Grounds – Extended sick leave itself or any other due and valid reason (No. 272, *Quarto*, 17 September 1992; No. 409, *Krieps*, 12 December 2000)

Termination of a seconded staff member’s contract – NATO body bound, without having to respect a period of notice, to terminate the seconded staff member’s contract as of the date set by the national authorities as the end of the secondment even if that is earlier than the anticipated end date of the contract (No. 255, *Lops*, 17 May 1990; No. 337, *Melas*, 25 October 1996)

**Termination of a contract during the probationary period** – Conditions

Board unable to go behind the reasons which may have prompted the termination (No. 209, *Bisschop*, 6 May 1986; case law overturned by decision No. 670, *Charlier*, 15 September 2004)

Due and valid reasons (No. 670, *Charlier*, 15 September 2004)

**Termination at the end of the probationary period** – Need to provide adequate grounds for termination of the contract (No. 11, *Mr X*, 25 October 1968; No. 90, *Perrier*, 10 March 1978)

2-4-14 Termination benefit

Benefit provided for in the contracts of NATO staff in Paris – Relocation of the Headquarters from Paris to Brussels

Staff members remaining in the service of the Organization under new contracts – No right to this benefit, since those concerned are still in employment with NATO and the new contracts have not affected their conditions of employment (No. 6(d), *Aldus and others*, 18 December 1967)

Concurrent payment of the indemnity for loss of job provided for in the 33rd Report – No – Entitlement to the greater of these two indemnities (No. 8, *Bornemann*, 8 September 1967)

Termination benefit – Benefit granted on termination of appointment for other than disciplinary reasons – Termination of contract on reaching the age limit – Right to this benefit (No. 6(d), *Aldus and others*, 18 December 1967)

Termination benefit – Indemnity instituted by the 33rd Report – Reasons for termination – Relocation of the International Staff from Paris to Brussels – No entitlement to that indemnity (No. 8, *Bornemann*, 8 September 1967)

###### 2-4-15 Indemnity for loss of job

Date when the right to an indemnity is assessed – Date when the contract really ended – Case of staff member whose post was deleted, for whom the Administration acknowledges entitlement to this indemnity but who, during the notice period, is placed on sick leave, then on extended sick leave, and is finally found to be incapacitated for work by the invalidity board (para 2 of Art. 1 of Annex V) (No. 763, *Wiane-Hogan,* 6 May 2010)

###### **No right to this indemnity**

Staff member holding a fixed-term contract (para.3 of Annex V) – Exception for staff members who have served NATO for not less than 10 years (para.10 of Annex V) – Not applicable in the specific case (No. 45, *de Leeuw*, 9 November 1972)

Decisions of the NATO Military Budget Committee and the North Atlantic Council approving a new organization chart – Decisions not *per se* giving entitlement to this indemnity (No. 398, *Driscart*, 12 July 2000)

Right that cannot be conferred by a letter from the Administration merely informing the staff member of the upcoming deletion of the post (No. 366, *Lombardi*, 10 November 1997)

Staff member dismissed because of physical incapacity (No. 84, *de Raffaele*, 13 January 1978)

Staff member not giving satisfactory service and whose post has not been deleted (No. 205, *de Sangro*, 31 January 1986)

Staff member whose contract is terminated because of physically incapability (No. 366, *Lombardi*, 10 November 1997; No. 398, *Driscart*, 12 July 2000; No. 702, *Hoenjet*, 8 November 2006)

Seconded staff member whose contract is terminated because of the early cessation of the secondment (No. 255, *Lops*, 17 May 1990)

Staff member offered a suitable post in the same grade and at the same headquarters or in the same country (No. 240, *McGaughey*, 3 November 1988; No. 423, *Penninckx*, 11 July 2001)

Staff member whose duties have not been changed in such a way that she no longer possesses the required qualifications (No. 86, *Dussart*, 7 December 1977)

Staff member who dies during the period of notice preceding dismissal (No. 348, *Cozzolino and Imre*, 24 April 1997)

Staff member who, during the notice period, suffered a road accident and was placed on sick leave, then on extended sick leave and finally found to be permanently incapacitated for work by the invalidity board (No. 763, *Wiane-Hogan,* 6 May 2010)

Staff member dismissed during the probationary period (No. 670, *Charlier*, 15 September 2004)

###### **Right to this indemnity**

Only in the cases set out in sub-section (2) of paragraph 1 of Annex V (No. 147, *Fursey*, 28 April 1982)

Staff member whose duties have been changed in such a way that he or she no longer possesses the required qualifications (No. 67, *Mancini*, 28 January 1976; No. 86, *Dussart*, 7 December 1977; No. 99, *Kester*, 2 February 1979)

Staff member employed in the public service whose contract is terminated and who has not been immediately reintegrated in his original administration (No. 83, *Hintz*, 16 November 1977)

Staff member whose indefinite-duration contract is terminated because of the deletion of his/her post, and who has not been offered another post (No. 267, *de Oliveira*, 14 November 1991)

Staff member whose indefinite-duration contract is terminated because of the deletion of his/her post (No. 97, *Baylac*, 6 March 1979; No. 433, *Flachaire*, 23 January 2002)

 Deletion of the post not the grounds – Staff member whose appointment is terminated because the national authorities do not wish his/her contract to be extended (No. 147, *Fursey*, 28 April 1982)

termination of services includes the case of non-renewal of a contract (No. 136, *Topliss*, 22 October 1981; No. 138, *Davies*, 22 October 1981; No. 147, *Fursey*, 28 April 1982)

Staff member who has served NATO for not less than 10 years

Calculation of the length of service completed – Case of the staff member assigned to NATO by the United States government by virtue of arrangements between NATO and that government, then employed directly by NATO – Period that must be taken into account, whatever the employment status of the staff member (No. 305, *Cox*, 17 November 1994)

Staff member who took up duties on 3 January when 1 and 2 January were official holidays – Entire year therefore taken into account for the calculation of the ten years (No. 83, *Hintz*, 16 November 1977)

Also necessary to fulfil the conditions laid down in, para.1 of Annex V to the CPR (No. 59(b), *Rasmussen*, 4 June 1975; No. 63, *Laval*, 4 June 1975; No. 136, *Topliss*, 22 October 1981; No. 138, *Davies*, 22 October 1981; No. 139, *Hardenbol*, 9 July 1981; No. 147, *Fursey*, 28 April 1982)

###### Need to meet the conditions of Article 1(2)(b) of Annex V to the CPR (No. 67, *Mancini*, 28 January 1976; No. 72, *Van* *Duin*, 11 May 1976)

###### **Method of calculation**

Case where the period of notice is prolonged because the staff member is given extended sick leave (No. 41, *Durüturk*, 19 April 1972)

Staff members recruited before 1974 and not taking up the option to remain in the Provident Fund scheme – Staff members henceforth subject to the pension scheme – Inclusion of the Organization’s contribution to the Provident Fund in the indemnity for loss of job – No (No. 230, *Mavridis*, 21 May 1987)

Indemnity calculated from the date when the staff member joined the Organization (para.6 of Annex V) – Period of service must be uninterrupted – Consequence – Period taken into account is the last continuous period of service with NATO or with another coordinated organization prior to the termination of the contract – Exclusion of a previous period of service by the same staff member separated by a career break – Exception for short breaks which do not affect continuity of service – In this case, break of three years which interrupted the staff member’s career (No. 313, *Graas*, 8 June 1995)

Amount equal to one month for each year of service from the date when the staff member joined NATO (No. 811, *Luja*, 30 September 2011)

###### **Payment**

Payment subject to a unanimous decision by the governing board of the employing NATO body (No. 374, *Todd*, 6 March 1998)

Consequence – Staff member who was paid the job loss indemnity – Rejection of her request that the Administration be ordered to pay her compensation for the injury suffered (No. 141, *Goderniaux*, 3 December 1981)

##### 2-5 Obligations and responsibilities (Chapter IV)

2-5-1 Requisition of staff members (Art. 10.2)

Duties that may be required – Role of desk officer or duty officer (DDO) – Legality (No. 56, *Mavridis*, 9 May 1974)

2-5-2 Becoming candidates for or holding a political office not allowed – Necessity of obtaining consent (Art. 12.1)

Consequences

Impossibility of the Administration withdrawing its consent just a few days before the elections (No. 71, *Glimmerveen*, 29 January 1976)

Obligation for such staff members not to involve NATO in the discharge of those activities (No. 58, *Glimmerveen*, 23 April 1975; No. 71, *Glimmerveen*, 29 January 1976)

Staff members not allowed to do anything that would reflect adversely on their position or on the good repute of NATO (No. 58, *Glimmerveen*, 23 April 1975; No. 71, *Glimmerveen*, 29 January 1976)

2-5-3 Ban on accepting advantages from sources outside NATO (art. 12.2.3)

No breach – Letters of recommendation from customers of the NATO Agency – Common practice in business relationships (No. 844, *Garcia Cidoncha*, 1 June 2012)

2-5-4 Obligation of discretion (art. 12.5)

Breach

Information given to another staff member regarding a decision taken about him – Fault not justifying dismissal (No. 4, *Bouffioux*, 19 April 1967)

Staff member approaching the Bar Association about being restrained from entering NATO premises (No. 271, *Quarto*, 17 September 1992)

Disloyalty of a staff member who reported illegal actions allegedly committed by his organization to external bodies, thus putting pressure on his own organization (No. 205, *de Sangro*, 31 January 1986) (for non-renewal of a contract, see No. 684, *Johnson*, 11 May 2006)

2-5-5 Ban on engaging in an outside occupation or holding an outside office incompatible with the proper discharge of duties without obtaining the opinion of the Head of NATO body (Art. 14.1.b in 1976, later 12.2.1.b)

Notion of incompatible outside occupation – Private, paid work as legal counsel for a SACT staff member performed by the SHAPE Legal Adviser (No. 684, *Johnson*, 11 May 2006)

Powers of the Organization with regard to a staff member who fails to comply – Disciplinary action (No. 71, *Glimmerveen*, 29 January 1976)

Staff member involved in political activities after rejoining NATO – Administration required, before taking disciplinary action, to instruct the staff member to choose between his duties within the Organization and his political activities (No. 71, *Glimmerveen*, 29 January 1976)

2-5-6 Obligation to treat colleagues with respect and courtesy and not to discriminate against them on any grounds (Art. 12.1.4; provisions introduced into the CPR in February 2003)

Application to previous situations under a general principle of law (No. 672, *Photopoulos*, 3 March 2005)

Power of a NATO body to establish local rules

Rules not yet established – Non-enforcement of rules established by another NATO body (No. 672, *Photopoulos*, 3 March 2005)

Rules invoked not applicable to the body employing the staff member – Application of Article 12.1.4 only (No. 762, *Walker*, 12 March 2010)

Discrimination against a staff member

Staff member having been the only one to be reminded of obligations – Discrimination not established, since the reminder resulted only from his own behaviour during the preceding period (Nos. 698-700-701, *Kirby*, 14 September 2006)

Staff member not establishing that the differences in treatment observed were based on reasons other than the interests of the service and the respective professional skills of her colleagues and herself, in particular her age, nationality, ethnic origin and the fact that she is a woman (No. 762, *Walker*, 12 March 2010)

**Notion of harassment**

Facts demonstrating, by their nature and the accumulation thereof, that the appellant was the victim of attitudes and actions which objectively created a climate hostile to him or her

Harassment established – Actions contrary to the principles of good management and non-discrimination – Staff member entitled to compensation (No. 672, *Photopoulos*, 3 March 2005)

Harassment not established

Staff member offering no evidence that the separate incidents, added together, amounted to conduct betraying malice aforethought (No. 690, *Bengi*, 29 June 2006)

Allegations not corroborated and relating to common incidents in professional relations (No. 762, *Walker*, 12 March 2010)

Difference owing to incompatible temperaments between the staff member and his line manager, which the Administration ended by transferring the staff member to work for a different manager (No. 824, *Karagounis*, 9 March 2012)

Situation from which the staff member claims to have suffered mainly attributable to her own attitude, given that all the staff in the service were subject to the same working conditions (Nos. 839-863-864, *Cauchie*, 7 February 2013)

Staff member criticizing the behaviour of the Administration, which allegedly sought to harm him deliberately, whereas each of the behaviours cited was founded on reasons that had to do with the proper use of the Organization’s money and its efficient running (No. 756, *Baldwin*, 18 December 2009)

Senior staff member having encountered, with the Head of NATO body employing him, differences of judgment in the organization and management of the body – Harassment not established, particularly as such disagreements are normal in the management of any entity, body or company (No. 756, *Baldwin*, 18 December 2009)

Obligation of the Administration when informed of a situation involving harassment

 Once the facts have been established, demonstrate good management and a duty of care by seekign appropriate ways of ending it and re-establishing a serene, respectful working environment (No. 770, *Fabi and others,* 9 July 2010)

Steps appropriate in this case, escept for the failure to acknowledge the situation – Change in the organization chart removing any kind of hierarchical and physical link between the plaintiffs and the person accused of harassing them – Balance struck appropriate with the interests of the service in a small structure of 120 staff members where it is impossible to prevent contact between the plaintiffs and the person responsible for the harassment (No. 770, *Fabi and others*, 9 July 2010)

Consequence of the accusation of harassment – Disciplinary action – 7-day suspension – Illegality in the present case, given the constant, deliberate manoeuvres by the Administration to isolate the staff member from her superiors and her work colleagues (No. 832, *Pavesi*, 24 February 2012)

2-5-7 Ban on any action or activity which may reflect adversely on the staff member’s position or on the good repute of the Organization (Art. 13.2)

Obligation to inform NATO of any legal proceedings or criminal judgment against a staff member – No

Exception if those legal proceedings or criminal judgment are likely to reflect adversely on the good repute of the Organization, in particular in the light of the nature and gravity of the acts and the nature of the duties of the staff member in question (No. 380, *Bergantino*, 12 November 1998)

Staff member who neglected to indicate that he had been fined 4.5 million lire by an Italian military tribunal for fraudulently obtaining reimbursement by the Italian Defence Ministry of fictitious hotel bills for a mission prior to his secondment to NATO – No adverse impact on his position or on the good repute of the Organization (No. 380, *Bergantino*, 12 November 1998)

2-5-8 Obligation of the Administration to provide assistance and compensation to its staff (Art. 14)

More general obligation, regardless of the provisions of Article 14, for Heads of NATO bodies who are responsible for the proper running of the service to examine situations brought to their attention by staff members (No. 164, *de Jonge*, 2 March 1984)

 Obligation to examine, from the administrative standpoint, the follow-up to slanderous remarks, regardless of the possible legal consequences thereof (No. 164, *de Jonge*, 2 March 1984)

Obligation to protect its staff members against the actions of a national authority that fails to grant the particular protections guaranteed by international agreements – Obligation not applying to judicial action directed against a staff member as a private individual and bearing no relation to his office (No. 344, *Gasparini*, 17 July 1997)

Verification by the Board of the Administration’s obligations and assessment of the wrongful nature of its conduct (No. 344, *Gasparini*, 17 July 1997)

2-5-9 Obligation to ensure health and safety conditions for staff members (Art. 16.1)

Obligation to ensure adequate health and safety conditions (No. 740, *Woodcock*, 31 October 2008)

2-5-10 Obligation to accept official communications from the Organization

Staff member at fault by refusing to accept official communications from the Administration, despite the debatable nature of the process used by the Administration to compel him to do so (No. 268, *Quarto*, 26 February 1992)

Fault by the negligent staff member, who could not ignore the Administration’s attempts to notify him of a decision and took no initiative to receive the documents (No. 272, *Quarto*, 17 September 1992; No. 273, *Quarto*, 17 September 1992)

Administration deciding that a document would be delivered by handing it over in person – Staff member refusing to come in on the specified day and time, invoking the necessity of being accompanied by legal counsel – Receipt of a document not requiring the presence of counsel – Refusal to receive the document being subject to disciplinary action (No. 719, *Kirby*, 21 September 2007)

##### 2-6 Duration of work and work schedules (Chapter V)

(Nil)

##### 2-7 Security (Chapter VI)

Classified document (Art. 18) – Notion – Document that itself should also have a classification (directive AD 70-1) – Not in the present case – Document with only one classification indicated ("NATO Restricted") in a superimposed box from a photocopy– Insertion into a case file by the staff member of a document that the Administration claims was classified – Fault not established – Illegality of disciplinary action for that (No. 827, *Pavesi*, 24 February 2012)

##### 2-8 Salaries and allowances (Chapter VII)

2-8-1 General rules

**“Noblemaire” principle** – Duty of the international organizations to attract staff members from States where the pay is highest (ILOAT No. 825) – Breach alleged but not established (No. 296, *Daenes*, 5 May 1994; No. 297, *Salaün*, 5 May 1994)

**Right to a stable, objective, transparent rule** for determining the salaries of international civil servants (nos. 705-706, *Roden & Valkenberg*, 25 May 2007; - nos. 708-711, *Synadinos & Michaux*, 25 May 2007)

**Re-establishment of careers**

Staff member improperly laid off, then reinstated – No entitlement to the payment of salary and allowances for the period not worked – Entitlement to compensation equal to the difference between the emoluments he or she would have received at NATO and the salary resulting from professional activity engaged in during the same period (No. 406, *Schulze*, 27 September 2000; No. 703(a), *Lelling*, 9 November 2006)

Need, during this calculation, to deduct from the amount of the salaries taken into consideration the income tax collected on these salaries (No. 406, *Schulze*, 27 September 2000).

Former staff member enjoying social coverage and pension entitlements – Wage income to be compared – Income net of social security premiums (No. 703(b), *Lelling*, 25 May 2007).

**Other**

Staff members required to provide the Administration with all the information necessary for determination of their eligibility for allowances (Art. 24.3) – Staff member who concealed his divorce with a view to continuing to receive the benefits granted to married staff members – Breach punishable by disciplinary action (No. 243, *Rho*, 15 March 1989)

Late payment of salary or allowances – No CPR provision for the payment of interest in the event of a delay – But interest due when there has been an excessive delay (No. 105, *Baylac*, 10 January 1980)

2-8-2 Salary

**Method of calculation**

Salary based on the grade in the contract signed by the staff member (No. 94, *de Sangro*, 6 July 1978)

Method of calculation for B- and C-category staff members (Annex II to the CPR) – Reference to best employers – Location of those employers – All of Turkey, whereas most NATO staff members in Turkey lived in the Izmir area – Legality (No. 187, *Cicek*, 18 April 1985)

Payment impossible when duties not performed (No. 73, *Allan*, 12 May 1976)

Payment of salary impossible for a period after the contract has ended (No. 198, *Ross*, 14 May 1985)

**Salary adjustment**

Recommendations of the Coordinating Committee of Government Budget Experts of the Coordinated Organizations

Type and basis (Nos. 218 to 227, *Eden and others,* 26 March 1987)

Adoption by the North Atlantic Council – Deliberations remaining legally independent from those of the decision-making bodies of the other Coordinated Organizations – Deliberations of the other organizations not creating entitlements for NATO staff members – Illegal discrimination not established (Nos. 218-227, *Eden and others*, 26 March 1987)

Salary adjustment between 1974 and 1976 (123rd Report of the Coordinating Committee) – Increase of 80%, then 2/3 of the cost-of-living increase, whereas the provisions in effect at the time of contract signature stipulated an adjustment “to meet the full change in the cost of living” – Balance of the contract not upset (No. 93, *Mills*, 6 July 1978)

Salary adjustment (159th Report of the Coordinating Committee, approved by the Council on 9 March 1979) – Provisions renewed until 30 June 1986 (No. 174, *Evans and others*, 14 February 1985)

Wage restraint in the form of a levy (191st Report of the Coordinating Committee, approved by the Council on 2 March 1983) – Levy constituting neither a tax nor a para-fiscal charge – Not at variance with the Ottawa Agreement (No. 174, *Evans and others*, 14 February 1985)

Reference to the net remuneration of public servants in some Member States (254th Report of the Coordinating Committee, approved by the Council on 26 January 1990) – Provisions previously in effect not upset (No. 293, *Kermis*, 5 May 1994; No. 296, *Daenes*, 5 May 1994; No. 297, *Salaün*, 5 May 1994)

Annex II to the CPR in effect from 1 January 2003 to 31 December 2006 – Salary adjustment calculated in accordance with specific rules that ruled out their replacement by days of leave (Nos.705-706, *Roden & Valkenberg*, 25 May 2007; Nos. 708-711, *Synadinos & Michaux*, 25 May 2007)

Annex II to the CPR applicable to the years 2007 to 2012, adopted by the Council on 20 September 2006

Non-monetary elements excluded from consideration, including those sought for the previous years with effect from 1 January 2007 (No. 742, *Jourdan and others*, 31 July 2008)

Equal pay adjustments between Belgium and Luxembourg (187th Report of the Coordinated Organizations) – Rule valid only for annual adjustments, not special adjustments – Consequence – Difference between the increases in the two countries only momentary, since the annual increase was deducted from the special adjustment and the adjustment from one 1 January to the next remained the same in both countries (Nos.757-758-759, *Hassink, Kneip & Holzschuh*, 30 October 2009)

Application of the affordability clause (Art. 8 of Annex II) – Exceptional and unforeseen circumstances – Not established in the present case – Consequence – Obligation for NATO to apply the agreed method of calculation in Articles 1 to 6 (Nos. 784–794, 797–804 and 807–809, *Hill and others*, 4 October 2010)

2-8-3 Fiscal regime

Exemption of NATO staff members’ earnings from any income tax on physical persons (No. 61, *Arnbak*, 4 June 1975)

Exemption of remuneration paid to staff members (Paris Protocol) – Exception for staff members employed by a NATO body in Germany if they had been living in Germany for more than twelve months (No. 279, *Swan*, 14 January 1993)

Emoluments subject to tax in Switzerland – Necessity of the staff member disputing the taxation before the competent national courts – Abstention of the staff member for reasons that cannot be attributed to NATO –NATO not liable (No. 384, *Neschke*, 10 March 1999)

2-8-4 System of allowances – General rules

**Statutory nature – Consequence**

Power of the Administration to modify it unilaterally (No. 57, *Warren*, 11 December 1974; No. 77, *Vanderberghe and others*, 25 February 1977; No. 80, *Salançon and others*, 16 November 1977; No. 145, *de Sangro*, 4 December 1981; No. 371, *Murzi*, 6 March 1998)

Power to modify it at any time (No. 425, *Hadler*, 10 October 2001; No. 426, *Prideaux*, 10 October 2001; No. 430, *Milhoux-High*, 1 March 2002)

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

**Replacement of one allowance by another**

Consequence – More restrictive conditions

Legality (No. 57, *Warren*, 11 December 1974)

Legality, unless new rules on awarding them upset the balance of the contract (No. 77, *Vanderberghe and others*, 25 February 1977; No. 80, *Salançon and others*, 16 November 1977)

Entitlement to a compensatory allowance, under the terms of the 93rd Report of the Coordinated Organization, if new rules were to result in the individual receiving less total remuneration than before (No. 77, *Vanderberghe and others*, 25 February 1977; No. 80, *Salançon and others*, 16 November 1977)

**Modification of the rules on granting an allowance**

Modification of the system of the household allowance – Balance of the contract not upset – Legality (no. 145, *de Sangro*, 4 December 1981)

**Erroneous payment of an allowance to which the staff member was not entitled**

Staff members who could not have been unaware of the new conditions for granting the household allowance or the fact that continued payments in line with the previous rules were only of a temporary nature until such time as the new rules went into effect – Staff members not required to refund the excess payments – No fault by the Organization (No. 77, *Vanderberghe and others*, 25 February 1977)

Continued payment for 17 months – Fault by the Administration in the drafting and screening of the forms of staff members who were invited to provide information (albeit incomplete) about their family situation, mitigated by the fault of the staff members, who were duly informed by an office notice of the conditions for granting the allowance and who had the reimbursements of the erroneously paid allowances spread over a very long period (No. 77, *Vanderberghe and others*, 25 February 1977)

Continued payment for 28 months – Fault by the Administration, which was informed of the staff member’s situation and the age of his son in particular – Staff member required to clarify this but having every reason to believe that NATO was applying the same rules as Germany, which set the maximum age for the dependent children’s allowance as 27 – Fault of the Administration for the period before the staff member’s son’s 27th birthday, but fault of the staff member for the period after that (No. 261, *Zimmerman*, 20 September 1990)

Continued payment for 44 months – Fault by the Administration, which had been informed of the staff member’s new situation, mitigated however by the fault of the staff member in not informing the Administration of the erroneously received allowance – Consequence – Staff member required to reimburse the allowance but awarded compensation to redress the Administration’s fault, amounting in this case to approximately 10% of the money to be paid back (No. 263, *Dierickx*, 31 January 1991)

Continued payment for 49 months – Serious negligence by the Administration – Consequence – No reimbursement by the staff member of the mistakenly received allowances (No. 689, *Moroso*, 9 March 2006)

Continued payment for 6 years, but reimbursement not sought by the Administration (No. 145, *de Sangro*, 4 December 1981)

Administration having wrongfully thought that Canadian staff members had the choice of NATO’s allowance or the Canadian allowance, whereas they were only entitled to the Canadian one – Payment by NATO depriving them of a benefit they could have received from the Canadian administration – Request for repayment creating a prejudice (Nos.196-197, *Langdon & Rein*, 15 May 1985)

**Requests for payment**

Consideration of claims for allowances – Events which took place more than three months before the claim is made cannot be taken into account (Article 24.6)

Claim submitted on 6 December can be met only with effect from the previous September – No exceptional circumstances (No. 204, *Faurie*, 28 November 1985)

Request submitted on 26 July that could only be satisfied as of the previous 26 April – Duly justified exceptional circumstances not proven (No. 811, *Luja*, 30 September 2011; No. 822, *Bürgstein*, 30 September 2011)

Refusal to pay – Grounds – Insufficient credits available – Grounds not legal justification for a refusal to pay compensation to which the staff member is entitled (No. 372, *Iordanoglou*, 8 May 1998)

2-8-5 Expatriation allowance (art. 28.1)

**Nature** – Allowance in addition to primary remuneration and paid monthly (No. 393, *Lindner*, 24 February 2000)

**Purpose** – to partially compensate for the added cost to a staff member of having to live, because of his professional activities, in a given country while maintaining sentimental and, in some cases, material ties to the country of which he is a national (No. 420, *Woppowa*, 5 September 2001)

**Guarantee of the rate of payment** – None, under the terms of the 93rd Report of the Coordinated Organizations approved by the North Atlantic Council on 1 February 1974 (No. 80, *Salançon and others*, 16 November 1977)

**Notion of appointment by the Organization**

Initial contract for a post in category A, L or B (No. 393, *Lindner*, 24 February 2000)

Notion to be assessed in the light of whether the object of the expatriation allowance is to partially compensate for the added cost to a staff member of having to live, because of his professional activities, in a given country while maintaining sentimental and, in some cases, material ties to the country of which he is a national – Notion that may characterize a new assignment – Criteria (No. 420, *Woppowa*, 5 September 2001)

**Condition of nationality:**

Condition not fulfilled

Staff member who was a national of the country where she was employed –Entitlement to the expatriation allowance not established even though she had been resident in another country at the time of her recruitment (No. 689, *Moroso*, 9 March 2006)

Staff member of Dutch nationality assigned to Germany – Entitlement to the expatriation allowance (No. 393, *Lindner*, 24 February 2000)

Staff member acquiring, through marriage, the nationality of the host country – Staff member having no power to renounce that nationality – Entitlement to the expatriation allowance – Case of a female staff member automatically acquiring Italian nationality through marriage under the Italian law of 23 April 1983 and only having the power to renounce that nationality after she had been appointed by NATO (No. 232, *Watkins-Robino*, 2 October 1987) – Staff member having had the power to renounce it prior to her appointment at NATO – Entitlement to the expatriation allowance not established (No. 232, *Watkins-Robino*, 2 October 1987)

Staff member resident for more than ten years in the country where he is hired by a NATO body (No. 279, *Swan*, 14 January 1993)

**Notion of resident (art. 28.1)** (No. 27, *Jenkins*, 10 June 1971)

Not continuously resident in the country of assignment for the three years preceding the appointment (No. 89, *Quantrell-Park*, 10 March 1978)

Staff member recruited by a NATO body established in Belgium – Staff member previously employed by a company under Belgian law based in Belgium on a contract governed by Belgian law, receiving health insurance and complementary health insurance in Belgium, who was in possession of two successive Belgian residence cards and whose wife worked in Belgium – Consequence – Belgian resident within the meaning of Article 28.1 – No entitlement to the expatriation allowance (No. 776, *De Simone,* 29 October 2010)

State with which the staff member has established most of her interests – Range of indices – Staff member having kept connections in the State where she was employed by NATO that included administrative ties, accommodation with a fixed telephone line that she gave to her correspondents, the benefit of professional training courses and unemployment benefits while at the same time seeking employment in the State of which she was a national (No. 867, *Mencia Marban*, 20 December 2012)

Notion that does not refer to the staff member’s position vis-à-vis the police regulations of the country in which they are employed (No. 89, *Quantrell-Park,* 10 March 1978)

**Duty station (art. 28.3.1)** – Assignment less than 50 km from the frontier of the country of which officials are nationals – Entitlement to the allowance provided that the actual residence is in the country of service (No. 160, *Hap*, 20 October 1983)

 Notion of actual and habitual residence

Residence during working days (No. 160, *Hap*, 20 October 1983)

Residence in a hotel room – Notion assessed according to the conditions of occupation – Residence for 10 days a month – Not actual and habitual residence (No. 160, *Hap*, 20 October 1983)

Presence interrupted by 50 days of missions abroad – Residence assessed in the light of the leases presented – Entitlement to the allowance provided a lease had been signed for that period (No. 160, *Hap*, 20 October 1983)

**Condition of the allowance granted (Art.**28.2.3) – Staff recruited on or after 1 January 1996 paid the allowance at the rate of 18% for the first ten years of service (No. 411, *Bayliss*, 5 September 2001)

**Power to grant an exception for situations of special hardship (Art. 28.3.3)** – Not established in this case (No. 776, *De Simone,* 29 October 2010)

2-8-6 Household allowance

Head-of-family allowance replaced with the household allowance – Decision approved by the North Atlantic Council on 1 February 1974, in accordance with the 93rd Report of the Coordinated Organizations (No. 77, *Vandenberghe and others*, 25 February 1977)

Allowance reserved for married staff, excluding persons bound to one another, regardless of their gender, by a long-term civil partnership (No. 814, *Hohenforst*, 13 July 2011)

 Person bound by a long-term partnership being neither married within the meaning of Art. 29.1.1 nor a dependant within the meaning of Art. 29.3 (No. 814, *Hohenforst*, 13 July 2011)

Amount dependent on the spouse’s income

Spouse’s income above the ceiling – Loss of entitlement to the allowance (No. 263, *Dierickx*, 31 January 1991)

Requirement for the Administration to know the exact amount of the spouse’s earnings – Refusal of the staff member to disclose them – Consequence – No payment of the allowance (No. 61, *Arnbak*, 4 June 1975)

Amount to be taken into consideration – Income after deduction of the national taxes that would have been payable by a person having no other income or the internal tax of the Coordinated Organization that employed the spouse (No. 61, *Arnbak*, 4 June 1975)

2-8-7 Compensation for overtime

No entitlement for A-grade staff members (CPR, Art. 17.3.2) – Option of requesting compensatory leave (No. 479, *Coppin*, 29 January 2003)

2-8-8 Installation allowance (Art. 26.2.3)

**Conditions** – Residence more than 100 km away from new duty station (Art. 26.1.1) (No. 867, *Mencia Marban*, 20 December 2012)

**Second instalment** – Payment owed to the staff member under Article 26.1.1 (change of residence) and 26.1.2 (family residing with the staff member)

Date on which the eligibility criteria must be assessed

Date of payment of the allowance (Art. 24.4) (No. 411, *Bayliss*, 5 September 2001; No. 418, *Farnworth*, 5 September 2001)

