

**RULES OF PROCEDURE OF THE ADMINISTRATIVE TRIBUNAL
CONTENTS**

Chapter	Subject	Article(s))
I	<u>General Principles</u>	
II	<u>Organization</u>	1 to 12
III	<u>Disqualifications and Challenges</u>	13 to 15
IV	<u>Arbitration, Conciliation, Mediation, and Settlements</u>	16 to 23
V	<u>Preliminary Questions</u>	24 and 25
VI	<u>Procedure</u>	26 to 43
VII	<u>Third Party Intervention</u>	44 to 48
VIII	<u>Complaints Alleging Nonobservance of the Provisions of the Retirement and Pension Plan</u>	49
IX	<u>Judgment</u>	50
X	<u>Procedure for Review</u>	51
XI	<u>General Provisions</u>	52 to 60
XII	<u>Transitory Provisions</u>	61 and 62

**CHAPTER I
GENERAL PRINCIPLES**

The Tribunal of the Organization of American States (hereinafter "the Tribunal") shall observe the following order of precedence in the settlement of any dispute:

1. The internal legislation of the Organization of American States takes precedence over the general principles of labor law and over the law of the Member States.
2. Within the internal legislation of the Organization of American States the Charter is the supreme legal instrument, followed by resolutions of the General Assembly, resolutions of the Permanent Council, and provisions adopted by the various organs established in the Charter, including the Rules of Procedure of the Tribunal and the Staff Rules, each applicable within its own specific area.
3. By way of supplement, and consistent with the Charter of the Organization, the Statute of the Tribunal, and the preceding sections 1 and 2 of this Chapter, the Tribunal may apply and interpret the provisions and general principles of labor and civil law, take into consideration the clauses of contracts signed by the parties, cite the case law of this and other tribunals of international organizations, the general principles of equity, and other provisions and materials that apply or are relevant to the establishment and functioning of labor relations.

**CHAPTER II
ORGANIZATION**

Article 1: Composition

1. The Tribunal shall be composed of six members.

Member qualifications

2. (a) Each member must be a national of an OAS member state, but no two members may be nationals of the same member state. All members shall be experienced lawyers, law professors, or judges by profession, and shall serve strictly in their personal capacity.
2. (b) The following persons are ineligible to serve as members of the Tribunal:

permanent representatives of the member states on the organs, agencies, or entities of the Organization; persons who serve permanently on those bodies in any capacity; staff members of the General Secretariat; and individuals who have reached the age of 65 before being nominated for election.

Election

3. The members of the Tribunal shall be elected directly by the General Assembly, except for the case referred to in paragraph 1(5)(b) below. The member elected to the Tribunal shall take an oath to the President or Vice President of the Tribunal before taking office.

Duration of term

4. The term of each elected member shall be six years. Elections are staggered so that one new member is elected each year.

5. (a) A member's term shall begin on the first day of January following the member's election.

5. (b) If a member resigns or otherwise leaves the Tribunal before the expiration of his term, a substitute member shall be elected by the General Assembly, or by the Permanent Council if the General Assembly has not been convened. The substitute member elected shall serve only for the remainder of the replaced member's term, but shall not assume his seniority.

Reelection

6. (a) A member may be reelected, but may serve no more than two consecutive terms in office. For the purposes of this limitation, election to serve the remainder of a replaced member's term under paragraph 5 above shall not be considered a full six-year term.

6. (b) A member so reelected shall lose all the seniority accumulated in his prior term.

Article 2: Officers and panels

1. (a) The Tribunal shall have a President and a Vice President. Each member of the Tribunal, beginning with the two members having the most and second most seniority, respectively shall hold these offices successively for one year.

1. (b) In the absence of the President, the Vice President shall preside, and if he also is absent, the member of the Tribunal with the greatest seniority shall preside.

2. For each regular or special session, the Tribunal shall be convened as a panel consisting of three of its six members.

3. Under exceptional circumstances, for cases involving particular importance or difficulty, or to deal with cases that a three judge panel is unable to resolve, on the initiative of the President of the Tribunal or any of its members, the President, at his discretion, may convene an *en banc* session (plenary session) composed of the six members of the Tribunal. Such a plenary session also may be convened when the President, at any stage in the proceedings, considers that it is necessary or appropriate for a case to be considered by all members of the Tribunal.

4. The composition of the panel shall be renewed for each one of the Tribunal's sessions.

5. At the conclusion of the last session each year, the President, in the presence of the other members of the panel in session and the Secretary of the Tribunal, shall determine by lot among the six members the order in which members will sit on each panel the following year.

However, in the interest of continuity and effective administration, the panels shall be organized so as to ensure that the President or the Vice President of the Tribunal will sit on each panel.

6. In the interests of maintaining the effective operation of the Tribunal, the President shall endeavor in selecting the members of each panel in order to ensure that the composition of each panel: a) reasonably reflects the two major legal traditions of the Hemisphere (the common-law tradition and the civil-law tradition), b) has a reasonable ability to conduct work in the language used for hearing particular cases, and c)

responds to other practical reasons. If the President considers necessary to exchange places on the panels, he will request the consent of the designated members.

7. The President of the Tribunal shall announce the names of the members chosen by lot to constitute the panels for the next sessions. In the event one of those members resigns or is otherwise unable to serve, another member of the Tribunal chosen by the President shall replace him.

8. When the President of the Tribunal considers it necessary to convene a special session of the Tribunal under Article 6 of these Rules of Procedure, the composition of the panel shall be determined by the President from among the six members, with due regard for the principle of ensuring that all members are given an equal opportunity to participate in the proceedings of the Tribunal.

9. The President may attend all Tribunal sessions for purposes of dealing with administrative matters.

Article 3: Functions of the President of the Tribunal

1. The President of the Tribunal shall supervise the preliminary procedures for each panel.

2. The President shall inform the members constituting the panel about the measures taken during each preliminary period.

3. The President shall supervise the work of the Secretariat and shall represent the Tribunal in respect of all administrative matters that he has not delegated to the Secretary.

4. The President shall select another member of the Tribunal to replace a member of the panel who is unable to serve under Article 2, or has challenged him-self or has been replaced under Articles 13 or 14.

5. The panel member with greatest seniority shall chair the panel and supervise the proceedings in each panel, the order of discussion, and the conduct of hearings.

6. In any circumstance and subject to the rule set forth in Article 2, in the absence of the President, the Vice President shall preside, and if he also is absent, the member of the Tribunal having greatest seniority shall preside.

7. The President, or a member designated by the President, shall represent the Tribunal before the General Assembly and at any other special functions.

Article 4: Tribunal Secretariat

1. The Tribunal shall have a Secretary, who shall be designated by the Secretary General of the Organization in consultation with the Judges of the Tribunal, if possible. With respect to his specific functions, the Secretary shall be responsible to the Tribunal and, when it is not in session, to its President. The Tribunal shall also have at its disposal such personnel and services as may be necessary for its functioning, to be provided by the General Secretariat of the Organization.

2. If the Secretary is unable to perform his duties as such, he shall be replaced by another official also designated by the Secretary General in accordance with paragraph 1 of this article.

3. The Secretary shall be responsible for the publication of a collection of the judgments of the Tribunal, and the compilation and maintenance of other records.

4. The Secretary shall be responsible for the files, the accounts, and all the administrative work of the Tribunal. He shall be present at all hearings and at private meetings, and he shall witness all actions concerning the Tribunal unless directed otherwise by the Tribunal.

5. The Secretary also shall have any other functions that may be assigned to him by the President of the Tribunal, or the Chair of Tribunal Panel, to effectively conduct the Tribunal's activities.

6. The Secretary is responsible for keeping the members of the Tribunal informed on pending cases and other administrative matters bearing on the proper functioning of the Tribunal. Except in exceptional circumstances, the Secretariat shall provide by all

suitable means, not less than twenty-one days prior to consideration of the case concerned, the appropriate materials and a summary of the documentation of the cases to the panel members assigned to consider and decide them.

7. The Secretariat shall provide each newly elected member of the Tribunal, within three months of his election, with the fundamental laws and documents explaining the operations of the Tribunal and shall inform him about the cases pending and provide other material and assistance necessary to the proper discharge of his duties.