Date on which the contract is confirmed (no. 146, *Lewis*, 4 December 1981)

Second instalment payable to an official whose family comes to live with him at any time in the performance of his contract (No. 411, *Bayliss*, 5 September 2001; No. 418, *Farnworth*, 5 September 2001)

Second instalment payable to an official who gets married during the performance of his contract and whose wife comes to live with him at his residence in his duty station (No. 411, *Bayliss*, 5 September 2001; No. 418, *Farnworth*, 5 September 2001)

Second instalment not payable when the staff member, a United States resident prior to his appointment, was hired in Brussels but transferred to the United States during his probationary period and was living there at the time his contract was confirmed (No. 146, *Lewis*, 4 December 1981)

**Reimbursement** of half of the allowance paid to staff members who complete less than twelve months of service (No. 669(b), *Slater*, 26 November 2004)

2-8-9 Education allowance (Art. 30.1)

Education less than 80 km from the duty station – Entitlement to the allowance not established (No. 239, *Varlese*, 25 May 1988; No. 252, *Quoirin*, 7 March 1990; No. 347, *Kodeck*, 4 December 1997)

Notion of the education cycle (No. 347, *Kodeck*, 4 December 1997)

Notion of post-secondary studies – University studies (No. 876, *Trickett*, 17 January 2013)

Consideration of accommodation costs for children who live away from the parental residence – Condition of being “essential for their studies” – Special difficulties for children attending the educational establishment if they were to live at their parents’ home, owing to the distance or transportation problems – Difficulties not established in the specific case, since the staff member lived 5 km from the Brussels university attended by her children (No. 376, *Doling*, 8 May 1998)

Age as from which entitlement to the allowance begins – Age at which the child starts to attend primary school – Compulsory school age in the country to which the school system attended is attached (No. 712, *Zündorf*, 22 June 2007)

Threshold beyond which education expenditure is reimbursed 70% or 90% by the Organization – Threshold should be the same for all staff, regardless of the school attended by the children of staff when they are obliged, for educational reasons, to choose one school over another (No. 692, *Abernethy*, 10 May 2006)

Education in a country of which one of the parents is a national or in the duty country – Exception – Ability of the Administration to bear the cost of education in a third country if the education costs are lower there – Condition not fulfilled in this case (No. 836, *Akan*, 15 December 2011)

Payment on an exceptional basis (article 2.2 of Annex III.C) – Possibility limited to cases where the refusal of the allowance would cause special hardship (No. 876, *Trickett*, 17 January 2013)

**Deductions under Art. 24.7**

Basis – NATO should not be required to meet the cost of an allowance where the staff member is entitled to an allowance of the same nature from his or her own government in particular (Nos.196-197, *Langdon & Rein*, 15 May 1985)

Allowance available under Canadian regulations – Allowance of the same nature as under Art. 7 of Annex III.C (Nos.196-197, *Langdon & Rein*, 15 May 1985)

2-8-10 Dependent children’s allowance (Art. 29.2.1)

**Notion of dependent children** – Conditions

Child under 18 years of age – Legality of the Administration’s decision ordering the reimbursement of an allowance received for a 26-year-old child (No. 261, *Zimmermann*, 20 September 1990)

Child with a direct legal connection to the staff member, whether legitimate, illegitimate or adopted (No. 395, *Beemelmanns*, 25 February 2000)

Married staff member – Entitlement to the dependent children’s allowance if the child is fully maintained by the household (No. 127(b), *Zerbato*, 12 May 1981) – Period between the separation of residence and the divorce – Staff member entitled to the allowance even if the judgment on separate residence awarded custody of the children to the other spouse (No. 127(b), *Zerbato*, 12 May 1981)

Staff member mainly and permanently maintaining the child (No. 395, *Beemelmanns*, 25 February 2000)

**Deductions under Art. 24.7** – Case of divorced staff member whose ex-spouse is receiving an allowance paid by national authorities

Basis – NATO should not be required to meet the cost of an allowance where the staff member is entitled to an allowance of the same nature from his or her own government in particular (Nos.196-197, *Langdon & Rein*, 15 May 1985)

Restrictive list – Illegality of deducting an allowance received by the former spouse (No. 394, *Löwen*, 25 February 2000)

2-8-11 Other dependants’ allowance (Art. 29.3)

Persons in respect of whom it may be granted

Only persons other than the staff member’s children (No. 78, *Schoots*, 25 February 1977)

Child of the staff member when he is no longer covered by the dependent children’s allowance, for example because of his age or his state of health – No (No. 78, *Schoots*, 25 February 1977)

Simple option for the Administration, provided there was no error of law, obvious error of judgment or misuse of authority (No. 386, *Dols*, 11 March 1999)

Resources of the dependant having increased and gone over the threshold set by the guidance issued by the Head of NATO body – Payment of the allowance stopped – Yes – Repayment of part of the allowances already paid – No, given the obviously inequitable result of doing so (No. 386, *Dols*, 11 March 1999)

2-8-12 Handicapped children’s allowance (Art. 29.4)

Right for any NATO staff member who has a handicapped child provided that the child is dependent on that staff member, regardless of the age of the child, and regardless of the child’s age at the time he or she develops the handicap (No. 436, *Maggi*, 16 July 2002)

2-8-13 Extra duties allowance (Art. 32.1)

Remuneration determined by the contract that was signed – Option, in some circumstances, of paying an extra duties allowance (No. 34, *Smith*, 19 November 1971)

Cumulative conditions – Vacancy of a post on the establishment table of a NATO body and a staff member of a lower grade being formally designated to assume the full responsibilities of the post in question (No. 95, *Siddi*, 8 December 1978)

Allowance paid for the period in which the staff member temporarily performs the duties of his or her absent superior (No. 94, *de Sangro*, 6 July 1978)

Payment of the allowance for 6 years – Long period attesting to the merits of a request for an upgrade (No. 806, Gadaleta, 27 May 2011)

2-8-14 Austere conditions allowance (Annex XIV)

Austere conditions allowance stipulated by decisions to which Annex XIV to the CPR refer – Council-approved missions – Notion of austere accommodations – Substantially deficient hygienic conditions – Stay in Sicily in the summertime, in rooms that were not cleaned, where the towels were changed only once a week (No. 875, *Raets*, 20 December 2012)

##### 2-9 Travel and removal expenses (Chapter VIII)

2-9-1 Reimbursement of travel expenses (Art. 38)

Definition of permanent place of residence and home address – Place with which the staff member has the closest personal ties (No. 260, *Bond*, 20 September 1990)

 Staff member declaring his home to be in Australia, the country to which his parents emigrated from the United Kingdom but which he has only visited once – Home kept as the United Kingdom – Legality of the refusal to cover the cost of travel to Australia (No. 260, *Bond*, 20 September 1990)

Reimbursement of the travel expenses of the spouse of a staff member who completed his probationary period satisfactorily – Reimbursement owed regardless of the dates of the marriage and of the trip (No. 411, *Bayliss*, 5 September 2001)

2-9-2 Travel expenses (Art. 39)

**Conditions** – Residence more than 100 km away from new duty station (Art. 26.1.1) (No. 867, *Mencia Marban*, 20 December 2012)

Reimbursement refused – Refusal legal in the specific case because in spite of invoices produced, the expenses were never incurred by the staff member (No. 256, *Rho*, 17 May 1990)

Entitlement for staff members who complete less than twelve months of service not established (No. 669(b), *Slater*, 26 November 2004)

2-9-3 Travel expenses (Art.40)

Travel by air – Mode of transport

Contract not specifying the nature thereof – Legality of the order given to the staff member assessed only in the light of the CPR (No. 215, *Andrews*, 4 February 1987; No. 216, *McGaughey*, 4 February 1987)

Travel by a staff member from one NATO base to another having to be done in an aircraft performing a military mission – Difference between military transport and military mission – Illegality since the staff member’s tasks did not include participating in that mission (No. 215, *Andrews*, 4 February 1987; No. 216, *McGaughey*, 4 February 1987)

Travel by air – Notion of first class and second class – Second class having to be understood as the most economical class, not the class immediately after first class (No. 202, *Schall*, 15 April 1986; No. 206, *Reynaud*, 15 April 1986)

2-9-4 Subsistence allowance for staff travelling on duty (Art. 41.1 and 41.56)

**Powers of the Organization** – Obliging staff members to use accommodations that are neither free nor provided by governmental or international authorities – No (No. 484, *Nielsen*, 27 March 2003)

**Reductions in the allowance**

Reduction of the subsistence allowance paid to staff receiving free accommodation whose cost is not included in the travel expenses – Illegality since there is no provision for that reduction (Nos.211-212, *Nürnberg & Petersen*, 22 October 1986; No. 236, *Holmes*, 14 January 1988)

50% reduction in the subsistence allowance paid to staff members when NATO covers travel expenses that include overnight accommodation (Art. 41.49) (No. 202, *Schall*, 15 April 1986; No. 206, *Reynaud*, 15 April 1986)

50% reduction in the subsistence allowance paid to staff members housed free of charge, for operational reasons, by governmental or international authorities – Budgetary considerations – Illegal justification (no. 477, *Stouten*, 9 October 2002; - no. 484, *Nielsen*, 27 March 2003; - nos. 660–664, *Lamerichs and others*, 22 October 2003)

35% reduction in the subsistence allowance paid to staff members housed free of charge, for operational reasons, by governmental or international authorities, but in accommodations considered “not of an acceptable standard” – Budgetary considerations – Illegal justification (no. 477, *Stouten*, 9 October 2002)

2-9-5 Home leave (Art. 44.1) – see also 2-10-2

Allowance subject, under article 44.1 of the Civilian Personnel Regulations, to the condition of entitlement to the expatriation allowance (No. 867, *Mencia Marban*, 20 December 2012)

***2-10 Leave (Chapter IX)***

2-10-1 Annual leave (Art. 42.11)

**Length**

Calculation irrespective of the number of working hours (No. 22, *Gardi*, 27 November 1970)

NATO body where the staff works 5 days – Annual leave of 30 working days corresponding to 6 weeks of annual leave (No. 22, *Gardi*, 27 November 1970)

**Postponement** – Assessment of the exigencies of the service making it necessary (No. 32 , *Sauveur*, 29 October 1971)

**Periods for which it may be granted**

Notice period prior to contract termination – No (No. 84, *de Raffaele*, 13 January 1978)

Extended sick leave – No (No. 84, *de Raffaele*, 13 January 1978)

**Compensation for untaken annual leave** when the staff member ceases working for NATO

Conditions – Impossibility of taking leave before service ended (No. 372, *Iordanoglou*, 8 May 1998)

Method of calculation (Art. 42.31 to 42.34)

Calculation in line with Article 42.33, not affected by a SHAPE implementing directive (No. 277, *Quarto*, 17 September 1992)

Yearly calculation up to 30 April of the following year (No. 367, *Clark*, 18 July 1997)

2-10-2 Home leave (Art. 44.1, 44.6 and 44.7)

**Determination of home address**

Place with which the staff member has the closest personal ties (No. 260, *Bond*, 20 September 1990)

 Staff member declaring his home to be in Australia, the country to which his parents emigrated from the United Kingdom but which he only visited once – Home kept as the United Kingdom (No. 260, *Bond*, 20 September 1990)

**Leave to be taken in the country where the staff member has his or her official home** – Leave taken outside that country – Consequences

Fact warranting disciplinary action – Yes (No. 406, *Schulze*, 27 September 2000)

Deduction, as a reimbursement, of an amount corresponding to the total amount of travel expenses paid by the Organization – Yes (No. 406, *Schulze*, 27 September 2000)

Deduction of the improperly taken leave from the annual leave – Yes (No. 406, *Schulze*, 27 September 2000)

Deduction from salary – No (No. 406, *Schulze*, 27 September 2000)

2-10-3 Maternity leave (Art. 46.3.1)

Extension of the period of notice for contract termination in the event of a pregnancy – No (No. 90, *Perrier*, 10 March 1978)

2-10-4 Sick leave

**Authority responsible for taking a decision on it**

Head of NATO body – Yes (No. 381(a), *Mercier*, 13 November 2001)

Vanbreda insurance company – No (No. 381(a), *Mercier*, 13 November 2001)

**Remuneration continued for 36 months (Art. 45.61 to 45.66)**

Staff member on annual leave just before expiration of his contract – Staff member arguing that he should have been placed on sick leave to get an extension of his contract – Date of that request – Date after expiration of the contract – No effect on the length of the contract (No. 120, *Mjelde*, 24 July 1980)

Continued even if the contract of employment expires during that period

Application even in the event of retirement (No. 49, *Abazoglou*, 31 May 1973)

Application even if the contract expires during the sick leave – Remuneration continued until the sick leave ends (No. 55, *Smith*, 9 May 1974; No. 381(c), *Mercier*, 22 March 2001)

**Frequent recurrence of short periods of illness (Art. 45.4)**

Grounds for termination of contract (see also § 2-4-10)

Absence of approximately 60 days per year (No. 44, *Godin*, 9 November 1972)

Absence of ten days, then 3 months in a row (no. 248, *X*, 28 June 1989)

Staff member absent 67 times in 7 years, for a total of 466 days – Termination despite the staff member’s professional qualities (No. 172, *Keohane*, 5 December 1984)

Frequent absences, likely to recur – Power to terminate the contract after a further medical examination of the staff member to assess his fitness for performing his duties normally in future (No. 172, *Keohane*, 5 December 1984)

Frequent absences – Discretionary latitude to decide to terminate the contract when such absences are likely to be detrimental to the interests of the department (No. 402, *Neto*, 12 December 2000)

Prolonged absences owing to illness – Staff member only having worked for 4½ months in the previous year (No. 69, *De Raffaele*, 28 January 1976)

**Extended sick leave (Art. 45.7.3)**

Step increase impossible during extended sick leave (No. 277, *Quarto*, 17 September 1992)

Power to terminate the contract of a staff member on extended sick leave

Principle preventing the contract of a staff member on sick leave from being terminated – Not established (No. 272, *Quarto*, 17 September 1992; No. 379, *Mock*, 1 October 1998)

Decision that must not be arbitrary or improper (No. 312, *Michler*, 5 April 1995; No. 403, *Castrouni-Sgandurra,* 24 October 2000)

Illegality of terminating the contract of a staff member whose extended sick leave is on the point of ending unless the immediate replacement of that staff member is a matter of extreme urgency – Administration having been informed that the staff member’s state of health might enable him to resume his duties in a relatively short time, and absence of urgency or any other grounds for immediate termination (No. 312, *Michler*, 5 April 1995; No. 721(a), *Pongiluppi*, 22 June 2007)

Prior medical examination

Examination advisable when the Administration has doubts about the date when the sick leave will end (No. 312, *Michler*, 5 April 1995)

Condition not necessary if there is certainty about the enduring nature of the extended illness – Repetitive nature of absences on account of illness and staff member’s demonstrated intention not to resume working (No. 403, *Castrouni-Sgandurra*, 24 October 2000)

Grounds for termination of contract

Repetitive nature of absences on account of illness over the five previous years, followed by extended sick leave (No. 403, *Castrouni-Sgandurra*, 24 October 2000)

Frequent absences of the staff member over the previous years and up to the ongoing extended sick leave having seriously affected the service’s ability to function effectively – Exception – Findings of a medical examination requested by the Administration itself expected imminently (Nos. 749 and 751, *Petrizi-Davies*, 27 February 2009)

Period of 21 months from the start of the illness (No. 682, *Lelling*, 27 October 2005)

Decision of the Invalidity Board acknowledging the permanent invalidity prior to the expiration of the 21-month period (No. 695, *Korsten*, 29 June 2006 ; - nos. 839-863-864, *Cauchie*, 7 February 2013)

Effective date of contract termination

Effective date of the termination postponed to the end of the period of sick leave – Sick leave ending, for example, when the staff member’s permanent invalidity is acknowledged (No. 272, *Quarto*, 17 September 1992)

Effective date of the termination postponed to the end of the period of sick leave (No. 84, *De Raffaele*, 13 January 1978; No. 90, *Perrier*, 10 March 1978)

Staff member shown as supernumerary personnel on the establishment table and accruing pension rights (No. 326, *Michler*, 17 April 1996)

Impossibility of the Administration postponing the effects of termination until a later date (No. 235, *Iazzetti-Brown*, 12 November 1987)

Staff member entitled, during the period between the date of termination and its effective date, to be granted an invalidity pension, there being no need to make a distinction according to whether the illness arose before or after termination of the contract was declared – Illegality of the Administration’s refusal to convene an Invalidity Board (No. 326, *Michler*, 17 April 1996)

Staff member entitled to request compensation in lieu of notice – Necessity of requesting it within a reasonable period of time starting from the date of contract termination – Period of 20 months – In excess of a reasonable period of time (No. 208, *Huwart*, 31 January 1986)

 Notice period stipulated in Article 9 of the CPR – No (nos. 839-863-864, *Cauchie*, 7 February 2013)

**Powers of the Administration**

To require a staff member to undergo a medical control to verify the validity of the medical certificate submitted by that person (No. 385, *Fracassi*, 29 January 1999; No. 678, *Bosca*, 29 June 2005)

Medical control – Administration designating a physician to examine the staff member as thoroughly as possible but not obliged to designate doctors specializing in pathologies other than those mentioned in the medical certificate (No. 385, *Fracassi*, 29 January 1999)

To terminate the sick leave on the date when the staff member is recognized to be fit to work and regarding the contract as terminated as of that same date (No. 385, *Fracassi*, 29 January 1999; No. 678, *Bosca*, 29 June 2005)

Illness – Vanbreda company’s medical expert – To challenge the findings of that company’s expert (No. 381(c), *Mercier*, 22 March 2001)

**Obligations of the Administration**

Staff member seeking acknowledgement of her invalidity for three different medical conditions – Administration merely having her examined by specialists for one of those conditions and refusing her request in its entirety – Illegality – Consequence – Obligation for the Administration to investigate the request concerning the other two conditions (Nos. 839-863-864, *Cauchie*, 7 February 2013)

Procedural rules – Obligation to give the staff member an opportunity to make comments (Nos. 749-751, *Petritzi-Davies*, 27 February 2009)

To offer employment suited to the state of health of the staff member, who is acknowledged as being fit to work provided that she is spared certain tasks – Lack of the necessary diligence – Consequences – Illegality of a termination that took place when the period of extended sick leave had not expired (No. 741, *Demir*, 8 May 2009)

**Invalidity Board (Annex IV, Article 13.3(i))**

Procedural rules

Convocation necessary in order to rule on whether the invalidity is permanent – Convocation prior to expiration of the extended sick leave (No. 235, *Iazzetti-Brown*, 12 November 1987; - No. 695, *Korsten*, 29 June 2006)

Procedure before the Board (No. 682, *Lelling*, 27 October 2005)

Invalidity Board having made a ruling based on an incomplete file – Substantial formality

Illegality of the decision, taken in line with the Board’s opinion, refusing to grant an invalidity pension – Consequence – Necessity of convening another Invalidity Board before ruling on the request for an invalidity pension again (No. 310, *Verdonck*, 26 January 1995; No. 434, *Girsch*, 17 July 2002)

Illegality of the decision to terminate a contract taken based on that opinion (No. 310, *Verdonck*, 26 January 1995)

Invalidity Board having submitted the matter to an expert – Vanbreda company’s medical expert – Challenging the findings of that company’s expert (No. 381(c), *Mercier*, 22 March 2001)

Invalidity Board having given an unjustified opinion – Illegality of the decision taken based on that opinion (No. 434, *Girsch*, 17 July 2002)

Meaning and significance of the Board’s opinion

Mission of the Board

Appointment of an expert to determine whether the staff member was unfit to work when he presented a medical certificate, just before the effective date of termination of his contract (No. 213(a), *X,* 22 October 1986) – Finding that the condition from which the staff member suffered did not make him unfit to work (No. 213(c), *X,* 2 October 1987)

Assessment of the existence of total invalidity making the staff member unfit to perform his or her duties – Yes – Exclusive jurisdiction (No. 235, *Iazzetti-Brown*, 12 November 1987; - No. 264, *Uzumcu*, 25 September 1991; - No. 379, *Mock*, 1 October 1998)

Assessment of incapacity for service – No (No. 264, *Uzumcu*, 25 September 1991; No. 379, *Mock*, 1 October 1998)

Significance of the Board’s opinion

Administration deducing from the absence of total incapacity that the staff member was fit to resume working – Error of law (No. 264, *Uzumcu*, 25 September 1991)

Eligibility for an invalidity pension – Yes (No. 421, *Wortley-Salma*, 4 September 2001)

Continued contractual ties to the Organization – No (No. 421, *Wortley-Salma*, 4 September 2001)

Findings based on purely medical data (No. 682, *Lelling*, 27 October 2005)

Invalidity Board having ruled on the staff member’s inability to perform his duties based solely on the rate of invalidity – Error of law – Incapacity must be assessed in the light of the duties to be performed – Illegality of the decision taken based on that opinion (No. 434, *Girsch*, 17 July 2002)

Invalidity – Invalidity Board having ruled that there was not permanent invalidity – Absence of invalidity within the meaning of the CPR (No. 682, *Lelling*, 27 October 2005)

Administration not required to send the staff member the Invalidity Board’s opinion before terminating his contract (No. 379, *Mock*, 1 October 1998)

Assessment of a national social security system – Assessment having no bearing on the legality of the decision by the Head of NATO body based on the report of the Invalidity Board’s medical consultants (No. 237, *Miller*, 25 May 1988)

##### 2-11 Social securities, insurances and Provident Fund (Chapter X)

2-11-1 Method of insurance (Art. 48.3) – General rules

Competence to adopt it – Limited to the North Atlantic Council (Nos.437 and others, *Kleidorfer and others*, 20 November 2002)

2-11-2 Contributions to medical coverage for retirees

Solidarity mechanism

Legality, since those contributing are not certain never to benefit from it (Nos. 437 and others, *Kleidorfer and others*, 20 November 2002)

Legality, when those contributing already have access to and pay into an invalidity scheme (Nos.437 and others, *Kleidorfer and others*, 20 November 2002)

Provident Fund (Annex VII to the CPR) – Consequences of currency fluctuations (No. 23(b) *Acquaticci and others*, 25 March 1971)

2-11-3 Additional insurance (Art. 47.1)

Contract of 1 November 1967 – Retroactive application from 1971 onward to the staff of the agencies based in Germany – Except continued medical coverage (No. 48, *Twelvetrees*, 1 June 1973)

Agreement concluded in 1981 between SHAPE, the Vanbreda insurance company and the staff association – Not renewed in 1999 – Agreement to which the NATO body is a party – Decision for NATO or one of its bodies (No. 417, *Seldon*, 11 July 2001)

Staff member’s account in the Provident Fund – Closure of the account – Date and terms (No. 50, *Liard*, 31 May 1973)

2-11-4 Continued medical coverage

**Contract of 1 November 1967**

Period of ten years of service in the Organization – Staff member who is a US government employee assigned to NATO – Period not taken into account (No. 112, *Cline*, 15 February 1980)

Retroactive application from 1971 onward to the staff of the agencies based in Germany – Except continued medical coverage (No. 48, *Twelvetrees*, 1 June 1973)

**System in force as of 1 March 1995**

Contribution charged to staff leaving between 55 and 65 years of age

Immediate application – Violation of the principle of non-retroactivity not established (no. 338, *Murzi*, 5 December 1996; - Nos. 437 and others, *Kleidorfer and others*, 20 November 2002)

Measure necessitated by the increase in life expectancy and the rising cost of healthcare (No. 328, O’*Shea*, 5 December 1996; No. 425, *Hadler*, 10 October 2001; No. 426, *Prideaux*, 10 October 2001; No. 430, *Milhoux-High*, 1 March 2002)

Introduction of a premium only for former staff members – Balance of the contract upset, conferring a right to compensation (No. 338, *Murzi*, 5 December 1996)

Benefit of continued medical coverage reserved for staff who have completed ten years of uninterrupted service – Condition not applicable to staff having “taken up their duties” before 1 January 1995 – Notion of taking up duties – Staff having been in the same post since that date (No. 671, *McCall*, 2 March 2005)

**System in force since 1 January 2001**

Health insurance – Contribution – Contribution of staff who retire before 65 years of age – Yes (Nos. 437 and others, *Kleidorfer and others*, 20 November 2002)

Funding of contributions to the RMCF – 1.5% for the staff and 3% for NATO (Nos. 437 and others, *Kleidorfer and others*, 20 November 2002)

Staff with at least 25 years of reckonable service exempted from contributing – No justification for that ceiling – Illegality (No. 425, *Hadler*, 10 October 2001; No. 426, *Prideaux*, 10 October 2001)

Contribution charged to staff retiring after 31 December 2000

Discrimination not established (No. 430, *Milhoux-High*, 1 March 2002)

Introduction necessary for a balanced participation in the expenses of that system (No. 430, *Milhoux-High*, 1 March 2002)

Increase in the rate of contribution to continued medical coverage from 2.591% to 3% of the pension – Increase necessitated by rising healthcare costs and longer life expectancy – Balance of the contract not upset so long as the proportion of one third for the staff, two thirds for the Administration is maintained (No. 723, *Van der Laan*, 12 July 2007; No. 726, *Oudega*, 12 July 2007)

Choice of increasing the rate of contribution of retirees whereas the rate for serving staff went down slightly – Desire to achieve a better balance between premiums and benefits for those two categories – No obvious error of judgment (No. 723, *Van der Laan*, 12 July 2007; No. 726, *Oudega*, 12 July 2007)

##### 2-12 Reports, performance assessment, grades, advancement, changes of post or grade (Chapter XII)

2-12-1 Responsibility

Responsibility for establishing a system for evaluating staff – Head of NATO body (Art. 55.1 of the CPR) (No. 29, *de Jong*, 29 October 1971)

2-12-2 Reports – Procedure

**Rating officer** – Immediate supervisor (CPR, Art. 55.4) – Competent authority (No. 68, *Koçaker*, 14 November 1975)

**Performance report**

Reassignment contract – Contract ending at the end of the probationary period – Performance report not required (No. 158, *Menet*, 8 July 1983)

Necessity of preparing that report six months before the expiry of a definite-duration contract (No. 680, *Hunt*, 13 September 2005; No. 694, *Rovder*, 14 December 2006; No. 782, *Prema*, 29 October 2010) – Also a necessity for staff seconded from a national administration (No. 782, *Prema*, 29 October 2010)

Periodicity – Power of the Administration to make out performance reports more often than every two years, as set out in Article 1.4 of Annex VIII, e.g. prior to the line manager leaving, before a reassignment or when the staff member has been alerted to the need to improve his or her work or else his or her contract might be terminated (No. 171, *Markey*, 23 October 1984; No. 246, *Dale*, 16 March 1989; No. 259, *Niedercorn*, 20 September 1990)

Requirement for a person other than the line manager to countersign the report – Yes (No. 676, *Orosz*, 30 June 2004)

Performance report tainted by numerous irregularities – Report that cannot be used in connection with a possible application by the appellant for another post at NATO (Nos.161(b)-168, *Brégain*, 1 March 1984)

Necessity of providing all the necessary explanations (Annex VIII A, Art. 1.1) – Period of three months before the end of the contract or the extension of the probationary period (Nos.693 and 697, *Angus*, 14 September 2006)

Performance report noting significant shortcomings

Obligation to hold a meeting with the staff member – No meeting – Consequence – Irregularity of the procedure of non-renewal of the contract (No. 694, *Rovder*, 14 December 2006)

Obligation to warn the staff member that her contract might be terminated if the quality of her work did not improve – No (No. 259, *Niedercorn*, 20 September 1990)

**Performance assessment (Art. 55.5 and Annex VII.B, Art. 1.1)**

Non-renewal of the contract having to be preceded by a performance review (No. 769, *Varcol*, 17 September 2010) – Staff member who had only had one review in 3 1/2 years, sixteen months before the decision not to renew his contract (No. 769, *Varcol*, 17 September 2010)

##### 2-12-3 Change in duties

Being relieved of certain duties – General and permanent restrictions on the staff member’s responsibilities – Contrary to the financial regulations decided on by the Military Budget Committee and the North Atlantic Council, solely empowered with making alterations to the establishment table – Illegality (No. 17, *Ubertis*, 23 October 1969)

Substantial change in duties

Consequence – Impossibility for the Organization to require the staff member to acquire skills of a different nature than those called for in the post he occupies (No. 70, *Groeneveld*, 29 January 1976)

Assignment to duties that are significantly different than those noted in the job description attached to the contract – Illegality of that one-year assignment (No. 377, *Bosman*, 2 October 1998)

**Transfer in the interests of the service**

Transfer in the interests of the service – Grounds – Transfer of a member responsible for close protection of the NATO Secretary General, who had lost confidence in that staff member owing to his inability to carry out one of his missions because of the loss of his identity documents – Step proportionate to the objective of ensuring the close protection of that authority under all circumstances – Legality (No. 821, *Sprengers*, 30 September 2011)

2-12-4 Regrading

Decision on regrading taken by the competent budgetary authority – Administration’s ability to define the rules on regrading, with respect to required linguistic abilities in particular – Obligation to do so ahead of time in a clear and objective fashion while abiding by the provisions of the CPR (No. 727, *Colin and others*, 14 December 2007)

 Illegality of doing a regrading based on rules that are defined after the staff members concerned have taken the language tests (No. 727, *Colin and others*, 14 December 2007)

**Staff member arguing that he or she should be upgraded**

Remuneration determined by the contract that was signed – Option, in some circumstances, of paying an extra duties allowance (No. 34, *Smith*, 19 November 1971)

North Atlantic Council alone having the authority to upgrade a post to best match the duties actually performed by the staff member (No. 667, *Archer*, 10 December 2003; No. 674, *Hanssen*, 25 May 2005; No. 675, *Lenti and others*, 30 June 2005; - No. 806, *Gadaleta*, 27 May 2011; - No. 843, *Axelsen*, 9 March 2012)

Decision by the Head of NATO body not to propose upgrading the post occupied by the appellant – Infringement of the staff member's rights not established

Failure to fulfil hopes raised by assurances made by the Secretary General himself (No. 675, *Lenti and others*, 30 June 2005)

Failure to fulfil hopes raised by assurances made by the Head of NATO body that were not accompanied by concrete action (No. 806, *Gadaleta*, 27 May 2011)

No failure to fulfil the hopes of the staff member, given that the Administration proposed regrading her post to the relevant higher authorities but gave no assurances of a regrading to the staff member (No. 843, *Axelsen*, 9 March 2012

Entitlement to an upgrade not established, when the previous contracts had never made provision for it (No. 667, *Archer*, 10 December 2003)

Entitlement to an upgrade not established (No. 294, *Lewington*, 9 June 1994; - No. 373, *Pingram*, 7 May 1998; - No. 668, *Kohns*, 25 June 2004; - No. 674, *Hanssen*, 25 May 2005; - No. 675, *Lenti and others*, 30 June 2005; - No. 691, *Veltri*, 8 March 2006 ; - No. 806, *Gadaleta*, 27 May 2011; - No. 843, *Axelsen*, 9 March 2012)

Refusal by the Administration to propose upgrading the staff member’s post – Refusal based on the absence of a need for reorganization of the service and the existence of a process for the general revision of the peacetime establishment – No manifest error of judgment (No. 691, *Veltri*, 8 March 2006)

Power of the Organization, when the staff member does not possess all the required classifications, to assign him or her to fill the post temporarily at a lower grade than that attached to the post (CPR, Art. 58.3) – Contract not concluded on the basis of such arrangements (No. 390, *Dols*, 9 December 1999)

**Introduction of the Evaluation, Selection and Placement System (ESPS) – E-3A Component decision of 6 July 2001**

Period preceding its entry into force – Ability to recruit staff based on the usual arrangements for job vacancy notices (No. 657, *Spurdle*, 21 October 2003)

Staff member acknowledged as qualified and ranked second – Consequences – Priority in the event that the ESPS had been applicable and the first-placed candidate had not been allowed to be appointed (No. 657, *Spurdle*, 21 October 2003)

**Introduction of the Evaluation and Transfer System (ETS) – SHAPE directive of 17 March 1999**

Description of the three phases (No. 405, *Togayli*, 11 July 2001; No. 407, *Trost*, 11 July 2001)

Staff member requesting to be laid off with the indemnity for loss of job (No. 404, *Lawn*, 25 October 2000)

Staff made redundant (Art. 57.2)

Priority examination of his application for a vacant post of the same grade before other recruitment was put in hand (No. 725, *Caplan*, 14 December 2007) – Priority not applicable for a post of another grade, even a lower one (No. 778, *Pinto*, 4 February 2011)

Provision applicable to staff members as soon as they learned of the planned deletion of their post and until the effective date of contract termination (No. 407, *Trost*, 11 July 2001) but not beyond that date (No. 408, *Papanaklis*, 21 March 2001).

Entitlement to a new post in the Organization not established (No. 408, *Papanaklis*, 21 March 2001)

Benefit of the clearing house procedure – Benefit impossible after contract termination (No. 408, *Papanaklis*, 21 March 2001)

**Introduction of the ETS – SHAPE directive of 17 October 2003**

Examination of applications – Equal treatment of staff seconded to a post by a member country (No. 685, *Angus*, 13 September 2005)

Examination of applications – Fairness – Yes – Abuse of procedure – No (No. 685, *Angus*, 13 September 2005)

**Special recruitment procedures** for lateral transfers (NAMSA instruction of 24 October 2003) – Priority over applications from staff of other NATO bodies or external applicants – Necessity of publicizing post vacancies so that staff members can apply before a vacancy notification is published (No. 699, *Sgueglia*, 13 September 2006)

2-12-5 Staff made redundant (Article 57.2)

Notion of staff made redundant – Not established – Staff member whose budget post has not been deleted and no decision has been made to delete that post at a later date (No. 136, *Topliss*, 22 October 1981)

Priority examination of a staff member’s application for a vacant post of the same grade before other recruitment is put in hand – Provision applicable to staff members as soon as they learn of the planned deletion of their post and until the effective date of contract termination (No. 407, *Trost*, 11 July 2001) but not beyond that date (No. 408, *Papanaklis*, 21 March 2001)

Entitlement to a new post in the Organization not established (No. 408, *Papanaklis*, 21 March 2001)

No vacant post of the staff member’s grade – Request for regrading that could not be decided on (No. 161(b)-168, *Brégain*, 1 March 1984)

Benefit of the clearing house procedure – Benefit impossible after contract termination (No. 408, *Papanaklis*, 21 March 2001)

##### 2-13 Discipline (Chapter XIII)

2-13-1 Powers of the Appeals Board

To determine whether the disciplinary action taken was warranted by the nature of the misdemeanours (No. 29, *de Jong*, 29 October 1971)

Substitution of one sanction for the one decided upon by the Administration – No (No. 380, *Bergantino*, 12 November 1998).

To check the disciplinary action decided on by the Administration: to verify proper form and proper procedure, the material correctness of the facts alleged, the existence of misconduct that warrants a disciplinary penalty, and the proportionality of the punishment to the misconduct (No. 243, *Rho*, 15 March 1989; No. 380, *Bergantino*, 12 November 1998)

Inadmissibility of appeals lodged against preparatory actions – Decision by the Administration not to follow up on a staff member’s complaints about the process of the disciplinary procedure against him – Circumstances that can only usefully be cited against the disciplinary action taken at the end of that procedure (No. 709, *Kirby*, 9 November 2006)

### 2-13-2 Disciplinary nature of a measure

### **Measure of a disciplinary nature**

Suspension (CPR Art. 59.3 and 60.2) (No. 58, *Glimmerveen*, 23 April 1975)

 Consequence – Staff member kept on the staff of the Organization (No. 71, *Glimmerveen*, 29 January 1976)

Contract termination preceded by a suspension (No. 58, *Glimmerveen*, 23 April 1975)

Termination (No. 765, *Drexler*, 17 September 2010)

### **Measure not of a disciplinary nature**

Simple warning letter (No. 32, *Calcagno*, 18 November 1971)

### 2-13-3 Disciplinary procedure

Necessity of the penalty being preceded by the disciplinary procedure stipulated by Annex X of the CPR (No. 765, *Drexler*, 17 September 2010)

**Choice of procedure**

Power, not obligation, to initiate disciplinary proceedings when facts that might be punishable are observed (No. 672, *Photopoulos*, 3 March 2005; No. 710(b), *Angus*, 21 September 2007)

Termination motivated by the staff member’s unsatisfactory work and unsuitability for his duties – Disciplinary proceedings not required (No. 155, *Meurer*, 7 July 1983)

Staff member guilty of a breach of discipline – Dismissal that can only be decided based on the disciplinary procedure, not on the staff member’s unsatisfactory behaviour – Termination that did not respect the disciplinary procedure – Cancellation (No. 153, *Iacono*, 1 December 1982; No. 253, *Danois-Pire*, 8 March 1990)

**Object of the procedure** – To guarantee its objectivity and safeguard staff members’ rights – Consequence – Substantial non-compliance with the provisions of Annex X – Irregular procedure (No. 167, *Polfer*, 11 January 1984; No. 228, *Miller*, 3 February 1987; No. 289, *Ciavaglia*, 26 January 1994)

**Rule that staff members may not be penalized more than once for the same offence** (Art. 3.4 of Annex X) – Rule that does not prevent the appellant’s previously noted shortcomings from being taken into account in determining the severity of a penalty – Necessity of informing the staff member that the Administration is planning to take such an approach and of allowing him to discuss the earlier misconduct (No. 289, *Ciavaglia*, 26 January 1994)

**Initiation of the proceedings** (Art. 5.1 of Annex X)

Immediate superior (No. 715, d’*Hooghe*, 14 March 2007)

Necessity of giving the staff member precise information about the allegations against him – File that must contain all the documents and attestations justifying the Administration's action (No. 805, *Rizza*, 4 February 2011)

 Proceedings leading up to the dismissal decision based on the falsification of medical certificates – File containing none of the twenty supposedly falsified certificates – Cancellation of the disciplinary action ordered at the conclusion of those proceedings (No. 805, *Rizza*, 4 February 2011)

Report by the authority initiating the disciplinary proceedings (Annex X, Art. 5.2)

Letter listing acts of which the appellant is accused – Letter having the value of a report (No. 479, *Coppin*, 29 January 2003)

Report not containing a proposed disciplinary penalty – Administration suspending the proceedings and producing a new report with a proposed penalty – New report removing the initial procedural irregularity (No. 719, *Kirby*, 21 September 2007)

Forwarding of the disciplinary report – Forwarding to the official responsible for personnel management (No. 715, d’*Hooghe*, 14 March 2007)

**Disciplinary Board (Art. 6.1 of Annex X) – Composition**

Board composed of three members, who were joined by a fourth person who took part in the deliberations from start to finish – Irregularity – Change in the balance of the Board as set out in the rules and regulations – Consequence – Annulment of the penalty (No. 167, *Polfer*, 11 January 1984)

**Disciplinary Board (Art. 6.1 of Annex X) – Impartiality of its members**

Board including the staff member who initiated the disciplinary proceedings – No irregularity (No. 406, *Schulze*, 27 September 2000)

Board chaired by the staff member who initiated the disciplinary proceedings – No bias since that staff member had no personal interest in the matter (No. 406, *Schulze*, 27 September 2000)

### **Obligation to allow the staff member to present his or her defence**

Staff member who was neither informed of the allegations against him nor invited to explain the facts behind the grounds for the penalty – Irregular procedure – Annulment (No. 58, *Glimmerveen*, 23 April 1975)

Staff member who was neither heard by nor invited to appear before the Disciplinary Board – Substantive irregularity – Annulment of the penalty (No. 228, *Miller*, 3 February 1987)

Staff member not informed that the Administration was planning to take earlier misconduct into account to determine the severity of a penalty (No. 289, *Ciavaglia*, 26 January 1994)

Staff member having been given what he needed to prepare his defence (No. 479, *Coppin*, 29 January 2003)

Staff member having deliberately refused to respond to the summons to appear before the Disciplinary Board – Board having heard witnesses outside the staff member’s presence – Adversarial nature of the procedure respected (No. 715, d’*Hooghe*, 14 March 2007)

Staff member having to be informed of the allegations against him (Art. 60.3) – Staff member who was not informed prior to the disciplinary action, but who received that information during the complaints procedure initiated by him – Validity of the proceedings (Nos. 698-700-701, *Kirby*, 14 September 2006)

Staff member not having been in a position to prepare his defence properly – File containing none of the twenty supposedly falsified certificates on which the disciplinary action was based – Cancellation of the disciplinary action ordered at the conclusion of those proceedings (No. 805, *Rizza*, 4 February 2011)

Right to be heard by the head of personnel – Not established (No. 479, *Coppin*, 29 January 2003)

Staff member’s request for witnesses to be heard – Discretionary power of the Appeals Board to agree or not (No. 719, *Kirby*, 21 September 2007)

**Obligation for the Administration to check that the charges are established beyond a doubt**

Powers of the Appeals Board – To determine whether the disciplinary action taken was warranted by the nature of the misdemeanours (No. 29, *de Jong*, 29 October 1971)

Charges established in all likelihood, despite the flimsiness of the evidence adduced by the Organization (No. 290, *Krott*, 16 September 1993)

Charges not established – Cancellation of the penalty (No. 428, *Moos*, 11 December 2001)

2-13-4 Substantiation of the disciplinary action

Obligation to provide substantiation (No. 715, *d’Hooghe*, 14 March 2007)

Conditions – Staff member informed orally in a clear, precise and complete fashion (No. 402, *Neto*, 12 December 2000; No. 715, *d’Hooghe*, 14 March 2007)

### 2-13-5 Reasons for the disciplinary action

### **Facts warranting disciplinary action**

Damage to the good repute of the Organization – Staff member’s political activities – Penalty that can go up to dismissal (No. 58, *Glimmerveen*, 23 April 1975) – In the present case, damage to the good repute of the Organization not established (No. 71, *Glimmerveen*, 29 January 1976)

Indebtedness of the staff member having led to many requests from loan establishments to the Organization seeking to recover debts – Situation resulting not from a failure to comply with his obligations under the CPR but from the bankruptcy of his wife’s company (No. 153, *Iacono*, 1 December 1982)

Staff member who concealed his divorce with a view to continuing to receive the benefits granted to married staff members – Failure to comply with the obligations in Art. 24.3, whereby staff members are required to provide the Administration with all information necessary for the determination of their eligibility for allowances (No. 243, *Rho*, 15 March 1989)

Excessive speed inside a NATO military base, failure to stop, taking the risk of running over the guard at the gate of the base (No. 290, *Krott*, 16 September 1993)

Staff member having spent a substantial part of his home leave outside his official home country, despite an undertaking not to do so (No. 406, *Schulze*, 27 September 2000)

A-grade staff member having intentionally sought to be paid for overtime hours worked (No. 479, *Coppin*, 29 January 2003)

Refusal to obey an order that is not manifestly illegal – Refusal, without valid justification, of a suspended staff member to come get a document from the headquarters (No. 719, *Kirby*, 21 September 2007)

**Facts not warranting disciplinary action**

Agreement to the transfer of a staff member to another NATO body without awaiting the expiration of the notice period – Fault not established, given the modest responsibilities of the transferred staff member and the steps taken to avoid disruption of the service (No. 31, *Cauchie*, 27 October 1971)

Refusal by the staff member to report the income of his spouse (No. 61, *Arnbak*, 4 June 1975)

Staff member who neglected to indicate that he had been fined 4.5 million lire by an Italian military tribunal for fraudulently obtaining reimbursement by the Italian Defence Ministry of fictitious hotel bills for a mission prior to his secondment to NATO – No adverse impact on his position or on the good repute of the Organization (No. 380, *Bergantino*, 12 November 1998)

Suspension for reasons external to the disciplinary proceedings – Continuance in office not prejudicial to the Organization – Illegality of the suspension (No. 399, *Schulze*, 27 September 2000)

Insertion into a case file of a document that the Administration claims was classified – Document itself without any classification, but a classification in a superimposed box from a photocopy (No. 827, *Pavesi*, 24 February 2012)

Staff member having requested a change in her manager's behaviour and accusing him of harassment – Behaviour not indicating an abuse of the right of complaint, given the Administration's constant and deliberate manoeuvres – Illegality of the 7-day suspension ordered (No. 832, *Pavesi*, 24 February 2012)

2-13-6 Penalties – Various categories and choice thereof

### **Manifest error of judgment**

Dismissal – Grounds that are not legal justification for a dismissal

Informing a staff member of a decision taken about him – No serious offence (No. 4, *Bouffioux*, 19 April 1967)

Candidate for political elections who gave his NATO office telephone number as his telephone number (No. 71, *Glimmerveen*, 29 January 1976)

Staff member involved in political activities – Administration required, before taking disciplinary action, to instruct the staff member to choose between his duties within the Organization and his political activities (No. 71, *Glimmerveen*, 29 January 1976)

Staff member who, in violation of Art. 24.3, concealed his divorce with a view to continuing to receive the benefits granted to married staff members (No. 243, *Rho*, 15 March 1989)

Excessive speed inside a NATO military base, failure to stop, taking the risk of running over the guard at the gate of the base (No. 290, *Krott*, 16 September 1993)

Suspension – Facts not serious enough to justify a suspension – Staff member who failed to spend all his home leave in his official home country (Art. 44.6) (No. 399, *Schulze*, 27 September 2000)

### **No manifest error of judgment**

Dismissal – Repeated initiatives to claim responsibilities for herself that were not hers, undermining her manager’s authority, and causing serious disruptions to the smooth running of the service as a result (No. 715, *d’Hooghe*, 14 March 2007)

Temporary suspension – A-grade staff member who intentionally sought to be paid for overtime hours – Attenuating circumstances – Administration having demonstrated considerable severity but not having exceeded the limits of its discretionary authority (No. 479, *Coppin*, 29 January 2003)

Written censure, second action in the list of disciplinary actions at Art. 59.3, of a financial controller who spent a substantial part of his home leave outside his official home country, despite an undertaking not to do so (No. 406, *Schulze*, 27 September 2000)

### 2-13-7 Consequences of the disciplinary action

Suspension of a staff member charged with serious misconduct (Art. 60.2) – Consequence – Withdrawal of the staff member’s NATO identity card – Grounds – Staff member whose presence in a NATO building could jeopardize the smooth running of the legal proceedings in which he was involved – Legality (698-700-701, *Kirby*, 14 September 2006)

##### 2-14 Pensions (Chapter XV)

2-14-1 Retirement pension

**Transfer of pension rights** for staff members who enter the service of the Organization after leaving the service of a government administration

Secretary General’s decision not overriding any CPR provisions (No. 113, *Crosby*, 10 January 1980)

Compensation for loss of previous pension rights (Art. 47 of Annex IV) – Affiliation with the NATO scheme in no way modifying the staff member’s rights in his national administration – Right to compensation not established (No. 231, *Peters*, 22 May 1987)

Pension paid by a national office – Amount affected by NATO’s omission forty years earlier to contribute to that office for a one-year period – Documents destroyed – Lump-sum compensation (No. 392(a), *Gresser*, 9 December 1999)

**Move from the Provident Fund to the Pension Scheme**

Pensions – Decision on the Pension Scheme approved in principle by the Council decision of 27 April 1974 approving the 94th Report of the Coordinated Organizations and approved on 10 February 1977 with effect from 1 July 1974

System in place for staff whose service terminated before 1 January 1973 (Art. 49 of Annex IV) – Condition of having left the Organization at the age of 60 or more with at least ten years’ service (No. 149, *Gardi*, 19 October 1982)

Obligation for staff recruited on or after 1 July 1974 to join the new pension scheme (No. 92, *Skingle*, 14 August 1978; No. 106, *Van der Laan*, 31 October 1979; No. 107, *Maseng*, 31 October 1979; No. 108, *Lorentzen*, 31 October 1979; No. 111, *Wilhelm*, 15 February 1980; No. 117, *Coerdt*, 14 May 1980)

 Terms of the transfer of Provident Fund accounts of staff members who then became affiliated to the Pension Scheme (No. 117, *Coerdt*, 14 May 1980; No. 129, *Rodi*, 18 February 1980)

Option period set by the Council for Pension Scheme or Provident Fund affiliation – Option period reopened owing to a new fact

Requirement for NATO to make sufficient effort to ensure that staff members receive essential information – Simple letter – Insufficient effort (No. 162, *Cippico*, 29 November 1983)

Former NATO staff members – Application of rules on beneficiaries (No. 119, *de Raffaele*, 24 July 1980; No. 162, *Cippico*, 29 November 1983)

Established – Staff member not having been informed in due course of the rules in force (No. 119, *de Raffaele*, 24 July 1980; No. 162, *Cippico*, 29 November 1983)

Not established – Staff member informed in due course of the rules in force but who only learned belatedly of the possibility of combining years spent at NATO and at the OECD (No. 207, *Vernon*, 7 May 1986)

Not established – Staff member informed in due time by his national administration (No. 143, *Imre*, 20 October 1981)

Not established – Change in national legislation – Necessity of ensuring the stability of legal situations (No. 250(b), *Amoroso*, 4 April 1990)

**Revision of the amount of pensions**

Rate of staff contribution (Annex IV, Art. 41) – Rate set by the North Atlantic Council based on the Report of the Coordinating Committee on Remuneration – Conditions – Change dependent on the rate of change in salary purchasing power – Latitude that must not be exercised arbitrarily – Not established – Consequence – Rate increased from 8% to 8.3% – No manifest error of judgment (No. 424, *Gasparini*, 5 September 2002)

Pension adjustment equal to the NATO staff’s salary adjustment (Nos. 708-711, *Synadinos & Michaux*, 25 May 2007)

Elements giving no entitlement to an upward or downward adjustment – Changes to conditions of eligibility and amounts of allowances set out in Article 24 of the CPR; annual changes in the number of working hours (Nos. 708-711, *Synadinos & Michaux*, 25 May 2007)

**Conditions of entitlement**

Age of the staff member

Entitlement to a pension as of age 60 (No. 707, *Calcagni*, 14 December 2006)

Staff member drawing a pension and continuing to serve beyond 60 years of age – Staff members who took up their duties prior to 1 July 1974 – Bonus payment of 5% per year even when service was interrupted, then resumed (No. 126, *de Jong*, 3 December 1980)

Exclusion of service beyond age 65 (No. 707, *Calcagni*, 14 December 2006)

Service counting for entitlement

Total of the periods of service in the organizations listed in Article 1 of Annex IV – All NATO bodies – Notion – All bodies and headquarters created under the NATO Treaty and fully funded by international budgets – Validation for pension purposes only of periods of service starting from the date when AGARD became internationally funded (No. 102, *Willaume*, 19 July 1979)

Periods of service as an officer of the United States government assigned to NATO under the 1963 agreement – Validation impossible (No. 104, Cline, 31 October 1979) – Periods not taken into account for an extension of continued medical coverage (No. 112, *Cline*, 15 February 1980)

Validation of periods of service performed in a previous appointment – Necessity of requesting validation of it not later than twelve months after the new appointment (No. 276, *Lohkamp*, 4 November 1992; No. 307, *Turatus*, 25 January 1995; No. 308, *Bewilogua*, 25 January 1995; No. 309, *Neumeyer*, 26 January 1995; No. 382, *Lambie*, 16 July 1998)

 Exception where strict enforcement of that rule would deprive the rule of its strict, proper application – Administration having neglected to inform its staff performing successive periods of interrupted service of short duration in different Coordinated Organizations of the particularly complex rules applicable to them and to have their periods of service accumulated and validated (No. 276, *Lohkamp*, 5 November 1992)

Validation of the period in which the staff member received compensation for leave not taken, for the fraction of that period in which he did not take up or resume other employment that conferred entitlement to a retirement pension (No. 265, *Lops*, 26 September 1991)

Duration of ten years’ service (Art. A.64.1) – Periods taken into consideration (Annex IV, Art. 4.1) – Periods served as a staff member or in any other capacity prior to appointment as a staff member – Exclusion of service performed in another capacity after the appointment as a staff member (No. 707, *Calcagni*, 14 December 2006)

**Date of entitlement to the pension** – Case of staff member whose contract was terminated – First day following the date of expiration of the notice period, whether notice was served or replaced by an allowance (No. 264, *Uzumcu*, 25 September 1991)

**Amount**

Adjustment designed to offset the impact of income tax (Art. 42 of Annex IV) – Case of staff member receiving her retirement pension and a survivor’s pension owed to her after the death of her husband, also a former NATO staff member – Adjustment calculated for each individual pension (No. 387, *Perret-Fasquel*, 22 April 1999; see also OECD AT No. 125, 11 April 1991)

Defined Contribution Pension Scheme, applicable to staff recruited from1 July 2005 onward – Depreciation of assets placed in the individual pension account – NATO not liable (Art. 10.3 of Annex VI) (Nos. 853, 854, 856 and 859, *Azevedo and others*, 21 September 2012; - Nos. 855, 857 and 858, *Bicego and others*, 21 September 2012)

Garnishing of pension – Legality of the decision by the Head of NATO body to withhold money from the pension of a former staff member with a view to supporting the execution of a legal decision of a Member state – No immunity for the former staff members of NATO or its bodies with respect to the payment of debts contracted in the course of their private activities that are in no way connected with the Organization (No. 768, *Somville*, 7 July 2010)

2-14-2 Invalidity pension

**Conditions of entitlement** (Art. 13 of Annex IV)

Administrative decision taken in line with the findings of an Invalidity Board that must be convened during the period in which pension rights were accruing to the staff member (No. 134, *de Raffaele*, 14 May 1981)

Appeals Board decision determining the staff member’s unfitness to resume his duties – Decision tantamount to an administrative decision (No. 134, *de Raffaele*, 14 May 1981)

Not having reached the statutory age limit of 65 years (Art. 13.1) – Circumstance of the Invalidity Board having made its ruling after that age limit and the staff member’s retirement having no impact on the application of that condition (No. 760, *Tudini*, 18 December 2009)

**Amount**

Situation in which the staff member receives an invalidity pension from a national social security system – NATO required to pay just the fraction that exceeds the total of the national pension and the invalidity pension under the NATO group insurance plan (287(a), *Somville*, 25 November 1993)

Revision of the amount of the pension – Deduction of the pension paid by Vanbreda (Art. 47.1) – Regularity – Taking account of the money paid by Vanbreda and accepted by the staff member – No (No. 150, *De Raffaele*, 19 October 1982)

Benefits under Annex IV of the CPR, Art. 14 – Lump sum – Full compensation for injury – In some cases not established – Full compensation possible with respect to fault liability (No. 461(a), *Sutherland*, 9 October 2002)

Obligation for NATO to ensure that its contractors fulfil their obligations (No. 287(a), *Somville*, 25 November 1993)

**Invalidity Board** (Annex IV, Art. 13) – Procedure

Necessity of deliberation by the Board’s three members

Ability, in exceptional cases, not to meet in one place – Decision having been taken by two of its members without consulting the third – Improperly deliberated opinion – Consequence – Cancellation of the refusal of the Head of NATO body to grant an invalidity pension – Necessity of convening a new Invalidity Board (No. 396, *Wortley-Salma*, 23 May 2000)

Board having kept one of its members out of the discussions – Adverse effect on the collegiate aspect of the deliberations – Irregular procedure tainting the Board’s opinion – Consequence – Cancellation of the refusal of the Head of NATO body to grant an invalidity pension – Necessity of convening a new Invalidity Board (No. 254, *Marsella*, 5 April 1990)

 Procedure which has not yet been defined for staff under the Defined Contribution Pension Scheme (DCPS) – Possibility of instituting an ad hoc procedure (Nos. 839, 863 and 864, *Cauchie*, 7 February 2013)

**Decision terminating it** – Effective date – Retroactive decision – Illegality (No. 287(a), *Somville*, 25 November 1993)

2-14-3 Orphan’s pension (Art. 25 of Annex IV)

**Entitlement** (Art. 25.4 of Annex IV)

Dependants – Child mainly and permanently maintained by the deceased parent, even if the child does not live at his or her home – Not established in the specific case, even if the deceased parent had borne certain expenses (No. 353, *Guyot and Ludwig*, 17 July 1997)

Case of remarriage of a widowed staff member

Situation different than remarriage of a staff member whose spouse has died (No. 304(a), *Hofland*, 14 September 1994)

Entitlement to an orphan’s pension maintained even if the staff member who is the parent remarries (No. 304 (b), *Hofland*, 19 October 1995)

2-14-4 Reversion pension (Art. 18.2 of Annex IV)

Right to a reversion pension – Non-remarried former spouse of a staff member or former staff member (No. 774(b), *Hulzebos*, 27 May 2011)

Division of the reversion pension between the spouse and former spouse of the deceased staff member (Art. 22 of Annex IV)

Appeals Board unable to accept the appeal submissions without directly damaging the rights of a third party – Obligation, in order to observe the adversarial procedure, to defer the ruling in order to send the documents in the procedure to that third person and allow her to submit comments (No. 774(a), *Hulzebos*, 29 October 2010)

Division in proportion to the duration of the marriages (No. 774(b), *Hulzebos*, 27 May 2011)

Reversion pension shall not be more than the amount of the maintenance payable (No. 774(b), *Hulzebos*, 27 May 2011)

Renunciation of the reversion pension by the former spouse – Analysis of the divorce agreement between the former spouses (No. 774(b), *Hulzebos*, 27 May 2011 ; No. 850, *Hulzebos*, 26 October 2012)

##### 2-15 Consultants (Chapter XVI)

Notion (Art.68) - Recognized expert or specialist engaged to serve in an advisory or technical capacity – Nurse – No (Nos. 852 & 861, *Puibaraud*, 25 October 2012)

Applicable rules – Contract making reference to the CPR – Application of the CPR – Case of a freelance interpreter (No. 666(a), *Shaw-Aerts*, 9 December 2003)

No entitlement to such a contract at the time of retirement (No. 756, *Baldwin*, 18 December 2009)

##### 2-16 Temporary personnel (Chapter XVII)

**Conditions (Articles 77 and 78)**

Replacement of members of the staff who are absent or to undertake tasks temporarily (Art. 77) for a maximum of 90 days, renewable once (Art. 78) – Conditions met in this case (No. 834, *Schewe*, 30 September 2011) or not met (No. 879, *Juneau*, 13 March 2013)

Circumstance which does not authorize the recruitment of temporary staff

Staff member employed for 15 years under successive one-year contracts – Contract comparable to an indefinite duration contract – Staff member who should have been employed from the beginning on the basis of an initial contract followed by an indefinite duration contract – Consequence – Payment of salary and allowances as if the staff member had been employed under such a contract (Nos. 852 & 861, *Puibaraud*, 25 October 2012)

Staff member employed for four and a half years on successive contracts ranging from two months to one year to set up and develop a service – Situation of neither replacing absent staff nor carrying out temporary tasks – Consequence – Payment of salary and allowances as if he had been employed on a regular contract (No. 879, *Juneau*, 13 March 2013)

Staff whose 3-month contract has been renewed a number of times over a period of several years – Administration merely claiming that successive restructurings of the body made it necessary, throughout this period, to refrain from taking any definitive decision on recruiting a salaried employee – Contracts which must come under Article 5 of the CPR

Period of 8 years over which the staff member was employed under 34 successive contracts, each lasting 3 months (No. 779, *Wild*, 17 September 2010)

Period of 8 years over which the staff member was employed under 30 successive contracts, each lasting 3 months (No. 822, *Bürgstein*, 30 September 2011)

Period of more than 4 years over which the staff member was employed under 18 successive contracts, each lasting 3 months (No. 813, *Dohms*, 27 May 2011)

 Circumstance which authorizes the recruitment of temporary staff

 Replacement of a member of staff on long-term sick leave (No. 834, *Schewe*, 30 September 2011; - No. 878, *Fryns*, 13 March 2013)

 Temporary contract pending the arrival of a new postholder selected following a recruitment process, the said arrival having been delayed until a medical certificate and security clearance had been issued (No. 878, *Fryns*, 13 March 2013)

Translators – Amount of remuneration – Calculation (No. 53(b), *Osy de Zegwaart*, 10 May 1974)

##### 2-16 bis Financial controllers

**Obligation for each NATO body** to recruit a financial controller (No. 391, *Schulze*, 24 September 1999)

**Appointment**

Legal basis – Art. 2 of the CPR making reference to the Financial Regulations (No. 391, *Schulze*, 24 September 1999)

Authority – Head of NATO body, after approval by the NATO Council (No. 391, *Schulze*, 24 September 1999)

Power not to appoint the candidate following the Council’s approval and power to submit another nomination shortly thereafter (No. 391, *Schulze*, 24 September 1999)

 Obligation to appoint a financial controller within a reasonable time frame (No. 391, *Schulze*, 24 September 1999)

 Obligation for a contract of at least three years of service as a financial controller (No. 391, *Schulze*, 24 September 1999)

 Interim appointment for 6 months of a controller who had already completed three years’ service, pending the appointment of the permanent holder of that post – Legality (No. 359, *Baldwin*, 3 June 1997)

**Choice** of a civil servant of a Member state normally (Art. 23 of the Financial Regulations) – Option of choosing a person lacking that status (No. 359, *Baldwin*, 3 June 1997)

**Competence** – Relationship with the Head of NATO body (No. 756, *Baldwin*, 18 December 2009)

##### 2-17 Staff associations and staff committees (Chapter XVIII)

Power to submit a complaint – No (No. 681, *Staff Association*, 12 September 2005)

# Chapter 3: Jurisdiction of the Appeals Board

### This chapter describes the disputes, requests and submissions of appellants for which the Appeals Board deems itself to have jurisdiction or not.