Article 5: Regular sessions

The Tribunal shall hold regular sessions during the second and fourth quarters of each year, provided the following conditions exist:

1. There are one or more cases pending consideration by the Tribunal, in accordance with the provisions of paragraph 2 of Article 35 of these Rules of Procedure; and/or
2. In the opinion of the President, such case or cases, or the administrative needs of the Tribunal, justify the holding of a session.

Article 6: Special sessions

1. The President may convoke a special session when the pending cases so require, provided the conditions mentioned in the preceding Article prevail, or when, in the opinion of the President, special circumstances require such a session.
2. Before a special session is called, the President of the Tribunal shall confer with the other members designated by the President to sit on the panel in accordance with Article 2 of these Rules of Procedure.

Article 7: Communication of the President's decisions

The decisions made by the President in accordance with the preceding articles shall be made known to the members chosen to sit on a panel at least thirty days before the beginning of a regular session, and fifteen days in advance in the case of special sessions.

Article 8: Members unable to attend

The members of the Tribunal who are unable to attend the panel for which have been called shall notify the President accordingly within a period of five days after receiving notice of the convocation, through the intermediary of the Secretary. In such cases, the member or members of the Tribunal selected to replace unavailable members shall be immediately requested to appear by the President.

Article 9: Remission of files

Notwithstanding Article 24, paragraph 4, as soon as the Secretariat knows which members will make up the Panel for a given session, it shall send a copy of each of the case files involved to each such member.

Article 10: Advancement or postponement of sessions

The President may, according to the circumstances, advance or postpone the beginning of any session of the Tribunal, provided the regular sessions are held during the second and fourth quarters of the year.

Article 11: Place of meetings

Both the regular sessions and the special sessions shall be held at the headquarters of the General Secretariat. Nevertheless, when cases of *force majeure* or exceptional circumstances occur, the President may request the Tribunal to meet at any other site in a member state, with the prior authorization of the government of that state and the approval of the members who are due to serve.

Article 12: Nature of deliberations

All deliberations related to the decision making process or other circumstances where executive decisions are required shall be secret.

CHAPTER III

DISQUALIFICATIONS AND CHALLENGES

Article 13: Mandatory disqualifications

1. The following circumstances constitute mandatory disqualifications from hearing a

particular case:

- (a) Having a personal interest in the case;
- (b) Having been a counselor, adviser, attorney, expert, or witness in the case either during or prior to the procedures mentioned in Article VI of the Statute, or in the course of the judicial procedure;
- (c) Having taken cognizance of the case in any of the administrative procedures mentioned in Article VI of the Statute;
- (d) Being a relative of any of the parties within the fourth degree of consanguinity or the second degree of affinity.

2. When a member of the Tribunal finds himself in any of the situations contemplated in this Article he shall be disqualified *ipso jure*, and the Tribunal shall so declare.

Article 14: Recusal

1. The following constitute reasons for recusement from hearing a given case:

- (a) Being a relative of any of the counselors, advisers, attorneys, or representatives of a party within the fourth degree of consanguinity or the second degree of affinity;
- (b) Being an intimate friend of, or bearing manifest animosity toward, any of the parties;
- (c) Having expressed a formal opinion with respect to the case in question;
- (d) Any other reason affecting impartiality.

2. When a member of the Tribunal finds himself in any of the situations contemplated in this Article, he shall disqualify himself from hearing the case and shall inform the President of his disqualification, through the Secretary. The President shall first hear the parties and shall decide whether it is proper to accept the disqualification. If this is accepted, the President shall immediately request the corresponding alternate member to appear, or if this is not possible, shall continue the proceedings with the two remaining judges, in the absence of objections by the parties, or shall postpone the case for another session.

Article 15: Recusation

1. The parties have the right to recuse a member of the Tribunal, stating the reason. The reasons given above for mandatory disqualification and recusal are also reasons for recuse.

Formalities and Opportunity

2. The challenge should be presented in writing, accompanied by the pertinent documentary evidence, if there is any, and with the offer of the other corresponding evidence, within five days following the date on which the party concerned has been informed of the composition of the Panel. When the recusation be based on a supervening fact, the same form of procedure shall be followed within five days following the date on which the party concerned has learned of the fact that motivates the challenge.