***3-1 Lack of jurisdiction of the Appeals Board***

3-1-1 Lack of jurisdiction *rationae temporis*

Decisions prior to the creation of the Board on 20 October 1965 – Assessment of an internal appeal – Decision taken after examination of that internal appeal (No. 2, *L’Hostis,* 13 October 1966)

3-1-2 Decisions taken by national authorities

**Assessment of the validity of national legislation**

Assessment of compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and of national authorities’ procedures (No. 432, *Trécat*, 5 September 2002)

Substitution by the Appeals Board of its assessment of a member state’s compliance with the Ottawa Agreement for that of the competent national courts (No. 679, *Trécat*, 30 June 2005)

Assessment of the jurisdiction of the Belgian court with respect to Belgian or Italian laws or rules or principles of international law (No. 344, *Gasparini*, 17 July 1997)

Assessment of the possibility for an Italian lawyer engaged as a NATO legal adviser to plead for the Organization before the Italian courts (No. 205, *de Sangro*, 31 January 1986)

Assessment of the consequences of differences between national legislations in leading to different situations for NATO staff members depending on their nationality – Consequences des differences of legislation regarding marriage and long-term civil partnerships (No. 814, *Hohenforst*, 13 July 2011)

**Assessment of decisions by national authorities**

Decision by the US authorities not to recruit a staff member with a view to appointing him to a NATO body – Jurisdiction of the American courts only, both with regard to the legality of the decision and to the liability arising from it (No. 91(b), *Atma*, 2 February 1979)

Decision by a national authority not to renew the staff member’s secondment (No. 144, *Mahieu*, 4 December 1981)

Decisions by a national authority deciding to withdraw a staff member’s security clearance – Lack of jurisdiction, even by way of exception (No. 18 *Panella*, 3 June 1970; No. 40, *Petit*, 19 April 1972; No. 200, *Simons*, 18 July 1985)

Decision by a national authority deciding to withdraw an access badge from a vehicle at a national military compound inside which a NATO body is located (Nos. 698-700-701, *Kirby*, 14 September 2006)

**Assessment of the liability of Member States**

Liability of a state arising from its decision to withdraw the security clearance of a staff member (No. 40, *Petit*, 19 April 1972)

Submissions seeking an order for NATO to pay compensation to a member state (No. 359, *Baldwin*, 3 June 1997)

3-1-3 Certain decisions by the North Atlantic Council

**Creation of the Appeals Board**

Decision of the North Atlantic Council creating the Appeals Board – Assessment of its compliance with the Ottawa Agreement (No. 34, *Smith*, 19 November 1971)

**Civilian Personnel Regulations**

Amendment of the CPR by the Board (No. 202, *Schall*, 15 April 1986; No. 206, *Reynaud*, 15 April 1986; Nos. 730-731, *Kneip & Hassink*, 11 July 2008)

Lack of jurisdiction of the Board to assess the legality of CPR provisions

No jurisdiction in principle (No 781, *Girard*, 4 February 2011)

Lack of jurisdiction, unless these provisions violate a general principle of international public service law (Nos. 853, 854, 856 and 859, *Azevedo and others*, 21 September 2012; Nos. 855, 857 and 858, *Bicego and others*, 21 September 2012)

Exception – Where a provision of the CPR seriously violates a general principle of international public service law (Nos. 730-731, *Kneip & Hassink*, 11 July 2008)

Desirability of a modification of the CPR (No. 202, *Schall*, 15 April 1986; No. 206, *Reynaud*, 15 April 1986; No. 238, *Montgomery*, 25 May 1988)

Determination of the right date of implementation of any modifications to the CPR envisaged by the Council (No. 238, *Montgomery*, 25 May 1988)

Assessment of a number of quantitative criteria adopted by the CPR – Allowances – Education allowance –80 km distance between the place of domicile and the workplace – Arbitrary difference between staff members – Lack thereof – Assessment of an issue of policy that can only be decided by the Council (No. 239, *Varlese*, 25 May 1988)

**Other decisions by the North Atlantic Council**

Cancellation of decisions of the North Atlantic Council (No. 6(d), *Aldus and others*, 19 December 1967; No. 57, *Warren*, 11 December 1974; No. 77, *Vandenberghe and others*, 25 February 1977; No. 169 (b), *de Sangro*, 24 October 1984; Nos. 174 and others, *Evans and others*, 14 February 1985; No. 424, *Gasparini*, 5 September 2002; Nos. 730-731, *Kneip & Hassink*, 11 July 2008; Nos. 784 to 794, 797 to 804 and 807 to 809, *Hill and others*, 4 October 2010; No. 814, *Hohenforst*, 13 July 2011)

Modification of the personnel establishment approved by the North Atlantic Council, and the grade of a staff member in particular (No. 94, *de Sangro*, 6 July 1978)

Deletion of a post by the budgetary authority (No. 141, *Goderniaux*, 3 December 1981; No. 142, *Ivoy*, 3 December 1981; No. 862, *Wendel*, 20 December 2012)

Advisability of the decision on the application of wage restraint in the form of a levy on salaries, in addition to the triennial review (No. 174, *Evans and others*, 14 February 1985)

3-1-4 Relations between the Secretary General and the North Atlantic Council

Decision by the Secretary General as to whether or not to submit any document for discussion by the nations in the framework of the North Atlantic Council (No. 851, *Suarez Gonzalez*, 21 September 2012)

3-1-5 Statutory decisions by Heads of NATO bodies

Lack of jurisdiction to rule directly on statutory decisions by Heads of NATO bodies or any other administrative authority – But jurisdiction to assess them when an appeal is directed against an individual decision taken for the implementation thereof (No. 206, *Reynaud*, 15 April 1986; Nos. 734-735, *Roden & Valkenberg*, 14 March 2008; No. 781, *Girard*, 4 February 2011)

No jurisdiction to rule directly on the legality of a regulatory decision in a message that was sent out to retired staff in general (Nos. 784 to 794, 797 to 804 and 807 to 809, *Hill and others*, 4 October 2010)

No jurisdiction to rule on the general organization of employment relations between NATO and its staff members and their representatives (No. 851, *Suarez Gonzalez*, 21 September 2012)

 Recategorization of submissions as being directed against the decision to apply the statutory act to the appellant (No. 737, *Suarez-Gonzalez*, 23 May 2008)

3-1-6 Individual decisions by Heads of NATO bodies taken regarding someone who is not a staff member, a former staff member or a beneficiary

Jurisdiction restrictively defined by the provisions of Article 4.2.1 of Annex IX – Individual disputes brought by persons other than staff members, former staff members or beneficiaries – Lack of jurisdiction of the Board (No. 722, *Secco*, 15 March 2007)

3-1-7 Decisions by authorities or persons not acting on NATO’s behalf

Contract between NATO and the insurance company paying the invalidity benefits (Nos. 839, 863 and 864, *Cauchie*, 7 Febraury 2013)

Findings of an expert at the conclusion of medical arbitration proceedings undertaken based on Article 7 of the NATO group insurance contract (No. 476, *Neto-Rodrigues*, 28 January 2003)

Consequences of a decision taken in medical arbitration proceedings (No. 659, *Hutse*, 4 June 2003)

Order for private insurers to pay an invalidity pension to a NATO staff member recognized as suffering from permanent invalidity (No. 84, *de Raffaele*, 13 January 1978; No. 112, *Cline*, 15 February 1980; No. 134, *de Raffaele*, 14 May 1981)

Order for the payment of damages to or by a Head of NATO body personally (No. 31, *Cauchie*, 27 October 1971; No. 37, *Gorman*, 16 November 1971)

Decision by the Vanbreda company setting an invalidity rate (Nos. 840, 845 & 849, *Pilot-André*, 1 June 2012; Nos. 839, 863 and 864, *Cauchie*, 7 February 2013)

3-1-8 Orders to NATO authorities or substitution for the latter in taking decisions

**Jurisdictional power not foreseen by the CPR**

Order to stay the execution of a decision by a Head of NATO body – Measure impossible notwithstanding the provisions of Article 4.35 of Annex IX, which are only guidance for Heads of NATO bodies (Nos. 161(b)-168, *Brégain*, 1 March 1984)

Substitution of its judgment for that of the Administration in assessing the qualifications of a candidate for a vacant post (No. 21, *Schuhmacher*, 27 November 1970; No. 201, *de Monts de Savasse*, 19 July 1985; No. 233, *de Monts de Savasse*, 14 January 1988; No. 234, *Broadbent*, 14 January 1988; No. 292, *Falch*, 27 January 1994)

**Non-jurisdictional powers**

To offer advice on a matter (No. 145, *de Sangro*, 4 December 1981: “The Appeals Board … does not give legal advice"); to respond to questions in abstract terms (No. 215, *Andrews*, 4 February 1987)

To clarify the CPR – Request that the Board “clarify” the provisions of the CPR (No. 238, *Montgomery*, 25 May 1988)

To inform appellants about the existence and the substance of regulations (No. 753, *Iannace*, 30 October 2009)

To indicate the administrative procedures to follow pursuant to its decision (No. 134, *de Raffaele*, 14 May 1981 – although the Board sometimes does: No. 743, *Rathke*, 10 July 2009; No. 755, *Messervy*, 30 October 2009)

To assess the legality of decisions by Heads of NATO bodies in the absence of appeals (No. 98, *Hintz*, 7 December 1978)

To make general rules (No. 215, *Andrews*, 4 February 1987)

**Decisions involving assessment of the Administration**

Assessment of the way in which the Administration carries out its duties, in particular whether its decisions are reasonable or not (No. 164, *de Konge*, 2 March 1984)

Assessment of the general conditions of operation of NATO bodies (No. 781, *Girard*, 4 February 2011), in particular the management of funds entrusted to a pension scheme (No. 866, *Agneessens*, 25 October 2012)

Making general recommendations to a NATO body about the management of its responsibilities (No. 795, *Klag*, 10 December 2010)

Opening of an inquiry by an outside expert on the management of a NATO body (No. 164, *de Jonge*, 2 March 1984; no.198, *Ross*, 14 May 1985; No. 415, *Durand*, 11 December 2001)

Decision on disciplinary action (No. 736, *Angus*, 8 April 2011)

Opening an inquiry into:

* the classification of a post (No. 169 (b), *de Sangro*, 24 October 1984)
* management of the promotion and recruitment system in a NATO body (No. 404, *Lawn*, 25 October 2000)
* the protection of personal data on staff members (No. 795, *Klag*, 10 December 2010)

Constitution of a “special tribunal” (No. 31, *Cauchie*, 27 October 1971)

Convocation of an invalidity board (No. 23No. 235, *Iazzetti-Brown*, 12 November 1987; No. 695, *Korsten*, 29 June 2006)

Granting of an invalidity pension (No. 379, *Mock*, 1 October 1998)

Injunction to a staff member to cease his inquiries or refrain from retaliations (No. 753, *Iannace*, 30 October 2009)

**Orders and recommendations to the Administration**

Recommendation to the Administration (No. 206, *Reynaud*, 15 April1986)

Order to take a given measure, in particular to rectify a situation (No. 164, *de Jonge*, 2 March 1984)

Order to the budgetary authority to create a post in the NATO personnel establishment (No. 667, *Archer*, 10 December 2003)

Order to the Administration to grant an indefinite-duration contract to a staff member (No. 414, *Neitzel*, 25 April 2001)

Order to send a letter of congratulations to a staff member (No. 31, *Cauchie*, 27 October 1971)

Order to disavow the recitals in a NATO legal adviser's letter (No. 271, *Quarto*, 17 September 1992)

Order to send a letter of apology to a former staff member (No. 98, *Hintz*, 7 December 1978; No. 694, *Rovder*, 14 December 2006) or to national delegations (No. 694, *Rovder*, 14 December 2006) or to acknowledge mishandling of a matter by the Administration (No. 198, *Ross*, 14 May 1985)

Order to take disciplinary action against staff members (No. 736, *Angus*, 8 April 2011)

Ordering an enquiry into the management of a NATO body's responsibilities (No. 795, *Klag*, 10 December 2010)

Order to look into what must be done to prevent an identical situation from recurring (No. 31, *Cauchie*, 27 October 1971)

Order to provide assistance to a staff member in a dispute pending before a national court regarding his pension rights (No. 69, *de Raffaele*, 28 January 1976)

Order to initiate disciplinary action (No. 198, *Ross*, 14 May 1985; No. 672, *Photopoulos*, 3 March 2005)

Order to clarify the applicable regulations (No. 266, *Hoefling*, 13 November 1991)

Order telling the administration how to make its decisions known (No. 817, *Roberts*, 27 May 2011)

***3-2 Jurisdiction of the Appeals Board***

3-2-1 General definitions

Jurisdiction set out by Chapter XIV of and Annex IX to the CPR, approved by the North Atlantic Council on 20 October 1965 by the decision recorded in C-R(65)44 which constitutes the basic terms of reference of the Appeals Board – Jurisdiction not modified by the working paper with limited distribution adopted on the same day that does not waive rules in the document circulated to all staff (No. 173(a), *Buyle*, 5 December 1984)

Jurisdiction restrictively defined by the provisions of Article 4.2.1 of Annex IX – Individual disputes brought by persons other than staff members, former staff members or beneficiaries – Lack of jurisdiction of the Board to take cognizance of the refusal to appoint a candidate from outside the Organization to a post (No. 722, *Secco*, 15 March 2007)

Competent to interpret acts of private law under the national law of persons, insofar as this interpretation is essential to the application of the Civilian Personnel Regulations, and consequently to the settlement of the dispute brought before it (No. 850, *Hulzebos*, 26 October 2012)

3-2-2 Disputes over decisions by the North Atlantic Council

Jurisdiction of the Board to assess the legality of the North Atlantic Council’s decisions in an appeal lodged against a decision by a Head of NATO body when the latter's decision is limited to reproducing the Council’s decision (No. 6(d), *Aldus and others*, 19 December 1967; No. 57, *Warren*, 11 December 1974; No. 77, *Vandenberghe and others*, 25 February 1977; No. 174 and others, *Evans and others*, 14 February 1985)

Authority of the Board to assess the legality of decisions of the North Atlantic Council when an appeal is made against a decision taken by the head of a NATO body and this decision merely reproduces the Council’s decision (No. 6(d), *Aldus and others*, 19 December 1967; No. 57, *Warren*, 11 December 1974; No. 77, *Vandenberghe and others*, 04 October 2010; No. 174, *Evans and others*, 13 July 2011)

Jurisdiction of the Board to verify that a decision by the Council as the budgetary authority to delete a post was not taken based on an irregular procedure or founded on facts that were tainted by errors of law (No. 343, *Selvanizza*, 5 February 1997; No. 345, *Cooper*, 6 February 1997)

Jurisdiction to interpret any provision of the Civilian Personnel Regulations and their annexes (Nos. 784 to 794, 797 to 804 and 807 to 809, *Hill and others*, 4 October 2010)

Method of interpretation – Interpretation on the basis of proposed modifications of the CPR that were not accepted – Interpretation of the terms "married staff members" to determine entitlement to the household allowance, in the light of the two refusals in previous years to modify the CPR to extend this entitlement to staff members who have entered into a long-term civil partnership (No. 814, *Hohenforst*, 13 July 2011)

3-2-3 Disputes over decisions by Heads of NATO bodies

Jurisdiction to take cognizance of appeals brought by former staff members (Art. 4.21 of Annex IX) – Jurisdiction limited to disputes involving those former staff members and that are related to the duties previously performed by them (No. 159, *Mazza*, 21 October 1983)

Jurisdiction to assess the legality of the non-renewal of a contract (No. 38, *Lew*, 24 February 1972; No. 63, *Laval*, 13 June 1975; No. 75, *Yardas*, 2 July 1976; No. 85, *Shimell*, 8 December 1977; No. 97, *Baylac*, 6 March 1979; No. 812, *Ferkinghoff*, 8 April 2011)

3-2-4 Disputes over liability

Assessment, for the purpose of determining NATO’s liability, of the compliance of Member States’ acts and decisions with the Ottawa Agreement (No. 361, *Gasparini*, 4 December 1997)

Case in which that compliance was addressed in decisions by member states' courts – Interpretation by the Appeals Board required (No. 679, *Trécat*, 30 June 2005)

Assessment of the origin of an injury sustained by a NATO staff member under the CPR (No. 461(a), *Sutherland*, 9 October 2002)

Order for NATO to pay damages (No. 461(a), *Sutherland*, 9 October 2002)

Assessment of the wrongful nature of the origin of an injury, of NATO’s liability, of the grounds for the payment of damages for the injury (sure and direct nature) – Assessment of the legality of decisions by NATO bodies denying their liability (No. 461(a), *Sutherland*, 9 October 2002)

Consequences of any negligence by NATO in the execution of the contract of a staff member subject to the CPR (No. 666(a), *Shaw-Aerts*, 9 December 2003)

3-2-5 Disputes over social benefits and pensions

Dispute over staff members’ entitlement to social benefits that have to be provided by a private insurer – Assessment by the Board of any wrongdoing by the Administration in the application of the contract between NATO and the insurance company (No. 112, *Cline*, 15 February 1980)

Decision by the Head of a NATO body to endorse the findings of an expert at the conclusion of medical arbitration proceedings (No. 476, *Neto-Rodrigues*, 28 January 2003)

Invalidity Board – Checking the findings of the Vanbreda company’s medical expert (No. 381(c), *Mercier*, 22 March 2001)

Dispute over the application of continued medical coverage benefits – Benefits guaranteed by the CPR (No. 671, *McCall*, 2 March 2005)

Dispute over liability founded on Article 7 of the NATO group insurance contract – Jurisdiction with regard to decisions by a Head of NATO body taken pursuant to a medical expert’s findings (No. 476, *Neto-Rodrigues*, 28 January 2003)

# Chapter 4: Procedure

This chapter describes the procedural rules applicable before the Appeals Board when it examines the appeals lodged with it.

## 4-1 General rules of procedure

4-1-1 Composition of the Appeals Board

**Composition as determined by Article 4.1.1 of Annex IX**

"There shall be established an Appeals Board composed of a President and two full members, of different nationality. The members of the Board, who must be of the nationality of one of the Member states of NATO, but not members of the Organization's staff or of the national delegations to the Council, shall be appointed by the North Atlantic Council for a period of 3 years from among persons of recognized competence of whom one at least must have legal qualifications."

Article 4.16 of Annex IX allows appellants to contest the partiality of Appeals Board members. When they approved the Civilian Personnel Regulations, the Member States had good reason to judge that these Regulations provided for a tribunal in accordance with Article 6 of the European Convention for the Protection of Human Rights (ECHR, 12 May 2009, *Gasparini v. Italy and Belgium*, no. 10750/03)

Review by the Board itself of the rules governing its composition – Yes – Conformity (No. 16(b), *Zahlès*, 27 January 1970)

Review by the Appeals Board of the proper designation of Board members – (No. 34, *Smith*, 19 November 1971)

Petition for a rehearing – Common law composition – Validity – Rejection of the petition for the three judges who ruled in the previous case to recuse themselves (No. 15(a), *Bornemann*, 21 October 1969; No. 137, *Nind*, 8 July 1981)

**Petition for the Board as a whole to recuse itself (Art. 4.1.6 of Annex IX)**

“Each party can ask for a change in the composition of the Appeals Board on account of presumed partiality. The parties may not, however, invoke the nationality of a member of the Appeals Board to this effect. The Board shall take a decision on the request submitted in the absence of the member concerned "

Request for recusal of all the Board’s members – Inadmissibility (No. 736, *Angus*, 8 April 2011)

Petition submitted without advancing any ground of an individual nature – Inadmissibility.

Petition based on the presumed partiality of the members who made the ruling a rehearing of which is sought (No. 15 (a), *Bornemann*, 21 October 1969; No. 736, *Angus*, 8 April 2011)

Petition "completely alien to the provisions of Article 4.1.6 of Annex IX" – Dismissal (No. 340, *Parisotto*, 9 January 1997)

Petition expressed in a general manner without indicating the grounds on which, for each Board member, his participation is purportedly biased (No. 710 (a), *Angus*, 22 June 2007; No. 736, *Angus*, 8 April 2011)

**Petition for the recusal of a judge**

Admissibility

Appellant not able, by making frivolous and unsubstantiated allegations, to force one or more members of the court to recuse themselves (No. 736, *Angus*, 8 April 2011)

Petition must be based on grounds of an individual nature (No. 340, *Parisotto*, 9 January 1997)

New facts brought to the appellant's attention after the first hearing – Impartiality demonstrated for one of the judges in the case but not for the other – Challenge of this judge allowed (No. 16(a), *Zahlès*, 22 October 1969)

4-1-2 Venue

Meetings in **Paris**, at NATO Headquarters: Nos. 1 to 4

Meeting in **Luxembourg**, at NAMSA HQ: Nos. 29, 31 and 32

Meeting in **Versailles**, at CEOA HQ: Nos. 141, 142, 144, 145 and 146

Meeting in **Aix-en-Provence**, at NAHEMA HQ: Nos. 437 to 441, 443 to 460, 462 to 465, 467 to 474 & 481, *Kleidorfer and others*, 20 November 2002 (single decision)

Meetings in **Brussels**, at NATO Headquarters: all other decisions

### 4-1-3 Hearings not public

"The meetings of the Appeals Board shall be held in private" (Article 4.7.1 of Annex IX)

Hearings not public – Ground – Preservation of the dispassionate character of debate within the specific context of an organization such as NATO – No prejudice to the fundamental rights of applicants before the Board (No. 424, *Gasparini*, 5 September 2002)

Hearings not public (Annex IX, Article 4.7.1) – Appeals Board not empowered to decide to open one of its sessions to the public (No. 424, *Gasparini*, 5 September 2002)

The fact that the Appeals Board's proceedings are not publicized is justified by the fact that the questions put to it concern technical issues and require a rapid decision, and that hearings have to remain dispassionate in the specific context of an organization such as NATO.

When they approved the Civilian Personnel Regulations, the Member States had good reason to judge that the requirements of fairness were met without the holding of a public hearing. The lack of publicity had in no way undermined the fairness of the proceedings as a whole (ECHR, 12 May 2009, *Gasparini v. Italy and Belgium*, No. 10750/03)

4-1-4 Holding of hearings

"The Head of the NATO body and the appellant may, on their own initiative, or following a request by the Appeals Board, attend the hearings and make oral statements in support of the arguments put forward in their submissions" (Article 4.7.2 of Annex IX)

**Possibility of not holding a hearing**

"Where, in the course of a meeting of the Appeals Board, it appears that further investigation, as provided for in paragraph (e) above, is necessary to enable it to reach its decision, the Appeals Board may, if it deems it appropriate, agree to render its decision without holding a further meeting for the purpose" (Para.(f) of Article 4 of Appendix 1 to Annex IX)

Judgment on a petition for a rehearing suspended pending the response from a national authority regarding the authenticity of a document (No. 658 (a), *Melchior*, 4 June 2003)

**Notification to the parties to attend**

"The Secretary of the Board shall notify the members of the Board, the NATO Legal Adviser, the Head of the NATO body concerned and the appellant, at least 15 days in advance of the date of the meeting of the Board. A copy of the file of each case shall be circulated to each member of the Board at least 30 days before the date thus established." (Para.(b) of Article 2 of Appendix 1 to Annex IX)

Applicant not advised of the date of the hearing or given an opportunity to present his comments – Appeals Board unable to legitimately sit or rule (No. 669 (a), *Slater*, 14 September 2004)

Board sitting in the absence of the appellant or his representative – Permitted only if this absence is the appellant's choice or caused by his negligence (No. 418, *Farnworth*, 5 September 2001 (ruling implicit); No. 669 (a), *Slater*, 14 September 2004; No. 710 (a), *Angus*, 22 June 2007; No. 718, *Kirby*, 12 July 2007; No. 719, *Kirby*, 21 September 2007; No. 732, *Jensen*, 31 October 2008; No. 767, *Rathke*, 17 September 2010; Nos. 780(a) and 781, *Girard*, 4 February 2011; No. 736, *Angus*, 8 April 2011)

Notice to the appellant to attend – Obligation to take into account the last address indicated, for example on the first page of his reply (No. 669 (a), *Slater*, 14 September 2004)

**Presence of third parties**

Presence, on behalf of the Organization, of a staff member who sat on the Complaints Committee applied to by the appellant – No infringement of the regularity of the procedure (No. 422, *Biondi*, 28 February 2002)

Hearing of witnesses – Petition

"The Appeals Board shall hear any witnesses 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 Board and may not refuse the required information, except under the conditions laid down in the Board's rules" (Article 4.7.4 of Annex IX)

Hearing necessary in the instant case – Head of the NATO Social Service and Director of the Van Breda company present at an appeal on continuing medical cover (No. 338, Murzi, 5 December 1996)

Hearing not necessary in the instant case (No. 681, *Staff Association, Goyens & Hill*, 12 September 2005; Nos. 687-688, *Bundgaard & Moller*, 27 October 2005)

4-1-5 Lines of reasoning adopted by the Board

Simple considerations of equity – No (No. 430, *Milhoux-High*, 1 March 2002; No. 673, *Curry*, 26 May 2005; No. 707, *Calcagni*, 14 December 2006)

Board expresses its "regret" at having to cancel an appointment procedure a second time (No. 233, *de Monts de Savasse*, 14 January 1988; No. 234, *Broadbent*, 14 January 1988), and a third time (No. 241, *Green*, 15 February 1989; No. 244, *de Monts de Savasse*, 15 February 1989; No. 245, *Broadbent*, 15 February 1989)

Board refers to "unfortunate irregularities" (No. 676, *Orosz*, 30 June 2004)

Board can decide that certain rules are non-substantive in nature (No. 99, *Kester*, 2 February 1979; No. 203(b), *Bremer*, 16 April 1986)

Interpretation of documents

Council decision leaving no room for interpretation – Board obliged to apply it literally (No. 40, *Petit*, 19 April 1972)

Civilian Personnel Regulations interpreted on the basis of proposed modifications that were not accepted – Interpretation of the terms "married staff members" to determine entitlement to the household allowance, in the light of the two refusals in previous years to modify the CPR to extend this entitlement to staff members who have entered into a long-term civil partnership (No. 814, *Hohenforst*, 13 July 2011)

Decision the terms of which can give rise to some doubt – Search for the true motives of the Administration rather than carrying out a semantic analysis of the terms of the document (No. 96, *Evans*, 8 December 1978)

Evidential force of a document – Literal wording of a document accepted in the absence of any other document – Other document contradicting the first – Assessment of the relative evidential force of the documents, with preference being given to a financial document not challenged in its time rather than a fiscal certificate in which one statement is inaccurate (No. 140(b), Willaume, 28 April 1982)

Real or presumed differences between two versions of the same text in both NATO official languages

Assessment of a document vs. its translation in the other NATO official language (No. 6(d), *Aldus and others*, 19 December 1967; No. 83, *Hintz*, 16 November 1977)

Comparison of the two versions of the decision – Faulty translation observed and reference to the original (No. 137, *Nind*, 8 July 1981)

Comparison of the two versions of a contract – Discrepancies resolved by seeking to identify the common intent of the parties (No. 6(d), *Aldus and others*, 19 December 1967)

Interpretation of the CPR by réference to each of the official languages of NATO (No. 814, *Hohenforst*, 13 July 2011)

Grounds too succinct

"Decisions of the Board (…) shall state the grounds on which they are based" (Annex IX, Article 4.8.1).

Board declares that the facts justifying termination of the contract are real and valid, but fails to say what these are (No. 171, *Markey*, 23 October 1984)

Appeals Board states that one of the grounds for the non-renewal of a contract is legal, but fails to specify what this is (No. 173(b), *Buyle*, 19 April 1985)

Administrative decision based on various grounds, some of which are illegal – Legality of the decision if it appears that the administration would have taken the same decision on the basis of the legal grounds alone (No. 844, *Garcia Cidoncha*, 1 June 2012)

4-1-6 Procedure must be in writing

"Appeals shall be made in writing. They shall state all grounds of appeal put forward by the appellant and shall be accompanied by all documentary evidence in support thereof" (Article 4.3.3 of Annex IX)

Inability to invoke new arguments at the hearing (Nos. 687-688, *Bundgaard and Moller*, 27 October 2005)

4-1-7 Inter partes nature of the proceedings – Rights of the defence

"The Head of the NATO body and the appellant may, on their own initiative, or following a request by the Appeals Board, attend the hearings and make oral statements in support of the arguments put forward in their submissions. They may be aided or represented for this purpose either by a member of the civilian or military personnel of NATO or by counsel selected by them" (Article 4.7.2 of Annex IX)

**Appellant's right to be assisted by a person of his choice** (Article 4.7.2 of Annex IX to the CPR) – Rule which does not preclude certain persons bound by contract with NATO from being prevented, on account of their duties, from assisting or representing an appellant (No. 684, *Johnson*, 11 May 2006)

**Exchange of written statements** – Time allowed to provide them – Deadline set by the Appeals Board Secretary exceeding that of 60 days laid down by Article 4.4.1 of Annex IX – Circumstance not affecting the regularity of the procedure, particularly as the deadlines communicated to the parties were met and each party was able to put his arguments to the Appeals Board at its meeting (No. 835, *Lieber*, 11 November 2011)

**Documents produced at the hearing**

Ruling deferred to provide time for both parties to respond. Expert heard at the hearing asked to submit his observations in writing so that these can be addressed to the parties (No. 169(a), *de Sangro*, 9 May 1984)

Ruling deferred to give the opportunity to submit comments to the person whose rights the Board's decision might damage (No. 774(a), *Hulzebos*, 29 October 2010)

Elements essential to the resolution of the dispute not brought to the Board's attention until the hearing – Need to defer a ruling in order to respect the *inter partes* nature of the proceedings (No. 666 (a), *Shaw-Aerts*, 9 December 2003; *a contrario*: No. 669 (b), *Slater*, 26 November 2004)

Submission of new documents at the hearing – Documents not subjected to examination by both parties – Board obliged to exclude them (No. 669 (b), *Slater*, 26 November 2004; *a contrario*: No. 666 (a), *Shaw-Aerts*, 9 December 2003)

**Submission of documents**

Right to receive the Complaints Committee report (No. 422, *Biondi*, 28 February 2002; No. 667, *Archer*, 10 December 2003)

**Necessity of involving a third party**

Adversarial nature of the legal procedure – Situation where the Board could not accept the appeal submissions without directly damaging the rights of a third party

Reversion pension must be divided between the spouse and the former spouse of the deceased staff member (Article 22 of Annex IV) – Obligation to defer the ruling in order to send the documents in the procedure to that third person and allow her to submit comments (No. 774(a), *Hulzebos*, 29 October 2010)

Appeal against the decision to reject the appellant's application for a post which calls into question the eligibility of the selected candidate (No. 815(a), *Baaring*, 11 November 2011)

4-1-8 Intervention

Obligation on the Board's part to communicate the appeal to a third party whenever the action lodged could infringe the rights of that third person.

Ruling deferred in order to provide time to address the appeal to this third party (No. 203(a), *Bremer*, 29 November 1985)

Spontaneous intervention by the third party does not meet these conditions – Intervention inadmissible (No. 293, *Kermis*, 5 May 1994)

4-1-9 Information given in the decision

Making decisions anonymous – Not required in this case, as the appellant does not show how mentioning his name in the decision could cause him damage, particularly as the Appeals Board takes care to indicate on each of its decisions and on the compendia or collections of decisions which it issues that in case of reproduction, even if only partial, of any decision, the name of the appellant must not appear (No. 795, *Klag*, 10 December 2010)

## 4-2 Filing of the appeal

4-2-1 Main characteristics of appeals

**Right to appeal**

Administration which, in the person of the Head of a NATO body, exerted pressure on the staff member not to file an appeal with the Board – Serious allegation not convincingly challenged by the Administration – Redress for the damage caused – Indemnity of 2,000 DM (No. 261, *Zimmermann*, 20 September 1990)

Illegality of directives issued by a Head of a NATO body, on the modalities of challenging administrative decisions, that restrict staff members' right to an appeal arising from the provisions of Article 61 of the CPR and of Annex IX thereto (No. 772, *Marin Ortega*, 10 December 2010; No. 773, *Iannace*, 10 December 2010; No. 775, *Pavesi*, 4 February 2011)

**Non-suspensive effect of the appeal** before the Board (No. 139, *Hardenbol*, 9 July 1981)

4-2-2 Decisions subject/not subject to appeal

**Acts removed from the legal process**

Decision cancelled, even before the appeal was lodged, by a previous Appeals Board decision - Appeal inadmissible (NoS. 838 and 848, *Ianacce*, 6 July 2012; No. 846, *Marin Ortega*, 6 July 2012)

**Acts constituting appealable decisions**

Decision by the Secretary General (No. 6(d), *Aldus and others*, 19 December 1967; No. 414, *Neitzel*, 25 April 2001; No. 424, *Gasparini*, 5 September 2002)

Decision by the Secretary General when no provision of the CPR provides for the eventuality of a complaint lodged with him against the Head of a NATO body – Requirement to exercise good management (No. 681, *Staff Association, Goyens & Hill*, 12 September 2005)

Decision by the Secretary General to amend the budgetary document submitted to the Civil Budget Committee – Decision whose effect is to preclude any possible reclassification of the appellant (No. 675, *Lenti and others*, 30 June 2005)

Decision by the Head of a NATO body

Requalification of the appeal to determine which Head of a NATO body made the decision (No. 4, *Bouffioux*, 19 April 1967)

Concept of "Head of a NATO body"

Agency whose incorporating charter provides for the appointment of a General Manager and reliance to "the maximum extent possible" on "any administrative assistance that can be extended to it by NATO Headquarters" – General Manager to be regarded as the Head of a NATO body, within the meaning of Article 4.3.1 of Annex IX to the CPR (No. 80, *Salançon and others*, 16 November1977)

### NATO body dissolved - Liquidator to be considered the Head of the NATO body in the sense of Annex IX to the CPR (No. 780 (a), *Girard*, 4 February 2011)

Implicit decision – Reply from the Head of a NATO body indicating that he was unable to rule on a complaint which was being examined by "the highest NATO authorities" – Reply equivalent to a refusal (No. 187, *Cicek*, 18 April 1985)

Criteria – Questioning by the Appeals Board of the individual who personally made the decision.

Not established in the instant case. The impugned decision merely relays a decision by SACEUR which the signatory to the letter is bringing to the staff member's attention (No. 400, *Morisson*, 13 July 2000) – Same for a decision by the Secretary General brought to the staff member's attention by the Deputy Assistant Secretary General for Human Resources (NO. 821, *Sprengers*, 30 September 2011)

Not established in the instant case.The impugned decision merely relays a decision by the NATO Secretary General which the signatory to the letter is bringing to the staff member's attention (No. 694, *Rovder*, 14 December 2006)

Established in the instant case.The impugned decision, although signed by the Chief of Staff, was taken personally by the Head of the NATO body, as attested to by other documents in the file (No. 693-697, *Angus*, 14 September 2006)

Decision that must be considered to have been signed by the Head of the oersonnel division and taken by the Head of the NATO body (No. 381(a), *Mercier*, 13 November 1998)

Decision by the Head of a NATO body to endorse the findings of an expert following a medical arbitration procedure (No. 476, *Neto-Rodrigues*, 28 January 2003)

Head of a NATO body recognizing at the hearing of the Board that the decision had been taken by him (No. 812, *Ferkinghoff*, 8 April 2011)

Performance report (No. 87, *Appleton*, 11 January 1978 – cf. as from 1991: preparatory act not subject to direct appeal)

Decision not to renew a contract when the staff member could have challenged beforehand the decision establishing the duration of her contract (No. 416, *Vedel and Badin*, 22 January 2002; No. 419, *Corso-Leclercq*, 22 January 2002)

Decision intended to impose the immediate payment of sums greater than what was paid before (No. 437 and others, *Kleidorfer and others*, 20 November 2002)

**Acts not constituting appealable decisions**

Decisions taken by persons not the Head of a NATO body

Requalification of the appeal to determine which Head of a NATO body made the decision (No. 4, *Bouffioux*, 19 April 1967)

Letter in which a staff member on sick leave is informed by her employer of the decision by the Van Breda insurance company declaring her to be fit for work – Decision requalified as the decision of the Head of the employing NATO body (No. 381 (a), *Mercier*, 13 November 1998) – *a contrario*: decision by Van Breda company setting an invalidity rate (Nos. 840, 845 & 849, *Pilot-André*, 1 June 2012)

Determination of the Head of the NATO body concerned.

Decision taken by the Head of another NATO body because of an error committed by both the staff member, who sent his complaint to the wrong authority, and by the latter authority, which should have forwarded it to the appropriate body (No. 80, *Salançon and others*, 16 November 1977; No. 746, *Rutten*, 27 February 2009)

Former staff member of a NATO body – Only certain decisions may be challenged – Decisions by the Head of the NATO body with which he was serving at the time of his retirement or at the end of his last contract with a NATO body (No. 746, *Rutten*, 27 February 2009)

Decision taken by the Head of the Administration and Personnel Division of a NATO body – Confirmation of the existence of an implicit rejection decision resulting from the silence maintained for 30 days by the Head of the NATO body – Appealable implicit decision (No. 55, *Smith*, 9 May 1974)

Decision taken by the Chief of Staff of the Head of the NATO body (No. 255, *Lops*, 17 May 1990; No. 739, *Koelewijn*, 12 December 2008)

Preparatory act

 Decision by the Administration not to follow up on complaints by a staff member regarding the conduct of the disciplinary procedure to which he was subject – Circumstances may only be invoked against the disciplinary sanction imposed at the conclusion of this procedure (No. 709, *Kirby*, 9 November 2006)

Performance report (No. 266, *Hoefling*, 13 November 1991) – Preparatory act whose illegality may be invoked only in support of findings directed against the act being appealed against (No. 680, *Hunt*, 13 September 2005; No. 724, *Barbieri*, 25 October 2007; No. 745, *Austin*, 31 October 2008; No. 782, *Prema*, 29 October 2010; No. 824, *Karagounis*, 9 March 2012; No. 842, *Antonsen*, 24 February 2012)

Decision to convene a selection board to consider candidates for a job – Preparatory decision whose legality may only be challenged in support of an appeal against the decision not to approve an application for the post in question (Nos. 838 and 848, *Ianacce*, 6 July 2012)

Simple notices, letters and information

Complaints Committee advice (No. 164, *de Jonge*, 2 March 1984).

Simple letter of remarks (No. 32, Calcagno, 18 November 1971; No. 36, *Cracco*, 22 February 1972)

Simple informational letters (No. 392 (b), *Gresser*, 22 March 2001).

 Letter informing the staff member that the Head of the NATO body had forwarded a proposal to budget authorities (No. 343, *Selvanizza*, 5 February 1997; No. 345, *Cooper*, 6 February 1997; Nos. 349/356, *Verdoni*, 20 November 1997, and on the same day: No. 355, *Chiavacci*; No. 357, *Garibbo*; No. 358, *Menelli*)

Audit reports (No. 335, Bindges, 25 September 1996)

Decision not constituting grounds for grievance

Favourable decision allegedly based on an erroneous ground (No. 146, Lewis, 4 December 1981)

Instruction not applied to the appellant (No. 164, *de Jonge*, 2 March 1984)

4-2-3 Need for a prior administrative decision

“The Appeals Board shall only entertain appeals arising out of a decision of the Head of the NATO body concerned which constitutes grounds for grievance.” (Annex IX, Article 4.3.1).

Submissions presented directly to the Appeals Board – Inadmissibility (No. 9, *Zahlès*, 23 October 1968; No. 20, *Ubertis*, 4 March 1971; No. 46, *Smith*, 21 March 1973; No. 92, *Skingle*, 14 August 1978; No. 95, *Siddi*, 8 December 1978; No. 352, *Jackson*, 5 June 1997; No. 673, *Curry*, 26 May 2005; No. 676, *Orosz*, 30 June 2004; No. 681, *Association du personnel*, 12 September 2005; No. 743, *Rathke*, 10 July 2009; No. 755, *Messervy*, 30 October 2009)

Authority competent to sign the decision taken after consideration of the prior appeal – Same person as in the initial decision acting "by order" – Legality – Regrets by the Board (No. 4, *Bouffioux*, 19 April 1967).

Ability to lodge a petition against a decision by the Head of a NATO body (No. 400, *Morisson*, 13 July 2000; Nos. 693-697, *Angus*, 14 September 2006)

### 4-2-4 Complaint procedure

### **Obligation to go through the immediate supervisor in the first instance (Article 61.1)**

### Procedure made impossible by the nature of the dispute – Staff member subjected to harassment by one of the main officials of the NATO body where she was employed (No. 796-810, *Nechelput*, 30 September 2011)

### **Distinction between a complaint and a petition**: cf: No. 97, *Baylac*, 6 March 1979; No. 367, *Clark*, 18 July 1997

### **Scope**

All staff members may appeal to the Board (No. 666(a), *Shaw-Aerts*, 9 December 2003)

Exception in the case of disciplinary action – Prior disciplinary procedure offering the staff member an initial opportunity to make his comments during a procedure with both parties present – Sanction thus neither subject to complaint nor to the convening of a Complaints Committee – Administrative petition possible before the appeal procedure (No. 720, *Kirby*, 12 July 2007)

Dispute dealing with "conditions of work" (Art. 61.1) – Need to refer the matter to the division chief (No. 231, *Peters*, 22 May 1987)

Situation of former staff members and legal successors – Unable to make a complaint, but only to make a request to the Head of the NATO body – Identical conditions as regards preservation of the appeal period – Notion of the reasonable time within which such requests must be submitted (Article 61.3) – Four months – Reasonable period in this case (No. 847, *Vankrunkelsven*, 24 February 2012)

### **Nature and subject of the proceeding**

Proceeding, in the case of an administrative appeal, whose object is to enable the Head of the NATO body to come to a decision based upon the advice of a Complaints Committee before re-examining the decision taken by one of his subordinates – Proceeding not mandatory when a petition against a decision by the Head of the NATO body himself is involved (No. 97, *Baylac*, 6 March 1979)

Petition which the Head of the NATO body himself submits to a Complaints Committee – Petition which, as a consequence, does not become a complaint, within the meaning of Article 61 of the CPR (No. 322, *Maloberti*, 29 February 1996; No. 693-697, *Angus*, 14 September 2006)

### **Procedure**

Challenge of an act which is not a decision – Consequence – Complaints procedure does not apply (No. 271, *Quarto*, 17 September 1992).

Need to approach one's section or division chief beforehand (Art. 61.1.) (No. 164, *de Jonge*, 2 March 1984).

Challenge of a decision taken by a subordinate of the Head of a NATO body – Time period.

Need to lodge a complaint within a reasonable period of time (No. 270, *Quarto*, 26 February 1992; No. 287(a), *Somville*, 25 November 1993; No. 367, *Clark*, 18 July 1997; No. 400, *Morisson*, 13 July 2000; Nos. 693-697, *Angus*, 14 September 2006; Nos. 698-700-701, *Kirby*, 14 September 2006; No. 772, *Marin Ortega*, 10 December 2010; No. 773, *Iannace*, 10 December 2010; No. 775, Pavesi, 4 February 2011; No. 819, *von Schwerin-Bode*, 30 September 2011; No. 822, *Bürgstein*, 30 September 2011; No. 837, *Formignani*, 15 December 2011)

 Request relating to a past period – Period of 3 months after the staff member's employment ended (No. 822, *Bürgstein*, 30 September 2011)

 Concept of a "reasonable time" must be understood in the light of the deadline of 60 days for appeals (Article 4.3.2 of Annex IX) and of the period of 3 months for claiming allowances retroactively (Article 24.6 of the CPR) – Delay of 3 months not unreasonable, in the light of the appellant's state of health owing to the deterioration in her working conditions (No. 827, *Pavesi*, 24 February 2012)

Need to submit the complaint within a reasonable period of time after rejection of the request by the head of service or official in charge of personnel management – Complaint submitted after this reasonable period of time – Consequence – Inadmissibility of the appeal filed with the Appeals Board.

20 months elapsed after the refusal (No. 208, *Huwart*, 31 January 1986)

14 mois elapsed after the refusal (No. 270, *Quarto*, 26 February 1992)

7 years elapsed after the refusal (No. 393, *Lindner*, 24 February 2000)

9 years elapsed after the refusal – "well after the passage of a reasonable period of time" (No. 287(a), *Somville*, 25 November 1993)

Request for conversion of a definite duration contract to an initial contract submitted 15 months after its signature (No. 837, *Formignani*, 15 December 2011)

Request relating to a past period – Delay of 6 years after the termination of the staff member's employment (No. 819, *von Schwerin-Bode*, 30 September 2011; No. 825, *Beemelmans,* 30 September 2011; No. 826, *Berix,* 30 September 2011), same for a delay of 5 years (No. 830, *Gillessen*, 30 September 2011; No. 831, *Desjarlais,* 30 September 2011), 21 months (No. 829, *Indielsten*, 30 September 2011), 11 months (No. 820, *Crounse*, 30 September 2011), 8 months (No. 833, *Eason*, 30 September 2011)

**Complaints Committee (Article 3.2 of Annex IX)**

Mission entrusted to the Complaints Committee – Illegality of the decision by the Head of the NATO body to limit the terms of reference of the Committee, debarring examination of the facts that gave rise to the performance report and on whose basis it was decided not to renew the appellant's contract (No. 85, *Shimell*, 8 December 1977)

Request submitted by a staff member who lodged a complaint seeking the convening of a Complaints Committee.

Ability to request the convening of a Complaints Committee (Annex IX, Art. 3) – Head of a NATO body obliged to honour this request (No. 367, *Clark*, 18 July 1997; No. 400, *Morisson*, 13 July 2000; Nos. 693-697, *Angus*, 14 September 2006; Nos. 698-700-701, *Kirby* 14 September 2006; No. 740, *Woodcock*, 31 October 2008; No. 772, *Marin Ortega*, 10 December 2010; No. 773, *Iannace*, 10 December 2010; Nos. 840, 845 & 849, *Pilot-André*, 1 June 2012)

Presumed complaint against a decision by the Head of a NATO Body – Implicit refusal by this authority after a period of 30 days – Convening of a Complaints Committee serves no purpose (No. 187, *Cicek*, 18 April 1985)

Decision taken without such a committee having been convened – Consequence – Illegality of the decision (No. 400, *Morisson*, 13 July 2000; No. 772, *Marin Ortega*, 10 December 2010; No. 773, *Iannace*, 10 December 2010)

Exception in cases where the request to convene a Complaints Committee refers to facts already examined by a previous Committee or a decision which has been rescinded, thereby rendering the dispute devoid of substance (Nos. 698-700-701, *Kirby* 14 September 2006; No. 740, *Woodcock*, 31 October 2008)

Ability for the Head of a NATO body to whom a complaint has been referred to submit the staff member's request to a Complaints Committee for its advice (No. 367, *Clark*, 18 July 1997); same ruling for the Head of a NATO body to whom a petition against one of his own decisions has been submitted (No. 367, *Clark*, 18 July 1997; No. 400, *Morisson*, 13 July 2000)

Time period for convening the Complaints Committee – 15 days (Art. 3.2.1 of Annex IX) – Exception – Complexity of the file making it necessary to put together a complete file reporting specific and accurate facts – Lengthy period of time has no impact on the seriousness of the review of the complaint (No. 710 (b), *Angus*, 21 September 2007; No. 764, *Cool*, 6 May 2010)

Staff member's right to be assisted by counsel – Not demonstrated (No. 422, *Biondi*, 28 February 2002)

Obligation for the Complaints Committee to hear the staff member submitting the complaint – No – Formality which is nevertheless appropriate and even essential in certain cases (No. 100, *Nind*, 4 May 1979; No. 101, *Cameron*, 4 May 1979)

Right of challenge – Applicant claiming to have been deprived of his right to challenge a member of the Complaints Committee but presenting no grounds to the Appeals Board by way of justification – Appropriate procedure (No. 347, *Kodeck*, 4 December 1997)

Advice – Scope – Advice not binding – Competent authority may deviate from this advice (No. 10, *Englefield*, 24 October 1968; Nos. 698-700-701, *Kirby*, 14 September 2006)

Time allowed the Administration to reach a decision – 60 days (the sum of the 15, 30 and 15 days specified in Article 3.2 of Annex IX) – Time period substantially exceeded– Reason for this attributable to certain cases of *force majeure*, but some unexplained delays – Non-substantial irregularity – Delay has no impact on the Complaints Committee report or the decision taken (No. 99, *Kester*, 2 February 1979)

**Procedure further to the advice of the Complaints Committee**

Communication to the appellant of the Complaints Committee report – Communication mandatory only in those cases where the dispute has been referred to the Appeals Board (No. 422, *Biondi*, 28 February 2002).

Obligation for the Head of the NATO body to hear the staff member before reaching a decision (No. 100, *Nind*, 4 May 1979; No. 101, *Cameron*, 4 May 1979; No. 291, *Togayli*, 27 January 1994; No. 292, *Falch*, 27 January 1994; No. 367, *Clark*, 18 July 1997; No. 821, *Sprengers*, 30 September 2011)

Obligation for the Head of the NATO Body to come to a decision within a period of 15 days after receipt of the Complaints Committee report (Annex IX, Art. 3.2.3) – Silence by the Administration following receipt of this report – Emergence of an implicit decision rejecting the initial request (No. 694, *Rovder*, 14 December 2006)

4-2-5 Interest in action

“The Appeals Board shall decide any individual dispute arising out of a decision taken by the Head of a NATO body either on his own authority or in application of a decision of the Council and which a staff member, or former staff member or his legal successors consider constitutes grounds for grievance." (Article 4.2.1 of Annex IX)

Beneficiaries of a deceased staff member (issue not decided: No. 348, *Cozzolino and Imre*, 24 April 1997)

**Persons with no interest in an action before the Board**

NATO body – Inadmissibility of a request to annul its own acts (No. 31, *Cauchie*, 27 October 1971).

Staff Association (No. 681, *Staff Association*, 12 September 2005)

Staff member permanently excluded during a previous recruitment phase (No. 123, *Nind*, 29 October 1980)

Candidate not a member of the NATO staff not selected during a recruitment procedure (No. 159, *Mazza*, 21 October 1983; No. 722, *Secco*, 15 March 2007)

### **Existence of an interest in the action**

Only individual appellants possible – Staff member, former staff member or legal successor (No. 681, *Staff Association*, 12 September 2005)

Admissibility of appeals submitted by former staff members (Art. 4.2.1 of Annex IX) – Admissibility limited to those disputes having a bearing on the duties performed previously by these former staff members – Staff member no longer a member of NATO and applying for a position three years later – Inadmissibility of the appeal (No. 159, *Mazza*, 21 October 1983)

Ability for a staff member to challenge a decision accepted by him earlier.

Decision renewing an impugned contract, challenged insofar as it limits this renewal to a brief period of time (No. 414, *Neitzel*, 25 April 2001)

Decision renewing a contract for three years when the staff member felt he was entitled to an indefinite-duration contract and so indicated this reservation when signing the renewal of his contract (No. 754, *Zarantonello*, 10 July 2009)

Petition for a rehearing – Admissibility of an appeal submitted by the Administration (No. 320, *Airborne Early Warning E3A Component*, 12 December 1995 ; - No. 388, *NETMA*, 22 April 1999)

### **Decision constituting grounds for a grievance by the appellant**

Decision eliminating the appellant for consideration for a post and appointing another person (implicit ruling: No. 21, *Schumacher*, 27 November 1970 & No. 76, *Westerhof*, 17 November 1976; Explicit ruling: No. 81, *Atma and Delor*, 16 November 1977; No. 772, *Marin Ortega*, 10 December 2010; No. 773, *Iannace*, 10 December 2010; No. 775, *Pavesi*, 4 February 2011)

Assignment decision already partially implemented (No. 377, *Bosman*, 2 October 1998)

Modification of the system of retirement contributions since the new system will definitely be in force at the time of the staff member's retirement and the contributions under the new system are already being deducted from his emoluments (No. 425, *Hadler*, 10 October 2001; No. 426, *Prideaux*, 10 October 2001)

Decision not to renew the appellant's contract (No. 433, *Flachaire*, 23 January 2002)

Decision setting the term of a contract when termination has been decided by a previous decision (No. 381(a), *Mercier*, 13 November 1998).

Act presently and certainly infringing on the appellant's interests – Not established in the instant case – Provisions of continuing cover likely to apply to the appellant only as from the date of his retirement but with no impact on his present personal situation (No. 341, *Nicholls*, 4 December 1996; No. 342, *Togayli*, 4 December 1996)

Decision regarding the appellant's medical fitness for work – Circumstance with no impact – Arbitration procedure between the staff member and NATO under the Van Breda group insurance policy (No. 381(a), *Mercier*, 13 November 1998)

Modification of a job description – Admissibility of an appeal against this decision

 Staff member holding this post – Yes (Nos. 796 and 810, *Nechelput*, 30 September 2011)

Staff member holding another post – Yes, if the responsibilities of this new position reduce the scope of the appellant's functions (Nos. 796 and 810, *Nechelput*, 30 September 2011)

### **Decision not constituting grounds for a grievance by the appellant**

(Cf. 4-2-2 "Acts not constituting appealable decisions").

4-2-6 Time periods

“Appeals shall be lodged with the Secretariat of the Appeals Board within 60 days from the date of notification of the decision appealed against. Nevertheless, in very exceptional cases and for duly justified reasons, the Appeals Board may admit appeals lodged after the time allowed." (Article 4.3.2 of Annex IX)

**Starting point of time periods**

Time period not elapsed.

Staff member failed to receive the CPR (No. 11, *M.X.*, 25 October 1968)

Mail sent in the form of a simple letter to a Brussels address while the staff member was staying in France – Administration unable to determine when this letter reached the Brussels address (No. 666(a), *Shaw-Aerts*, 9 December 2003)

Contract – Date of contract signing (No. 157, *Bayraktar*, 26 May 1983)

Date the individual decision was notified, at which time the staff member did not challenge the regulatory decision applied to him (No. 328, *O’Shea*, 5 December 1996)

Decision by the Head of a NATO body, or expiry of the 30 day-period established in Article 4.3.1 of Annex IX, resulting from the silence of this authority (No. 12, *Ferrari*, 1 April 1969)

Date on which the appellant received the disputed decision – Date cannot be determined with certainty – Alleged lateness not established (No. 862, *Wendel*, 20 December 2012)

Expiry of the 30-day period during which the Administration remained silent despite the fact a reply indicating that the matter was in hand was sent within that period (No. 392 (b), *Gresser*, 22 March 2001)

Expiry of the 15-day period during which the Head of the NATO body remained silent following the report by the Complaints Committee – Staff member unaware when this report was received – Time period to appeal not elapsed (No. 694, *Rovder*, 14 December 2006)

### **Duration of time periods**

60-day period

Appeal must be lodged with the Appeals Board within a period of 60 days (No. 269, *Quarto*, 26 February 1992; No. 360(a), *Bizzarri*, 19 November 1997; No. 400, *Morisson*, 13 July 2000; No. 715, *d’Hooghe*, 14 March 2007; No. 816, *Rigas*, 11 November 2011)

Time counted in calendar, not working days (No. 360 (a), *Bizarri*, 19 November 1997; No. 718, *Kirby*, 12 July 2007; No. 720, *Kirby*, 12 July 2007)

Date appeal arrived, whereas certain annexes were not received until after expiry of the time period (No. 724, *Barbieri*, 25 October 2007).

Date appeal arrived, albeit without arguments.The latter appear in an annex which reached the Board on the same day (No. 210, *Green*, 7 May 1986)

Calculation of the time for appeal

Dismissal of the petition notified on 10 December 1996 – Time period commencing as from 11 December at 24.00, and expiring on 8 February at 24.00 (No. 360(a), *Bizzarri*, 19 November 1997)

Time period expiring on a Saturday, Sunday or holiday – Time period extended until the next working day (No. 360(a), *Bizzarri*, 19 November 1997)

Date appeal filed – Date appeal recorded with the Organization, even though the appeal did not reach the Appeals Board Secretariat until the next day (No. 360(a), *Bizzarri*, 19 November 1997)

Administration disputing the admissibility of the appeal, but providing no evidence that the appellant knew of the import of the decision more than 60 days before he lodged his appeal – Appeal admissible (No. 817, *Roberts*, 27 May 2011)

Lateness – examples

Appeal against the decisions of 22 and 24 May notified immediately to the appellant – Appeal filed on 17 September (No. 58, *Glimmerveen*, 23 April 1975)

Submissions against a letter dated 7 November but not recorded until the following 15 January (No. 59 (b), *Rasmussen*, 4 June 1975)

 Appeal against a decision notified on 25 June but not recorded until the following 10 January (No. 60, *Langhan*, 11 November 1975)

Appeal seeking the payment of an indemnity, lodged in 1981, whereas there was an implicit rejection dating back to 1973 (No. 149, *Gardi*, 19 October 1982)

Appeal lodged 11 months after expiry of the time period (No. 154, *Léger*, 25 May 1983)

Appeal lodged against an implicit decision originating on 3 March but recorded the following 28 June (No. 269, *Quarto*, 26 February 1992); same for an appeal lodged against an implicit decision originating on 18 July but recorded the following 19 November (No. 816, *Rigas*, 11 November 2011)

Appellant challenging in 1999 an allowance which should have been paid to him in 1953 (No. 392(b), *Gresser*, 22 March 2001)

Appellant contesting a decision 7 years after being notified of it (No. 768, *Somville*, 7 July 2010)

Appellant challenging his pay slips more than two months after receiving them (Nos. 705-706, *Roden & Valkenberg*, 25 May 2007; No. 742, *Jourdan and others*, 31 July 2008) or seeking to challenge the method of calculation of the annual increase in salaries from five years before (No. 737, *Suarez-Gonzalez*, 23 May 2008)

Appeal filed on 16 August against a decision taken the previous 12 December (No. 435, *Warnet*, 4 September 2002)

Appeal filed on 6 April against a decision taken no later than the previous 17 December (No. 676, *Orosz*, 30 June 2004)

Appeal lodged against the non-renewal of a contract which made no mention of a possible renewal – Staff member failed to challenge the contract when signing – Lateness (No. 97, *Baylac*, 6 March 1979)

Submissions presented for the first time in the reply (No. 109, *Nind*, 10 January 1980)

**Interruption of the time period by a previous administrative appeal**

Interruption by a petition (No. 63, *Laval*, 4 June 1975; No. 79, *Hintz*, 6 May 1977; No. 100, *Nind*, 4 May 1979; No. 101, *Cameron*, 4 May 1979; No. 360(a), *Bizzarri*, 19 November 1997; No. 367, *Clark*, 18 July 1997)

Interruption by a single petition – Later petitions do not permit an extension of the time limits (No. 37, *Gorman*, 16 November 1971)

Time period

Need to file the petition within the 60-day period prescribed by Art. 4.3.2 of Annex IX (No. 79, *Hintz*, 6 May 1977; No. 100, *Nind*, 4 May 1979; No. 101, *Cameron*, 4 May 1979; No. 106, *Van der Laan*, 31 October 1979; No. 107, *Maseng*, 31 October 1979; No. 108, *Lorentzen*, 31 October 1979; No. 322, *Maloberti*, 29 February 1996; No. 324, *Parisotto*, 29 February 1996; No. 325, *Feroletto*, 29 February 1996; No. 367, *Clark*, 18 July 1997; No. 369, *Petronella*, 23 April 1998; No. 400, *Morisson*, 13 July 2000; Nos. 693 and 697, *Angus*, 14 September 2006; No. 694, *Rovder*, 14 December 2006; No. 718, *Kirby*, 12 July 2007)

Petition filed after this time limit – Petition may be examined and accepted by the Administration despite the fact that the time period for the appeal has irrevocably expired (No. 100, *Nind*, 4 May 1979; No. 101, *Cameron*, 4 May 1979; No. 322, *Maloberti*, 29 February 1996; No. 369, Petronella, 23 April 1998)

Effect of the petition

Interruption and non-suspension of time limits – Rejection of the petition commences a new 60-day period (No. 360(a), *Bizzarri*, 19 November 1997; No. 367, *Clark*, 18 July 1997; No. 369, *Petronella*, 23 April 1998; No. 680, *Hunt*, 13 September 2005)

Ability for the Head of a NATO body to himself submit the petition to a Complaints Committee – Petition does not, as a result, become a complaint, within the meaning of Article 61 of the CPR.

Ability for the head of a NATO body to reject the request for the convening of a Complaints Committee (No. 97, *Baylac*, 6 March 1979)

Referral to the Complaints Committee without effect on the running of the time period (No. 322, *Maloberti*, 29 February 1996; No. 367, *Clark*, 18 July 1997; Nos. 693-697, *Angus*, 14 September 2006).

**Extension of the time allowed by Article 4.3.2 of Annex IX to the CPR permitting the Board to examine late appeals**

No extension

No extension in the instant case (No. 37, *Gorman*, 16 November 1971; No. 66, *Allan*, 12 November 1975; No. 97, *Baylac*, 6 March 1979; No. 415, *Durand*, 11 December 2001)

Appellant informed by the Organization of the terms and conditions governing the filing of appeals (No. 60, *Langhan*, 11 November 1975)

Appellant informed, in her own language, at a hearing before a national jurisdiction of the terms and conditions governing the filing of appeals (No. 133, *Weiss*, 13 May 1981)

Interview requested and obtained by the staff member after expiry of the time period (No. 154, *Léger*, 25 May 1983)

Measures taken by the Administration to reclassify the staff member after expiry of the time period have no impact on the time period available to the staff member to challenge the dismissal affecting him/her (No. 154, *Léger*, 25 May 1983)

Contract including a resignation clause for the staff member 18 months later – Contract becomes final upon expiry of a 60-day period beginning with the date of signing, irrespective of its validity vis-à-vis the CPR (No. 157, *Bayraktar*, 26 May 1983)

Staff member absent from the office for health reasons or on account of an accident – Situation does not constitute a highly exceptional case (No. 228, *Miller*, 3 February 1987)

Appellant claiming that he was on a mission and subsequently on leave, and that he had requested to no avail communication of the Selection Committee's file prior to the decision being challenged by him (No. 314, *Pedersen*, 9 June 1995)

Appellant responsible for personnel management and therefore aware of the recruitment procedure under way to replace him not granted an extension of the appeal period for challenging the decision not to renew his own contract (No. 435, *Warnet*, 4 September 2002)

Appellant informed of the terms and conditions governing the filing of appeals, as attested to by the existence of a complaints procedure regarding another request on his part (No. 676, *Orosz*, 30 June 2004)

Ongoing discussions between the staff member and his administration but regarding a matter other than the subject of the appeal (No. 816, *Rigas*, 11 November 2011)

Extension

Rejection of the petition that may have led the appellant to believe the decision was not final and might be reviewed (No. 83, *Hintz*, 16 November 1977)

Physical condition of the staff member rendering him "unable to deal with his affairs" (No. 49, *Abazoglou*, 31 May 1973); staff member on sick leave who subsequently became pregnant – Time period of three months accepted (No. 90, *Perrier*, 10 March 1978); Staff member on sick leave for nine months whose health prevented her from preparing and presenting her appeal within the prescribed time periods (No. 228, *Miller*, 3 February 1987); Health of the staff member, in addition to the upset caused by the decision to refuse him an invalidity pension despite the fact that the opposite had been affirmed by several bodies outside the Invalidity Board (No. 254, *Marchella*, 5 April 1990)

Administration advised the staff member to wait for another letter before submitting a request (No. 111, *Wilhelm*, 15 February 1980)

Appellant who waited for the Administration's decision with respect to another candidacy before challenging the rejection of a previous application presented at the same time – Appeal inappropriate if it had been submitted in time (No. 306, *Andersen*, 16 November 1994)

Appellant who, approximately one month after the Administration's decision, informed the latter of his intention to lodge an appeal with the Board and requested various items of information to this effect and then, before the expiry of the 60-day appeal period, filed the security deposit provided for by Article 4.3.4 of Annex IX with the International Staff's Financial Controller – Appeal filed three weeks after expiry of the time period – "Very exceptional" case, within the meaning of Article 4.3.2 (No. 383, *Fracassi*, 28 January 1999)

Interpretation of an Appeals Board decision merely posing the principle of redress of psychological damage – Discussion necessarily long and carried out in several stages in order to reconcile the opposing positions – 18-month period not excessive in the instant case (No. 714, *Photopoulos*, 21 September 2007)

### **Extension of time periods on another ground**

Staff member who had challenged before a national jurisdiction the decision to declare her redundant but did not file an appeal with the Board until six years after this decision, and three years after the Secretary General's refusal to waive the Organization's jurisdictional privilege – Assuming that this ground could be such as to allow an extension of the time period, appeal in any case time-barred (No. 133, *Weiss*, 13 May 1981)

Staff member who challenged the decision to delete the post occupied by him and who applied for another post – Staff member not obliged to challenge the decision to declare him redundant within the 60-day period – Time period extended until expiry of a period of 60 days with effect from the notification of the refusal to entertain his candidacy (No. 324, *Parisotto*, 29 February 1996; No. 325, *Feroletto*, 29 February 1996)

Request for a cancellation appearing for the first time in the reply but closely connected to the request to cancel the decision impugned in the initial appeal, of which it constitutes a supplement (No. 738, *Barbieri*, 8 May 2009)

### **Reopening of time periods**

Reopening of the time periods further to the announcement of a decision substituted for the first one – No, insofar as the initial appeal was time-barred (No. 122, *Cameron*, 29 October 1980; No. 123, *Nind*, 29 October 1980) – Yes, insofar as the initial appeal was not time-barred (No. 123, *Nind*, 29 October 1980)

Reopening of the time periods following the announcement of a decision confirming the previous one.