In special circumstances the President may extend these periods, but in no case may he reduce them.

Procedure, settlement and effect of challenges

3. When a challenge has been received the parties concerned shall be notified through the Secretary, giving a period of up to fifteen days to submit an answer to the challenge, and after the pertinent evidence has been considered, the Tribunal shall decide upon the

question within three working days.

In the event that the recusation is clearly groundless or malicious, or alleged for manifestly dilatory purposes, the Tribunal shall decide upon it without further procedure. If the challenge is upheld, the presiding member shall call upon an alternate member from among those not selected for the current panel.

The decisions on matters of recusations shall be made public before the conclusion of the session of the Tribunal.

Recusation against the President or more than one member

4. When a challenge is presented against the President, the procedure indicated above being observed, the Tribunal shall decide upon the case with the panel members who have not been challenged. If two or more panel members have been challenged, the issue will be decided by a voting of all the remaining members of the Tribunal.

CHAPTER IV

ARBITRATION, CONCILIATION, MEDIATION, AND SETTLEMENTS

Article 16: General Principle

Before submitting a case to the Tribunal, the parties may seek to settle their disputes by means of any form of arrangement or voluntary agreement, including arbitration, conciliation, mediation, and settlement.

Article 17: Affirmation of the validity of agreements

The result of any of the aforementioned agreements shall be accepted by the Tribunal as binding upon the parties, and shall not be reviewed or reopened, unless such is requested in writing by all the parties or unless any of the conditions set forth in Article VII (2) and (3) of the Statute, and in Articles 18 and 19 of these Rules apply.

Article 18: Total or partial revocation of agreements or arbitration decisions

The Tribunal may rescind or reopen an arbitration award or mediation agreement, in whole or in part, only where a party proves by clear and convincing evidence that:

1. The agreement or arbitration award exceeds the maximum indemnities that may be imposed by the Tribunal under its Statute or the limit otherwise agreed to by the parties;
2. The award was procured or determined through corruption or misconduct or bad faith of the arbitrators or of the parties including misrepresentation or withholding of material facts;
3. The arbitrators or parties failed to follow the material provisions of the rules of procedure, if any, agreed to by the parties, or otherwise exceeded their authority.

Article 19: Correction of errors

The Tribunal may, at the request of either party, correct an arbitration decision and award where it is clear that:

1. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, property, or amount referred to in the award;
2. The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision on the issues submitted.

Article 20: Confirmation of agreements and arbitration decisions

In cases where the Tribunal decides not to rescind, reopen, remand or correct a mediation agreement or arbitration award for the reasons mentioned *ut supra*, it shall confirm it.

Article 21: Classification of posts

In disputes over the classification level of a post, the President of the Tribunal, upon the request of the parties concerned, shall request an audit of the post in question from a qualified independent job classification expert selected by him and, absent clear and convincing evidence of corruption or misconduct or other fundamental error on the part of the classification expert, the Tribunal shall confirm the results of the classification expert's audit as final and binding on the parties.

Article 22: Suspension of proceedings

The President of the Tribunal may recommend that the parties submit their claims to binding or non-binding arbitration, conciliation, or mediation. If the parties accept that recommendation, the President of the Tribunal shall suspend the proceedings before the Tribunal pending the conclusion of the arbitration, conciliation, or mediation process recommended. This decision shall be submitted to the Tribunal at its next session for confirmation or correction of errors.

Article 23: Inadmissible statements

No statements made by a party in the binding or non-binding arbitration, conciliation, or mediation proceedings shall be admissible against a party in the proceedings before the Tribunal on the matter, absent that party's written consent.

CHAPTER V PRELIMINARY QUESTIONS

Article 24: Preliminary questions on jurisdictional and procedural matters

1. Motions concerning preliminary questions and arguments in support thereof in relation to jurisdictional and procedural matters, including but not limited to lack of jurisdiction of the Tribunal, or failure to satisfy the requirements of admissibility, shall be submitted to the Tribunal in writing within twenty days of receipt of the copy of the motion.

2. The opposing party may submit a written response in opposition to the motion within twenty days of his receipt of it.

3. The party submitting the motion on preliminary questions may submit a reply to the response within twenty days of receipt of it.

4. Within thirty days of receiving the last of the pleadings to be submitted under paragraph 3 above, the members scheduled to constitute the panel at the next session shall consult by telephone or other expeditious means and, based on those consultations, shall issue an order either granting the motion in whole or in part, denying it, or suspending all further proceedings in the action until the Tribunal can meet in session to consider it. During those thirty days, the President of the panel may submit written interrogatories to the parties for clarification, and copies of the interrogatories and answers shall be served on all parties and the corresponding Tribunal members.

5. The filing of a motion to dismiss under paragraph 1 shall suspend the time for filing an Answer under the Tribunal's Rules of Procedure until the Tribunal rules on the motion.

6. Either party shall have the right to request that the Tribunal reconsider its decision to grant the motion to dismiss in whole or in part, or deny it, at the Tribunal's next session. The requesting party shall file the motion for reconsideration within twenty days of receiving the Tribunal's decision.

The filing of the motion for reconsideration will suspend further proceedings in the action pending the Tribunal's decision in reconsideration.

7. For good cause shown, the President of the Tribunal may extend the time limits for filing the pleadings and taking the decisions provided for under this Article.

8. Failure of the respondent to make a motion to dismiss under this Article shall not ban or otherwise preclude the respondent from challenging the admissibility of the complaint, the Tribunal's jurisdiction, and the legal merits of the claim in the answer.

Article 25: Other preliminary questions

The Tribunal may, as it deems proper, admit and rule on other preliminary questions or matters relating to evidentiary and other pretrial issues consistent with its authority under Article XIII of the Statute, including matters raised *ex officio*.

CHAPTER VI PROCEDURE

Article 26: Filing of the complaint

1. The complaint shall be presented to the Tribunal through its Secretary, and may be written in any of the official languages of the Organization. It shall contain:

Content of the complaint

(a) Information on the personal and official status of the complainant.

With respect to his personal status, the complainant shall indicate:

- (i) His given name and surnames;
- (ii) The date and place of his birth;
- (iii) His marital status;
- (iv) His nationality;
- (v) The address at which notices should be sent to him.

With respect to his official status, the complainant shall indicate:

- (i) The office or unit of which he forms part at the time of the decision that he challenges;
- (ii) The date and type of his appointment or contract;
- (iii) Description of his duties at the time of the decision challenged.

(b) Authority against whom the complaint is brought.

When the complainant is a member of the staff of the General Secretariat of the Organization of American States, the complaint should be brought against the Secretary General, except when a decision of the Retirement and Pension Committee provided for in the corresponding plan is involved, in which case the complaint should be brought against that Committee.

(c) Brief statement of the facts.

In the statement of the facts, he shall indicate the procedures followed within the General Secretariat, referred to in paragraph 1 (a) of Article VI of the Statute of the Tribunal, as well as the date on which he was notified of the final decision of the Secretary General. He shall also indicate, if applicable, that the requirements mentioned in subparagraphs (b) and (c) of paragraph 1 of the same Article have been met.

(d) Grounds on which the complaint is based.

He shall indicate particularly the clauses of his contract or appointment and the regulatory provisions whose nonobservance he alleges, as the case may be.

(e) Evidence.

He shall offer the pertinent evidence to demonstrate the facts on which the complaint is based, relating it to those facts, and shall accompany it by all documentary evidence as he may have. When the exhibition of

documents that are in the possession of the General Secretariat or other entities included within the jurisdiction of the Tribunal is requested, it must be proven that it has not been possible to obtain them directly, enclosing a certified copy of the document in which it is stated that he has previously requested them from the corresponding entity.

The Tribunal shall not admit evidence that is offered by the parties after the initial document entering the complaint or that of the answer to it, unless it is a case of supervening evidence or unless the consent of the other party is obtained, without prejudice to the powers of the Tribunal to obtain by request such evidence as it considers necessary for the best clarification of the facts.

(f) Specific petitions.