No (No. 123, *Nind*, 29 October 1980)

Decision which does not confirm the previous one – Decision identical but which, for the first time, specifies the grounds for the rejection (No. 232, *Watkins-Robino*, 2 October 1987)

Right to file a second complaint based on the same facts – Conditions – New complaint whose subject is different from the first one and based upon a separate legal cause – First complaint seeking the reclassification of a post, and a second complaint seeking the payment of an indemnity (No. 668, *Kohns*, 29 June 2004)

Time period reopened by a decision of the Appeals Board, which had ruled on the case of a staff member placed in the same situation – NATO body which refused to grant the appellant the advantages resulting from a previous Appeals Board decision affecting another staff member.

Circumstance without effect on expiry of the time period for appeal applicable to a staff member who failed to challenge the decision affecting him in time (No. 369, *Petronella*, 23 April 1998; No. 370, *Gilbert, Wiig and Zacharacopoulos*, 23 April 1998)

Administration decision considered to be new, insofar as no legal security consideration constitutes a bar – Reopening of the time periods (Nos. 660 to 664, *Lamerichs and others*, 22 October 2003)

Reopening of the time periods because of a decision by a national jurisdiction restoring his security clearance to a staff member – Not established (No. 200, *Simons*, 18 July 1985)

4-2-7 Forms of the appeal

### **Obligation to provide grounds for the appeal**

"Appeals shall be made in writing. They shall state all grounds of appeal put forward by the appellant and shall be accompanied by all documentary evidence in support thereof" (Annex IX, Article 4.3.3).

Requirement to submit appeals in writing and indicate the grounds therefor.

Appeal without grounds but declared admissible insofar as these grounds appear in an annex to the appeal and were recorded the same day (No. 210, *Green*, 7 May 1986)

Submissions presented for the first time at the hearing – Inadmissibility (No. 483, *Wortley-Salma*, 26 March 2003)

### **Payment of the security deposit**

"Appeals shall only be considered provided that the appellant has deposited with the Financial Controller of the International Staff not later than 60 days after the date of their lodgement, security equal to 1% of his/her annual basic salary." (Article 4.3.4 of Annex IX)

Payment mandatory (Art. 4.34 of Annex IX) within two months after filing of the appeal (Nos. 181-183, *Swain & Trives* 5 December 1984; No. 285, *Quarto*, 27 March 1993; No. 728, *Kirby*, 11 July 2007)

Power of the President of the Board to reject an appeal for which the person filing it has failed to pay the security deposit (No. 13(a), *Grant-Jones and others*, 10 January 1969; No. 54, *Dreiser*, 10 June 1974; Nos. 181-183, *Swain & Trives*, 5 December 1984; No. 285, *Quarto*, 27 March 1993; Nos. 466-475-478-482, *Hoffmann and others*, 8 October 2002; No. 728, *Kirby*, 11 July 2007)

Payment of interest on security deposit – Not applicable insofar as no provision of the CPR provides for such interest payments (No. 684, *Johnson*, 11 May 2006)

4-2-8 Consequence of filing the appeal

"Although appeals shall not stay the execution of the decisions appealed against, the Heads of NATO bodies shall exercise all due circumspection to avoid taking any further action during the period within which an appeal may be brought or is being heard which would change the position within the NATO body to the detriment of the staff member bringing the appeal, by rendering impractical the relief sought by the appellant, in the event of the appeal being upheld" (Article 4.3.5 of Annex IX)

Administration required to refrain from taking any decision which might be to the detriment of the staff member and render impossible the relief sought by the appellant (Art. 4.3.5 of Annex IX) – Scope.

Discretionary power of the Head of the NATO body (No. 96, *Evans*, 8 December 1978)

Requirement to satisfy the appellant – No, even as a temporary expedient (No. 88, *Allan*, 20 January 1978)

## 4-3 Hearing of appeals

4-3-1 Time period for submitting briefs

“Appeals shall be transmitted immediately to the Head of the NATO body concerned, who shall make comments thereon in writing. These comments shall, within 60 days from the date of submission of the appeal, be communicated to the appellant who may, within 30 days of their receipt, submit a reply in writing." (Article 4.4.1 of Annex IX)

Submission of the reply

Defence not filed within an unreasonable period of time – Defence maintained during discussions (No. 680, *Hunt*, 13 September 2005)

Defence filed 19 days late – Lateness not influencing the proceedings or the outcome of the dispute (No. 844, *Garcia Cidoncha*, 1 June 2012)

Submission of the reply – Time period provided for by Article 4.4.1 of Annex IX – Time period prescribed must be observed, failing which the appeal is inadmissible – Period expiring on 21 March, reply submitted on 16 May for a hearing on 2 June – No circumstance justifying this delay – Inadmissibility – Consequence – Reply not entertained and declared inadmissible (No. 656, *Van Spronsen* 3 June 2003)

Ability to submit new arguments and documents in the reply (No. 724, *Barbieri*, 25 October 2007)

4-3-2 Assessment

Medical assessment ordered to ascertain the physical condition of a staff member (No. 52(a), *Drossart-Devos*, 18 October 1973; No. 213(a), *X*, 22 October 1986)

Second assessment ordered to supplement the first one (No. 52(c), *Drossart-Devos*, 10 May 1974)

Assessment ordered to determine whether the staff member is fit to resume her duties (No. 381(b), Mercier, 23 May 2000)

Appointment of the expert – Order by the President of the Board (No. 213(b), *X*, 5 January 1987)

Consultant's fees – Given the circumstances of the case, fees chargeable to NATO even though the appeal was dismissed (No. 213(c), *X*, 2 October 1987)

4-3-3 Preliminary examination (Art. 3(a) of Appendix 1 to Annex IX)

"Between the sessions of the Appeals Board, the President or a member of the Board whom he/she shall designate for that purpose shall deal with all interlocutory matters concerned either with points of procedure which may arise in the course of the preliminary examination, or with the determination of any fact material to the decision in the case. As far as possible, such facts shall be found in the presence of both parties and a report thereon shall be made to the Board in writing." (Para. (a) of Article 3 of Appendix 1 to Annex IX)

Preliminary examination carried out with the President and a member of the Board to review the amounts of the various remunerations received by the staff member (No. 287(b), *Somville*, 4 June 1994)

4-3-4 Adversarial nature of the appeal procedure

Communication of documents

Right to the communication of the Complaints Committee report (No. 667, *Archer*, 10 December 2003)

Communication of new documents at the hearing – Documents not submitted for the consideration of all parties – Board obliged to exclude them (No. 669 (b), *Slater*, 26 November 2004 ; *a contrario*: No. 140(a), *Willaume*, 22 October 1981; No. 666 (a), *Shaw-Aerts*, 9 December 2003)

Deferral of ruling in order to communicate to the Administration a document produced by the appellant (No. 140(a), *Willaume*, 22 October 1981)

Elements essential to a resolution of the dispute not brought to the Board's attention until the hearing – Need to defer the ruling in order to observe the adversarial nature of the procedure (No. 666(a), *Shaw-Aerts,* 9 December 2003)

Deferral of ruling when the action initiated could infringe on the rights of a third party, to allow the appeal to be communicated to this third party (No. 203(a), *Bremer*, 29 November 1985)

The Board's duty to ensure the objectivity of the proceedings – Power to exclude written submissions or oral statements which exceed the bounds of free discussion (No. 265, *Lops*, 26 September 1991)

4-3-5 Communication of documents at the Board's request (Art. 4.7.3)

"The Appeals Board may require the production of any document which it deems useful for the consideration of the appeals before it. Documents so communicated to the Board shall also be communicated to the Head of the NATO body and to the appellant" (Article 4.7.3 of Annex IX)

Communication of the Complaints Committee report (No. 96, *Evans*, 8 December 1978; No. 101, *Cameron*, 4 May 1979)

Communication by the Administration of various documents necessary for an examination of the merits of the case – Documents which were communicated to the appellant (No. 96, *Evans*, 8 December 1978; No. 101, *Cameron*, 4 May 1979)

## 4-4 Events preventing the Board from ruling on the submissions of the appeal

4-4-1 Requests for recusal

See 4-1-1: Composition of the Appeals Board

4-4-2 Withdrawal

"Should the appellant withdraw the appeal, the President may accept this withdrawal without convening the Board for the purpose, provided the withdrawal is unconditional." (Para.(b) of Article 3 of Appendix 1 to Annex IX)

**Withdrawal**

Authority competent to accept withdrawal – President of the Board (No. 1, *Mavridis*, 12 October 1966).

Partial withdrawal (No. 6(d), *Aldus and others*, 19 December 1967)

Example of a withdrawal (No. 62, *Caron*, 18 April 1975; No. 431, *de Santis*, 12 December 2001; 485 to 655, *Groves and others*, 27 March 2003; No. 677, *Long*, 14 September 2005)

Example of a withdrawal at the hearing (No. 6(d), *Aldus and others*, 19 December 1967; No. 165, *Léger*, 30 November 1983; No. 256, *Rho*, 17 May 1990; No. 690, *Bengi*, 29 June 2006)

Withdrawal resulting from the reversal by the Administration of the impugned decision (decision also says that "the appeal became groundless" (No. 131, *Vernimmen*, 13 May 1981) – Consequence – Reimbursement of certain expenses incurred by the appellant (No. 131, *Vernimmen*, 13 May 1981)

**Absence of withdrawal**

### Appellant claiming lack of competency of the deciding authority – Submission does not have the effect of proving that her appeal was withdrawn (No. 210, *Green*, 7 May 1986)

4-4-3 Dismissal of case

**Established**

Granting by the Administration to the staff member of the contract sought by him from the Board (No. 82, *Hagen*, 6 December 1977)

Granting by the Administration to the staff member of the sums requested (No. 202, *Schall*, 15 April 1986; No. 206, *Reynaud*, 15 April 1986)

Acknowledgement by the Administration, in the course of the proceedings, of the indefinite nature of the post he held, which was the subject of his appeal to the Board (No. 811, *Luja*, 30 September 2011)

Communication by the Administration of the requested document during the proceedings (No. 727, *Colin and others*, 14 December 2007; - No. 733, *Atienza-Corralo*, 14 March 2008; - No. 745, *Austin*, 31 October 2008; - No. 762, *Walker*, 12 March 2010; - No. 770, *Fabi and others,* 9 July 2010)

Withdrawal of the impugned decision by the Administration ("the appeal became groundless as a consequence of the decision(s)") No. 131, *Vernimmen*, 13 May 1981)

Decision replaced by a new decision – Rules on the salary adjustment replaced by new rules applicable to the same period (Nos. 784 to 794, 797 to 804 and 807 to 809, *Hill and others*, 4 October 2010)

Granting by the Board of an indemnity to redress the illegal termination, there being no obligation to reinstate the appellant – Submissions seeking the payment of a loss-of-job indemnity – Dismissal of case (No. 65 (a), *Ferrier*, 13 November 1975; No. 70, *Groneveld*, 29 January 1976)

**Not established**

Staff member receiving a permanent and total invalidity pension and challenging a decision prior to the award thereof to strike her from the requisite checks (No. 429, *Krieps*, 17 July 2002)

## 4-5 Powers and duties of the judge

4-5-1 General questions

Power to decide that a decision by the North Atlantic Council shall not be implemented (No. 6(d), *Aldus and others*, 19 December 1967)

Assessment of the legality of a decision as of the date it was taken – Decision rescinded three years later – Circumstance having no bearing on the legality of the first decision (No. 442, *Melchior*, 8 October 2002)

Combination of appeals – Possible combination (No.174 and others, *Evans and others*, 14 February 1985; - No. 437 and others, *Kleidorfer and others*, 20 November 2002; - Nos. 485 to 655, *Groves and others*, 27 March 2003; - No. 660 to 664, *Lamerichs and others*, 22 October 2003; - No. 698-700-701, *Kirby*, 14 September 2006)

 Appeals by the same appellant (No. 161(b)-168, *Brégain*, 1 March 1984)

Appeals lodged against identical decisions (Nos. 218 to 227, *Eden and others*, 26 March 1987)

 Deferral of ruling in order to allow the Board to simultaneously decide two related appeals (No. 161(a), *Brégain*, 21 October 1983)

4-5-2 Deferral of ruling

**Postponement until another session –** **Discretionary power of the Board** (No. 15 (b), *Bornemann*, 28 January 1970)

Deferral of ruling in order to allow the Board to simultaneously decide two related appeals (No. 161(a), *Brégain*, 21 October 1983)

**Deferral of ruling in order to ensure observance of the adversarial nature of the proceedings**

Deferral of ruling – Elements essential to the resolution of the dispute not brought to the Board's attention until the hearing – Need to defer ruling in order to observe the adversarial nature of the proceedings (No. 250(a), *Amoroso*, 16 November 1989; No. 666(a), *Shaw-Aerts*, 9 December 2003)

Deferral of ruling in order to guarantee observance of the adversarial procedure. Expert heard at the hearing asked to put his comments in writing so that these could be communicated to the parties (No. 169(a), *de Sangro*, 9 May 1984)

Deferral of ruling in order to communicate to the Administration a document produced by the appellant (No. 140(a), *Willaume*, 22 October 1981)

Deferral of ruling when the action initiated could infringe on the rights of a third party, to allow the appeal to be communicated to this third party (No. 203(a), *Bremer*, 29 November 1985)

Deferral of ruling to allow the appellant to examine a proposal for compensation presented at the hearing by the Administration (No. 392(a), *Gresser*, 9 December 1999)

**Deferral of ruling to order the production of additional information**

* on the conditions under which a contract was not renewed (No. 59(a), *Rasmussen*, 23 April 1975);
* on the exact amounts of various remunerations received by the staff member and the reasons for the suspension of payments by a national pension scheme for a certain period of time (No. 287(a), *Somville*, 25 November 1993);
* on the selection criteria for staff members declared redundant following the deletion of a number of seemingly identical posts (No. 360(a), *Bizzarri*, 19 November 1997);
* on various points of civil law in two states, to determine the date of a divorce's effect on the granting of the household allowance (No. 127(a), *Zerbaton*, 3 December 1980);
* on the conditions under which the Council adopted one article of the CPR, the French and English versions of which lend themselves to differing interpretations (No. 304(a), *Hofland*, 14 September 1994)

**Deferral of ruling pending events/information**

Deferral of ruling until expiry of the extended sick leave of a dismissed staff member, which is necessary to understand the full extent of the prejudice caused (No. 65(a), *Ferrier*, 13 November 1975; No. 65(b), *Ferrier*, 25 January 1979; No. 103, *Weech*, 13 August 1979)

Deferral of ruling pending a judgment by Italian authorities or an amendment to the CPR – Staff member not subject to the CPR – Board incompetent to hear the case – However, a ruling that Italian jurisdictions are incompetent to hear the case would result in a denial of justice – Deferral of ruling pending this judgment or an amendment to the CPR (No. 53(a), *Osy de Zegwaart*, 18 October 1973)

Deferral of ruling pending the results of an arbitration procedure intended to determine the health of a staff member whose contract was terminated (No. 381(a), *Mercier*, 13 November 1998; No. 721(a), *Pongiluppi*, 22 June 2007; No. 780(a), *Girard*, 4 February 2011)

Deferral of ruling to order a medical opinion with a view to ascertaining whether the staff member was unable to work at a particular period of time (No. 213(a), *X*, 22 October 1986) or is fit to resume her duties (No. 381 (b), *Mercier*, 23 May 2000)

Deferral of ruling at the request of the parties, who are about to reach a solution to the dispute through extra-judicial means (No. 363(a), *Jongbloed*, 4 December 1997)

Deferral of ruling to allow the Administration, which announced at the hearing that it was prepared to reveal the grounds for failing to renew a contract, to communicate these grounds – Period of one month granted for this purpose (No. 173(a), *Buyle*, 5 December 1984)

Deferral of ruling so that the appellant can clarify his demands for each indemnity item (No. 127(a), *Zerabto*, 3 December 1980; No. 760, *Tudini*, 18 December 2009)

Deferral of ruling in order to verify the existence and date of a decision by the budgetary authority (No. 331(a), *Nijman*, 24 October 1996)

Deferral of ruling in order to verify the authenticity of a document from a national administration (No. 658(a), *Melchior*, 4 June 2003)

Deferral of ruling pending the production by the parties of information on the income from all sources received by a staff member during the period during which she was illegally dismissed (No. 703(a), *Lelling*, 9 November 2006)

**Second deferral of ruling declared**

* the first pending the results of an arbitration procedure between the staff member and the Van Breda insurance company, and the second to order a medical assessment (No. 381(b), *Mercier*, 23 May 2000);
* given that the first did not provide all of the requisite clarifications (No. 287(b), *Somville*, 9 June 1994)

4-5-3 Referral to the Administration

Referral to the Administration to determine:

* the bases for the calculation of a pension (No. 276, *Lohkamp*, 5 November 1992);
* the precise amount of the loss-of-job indemnity due a former staff member (No. 305, *Cox*, 17 November 1994)

Reopening of a time bar claimed by the Administration

Reopening for a period of six months in the instant case in order to exercise the option between membership in the Provident Fund or the Pension Scheme (No. 119, *de Raffaele*, 24 July 1980)

30-day period available to the appellant in order to submit an application for an early pension, which depended upon the issue decided by the Board ruling on the submissions presented for primary relief (No. 147, *Fursey*, 28 April 1982)

4-5-4 Submissions

### **Submissions inadmissible**

Submissions not substantiated (No. 171, *Markey*, 23 October 1984)

Submissions seeking cancellation of a decision withdrawn before the appeal was made (No. 368, *Brookfield*, 24 April 1998; Nos. 693-697, *Angus*, 14 September 2006)

Submissions not the subject of a prior request to the Administration (No. 164, *de Jonge*, 2 March 1984; No. 238, *Montgomery*, 25 May 1988; No. 352, *Jackson*, 5 June 1997; No. 672, *Photopoulos*, 3 March 2005; No. 689, *Moroso*, 9 March 2006; No. 743, *Rathke*, 10 July 2009; No. 755, *Messervy*, 30 October 2009; No. 779, *Wild*, 17 September 2010; No. 813, *Dohms*, 27 May 2011; No. 811, *Luja*, 30 September 2011)

 Application in the case of a staff member declared redundant who sought only the payment of an indemnity from the Administration but did not challenge his dismissal – Inadmissibility of the request to cancel the dismissal presented for the first time before the Board (No. 240, *McGaughey*, 3 November 1988)

 Possibility for the appellant, after her submissions seeking compensation for material damage had been rejected as inadmissible because she had failed to quantify that damage in the first case, to formulate a subsequent request, after quantification (No. 828, *Mayfield*, 24 February 2012)

Submissions by the Administration seeking confirmation of the legality of certain decisions taken by it – Decisions not appealed against by the staff member – Inadmissibility of these submissions (No. 98, *Hintz*, 7 December 1978)

Submissions seeking an order against NATO because of the sale of a portion of the staff member's equity owing to the time taken by the group insurer to pay him his invalidity pension (No. 287, *Somville*, 7 April 1995)

**Submissions admissible**

Submissions seeking the payment of allowances owed by application of the CPR as well as the reimbursement of the social security contributions and taxes that the staff member thought he should not have had to pay – Submissions not quantified – Submissions admissible provided that the damage suffered was noted in the initial appeal and quantified in the reply, thereby allowing the Administration to examine and discuss it in due course (No. 811, *Luja*, 30 September 2011; No. 822, *Bürgstein*, 30 September 2011)

### **Ancillary submissions**

Application to withdraw documents from the proceedings – Refusal by the Board

Erroneous or insulting accusations – Request for the withdrawal of accusations from the proceedings must be made during these proceedings – Inadmissibility of such a request during a later proceeding (No. 132, *Hintz*, 13 May 1981)

Unclassified document already submitted to the Board in a previous case, with no impact on the resolution of the new appeal (No. 714, *Photopoulos*, 21 September 2007)

4-5-5 Arguments

### **Inadmissible arguments**

Arguments not directed against any specific decision (No. 659, *Hutse*, 4 June 2003)

Arguments made for the first time at the hearing (No. 659, Hutse, 4 June 2003; Nos. 687-688, Bundgaard and Moller, 27 October 2005; Nos. 698-700-701, *Kirby*, 14 September 2006)

Late arguments, contrary to others directed against the same decision (No. 346, *Bloomfield*, 24 April 1997)

### **Inoperative arguments**

Arguments related to the consequences of the impugned decision for the morale of staff members, conditions of recruitment and quality of service – Problems of a political nature within the purview of the Council and administrative policy and not constituting legal arguments (No. 174 and others, *Evans and others*, 14 February 1985)

Arguments related to a comparison between the remuneration of staff members and that of the European Communities or the other Co-ordinated Organisations – Problems of a political nature within the purview of the Council and administrative policy and not constituting legal arguments (No. 174 and others, *Evans and others*, 14 February 1985)

Arguments taken from the dismissal procedure in an appeal seeking only the award of a loss-of-job indemnity (No. 398, *Driscart*, 12 July 2000)

Administration placed in a situation in which it is limited in the exercise of discretion – Inoperative nature of the line of reasoning regarding the legality of the decision (No. 284, *Munns*, 4 March 1993; No. 329, *Valkanas*, 26 June 1996; No. 337, *Melas*, 25 October 1996; No. 410, *Bellec*, 25 April 2001)

Misapplication of national legislation by NATO (Nos. 693-697, *Angus*, 14 September 2006)

Staff member cannot invoke on his behalf the fact that an indemnity was wrongly paid to other staff members in the same situation as himself (No. 366, *Lombardi*, 10 November 1997; No. 702, *Hoenjet*, 8 November 2006)

Terms and conditions for the renewal of the probationary period have no impact on the decision not to renew the contract ,which had been confirmed in the interim (No. 717, *Flora*, 13 December 2006)

**Plea of illegality**

Admissibility

Admissibility of the ground of the illegality of North Atlantic Council decisions which the impugned decision seeks to apply, having regard to the provisions of the CPR (No. 424, *Gasparini*, 5 September 2002; No. 437 and others, *Kleidorfer and others,* 20 November 2002; Nos. 705-706, *Roden & Valkenberg,* 25 May 2007; Nos. 708-711, *Synadinos & Michaux,* 25 May 2007)

Admissibility of the ground of the illegality of a decision by the North Atlantic Council during an appeal directed against a decision of the Head of a NATO body (No. 6(d), *Aldus and others*, 19 December 1967; No. 57, *Warren*, 11 December 1974; No. 174 and others, *Evans and others*, 14 February 1985; No. 425, *Hadler*, 10 October 2001; No. 426, *Prideaux*, 10 October 2001)

Admissibility of the ground of the illegality of the regulatory decision determining the calculation of annual leave, invoked in support of an appeal against a decision calculating the leave of one staff member (No. 22, *Gardi*, 27 November 1970)

Admissibility of the ground of the illegality of a regulatory decision, invoked in support of an appeal against an individual decision applying it (No. 338, *Murzi*, 5 December 1996)

Admissibility of the ground of the illegality of decisions by the NATO Secretary General which the impugned decision seeks to apply (No. 437 and others, *Kleidorfer and others*, 20 November 2002)

Inadmissibility

Inadmissibility of the ground invoked in support of an appeal against a decision calculating the leave of a staff member for a particular year, involving similar decisions in previous years that were not challenged within the two-month appeal period (No. 22, *Gardi*, 27 November 1970)

Inadmissibility of the ground of the illegality of the Secretary General's decision to replace an increase in remuneration by two days of additional leave, invoked on the occasion of the designation six years later of the two days of leave granted based upon this previous decision (No. 737, *Suarez-Gonzalez,* 23 May 2008)

Inadmissibility of the ground of the violation of a text drafted by British authorities informing its staff wishing to join a NATO agency but which went beyond the provisions of the CPR (No. 46, *Smith*, 21 March 1973)

### **Complex operations**

Rejection of submissions for compensation as a consequence of the inadmissibility of the submissions aimed at cancellation from which they are indissociable (No. 676, *Orosz*, 30 June 2004)

**Control by the judge of the exceeding of authority – Assessments of appropriateness not within the purview of the judge** The Appeals Board does not control:

With respect to the operation of the Board:

- the appositeness of the designation of Board members (No. 34, *Smith*, 19 November 1971)

With respect to the operation of the service:

- the appropriateness of the decisions taken (No. 2, *L’Hostis*, 13 October 1966)

- the organizational measures to be taken within the services to check for the presence of irregularities (No. 412, *Schlega*, 29 May 2001)

- the choice between in-house staff or recourse to an outside provider (No. 28, *Harvey*, 15 November 1971)

With respect to the establishment table:

- the reorganisation and deletion of posts (No. 28, *Harvey*, 15 November 1971)

- deletion of a specific post (No. 28, *Harvey*, 15 November 1971)

- post titles (No. 145, *de Sangro*, 4 December 1981)

- the need to cut staff and the choice of posts to be deleted.

Existence of a check to ensure there is no error of fact, error of law, obvious error of judgment or misuse of powers (No. 316, *Bindges*, 18 October 1995; No. 324, *Parisotto*, 29 February 1996; No. 331 (b), *Nijman*, 8 January 1997; No. 332 (b), *Van Soldt*, 8 January 1997; No. 333, *Szlanyinka*, 24 September 1996; Nos. 349/356, *Verdoni*, 20 November 1997, and on the same day: No. 355, *Chiavacci*; No. 357, *Garibbo*; No. 358, *Menelli*)

Error by the Administration in not taking into account the criterion of the anticipated place of assignment and the acceptance or refusal by staff members of this new place of assignment (No. 331(b), *Nijman*, 8 January 1997; No. 332(b), *Van Soldt*, 8 January 1997)

Criterion of the age of staff members – Legality (No. 324, *Parisotto*, 29 February 1996)

Obligation, however, to adopt objective criteria (No. 360(a), *Bizzarri*, 19 November 1997) – Objective nature of the criteria of the interchangeability of staff and access to alternative social insurance (No. 360(b), *Bizzarri*, 6 March 1998)

- staff freezes (No. 311, *Koletzko*, 6 April 1995)

- the merits of the decisions taken by the budgetary authority (No. 141, *Goderniaux*, 3 December 1981; No. 142, *Ivoy*, 3 December 1981; No. 324, *Parisotto*, 29 February 1996)

- the merits of the grounds leading NDMAA to finalize the establishment table for civilian personnel, including the classification of these posts (No. 423, *Penninckx*, 11 July 2001)

- the merits of the grounds for the decision by the Head of a NATO body to either propose or not propose to the North Atlantic Council a change in the establishment table (No. 95, *Siddi*, 8 December 1978; No. 691, *Veltri*, 8 March 2006)

With respect to recruitment:

- the respective merits of the candidates for a post (No. 21, *Schuhmacher*, 26 November 1970; No. 81, *Atma and Delor*, 16 November 1977; No. 88, *Allan*, 20 January 1978; No. 201, *de Monts de Savasse*, 19 July 1985; No. 233, *de Monts de Savasse*, 14 January 1988; No. 234, *Broadbent*, 14 January 1988; No. 291, *Togayli*, 27 January 1994; No. 292, *Falch*, 27 January 1994; No. 324, *Parisotto*, 29 February 1996; No. 339, *Twyman*, 9 January 1997; No. 389, *Woodcock*, 24 September 1999; No. 404, *Lawn*, 25 October 2000; No. 699, *Sgueglia*, 13 September 2006; No. 775, *Pavesi*, 4 February 2011; No. 815(a), *Baaring*, 11 November 2011; No. 823, *Pavesi*, 24 February 2012); the preference for one candidate over another (No. 352 *Jackson*, 5 June 1997; No. 405, *Togayli*, 11 July 2001; No. 823, *Pavesi*, 24 February 2012; No. 844, *Garcia Cidoncha*, 1 June 2012); assessment of the qualifications of a candidate for a vacant post (No. 201, *de Monts de Savasse*, 19 July 1985; No. 389, *Woodcock*, 24 September 1999; No. 844, *Garcia Cidoncha*, 1 June 2012; No. 846, *Marin Ortega*, 6 July 2012 – a contrario: check on obvious error: No. 823, *Pavesi*, 24 February 2012)

 Candidate chosen at a lower rank than the appellant – No obvious error insofar as the Administration carried out a comprehensive evaluation of the merits of the candidates (No. 324, *Parisotto*, 29 February 1996; No. 823, *Pavesi*, 24 February 2012)

 Idem, except in the event of obvious error (No. 324, *Parisotto*, 29 February 1996; No. 685, Angus, 13 September 2005)

- the questions asked of the candidate by the selection board in charge of preparing the recruitment process (No. 699, *Sgueglia*, 13 September 2006)

With respect to the rights and obligations of staff members while on duty:

- the appropriateness of granting compensatory time off, which is not a right but a simple discretionary power (Art. 17.41 & 17.42 of the CPR) – Existence of a check to determine whether there has been an error of fact, an error of law, obvious error or misuse of powers (No. 56, *Mavridis*, 9 May 1974)

- the need for the consulting physician, when he renders his opinion regarding the ability of that member to perform his or her duties normally, to carry out a clinical examination or instead confine himself to a review of the medical file (No. 172, *Keohane*, 5 December 1984)

With respect to the renewal of contracts or redundancies:

- the choice by the Head of the NATO body to replace the contractual period of notice by a prior notice allowance, as provided for in Article 10.5 of the CPR (No. 141, *Goderniaux*, 3 December 1981; No. 142, *Ivoy*, 3 December 1981)

- the advisability of not renewing a definite-duration contract (No. 38, *Lew*, 24 February 1972; No. 39, *Ossadnik*, 24 February 1972; No. 46, Smith, 21 March 1973; No. 75, *Yardas*, 2 July 1976; No. 79, *Hintz*, 6 May 1977; No. 85, *Shimell*, 8 December 1977; No. 87, *Appleton*, 11 January 1978; No. 97, *Baylac*, 6 March 1979; No. 139, *Hardnebol*, 9 July 1981; No. 173(b), *Buyle*, 19 April 1985; No. 217, *Besques*, 22 October 1986; No. 280, *de Castelbajac*, 4 March 1993; No. 812, *Ferkinghoff*, 8 April 2011)

Existence of a verification of jurisdiction, procedure, or any error of fact or law, obvious error or misuse of powers (No. 59(a), *Rasmussen*, 23 April 1975; No. 59(b), *Rasmussen*, 4 June 1975; No. 63, *Laval*, 4 June 1975; No. 68, *Koçaker*, 14 November 1975; No. 75, *Yardas*, 2 July 1976; No. 79, *Hintz*, 6 May 1977; No. 85, *Shimell*, 8 December 1977; No. 217, *Besques*, 22 October 1986; No. 280, *de Castelbajac*, 4 March 1993; No. 812, *Ferkinghoff*, 8 April 2011)

- the relevance of the reason for terminating a contract at the end of the probationary period (No. 209, *Bisschop*, 6 May 1986; case law abandoned by Decision No. 670, *Charlier*, 15 September 2004)

- the diligence with which the NATO body sought to secure the reclassification of a post (No. 145, *de Sangro*, 4 December 1981)

### **Control by the judge of an abuse of power – Determinations within the purview of the Board's control**

Recruitment

Regularity of the application review procedure and choice of candidate (No. 389, *Woodcock*, 24 September 1999; No. 699, *Sgueglia*, 13 September 2006 ; No. 844, *Garcia Cidoncha*, 1 June 2012)

Respect for the method of rating candidates in view of the requirements set out in the vacancy notice – Verification of the professional qualifications sought (No. 815(a), *Baaring*, 11 November 2011; No. 815(b), *Baaring*, 1 June 2012)

Assessment of a candidate's qualifications for a vacant post – In this case, no obvious error in not choosing a candidate whose qualifications were not sufficient for carrying out the duties to which he or she aspired – Check on obvious error (No. 823, *Pavesi*, 24 February 2012) (Solution repealing the solution arising from the following decisions: No. 201, *de Monts de Savasse*, 19 July 1985; No. 389, *Woodcock*, 24 September 1999)

Disciplinary sanctions

Substitution of one sanction for the one decided upon by the Administration – No (No. 380, *Bergantino*, 12 November 1998)

Verification of the sanction decided upon by the Administration: verification of the existence of a fault such as to justify a sanction – Yes (No. 29, *de Jong*, 29 October 1971)

Verification of the sanction decided on by the Administration: verification of the form and procedure, the material accuracy of the facts and the existence of an error justifying the sanction, and the lack of any disproportion between the error and this sanction – Yes (No. 243, *Rho*, 15 March 1989; No. 380, *Bergantino*, 12 November 1998)

### **Minimum control by the judge of an abuse of authority (cancellation possible only if the Administration committed an "obvious error")**

Assessment by the Administration of a staff member's manner of serving (No. 87, *Appleton*, 11 January 1978)

Assessment of a candidate's qualifications for a vacant post – In this case, no obvious error in not choosing a candidate whose qualifications were not sufficient for carrying out the duties to which he or she aspired – Check on obvious error (No. 823, *Pavesi*, 24 February 2012) (Solution repealing the solution arising from the following decisions: No. 201, *de Monts de Savasse*, 19 July 1985; No. 389, *Woodcock*, 24 September 1999)

### **Assessment impossible by the Board**

Decision based on contradictory grounds

Decision based both on suppression of the post on the one hand and the inadequate professional skills of the staff member on the other – Board unable to ascertain the decisive ground for the dismissal – Illegality of the decision (No. 267, *de Oliveira*, 14 November 1991)

Decision based both on the candidate's insufficient qualifications and human resources experience, which should have automatically ruled out her candidacy, and on medical grounds – Impossibility of the Board determining the actual grounds of the contested decision (No. 775, *Pavesi*, 4 February 2011)

Determination of the post occupied from among a large number of posts created simultaneously – Consequence – No entitlement to a loss-of-job indemnity – Award, however, of an indemnity equal to three months' pay (No. 59 (b), *Rasmussen*, 4 June 1975; No. 63, *Laval*, 4 June 1975)

**Verification of the misuse of powers** (No. 34, *Smith*, 19 November 1971)

Definition – Argument can be accepted only if it is established with sufficient certainty, in the light of all the circumstances of the case, that the official authority has acted, exclusively or substantially, for purposes other than those that it could legally pursue in the exercise of its jurisdiction. – No misuse of powers in the instant case (No. 316, *Bindges*, 18 October 1995; No. 345, *Cooper*, 6 February 1997; No. 716, *Caplan*, 14 December 2007; No. 739, *Koelewijn*, 12 December 2008; No. 862, *Wendel*, 20 December 2012)

Example of misuse of powers

Termination with a loss-of-job indemnity replaced by a termination for extended sick leave – Misuse of powers (No. 242, *Mari*, 4 November 1988)

Termination allegedly based on incapacity for service but designed to avoid the payment of a loss-of-job indemnity – Not established in the instant case (No. 398, *Driscart*, 12 July 2000)

Misuse of powers not established

Selection process calling for a "suitably qualified incumbent" – Formula inappropriate but not affecting the free judgement of the Selection Board, which assessed the merits of the candidates following a procedure whose regularity was not seriously challenged (No. 124, *Murzi*, 29 October 1980)

Staff member terminated on account of extended sick leave. Nature of the illness (AIDS) did not play any particular role (No. 248, *X*, 28 June 1989)

Staff member dismissed after deletion of his post, without the reason being the conflicts which the staff member may have had over the previous months with his supervisors or an audit report suggesting that his departure was desirable (No. 316, *Bindges*, 18 October 1995)

Staff member dismissed without his previous duties as President of the Staff Association being the cause (Nos. 349/356, *Verdoni*, 20 November 1997)

Staff member dismissed following the deletion of several posts, in which the NATO body reviewed the individual situations of each person and first dismissed those employees covered by a social insurance scheme (No. 360(a), *Bizzarri*, 19 November 1997; No. 360(b), *Bizzarri*, 6 March 1998)

Plan existing within the Administration for some time aimed at offering a staff member a promotion within the service – Plan not in itself evidence of a misuse of powers (No. 405, *Togayli*, 11 July 2001)

Candidate for a post given preference over another (No. 422, *Biondi*, 28 February 2002; No. 739, *Koelewijn*, 12 December 2008)

Refusal to offer training, resulting from the regular reassessment by the Financial Controller of the benefits vs cost.(No. 739, *Koelewijn*, 12 December 2008)

Administration demonstrated its wish to learn the lessons from a previous Board ruling by taking a decision whose grounds are based on the interests of the service (No. 429, *Krieps*, 17 July 2002)

Deletion of a post not based on the personality of the incumbent but on the requirements of the service (No. 345, *Cooper*, 6 February 1997), or as the direct consequence of a lack of funding, within the foreseeable future, for projects related to the technologies entrusted to the incumbent of this post (No. 716, *Caplan*, 14 December 2007), or based on the need to change an organization after several years of operation (No. 862, *Wendel*, 20 December 2012)

Non-renewal of a contract not based on an appeal previously filed by the staff member before the Appeals Board (Nos. 693-697, *Angus*, 14 September 2006)

Sanction whose ground is not the existence of an appeal previously filed by the staff member before the Appeals Board (Nos. 698-700-701, *Kirby*, 14 September 2006)

## 4-6 Costs, expenses and penalties

4-6-1 Costs and expenses

Expenses not costed by the appellant – President of the Board empowered to determine these after the appellant was invited to specify them, within reasonable limits (No. 4, *Bouffioux*, 19 April 1967)

4-6-2 Entitlement to the reimbursement of costs (Art. 4.8.3 of Annex IX)

"In cases where it is admitted that there were good grounds for the appeal, the Board shall order the NATO body to reimburse, within reasonable limits, justified expenses incurred by the appellant. Furthermore, the NATO body shall reimburse the justified expenses incurred by witnesses who have been heard, within the limits to be fixed by the Board" (Article 4.8.3 of Annex IX)

**Reimbursement refused**

Reimbursement refused as a consequence of the total rejection of the main submissions (No. 38 *Lew*, 24 February 1972; No. 47, *Cocks*, 21 March 1973; No. 60, *Langhan*, 11 November 1975; No. 94, *de Sangro*, 6 July 1978; No. 109, *Nind*, 10 January 1980; No. 725, *Caplan*, 14 December 2007)

Case of a collective appeal – Reimbursement only of those appellants whose presence was needed – Dismissal of the submissions of the other appellants in this regard, although they obtain satisfaction regarding their main request (Nos. 784 to 794, 797 to 804 and 807 to 809, *Hill and others*, 4 October 2010)

Several appeals by the same appellant heard the same day – Travel and subsistence expenses not reimbursed a second time (No. 832, *Pavesi*, 24 February 2012)

**Repayment**

Reimbursement of costs granted when the main submissions of the appeal are accepted, but also in certain specific cases:

Appeal dismissed although serious evidence adduced (No. 5, *Micarelli*, 18 December 1967)

Appeal dismissed but presence at the hearing necessary to produce additional documents (No. 68, *Koçaker*, 14 November 1975) or to examine documents communicated by the Administration (No. 96, *Evans*, 8 December 1978; No. 99, *Kester*, 2 February 1979)

Appeal dismissed but presence at the hearing essential owing to the complexity of the dispute (No. 136, *Topliss*, 22 October 1981; No. 138, *Davies*, 22 October 1981; No. 260, *Bond*, 20 September 1990; No. 293, *Kermis*, 5 May 1994; No. 295, *Munns*, 9 March 1994; No. 316*, Bindges*, 18 October 1995; No. 360(b), *Bizzarri*, 6 March 1998; No. 362, *Trécat*, 4 December 1997; No. 376, *Doling*, 8 May 1998; No. 384, *Neschke*, 10 March 1999; No. 387, *Perret-Fasquel*, 22 April 1999; No. 407, *Trost*, 11 July 2001; No. 417, *Seldon*, 11 July 2001; No. 422, *Biondi*, 28 February 2002; No. 437 and others, *Kleidorfer and others*, 20 November 2002)

Appeal dismissed but presence at the hearing essential given the importance and complexity of the dispute (No. 174, *Evans and others*, 14 February 1985; No. 205, *de Sangro*, 31 January 1986) or its importance alone (Nos. 218-227, *Eden and others*, 26 March 1987)

Appeal raised a new legal question which was sensitive and likely to come up in many other disputes, although it was rejected here (No. 722, *Secco*, 15 March 2007)

Appeal dismissed but presence at the hearing essential (No. 281, *Ariman*, 4 March 1993; No. 442, *Melchior*, 8 October 2002)

Appeal dismissed but after:

* the Board was obliged to defer its ruling and order a new hearing (No. 169(b), *de Sangro*, 24 October 1984);
* the written submissions did not allow the Appeals Board to assemble sufficient elements (No. 413, *Bressan*, 29 May 2001)

Travel and subsistence expenses reimbursed even to an appellant whose petition for a rehearing is dismissed (No. 15(c) *Bornemann*, 2 June 1970), even to an appellant whose appeal is dismissed as out of time (No. 435, *Warnet*, 4 September 2002) – Since 2005, this case law is no longer observed. The dismissal of an appeal usually results in the rejection of the request for the reimbursement of expenses.

Reimbursement when the case ends in a dismissal grounded in the satisfaction afforded by the Administration to the appellant subsequent to the filing of his appeal (No. 69, *de Raffaele*, 28 January 1976; No. 82, *Hagen*, 6 December 1977; No. 131, *Vernimmen*, 13 May 1981)

Case of a petition for a rehearing presented by the Administration – Rejection of this petition – Reimbursement of expenses incurred by the respondent (No. 320, *Airborne and Early Warning E3A Component*, 12 December 1995 ; - No. 388, *NETMA*, 22 April 1999)

**Nature of the expenses reimbursed**

Reimbursement of expenses incurred by the appellant for retaining counsel

No reimbursement in the absence of effective representation or the production of a brief by a lawyer (No. 164, *de Jonge*, 2 March 1984)

Board's margin of discretion – Board orders the reimbursement of these expenses only insofar as there was substantial involvement by counsel either in preparing or presenting the appeal (No. 427, Woodcock, 10 October 2001)

Amount set by the Board cannot be increased by an amount of any sort such as, in particular, the value-added tax (No. 256, *Rho*, 17 May 1990)

Reimbursement of expenses incurred by other persons

Reimbursement of the expenses incurred by a member of staff assisting the appellant (No. 367, *Clark*, 18 July 1997; No. 400, *Morisson*, 13 July 2000)

Reimbursement of expenses incurred by a witness assisting the appellant (No. 290, *Krott*, 16 September 1993; No. 412, *Schlega*, 29 May 2001)

Reimbursement granted the witness despite the fact the appeal was dismissed in its entirety (No. 109, *Nind*, 10 January 1980)

Reimbursement of the expenses incurred by witnesses whose deposition was deemed useful by the Board (No. 284, *Munns*, 4 March 1993; No. 312, *Michler*, 5 April 1995; No. 368, *Brookfield*, 24 April 1998; No. 428, *Moos*, 11 December 2001)

Reimbursement granted to the witness despite the fact the appeal was dismissed in its entirety (No. 136, *Topliss*, 22 October 1981)

Reimbursement of the expenses incurred by the spouse of the appellant, who was unable to attend (No. 436, *Maggi*, 16 July 2002)

Nature and amount of expenses

Reimbursement of travel expenses from the appellant's domicile, even when this is in Honolulu, given that the Administration failed to establish that such was not the case (No. 256, *Rho*, 17 May 1990)

Board not obliged to conform to the scale established by the member nations for setting legal fees (No. 114, *Lorentzen*, 14 May 1980; No. 115, *Maseng*, 14 May 1980; No. 116, *Van der Laan*, 14 May 1980)

Reimbursement of 25,000 Belgian francs of the 46,000 claimed (No. 52(f), *Drossart-Devos*, 2 June 1975)

4-6-3 Handling of abusive appeals

"In delivering its decision, the Board shall order the repayment of the security deposited by the appellant unless it considers that the appeal was an abuse of process. In this latter case the security shall be kept by the Financial Controller of the International Staff and entered as a receipt in the International Staff's budget" (Annex IX, Article 4.8.2).

### **Powers of the Board**

Only sanction possible in the event of an abuse of process – No reimbursement of the security deposit (Annex IX, Art. 4.82) (No. 28, *Harvey*, 16 November 1971)

Reimbursement of the security deposit usually without any reason being given – Exception – Reason for reimbursement provided (No. 50, *Liard*, 31 May 1973)

Reimbursement of the security deposit dependent upon the production of a document providing assurances that the appellant did not knowingly lie to the Board (No. 719, *Kirby*, 21 September 2007)

Inability to order an appellant to pay damages to the NATO body (No. 28, *Harvey*, 16 November 1971)

### **Abusive appeal – Concept**

Examples of abusive appeals

Petition for a rehearing based on the fact that the Board was allegedly not aware of one document, despite the fact that the appellant had mentioned it in a brief during the hearing resulting in the first decision (No. 696, *Angus*, 29 June 2006)

Appeal submitted against a decision rescinded five months previously (Nos. 693-697, *Angus*, 14 September 2006)

Reply containing general allegations according to which the Board was allegedly guilty of fraud, theft, embezzlement of NATO funds and corruption – Abuse of the right to appeal (No. 710(b), *Angus*, 21 September 2007)

Examples of non-abusive appeals

Appeal partially allowed (No. 31, *Cauchie*, 27 October 1971; No. 32, *Sauveur*, 29 October 1971)

Appeal dealing with the interpretation of texts potentially giving rise to diverging solutions (No. 206, *Reynaud*, 15 April 1986)

Appeal reaffirmed despite the fact that the Board rendered a decision on a previous appeal by the same staff member dealing with related issues (No. 112, *Cline*, 15 February 1980)

Petition for a rehearing, but dealing with complex problems (No. 73, *Allan*, 12 May 1976)

Appeal totally dismissed containing, in part, submissions already presented and rejected in a previous appeal – In the instant case, no abuse of process (No. 132, *Hintz*, 13 May 1981)

Appeal presenting submissions distinct from those of a previous appeal – Legitimate exercise of the right to appeal (No. 823, *Pavesi*, 24 February 2012; No. 850, Hulzebos, 26 October 2012)

Appeal by a staff member against disciplinary action she was subjected to (No. 827, *Pavesi*, 24 February 2012; No. 823, *Pavesi*, 24 February 2012)

***4-7 Implementation of Appeals Board decisions***

Grounds for the decision – Authority – Grounds provide the necessary support for the measure (No. 818, *Drexler*, 13 July 2011)

4-7-1 Authority of res adjudicata

**Authority of res adjudicata by a previous decision of the Board**

Conditions for accepting it – Only if the parties, the substance and the relief are identical (Nos. 218-227, *Eden and others*, 26 March 1987)

 Issue different from those already decided by the Board in a previous case (No. 737, *Suarez-Gonzalez*, 23 May 2008)

Individual issue already submitted by the appellant to the Board and decided by it (No. 169(b), *de Sangro*, 24 October 1984; No. 262, *Lops*, 31 January 1991)

Submissions which, if they were accepted, would have the same effects as those already requested by the appellant and rejected by the Board for being out of time (Nos. 734-735, *Roden & Valkenberg*, 14 March 2008).

Rejection of a request to cancel a dismissal preventing the Appeals Board from ordering the Administration to review this decision (No. 335, *Bindges*, 25 September 1996)

**Authority of res adjudicata** – Decision by the Appeals Board rendered in an individual dispute.

Administration not obliged to re-examine the case of all former staff members in the same situation as the one successful in his appeal before the Board – No failure to observe the principle of equality (No. 370, *Gilbert, Wiig and Zacharacopoulos*, 23 April 1998)

Administration invited to apply the Board's decision to all staff members in the same situation and liable to launch an appeal within the proper time period, except for those whose situation has been settled by a now final decision (No. 370, *Gilbert, Wiig and Zacharacopoulos*, 23 April 1998)

Administration not barred from offering, as an act of benevolence, provisions favourable to staff members whose situation has been settled by a decision that has become final, provided that in so doing it does not infringe on rights acquired by third parties (No. 370, *Gilbert, Wiig and Zacharacopoulos*, 23 April 1998)

4-7-2 Effects of a cancellation

**Cancellation of a decision because of a procedural irregularity**

Obligation for the Administration to review a request referred to it and, observing a regular procedure, to take the decision it feels is in order (No. 110, *Cameron*, 10 January 1980; No. 775, *Pavesi*, 4 February 2011)

Cancellation of a decision taken without the Complaints Committee provided for in Article 3.2 of Annex IX being convened despite the fact such a meeting had been requested by the staff member – Review of the request after the convening of such a committee (No. 400, *Morisson*, 13 July 2000; No. 772, *Marin Ortega*, 10 December 2010; No. 773, *Iannace*, 10 December 2010)

Cancellation of a decision taken following an irregular opinion expressed by an Invalidity Board – Need to reconvene the Invalidity Board and to take a fresh decision, looking at the situation on the date of the meeting of the first Invalidity Board (No. 434, *Girsch*, 17 July 2002)

Cancellation of a reassignment decision taken in the interests of the service – Consequences for the claims for compensation – Dismissal since the grounds for the decision are valid (No. 821, *Sprengers*, 30 September 2011)

**Cancellation of a working relationship that has an erroneous legal basis**

Cancellation of the refusal to acknowledge that the staff member's working relationship did not result from 90-day temporary contracts but from a permanent contractual relationship based on Article 5 of the CPR – Pecuniary compensation (No. 828, *Mayfield*, 24 February 2012)

**Cancellation of an appointment**

Consequence of the retroactive nature of the annulment – Administration unable to consider as professional experience time spent in a post further to a decision that was subsequently cancelled by the Appeals Board (No. 241, *Green*, 15 February 1989; No. 244, *de Monts de Savasse*, 15 February 1989; No. 245, *Broadbent*, 15 February 1989)

**Cancellation of a dismissal during the probationary period**

No obligation to reinstate (No. 670, *Charlier*, 15 September 2004; No. 724, *Barbieri*, 25 October 2007; No. 842, *Antonsen*, 24 February 2012)

No obligation to offer a new contract (No. 670, *Charlier*, 15 September 2004; No. 724, *Barbieri*, 25 October 2007)

Indemnity compensating for the loss of the opportunity to be kept in post until the end of his contract (No. 724, *Barbieri*, 25 October 2007) – No compensation, since it is certain that his contract would not have been extended beyond the probationary period (No. 842, *Antonsen*, 24 February 2012)

Observation that a dismissal at the end of the probationary period was not preceded by any prior notice – Paid notice compensating for the early effective date of the dismissal equal to the salary which should have been paid during the notice period, less the sums actually received during that period (No. 158, *Menet*, 8 July 1983)

**Cancellation of a termination or dismissal**

Reinstatement (No. 58, *Glimmerveen*, 23 April 1975; Nos. 749-751, *Petritzi-Davies*, 27 February 2009; No. 818, *Drexler*, 13 July 2011; No. 870, *Smouts*, 7 February 2013)

 Reinstatement, without the Board having to state thisexplicitly (No. 818, *Drexler*, 13 July 2011)

Reinstatement in the same post or, if that should be impossible, in an equivalent post (No. 818, *Drexler*, 13 July 2011)

Cancellation of the dismissal of a staff member in a situation of extended sick leave

Possibility for the administration to assess, if it believes it has a case, the consequences of the extended sick leave (Nos. 749 and 751, *Petritzi-Davies*, 27 February 2009)

Obligation for the Administration to inform the staff member that she may set in motion the arbitration procedure in Article 7 of the agreement between Vanbreda International and NATO, or to implement it itself if the staff member has so requested (Nos. 840, 845 & 849, *Pilot-André*, 1 June 2012)

No reinstatement insofar as, in any event, the contract had expired (No. 380, *Bergantino*, 12 November 1998; No. 721(b), *Pongiluppi*, 14 March 2008)

Cancellation of ancillary sanctions such as failure to pay the employer's contribution into the Provident Fund, including the eventuality that the Board does not order reinstatement and replaces it, based on Article 4.2.3 of Annex IX, by the award of an indemnity (No. 74, *Glimmerveen*, 16 November 1976)

**Cancellation of a failure to renew a contract**

No automatic reinstatement, but obligation on the Administration's part to once again rule on possible renewal of the contract – Renewal gives rise to significant difficulties – Re-examination probably without effect – Redress via the award of an indemnity (No. 85, *Shimell*, 8 December 1977)

No automatic reinstatement or obligation on the Administration's part to offer the staff member a new contract – Possible entitlement to an indemnity (No. 368, *Brookfield*, 24 April 1998; No. 416, *Vedel and Badin*, 22 January 2002; No. 419, *Corso-Leclercq*, 22 January 2002; No. 433, *Flachaire*, 23 January 2002; No. 480, *Sterken*, 29 January 2003; No. 694, *Rovder*, 14 December 2006; No. 769, *Varcol*, 17 September 2010; No. 782, *Prema*, 29 October 2010)

No automatic reinstatement inasmuch as non-renewal could be based on other grounds (No. 480, *Sterken*, 29 January 2003)

 Suspension of the recruitment procedure in progress and initiation of a new procedure (No. 752, *Leisge*, 12 December 2008)

 Refusal by the Administration, after the intervention of the Appeals Board allowing it the option of not reinstating the staff member – Obligation to provide reasons for the decision not to reinstate (No. 738, *Barbieri*, 8 May 2009)

Amount of the indemnity equal, in the instant case, to 6 months' salary (No. 480, *Sterken*, 29 January 2003); to 9 months' salary (No. 433, *Flachaire*, 23 January 2002); to one year's salary (No. 85, *Shimell*, 8 December 1977; No. 368, *Brookfield*, 24 April 1998), to 15 months' salary (No. 416, *Vedel and Badin,* 22 January 2002; No. 419, *Corso-Leclercq*, 22 January 2002)

Negligence by the Administration during a contract non-renewal procedure – Responsibility – No obligation to reinstate the appellant or to offer him a new contract – Indemnity set in the instant case at six months' salary (No. 713, *Sellers*, 12 July 2007)

Case in which a directive (Para.(vii) of the Preamble) has provided for an entitlement to contract renewal – Scope

Cancellation of the non-renewal decision involving an obligation to offer a new contract (No. 733, *Atienza-Corralo*, 14 March 2008), contract of indefinite duration (No. 771, *Maretti*, 12 March 2010)

Cancellation of the decision to renew the contract for a definite duration only (No. 754, *Zarantonello*, 10 July 2009)

**Staff member improperly dismissed**

Illegal dismissal only for the period between the effective date and the date on which the appellant was informed of the ground therefor, i.e. withdrawal of her security clearance – Indemnity equal to the amount of her salary, less the paid notice received, but augmented by the additional paid notice she would have received had she remained in her post (No. 286, *Hambli-Balter*, 26 May 1993)

Indemnity equal to the emoluments he would have received until the anticipated end of his contract, which was prior to the Board's decision (No. 380, *Bergantino*, 12 November 1998)

Indemnity payable only for the period during which the staff member could have been employed by NATO and necessarily ceasing as from the date on which the national authority withdrew the staff member's security clearance, insofar as this withdrawal is not based on the dismissal of the staff member by NATO (No. 388, *NETMA*, 22 April 1999)

**Staff member who was irregularly dismissed and then reinstated – Entitlement to compensation**

No entitlement to payment of the salary and allowances for the period during which service was not provided – Entitlement to an indemnity equal to the difference between the emoluments he would have received within NATO and the salaries resulting from the professional activity he may have engaged in during the same period (No. 406, *Schulze*, 27 September 2000; No. 703(a), *Lelling*, 9 November 2006; No. 733, *Atienza-Corralo*, 14 March 2008; No. 818, *Drexler*, 13 July 2011; No. 840, 845 & 849, *Pilot-André*, 1 June 2012; No. 870, *Smouts*, 7 February 2013)

Need, during this calculation, to deduct from the amount of the salaries taken into consideration the income tax collected on these salaries (No. 406, *Schulze*, 27 September 2000)

Former staff member enjoying social coverage and pension entitlements – Wage income to be compared – Income net of social security premiums (No. 703(b), *Lelling*, 25 May 2007)

Calculation of the separation allowance – Amount must be calculated based on the last salary and for the total period of employment (No. 406, *Schulze*, 27 September 2000)

Prejudice resulting from the staff member's inability to import a vehicle exempt from VAT – Not established (No. 406, *Schulze*, 27 September 2000)

**Cancellation of a refusal to pay an indemnity**

Obligation on the Administration's part, to which the initial request was once again automatically referred, to rule a second time on the amount of this indemnity (No. 436, *Maggi*, 16 July 2002)

**Cancellation of a refusal to appoint a staff member to another post** – Cancellation based upon a procedural irregularity – Consequences

Staff member did not request cancellation of the appointment of the staff member selected – Consequences – Redress in the form of an indemnity only (No. 292, *Falch*, 27 January 1994)

No entitlement to be appointed to this new post – Redress of the psychological damage only (No. 306, *Andersen*, 16 November 1994)

**Cancellation of a regrading procedure**

No entitlement to regrading – Simple obligation for the Administration to re-examine the conditions of a potential regrading of those concerned in accordance with a regular procedure (No. 727, *Colin and others*, 14 December 2007)

4-7-3 Administration invoking Article 4.2.3 of Annex IX to the CPR

“Nevertheless, where the Secretary General or, as regards those bodies to which the Paris Protocol applies, the Supreme Commander concerned affirms that the execution of an annulment decision would give rise to substantial difficulties, the Appeals Board shall instead determine the amount of compensation to be paid to the appellant for the injury sustained” (Article 4.2.3 of Annex IX)

**Cancellation of a dismissal** – Reinstatement – Citing by the Secretary General of Article 4.2.3 of Annex IX – Appeals Board obliged to accede to this request – No reinstatement but compensation (No. 4, *Bouffioux*, 19 April 1967; No. 65 (a), *Ferrier*, 13 November 1975; No. 70, *Groneveld*, 29 January 1976; No. 71, *Glimmerveen*, 29 January 1976; No. 103, *Weech*, 13 August 1979; No. 243, *Rho*, 15 March 1989; No. 274, *Cooper*, 4 November 1992; No. 312, *Michler*, 5 April 1995; No. 818, *Drexler*, 13 July 2011; No. 841, *Le Bescond*, 6 July 2012)

Compensation equivalent, in the instant case, to one year's salary (No. 4, *Bouffioux*, 19 April 1967; No. 71, *Glimmerveen*, 29 January 1976; No. 274, *Cooper*, 4 November 1992; No. 312, *Michler*, 5 April 1995)

Compensation equivalent, in the instant case, to 10 months' salary (No. 70, *Groneveld*, 29 January 1976)

Compensation equivalent, in the instant case and given the fraud committed by the appellant, to four months' salary (No. 243, *Rho*, 15 March 1989)

Assessment impossible with the information available to the Board – Deferral of ruling (No. 103, *Weech*, 13 August 1979)

Compensation equal to zero given that the staff member withdrew his claim for any prejudice in terms of salary (No. 103(b), *Weech*, 24 July 1980)

**Cancellation of an appointment** – Appeals Board decides not to cancel – Award to those candidates not selected of an indemnity representing the not insignificant loss of opportunity to be appointed to the vacant position (No. 201, *de Monts de Savasse*, 19 July 1985; No. 241, *Green*, 15 February 1989; No. 244, *de Monts de Savasse*, 15 February 1989; No. 245, *Broadbent*, 15 February 1989)

4-7-4 Compromise signed between the parties for the enforcement of a Board decision

Dismissal decision cancelled by the Board – Staff member and the Administration then sign a "compromise agreement" according to which the employee waives her reinstatement and accepts an indemnity by way of a final settlement – Compromise signed by the staff member of her own free will – Board rejects the staff member's request to declare this compromise null and void and order her reinstatement (No. 303, *de Oliveira*, 15 September 1994)

4-7-5 Delay in implementing a decision

Administration correctly waited for the Appeals Board to communicate its decision before paying the indemnity due to the staff member (No. 105, *Baylac*, 10 January 1980)

Indemnity paid six weeks after announcement of the ruling – No delay or fault on the Administration's part (No. 105, *Baylac*, 10 January 1980)

Delay in the payment of a sum of money – Option of seeking the payment of arrears of interest (No. 262, *Lops*, 31 January 1991)

Refusal to implement a decision of the Board – Cancellation (No. 110, *Cameron*, 10 January 1980)

## 4-8 Available remedies

4-8-1 Petition for an interpretation

**Concept**

Considerable difficulty in implementing a decision of the Board – Jurisdiction of the Appeals Board to interpret the contents of the decision and the grounds on which it necessarily rests (No. 74, *Glimmerveen*, 16 November 1976).

Different readings of the decision by the staff member and the NATO body preventing the decision from being fully implemented (No. 703(a), *Lelling*, 9 November 2006; No. 714, *Photopoulos*, 21 September 2007).

Ground for the decision raises no significant difficulty in implementation – Submissions inadmissible (No. 74, *Glimmerveen*, 16 November 1976).

### 4-8-2 Appeal to rectify a material error

"The decisions of the Board shall not be subject to appeal, except that the Board may be requested to rectify a clerical or accidental mistake in a decision delivered" (Annex IX, Art. 4.8.4, 1st sentence)

### **Concept**

Not established – Assessment of a legal nature (No. 15(c), Bornemann, 2 June 1970; No. 132, *Hintz*, 13 May 1981)

Not established – Challenge presented as covering a period of time but dependent upon an assessment of a legal nature – Appeal to correct a clerical error qualified as a petition for a rehearing (No. 105, *Baylac*, 10 January 1980)

Not established – Lack of grounds, or inadequate grounds, for a Board decision (No. 114, *Lorentzen*, 14 May 1980; No. 115, *Maseng*, 14 May 1980; No. 116, *Van der Laan*, 14 May 1980)

Not established – Interpretation of submissions, qualifying them as principal or ancillary – Petition for a rehearing only remedy (No. 354, *Van Soldt*, 5 June 1997)

### **Admissibility**

No material error (No. 43, *Ossadnik*, 8 November 1972; No. 273, *Quarto*, 17 September 1992)

Material error – Correction of "two years" by "13 months", although this has no impact on the decision rendered previously (No. 151, *Topliss*, 20 October 1982)

Material error having no bearing on the purport of the decision – Inadmissibility of the petition to rectify a material error (No. 137, *Nind*, 8 July 1981)

Translation error in the English version – Substandard translation does not affect the original – Inadmissibility of the petition to rectify a material error (No. 137, *Nind*, 8 July 1981)

Error in the signatures of the decision – Analysis of the submissions – "and" conjunction instead of "or" (No. 74, *Glimmerveen*, 16 November 1976)

Date and translation errors already rectified by means of a corrigendum – Petition for a rectification devoid of purpose (No. 109, *Nind*, 10 January 1980).

Board neglected to rule on certain submissions (No. 256, *Rho*, 17 May 1990; No. 354, *Van Soldt*, 5 June 1997)

Submissions aimed at seeking reimbursement of the appellant's legal costs and travel costs for one witness – Rectification in the instant case (No. 427, *Woodcock*, 10 October 2001)

Board failed to rule on one argument – Not established in the instant case – Argument not articulated in the first case (No. 273, *Quarto*, 17 September 1992)

Time period for filing the appeal – Reasonable period of time – Period of 18 months does not appear unreasonable in the specific case given the efforts made by the staff member to settle the matter without having to reappear before the Board (No. 427, *Woodcock*, 10 October 2001)

4-8-3 Petition for a rehearing (Art. 4.8.4 of Annex IX)

"The parties may petition the Board for a rehearing should a determining fact not have been known by the Board and by the party requesting a rehearing at the time of the Board's decision. Petitions for a re-hearing must be made within 3 months from the date on which the above-mentioned fact becomes known, or, in any case, within 5 years from the date of the decision.” (Annex IX, Art. 4.8.4, 2nd sentence)

**Composition of the Appeals Board**

Common law composition – Dismissal of the challenge of the three judges who ruled in the previous case (No. 15(a), *Bornemann*, 21 October 1969; No. 340, *Parisotto*, 9 January 1997)

Challenge of a judge – Application of Art. 4.1.6 of Annex IX – Yes (No. 16(a), *Zahlès*, 22 October 1969)

### **Petition for a rehearing admissible**

Compelling reasons – Board sent a notice to the wrong address and rejected the appeal as inadmissible given the appellant's failure to respond (No. 13(b), *Grant-Jones*, 2 April 1969)

Decisive fact unknown to the party and the Board until after the Board had rendered its decision (No. 43, *Ossadnik*, 8 November 1972)

Fact not such as to modify the Board's assessment in its initial decision – Rejection of the petition for a rehearing (No. 273, *Quarto*, 17 September 1992)

Decisive document unknown to either the appellant or the Board until the latter had rendered its decision (No. 140(b), *Willaume*, 28 April 1982)

Decisive fact not known to either the party or the Board until after the latter had rendered its decision – Doubt regarding the conditions under which the document on which the Board's first decision was made was drafted – Deferral of ruling in order to verify its authenticity (No. 658(a), *Melchior*, 4 June 2003) – Authenticity affirmed by the national authority – Rejection of the petition for a rehearing (No. 658(b), *Melchior*, 20 December 2004)

**Petition for a rehearing inadmissible**

Grounds which may not be used to support a petition for a rehearing

Petition for a rehearing submitted by a NATO body not a party in the previous case – The fact that SHAPE had invoked the application of Article 4.2.3 of Annex IX gave it standing only to request a review by the Board insofar as it ruled on that point but not on the submissions in a dispute between the staff member and another NATO body (No. 351, *SHAPE*, 5 June 1997)

Challenge of the legal reasoning allegedly tainted by an error of law (No. 15(c) *Bornemann*, 2 June 1970; No. 736, *Angus*, 8 April 2011)

Challenge demanding that a measure be taken which the Board was not competent to decide on or which it could have decided on only by vitiating its decision with an internal contradiction (No. 74, *Glimmerveen*, 16 November 1976)

Absence or inadequacy of grounds for a decision by the Board (No. 114, *Lorentzen*, 14 May 1980; No. 115, *Maseng*, 14 May 1980; No. 116, *Van der Laan*, 14 May 1980; No. 761, *Koelewijn*, 18 December 2009)

Failure to respond to arguments challenged – Response not necessary because the Board deemed the appeal to be out of time (No. 137, *Nind*, 8 July 1981)

No response to an argument – Not established in the instant case, as the Appeals Board has responded (No. 15(c), *Bornemann*, 2 June 1970; No. 696, *Angus*, 29 June 2006; No. 761, *Koelewijn*, 18 December 2009)

Challenge of the regularity of the procedure followed before the Board in the previous case and of the merits of certain grounds accepted in the impugned decision (No. 340, *Parisotto*, 9 January 1997)

Challenge of the amount of the indemnity allowed (No. 74, *Glimmerveen*, 16 November 1976)

General allegations questioning the sincerity of the Administration's records, but no specifics (No. 710(b), *Angus*, 21 September 2007)

Absence of any determining fact

Absence of any determining fact (No. 109, *Nind*, 10 January 1980; No. 166, *Radway*, 11 January 1984; n 262, *Lops*, 31 January 1991; No. 483, *Wortley-Salma*, 26 March 2003; No. 686, *Sgandurra*, 26 October 2005; Nos. 734-735, *Roden & Valkenberg*, 14 March 2008)

Facts known to the Board when it rendered its decision or which are not determining (No. 98, *Hintz*, 7 December 1978)

Document which the appellant had mentioned in his reply in the case leading to the first decision (No. 696, *Angus*, 29 June 2006)

Fact without bearing on the ruling of inadmissibility of the submissions handed down by the Appeals Board (No. 109, *Nind*, 10 January 1980; No. 165, *Léger*, 30 November 1983).

Fact "forgotten" by the appellant – A fact which has been overlooked cannot be regarded as a fact which was not known (No. 166, *Radway*, 11 January 1984)

Fact known to the appellant no later than the date of the hearing during which the Board examined his appeal (No. 761, *Koelewijn*, 18 December 2009)

Document without any bearing on the decision made by the Administration, which was placed at the time in a situation in which it was limited in the exercise of discretion (No. 121, *Atma*, 24 July 1980)

Letter subsequent to the date of the Board's decision – Letter could not have any bearing on this decision (No. 121, *Atma*, 24 July 1980)

Fact posterior to the date of the Board's decision – Fact could not have any bearing on this decision (No. 170, *Hardenbol*, 9 May 1984)

Facts known to the Board on the date it handed down its ruling but having no decisive impact on the resolution of the dispute (No. 132, *Hintz*, 13 May 1981)

Withdrawal by a national administration of the security clearance of a staff member whose dismissal was annulled by the Appeals Board in the absence of any fault – Mention by the Board of a supererogatory event which was not the basis for the Board's decision (No. 388, *NETMA*, 22 April 1999)

Medical certificate of which the Administration, which is the originator of the petition for a rehearing, had necessarily been aware, even if its representatives at the hearing were unable to communicate the facts (No. 320, NATO *Airborne Early Warning E3A Component,* 12 December 1995)

Document adding no new element such as to alter the tenor of the first decision (No. 696, *Angus*, 29 June 2006).

### **Powers of the Appeals Board ruling on a rehearing of an earlier decision**

Petition for a rehearing inadmissible, but the Board decides to clarify for the appellant the scope of its previous decision being challenged in this case (No. 43, *Ossadnik*, 8 November 1972)

Deferral of ruling – Decision on a petition for a rehearing deferred pending a response from a national administration on the authenticity of a document (No. 658(a), *Melchior*, 4 June 2003)

# Chapter 5: Liability of NATO and its bodies

## Situations that may give rise to actions for damages

5-1-1 No-fault liability

**Liability based on *égalité devant les charges publiques***

Liability under Article 3(g) of the CPR, according to which the withdrawal by a State of a staff member’s security clearance certificate entails termination of his or her contract with NATO – The North Atlantic Council’s intention having been to exonerate NATO from any liability (No. 40, *Petit*, 19 April 1972)

Staff member who was legally made redundant from a second post she had accepted after the first post was abolished – Staff member placed in a less favourable financial situation than if her contract had been terminated when the first post was abolished – Entitlement to compensation (No. 259, *Niedercorn*, 20 September 1990)

5-1-2 Fault liability – Principle of liability

Compensation for damage suffered by NATO staff members, if that damage is not in any doubt and is directly linked to facts for which it may be held liable (No. 461(a), *Sutherland*, 9 October 2002; No. 666(b), *Shaw-Aerts*, 25 November 2004; Nos. 749 and 751, *Petritzi-Davies*, 27 February 2009)

 No link established between the staff member's work conditions and his state of health – Administration had taken appropriate measures to protect the health of the staff (No. 767, *Rathke*, 17 September 2010)

Invalidity – Benefits under Annex IV of the CPR, Art. 14 – Lump sum – Full compensation for injury – Lack thereof in some cases – Full compensation possible with respect to fault liability (No. 461(a), *Sutherland*, 9 October 2002)

Defined Contribution Pension Scheme, applicable to staff recruited from1 July 2005 onward – Depreciation of assets placed in the individual pension account – NATO not liable (Art. 10.3 of Annex VI) (Nos. 853, 854, 856 and 859, *Azevedo and others*, 21 September 2012; Nos. 855, 857 and 858, *Bicego and others*, 21 September 2012)

### 5-1-3 Fault liability – Administrative actions for which the public authority may be held liable

**Delays**

Deferral of the entry into force of a salary adjustment – Delay of six months, due to an illegal application of the Civilian Personnel Regulations (Nos. 784 to 794, 797 to 804 and 807 to 809, *Hill and others*, 4 October 2010)

Delay in the payment of compensation – Two-month delay – No fault in a case where the delay was caused by a currency transfer problem (No. 154, *Léger*, 25 May 1983)

Delay caused by proceedings in the national courts on which a decision to be taken by the Organization depends – NATO not at fault (No. 432, *Trécat*, 5 September 2002)

Delay in changing the surface of a car park of a NATO building, the slipperiness of which had already caused several accidents – Fault (No. 461(a), *Sutherland*, 9 October 2002)

Delay in rendering premises used by staff safe even though the existence of risks had been brought to the Administration’s attention (Nos. 749-751, *Petritzi-Davies*, 27 February 2009)

Lack of diligence in taking a personal situation into account – Fault – Order to pay EUR 10,000 in compensation (No. 669(b), *Slater*, 25 November 2004)

Long time taken by the Administration to examine a complaint, to submit it to a Complaints Committee and to take adecision – Total period of 13 months (No. 764, *Cool*, 6 May 2010)

Delay in processing a complaint – Grounds compounding the confusion caused by an irregular procedure – Fault – Order to pay EUR 5000 in compensation (No. 727, *Colin and others*, 14 December 2007)

**Information**

Misinformation provided about health insurance coverage – Error for which a NATO Agency may be held liable (No. 48, *Twelvetrees*, 1 June 1973)

Information to be given to staff members likely to go on sick leave – Nature of illness and how extensive and serious it is not yet certain before the end of the contract – Administration not having informed the Vanbreda insurance company – No fault in the specific case since after the medical examinations the staff member continued to perform his duties until his contract ended (No. 321, *Oehler*, 24 January 1996)

**Information about the pension scheme**

 Erroneous information – Information provided after 1 July 2005 describing the pension scheme applicable before that date – Passage of a pension scheme (No. 855, 857 and 858, *Bicego and others*, 21 September 2012)

 Succinct information on the pension scheme, the investment of the funds and their management – Fault by the Administration, mitigated by the imprudence of the staff members who did not try to ascertain these matters in detail – Compensation set at 1 € (Nos. 853, 854, 856 and 859, *Azevedo and others*, 21 September 2012)

**Promises**

Legitimate hopes of the appellant but no promise made to him by the Administration – Administration not liable (No. 88, *Allan*, 20 January 1978)

Conversation between the staff member and his manager in which the latter said he intended to help the staff member find another job – Esteem not constituting a commitment – No entitlement to compensation (No. 139, *Hardenbol*, 9 July 1981)

Commitment by the Administration to put the appellant’s name forward for posts – Applications turned down – Administration not at fault (No. 154, *Léger*, 25 May 1983)

Assurances alleged but not established – No violation of the principles of good faith and legitimate trust (No. 284, *Munns*, 4 March 1993)

Promises made by the head of a national delegation on a steering committee – Promise that cannot render NATO liable (No. 375, *Brenner*, 17 July 1998)

Assurances of a reclassification not followed through – No right to the difference in remuneration or re-establishment of a career – Redress for damage suffered (No. 668, *Kohns*, 25 June 2004)

Unfulfilled hopes

Administration unable to honour commitments to compensate efforts made by the appellant in the interest of the service – Administration having been unable to re-evaluate his remuneration within a reasonable time frame (No. 673, *Curry*, 26 May 2005)

Administration having informed the staff member that he would be given an indefinite-duration contract if his professional performance improved – Negligence by the Administration, given that the post in question was subject to rotation and therefore could not be renewed (No. 713, *Sellers*, 12 July 2007)

Administration having suggested to the staff member for six years that an upgrade would be possible but not having undertaken the necessary steps to make it happen – Fault (No. 674, *Hanssen*, 25 May 2005)

### Letter informing the staff member of the Administration’s willingness to review his application in a positive light but having reserved its decision until additional documents were provided – Information that did not make the staff member entitled to something (No. 384, *Neschke*, 10 March 1999)

### **Negligence**

Negligence in the process of upgrading a staff member

Administration having suggested to the staff member for six years that an upgrade would be possible but not having undertaken the necessary steps to make it happen – Fault (No. 674, *Hanssen*, 25 May 2005)

Failure to fulfil hopes raised by assurances made by the Head of NATO body that were not accompanied by concrete action (No. 806, *Gadaleta*, 27 May 2011)

No negligence – Administration having already submitted several requests for a revision of the personnel establishment to the higher authority and having warned the staff member that there was little chance of a new request succeeding (No. 691, *Veltri*, 8 March 2006)

Payment by NATO of retirement contributions for interpreters to an insurance company – NATO having paid this money without determining whether the company was legitimate – Negligence of the duty of diligence and good management – NATO required to make compensation for damage suffered (No. 666(b), *Shaw-Aerts*, 25 November 2004)

Defined Contribution Pension Scheme

Consequences of administrative and management operations carried out by itself when executing instructions to transfer holdings from one fund to another – Period of several weeks to complete the operations to transfer holdings from one fund to another – Fault of the Organization (No. 866, *Agneessens*, 26 October 2012)

Monthly pattern of operations for changing funds – No fault, in connection with a pension scheme that is not designed for speculation (No. 866, *Agneessens*, 26 October 2012)

Delay in processing a complaint – Grounds compounding the confusion caused by an irregular procedure – Fault – Order to pay EUR 5000 in compensation (No. 727, *Colin and others*, 14 December 2007)

**Omissions**

Duty for NATO to offer adequate protection to a staff member who suffered from a Member State’s disregard for one of the privileges or immunities under Articles 17 to 23 – Omission – Fault for which NATO may be held liable

None, provided that this obligation does not apply to judicial action directed against a staff member as a private individual and bearing no relation to his office (No. 344, *Gasparini*, 17 July 1997)

None, given that the competent national court authorities had not taken a decision ruling on the compliance of the national law with the Ottawa Agreement (No. 432, *Trécat*, 5 September 2002)

None in the specific case, given the national court decisions ruling on the compliance of the national law with the Ottawa Agreement (No. 679, *Trécat*, 30 June 2005)

Emoluments subject to tax in Switzerland – Necessity of the staff member disputing the taxation before the competent national courts – Abstention of the staff member for reasons that cannot be attributed to NATO –NATO not liable (No. 384, *Neschke*, 10 March 1999)

The Administration required to assist a staff member in disputes under the agreement between NATO and the insurers and arising between a staff member and the insurers regarding acknowledgement of his invalidity before the national courts (No. 84, *de Raffaele*, 13 January 1978)

**Disclosure of information**

Interference with the privacy of a staff member owing to the disclosure of information, by NATO staff members who learned of it in the course of their duties, about a staff member’s state of health – Disclosure of that information not necessary to protect the staff’s legitimate interests – Fault by the Organization (No. 248, *Mr X.*, 28 June 1999)

Communication to the national administration of a document likely to lead that administration to terminate the staff member’s secondment – Event likely to compromise the performance of the contract of employment between NATO and the staff member (No. 255, *Lops*, 17 May 1990)

Communication to a national administration of a staff report containing criticism that was prepared without his having the possibility of discussing it – Fault by the Administration (No. 694, *Rovder*, 14 December 2006)

File of a staff member containing a document listing all of his absences, whether for professional purposes or for personal and in particular medical reasons, accompanied by ironic comments implying that he did not work diligently and that he travelled on mission without good reason or made use of professional trips for private purposes, or comparing his periods of leave with those of one of his female colleagues – Defamatory comments causing the staff member non-material damage (No. 756, *Baldwin*, 18 December 2009)

5-1-4 Liability and illegality – Illegality for which the public authority may be held liable

Illegal assignment to a post other than the one on the job description attached to the contract (No. 377, *Bosman*, 2 October 1998)

Illegal modification of responsibilities (No. 817, *Roberts*, 27 May 2011)

Irregularity in the selection process for candidates for a vacant post – Consequences

No material damage, since the appellant did not seek cancellation of the appointment of the chosen candidate – Non-material damage only – Damage assessed at two months’ emoluments in the specific case (No. 389, *Woodcock*, 24 September 1999)

Material damage based on the serious chances he had of being appointed to a job, despite not being entitled to be appointed to it, in the light of the highly laudatory assessment he had received in his staff report (No. 288, *Harvey*, 24 November 1993)

Material damage based on the fact that her situation as an internal candidate should have led to her appointment, but that appointment would have been followed by a probationary period offering no guarantee of permanency – Damage assessed at one year’s emoluments (No. 148, *Schweser*, 28 April 1982)

No material damage since it is not established that the appellant would have been appointed had the procedure been regular – Compensation for procedural irregularities alone – Damage assessed in the specific case at two months’ emoluments (No. 292, *Falch*, 27 January 1994)

No material damage, since the appellant was not entitled to be appointed to the post in question – Non-material damage only – Damage assessed at BEF 100,000 in the specific case (No. 306, *Andersen*, 16 November 1994)

Procedural irregularity committed by NATO having led to the non-renewal of a staff member’s secondment – Damage assessed at one month’s salary (No. 144, *Mahieu*, 4 December 1981)

Illegal disciplinary action

Illegal suspension – Administration at fault (No. 399, *Schulze*, 27 September 2000)

Illegal censure – Administration at fault (No. 827, *Pavesi*, 24 February 2012)

Improper contract termination (No. 24, *Stievenart*, 25 March 1971; No. 25, *Dumont*, 25 March 1971; No. 42, *Castiau-Thiry*, 8 November 1972; Nos. 749-751, *Petritzi-Davies*, 27 February 2009)

Illegality of a contract termination that moreover deprived the staff member of the chance to have his contract renewed – Compensation assessed at 3 months’ salary (No. 155, *Meurer*, 7 July 1983)

Illegality of not renewing a contract based on the Administration’s desire to avoid entitling the staff member to health insurance coverage and the retirement pension he or she would have received after serving for ten years – Illegality of not renewing a contract, thereby depriving the staff member of a chance to be kept in service for an additional length of time (No. 368, *Brookfield*, 24 April 1998; No. 416, *Vedel and Badin*, 22 January 2002; No. 419, *Corso-Leclercq*, 22 January 2002)

 Illegality of procedure when not renewing a contract – Assessment of the loss of opportunity to have the contract renewed (No. 841, *Le Bescond*, 6 July 2012)

## 5-2 Accountability for damage

Persons responsible

Termination of a seconded staff member’s contract – NATO body bound, without having to respect a period of notice, to terminate the seconded staff member’s contract as of the date set by the national authorities as the end of the secondment even if that is earlier than the anticipated end date of the contract – No liability for NATO – Responsibility of the national authorities alone (No. 337, *Melas*, 25 October 1996)

NATO body arguing that it does not have the power to decide how to classify posts in different grades – Any fault not attributable to the NATO body to which the staff member belongs – Body required to turn to the competent authority (No. 423, *Penninckx*, 11 July 2001)

Defamatory comments in the file of a staff member causing him non-material damage – Comments necessarily made by a staff member of a NATO body – Liability of that body (No. 756, *Baldwin*, 18 December 2009)

NATO body succeeding another that has been dissolved – NAMSA becomes NPSA (No. 860, *Petrillo*, 6 July 2012)

## 5-3 Redress

5-3-1 Damage established or not established

### **Damage not established**

Refusal by the Administration to send the Complaints Committee’s report to the complainant (No. 101, *Cameron*, 4 May 1979)

Staff member recruited for a post assigned grade B2 even though the budgetary authority had made provision for a grade B3 post – No damage to that staff member since if the post had been assigned grade B3 he would not have been eligible to be recruited for it, and if the post had been turned into a B3, a new recruitment procedure might have resulted in another staff member being assigned to it (No. 390, *Dols*, 9 December 1999)

Staff member seeking compensation for extra workload but having signed a new contract several months earlier that indicated that his duties would be changed significantly – No definite damage resulting from NATO’s fault in not having changed the contract again (No. 375, *Brenner*, 17 July 1998)

Staff member having resigned – Resignation deemed proper – No damage (No. 198, *Ross*, 14 May 1985)

Termination of the contract of a staff member on extended sick leave – Staff member having continued to receive full pay and consequently not having suffered any loss of income – No damage for this (Nos.749-751, *Petritzi-Davies*, 27 February 2009)

Staff member whose contract was terminated but who continued to receive full pay under the group insurance policy (No. 409, *Krieps*, 12 December 2000)

Staff member requesting retroactive membership, over a period of 7 years, of the NATO health insurance, unemployment and pension schemes – Staff member belonged, over the same period, to a different social security scheme which entitled him to the same benefits at rates of contribution not differing greatly from those levied for the NATO scheme – No damage requiring compensation (No. 811, *Luja*, 30 September 2011)

Damage already repaired by compensation awarded in previous Appeals Board cases (No. 406, *Schulze*, 27 September 2000)

Cancellation of the decision not to renew a contract entails an obligation to offer a new indefinite duration contract – First contract not yet expired (No. 771, *Maretti*, 12 March 2010)

Improper termination affected the appellant's reputation among his colleagues and his superiors in his national army – No moral damage (No. 765, *Drexler*, 17 September 2010)

Head of NATO body having thought he was bound to apply the provisions of Article 10.5 and replace the contractual notice period by the granting of an allowance in lieu of notice – Error of law – Cancellation of that decision alone – Consequence – End date of the contract postponed – Board’s observation that the allowance in lieu of notice received by the staff member was equal to the pay that would have been received had the contract run until its expiration date – No material damage (No. 141, *Goderniaux*, 3 December 1981; No. 142, *Ivoy*, 3 December 1981)

Damage resulting from the Administration’s illegal refusal to convene an invalidity board to rule on the health of a staff member on extended sick leave – Damage no more than a possibility – Damage that can only be established if the invalidity board acknowledges the staff member’s invalidity (No. 326, *Michler*, 16 April 1996)

Damage simply possible, and not substantiated – Temporary divulgation on the NATO information network of personal data concerning him (No. 795, *Klag*, 10 December 2010)

### **Damage established**

Psychological problems after a fall (No. 461(a), *Sutherland*, 9 October 2002)

Career after service at NATO affected by the transmittal of an improperly prepared report containing poor assessments (No. 694, *Rovder*, 14 December 2006)

Defamatory comments in the file of a staff member causing him non-material damage (No. 756, *Baldwin*, 18 December 2009)

### **Exoneration from liability**

Breach of the obligation for professional discretion – Fault limited by the behaviour of the Administration which also disclosed confidential information to a third party, causing damage to the staff member (No. 271, *Quarto*, 17 September 1992)

### **Assessment of the damage**

Compensation *ex æquo et bono*, in the absence of accurate information (No. 428, *Moos*, 11 December 2001)

### 5-3-2 Nature of the damage

### **Material damage**

Delay in implementing a salary adjustment – Damage repaired by payment of sums due together with interest at the European Central Bank rate (Nos. 784 to 794, 797 to 804 and 807 to 809, *Hill and others*, 4 October 2010)

Loss of income due to the suspension of professional activity

Indemnity taking account of the indemnity for loss of job and the salary received by the staff member in another post – Additional allowance equal to 10 months’ emoluments (No. 280, *de Castelbajac*, 4 March 1993)

Difference between the income that would have been received for service and the invalidity pension that was paid (No. 461(a), *Sutherland*, 9 October 2002)

Difference between the income that would have been received for service and all the amounts paid, in particular the invalidity pension and the indemnity in lieu of notice (No. 461(b), *Sutherland*, 27 March 2003)

Loss of income due to the payment of retirement contributions not giving rise to benefits – Insurance company having compensated the staff member for 65% – NATO liable for 30% (No. 666(c), *Shaw-Aerts*, 26 May 2005)

Negligence having delayed a staff member’s upgrade by at least six months – Damage assessed at EUR 30,000 (No. 674, *Hanssen*, 25 May 2005)

Loss of income due to a reduction in the retirement benefits received by a former staff member due to errors by the Organization – Documents destroyed – Damage assessed as a lump sum of BEF 80,000 in the specific case (No. 392(b), *Gresser*, 22 March 2001)

Loss of any prospect of the appellant’s post being upgraded – Damage assessed at EUR 3333 (No. 675, *Lenti and others*, 30 June 2005)

Loss of a chance to be appointed to a post

Damage assessed at two months’ emoluments (No. 291, *Togayli*, 27 January 1994; No. 389, *Woodcock*, 24 September 1999)

Damage assessed at EUR 30,000 (No. 699, *Sgueglia*, 13 September 2006)

Loss of the opportunity to have the contract renewed – Little likelihood of renewal, as the appellant's performance was not found to be satisfactory – Material damage assessed at six times the monthly difference between the income he would have had at NATO and what he receives in the job he has found since leaving NATO (No. 841, *Le Bescond*, 6 July 2012)

Career after service at NATO affected by the sending of an improperly prepared report containing poor assessments – Damage assessed at EUR 20,000 (No. 694, *Rovder*, 14 December 2006)

Physical pain caused by the consequences of surgery following an accident in the workplace – EUR 15,000 awarded in total for this damage and non-material damage (Nos. 749-751, *Petritzi-Davies*, 27 February 2009)

Improper termination of the contract of a staff member on extended sick leave whose state of health had improved and who could expect to resume working soon – Psychological distress that led to extending the extended sick leave – Damage assessed at EUR 10,000 (Nos. 749-751, *Petritzi-Davies*, 27 February 2009)

**Non-material damage**

Actions contrary to the principles of good management and non-discrimination (“harassment”) – Staff member entitled to compensation (No. 672, *Photopoulos*, 3 March 2005)

Non-renewal of a contract motivated by the Administration’s desire for vengeance against a staff member who spoke out against her immediate supervisor’s misconduct – Non-material damages set at EUR 10,000 (No. 745, *Austin*, 31 October 2008)

Long time taken by the Administration to examine a complaint, to submit it to a Complaints Committee and to take a decision – Total period of 13 months – Damage assessed at EUR 5,000 in this case (No. 764, *Cool*, 6 May 2010)

Delays and omissions likely to be prejudicial to a dismissed staff member's placement in a NATO body (No. 862, *Wendel*, 20 December 2012)

Damage resulting from the grounds for a decision that was extremely prejudicial to the staff member not being communicated to that staff member as they should have been (No. 368, *Brookfield*, 24 April 1998)

Injury to a staff member’s reputation resulting from the refusal to pay him an indemnity to which he was entitled – Damage in the specific case assessed at LUF 500,000 (No. 374, *Todd*, 6 March 1998)

Behaviour of the Administration having caused a great deal of misunderstanding and disturbance that profoundly affected the staff member’s health and personal life – Damage assessed at USD 20,000 (No. 738, *Barbieri*, 8 May 2009)

Staff member employed under a succession of 3-month contracts when he should have held an indefinite-duration contract – Constant uncertainty as to the permanence of his employment – Moral damage assessed at EUR 5,000 (No. 779, *Wild*, 17 September 2010; No. 813, *Dohms*, 27 May 2011; No. 811, *Luja*, 30 September 2011; No. 822, *Bürgstein*, 30 September 2011)

Psychological distress caused by the consequences of surgery following an accident in the workplace – EUR 15,000 awarded in total for this damage and physical pain (Nos. 749-751, *Petritzi-Davies*, 27 February 2009)

Illegal assignment to a post other than the one on the job description attached to the contract – Assignment revoked after one month – Non-material damage only – Damage in the specific case assessed at BEF 1 (No. 377, *Bosman*, 2 October 1998)

Illegal modification of responsibilities (No. 817, *Roberts*, 27 May 2011)

Harassment lasting more than two years, consisting in aggressive behaviour, coarse language (also in the presence of others), and escalating intimidation and denigration of the staff member's personality and actions – Situation which had a serious effect on his health, his self-confidence and his ability to use his skills in his professional environment – Damage assessed at EUR 30,000 (No. 860, *Petrillo*, 6 July 2012)

Interference with the privacy of a staff member owing to the disclosure, by NATO staff members who learned of it in the course of their duties, of information about a staff member’s state of health – Disclosure that a staff member has AIDS – Compensation of BEF 1 million (No. 248, *Mr X.*, 28 June 1999)

Defamatory comments in the file of a staff member causing him non-material damage – Damage assessed at USD 20,000 (No. 756, *Baldwin*, 18 December 2009)

Irregularities in the procedure for cancelling an invalidity pension – EUR 5000 in compensation (No. 434, *Girsch*, 17 July 2002)

Illegal disciplinary action

Illegal censure – Damage assessed at EUR 3,000 (No. 827, *Pavesi*, 24 February 2012)

Illegal suspension for 7 days (No. 832, *Pavesi*, 24 February 2012)

Compensation of one symbolic euro (No. 681, *Staff Association, Goyens and Hill,* 12 September 2005)

Compensation of EUR 1,000 (No. 461(a), *Sutherland*, 9 October 2002)

5-3-3 Specifics of compensation for damages

**Quantifying the damage**

**Forms of compensation**

Compensation awarded to a staff member whose contract was terminated while he was on extended sick leave – Payment deferred to the end of that extended sick leave and dependent on him not being appointed to a post in the Organization (No. 312, *Michler*, 5 April 1995)

Provisional compensation – Amount set at 30% of the compensation sought by the appellant (No. 666(b), *Shaw-Aerts*, 25 November 2004)

**Amount of compensation**

Improper termination – Compensation calculated according to the staff member’s age, family situation, length of service with NATO and the circumstances attending to his or her search for and appointment to a new post

Compensation set at eight months’ emoluments (No. 24, *Stievenart*, 25 March 1971)

Compensation set at twelve months’ emoluments (No. 25, *Dumont*, 25 March 1971; No. 312, *Michler*, 5 April 1995)

Compensation set at five months’ emoluments (No. 42, *Castiau-Thiry*, 8 November 1972)

Compensation set at three months’ emoluments (No. 167, *Polfer*, 11 January 1984)

Illegal non-renewal of a contract depriving the staff member of a chance to keep working for an additional period of time

Damage assessed at one year’s emoluments (No. 368, *Brookfield*, 24 April 1998)

Liability of the Administration when its action was known to have been deemed to be tainted by an error of law in a previous Appeals Board decision – Damage assessed at 15 months’ salary (No. 416, *Vedel and Badin*, 22 January 2002; No. 419, *Corso-Leclercq*, 22 January 2002)

Actions of the Administration contrary to the principles of good management and non-discrimination – Liability lessened by the staff member’s not taking opportunities to be reassigned – Damage assessed at EUR 25,000 (No. 714, *Photopoulos*, 21 September 2007)

Illegal decision not to renew a contract whereas the staff member was entitled to have his contract renewed – Serious disruption to the living conditions of the staff member, affecting his personal life and his health – Damage assessed at EUR 35,000 (No. 733, *Atienza-Corralo*, 14 March 2008)

**Interest**

No provision in the CPR for payment of interest in the event of a delay in payment – No entitlement to such interest – On the other hand, ability of the Board to order the payment of interest in the event of damage suffered as a result of an inappropriate delay (No. 98, *Hintz*, 7 December 1978; No. 278, *Clark*, 13 January 1993; No. 330, *Neschke*, 25 June 1996)

Payment of interest despite no provision for that in the CPR (No. 374, *Todd*, 6 March 1998)

Starting point – Date of the claim for compensation made to the NATO body (No. 461(b), *Sutherland*, 27 March 2003)

Interest rate

4% interest rate (No. 374, *Todd*, 6 March 1998; No. 461 (b), *Sutherland*, 27 March 2003)

 Rate usually used by NATO in the event of an excessive delay in making payment, defined by analogy with Article 11 of Annex IV on pensions (No. 378, *Michler*, 2 October 1998)

 Rate that cannot be set at a higher level than if it were established that the delay in payment constituted inappropriate behaviour by NATO toward the staff member – Not established in the specific case (No. 378, *Michler*, 2 October 1998)

Rate of 3% (No. 692, *Abernethy*, 10 May 2006)

European Central Bank rate (Nos. 784 to 794, 797 to 804 and 807 to 809, *Hill and others*, 4 October 2010; No. 774(b), *Hulzebos*, 27 May 2011)