In the petitionary part the complainant shall indicate all the measures which in his opinion the Tribunal should order and the decisions it should take. He shall indicate especially:

(i) Proceedings to be conducted, such as presentation of documents by the other party, statements by witnesses, opinions of experts;

(ii) The decisions he challenges and that in his opinion the Tribunal should declare to be without effect;

(iii) The obligation he claims and compliance with which he requests;

(iv) The amount of the indemnity that in his opinion should be paid to him in the event the Secretary General makes use of the option mentioned in paragraph 2 of Article IX of the Statute;

(v) Any other relief that he may deem proper.

Article 27: Documents to be attached by the complainant

The documents that the complainant cites in his complaint in support of his claims should be attached as appendixes thereto, in original and complete form or in true copies. They should also be listed and numbered in the order in which he cites them.

Article 28: Number of copies

The complainant should present his complaint to the Secretary together with six copies. If the complainant lives away from the headquarters of the Tribunal, he may send his complaint and the corresponding copies by certified mail. If the appendixes are very long or there are some other circumstances that can be taken into consideration in this regard, the Secretary may permit the complainant to present fewer copies of the appendixes than of the complaint.

The original text of every written motion presented during the procedure shall bear the signature of the party or of his attorney and shall be submitted to the Secretariat, accompanied by the number of copies required in the preceding paragraph.

Article 29: Deficiencies in the complaint

If the complaint does not state the information required by Article 26 with sufficient clarity to enable the Tribunal to identify and to ascertain precisely what he states and requests, the Secretary may point out the deficiencies to the complainant and give him a prudent period of time, not to exceed fifteen days, in which to make the appropriate corrections or additions. Despite this, the Secretary shall in any case process the original

complaint, and the clarifying document, if there is one, in the normal manner.

Article 30: Transmittal of the complaint to the other party

Once the complaint has been received, the Secretary shall, within fifteen days at the most, send a copy of the complaint and its appendixes to the other party. The same rule shall be observed with respect to the document containing corrections or additions to the original complaint.

Article 31: Actions the complainant shall assert

The complainant shall assert all the actions based on facts known at the time of entering the complaint; any action he may assert thereafter will not be taken into account, and shall be considered quashed and outside the term of presentation of the complaint.

Article 32: New administrative procedures

Once the complaint has been entered, a new complaint based on raising the derivations of new administrative procedures relating to the same object shall not be admissible.

Article 33: Requirements for filing the complaint

1. For the complaint to be admissible, the party concerned must file it within ninety days after the date on which he was notified of the final decision of the Secretary General that is being contested. For employees located away from the headquarters of the General Secretariat the period for presentation of the complaint shall be one hundred and twenty days. In this case, the date that appears in the postal registration by the Post Office in which it has been deposited shall be taken as the date of presentation of the complaint.

2. If the Secretary General fails to make a final decision within thirty days following the date on which the procedures provided for in paragraph 1(a) of Article VI of the Statute have been completed, and nothing remains to be done but the taking of that final decision, the interested party may have recourse to the Tribunal and his complaint shall be admissible as if such a decision had been taken.

The periods of ninety and one hundred and twenty days provided for in the preceding paragraph shall begin upon the expiration of the period of thirty days within which the Secretary General should have taken a final decision.

3. When the situation provided for in paragraph 1(b) of Article VI of the Statute occurs, the interested party shall present his complaint within ninety days following the date on which the Secretary General informs him of his agreement that the case be submitted directly to the Tribunal. For employees located away from the headquarters of the General Secretariat, the period for presentation of the complaint shall be one hundred and twenty days. In this case the date that appears in the postal registration by the Post Office in which it has been deposited shall be taken as the date of presentation of the complaint.

4. The time limits specified above shall be extended to one year when the person with the right to recourse to the Tribunal is:

(a) A successor who has by any title succeeded to the staff member's right upon his death; or

(b) The legal representative of a staff member who is legally incapacitated from managing his own affairs.

5. In the other exceptional cases referred to in Article VI, paragraph 4 of the Statute, the Tribunal shall decide, for reasons that it shall express in the judgment, whether the complaint is admissible despite the fact that it has been presented after the expiration of the period indicated in paragraphs 2 and 3 of that Article.

6. Before admitting the complaint of a person who is not a staff member, the Tribunal shall require that person to submit a filing fee, a bond, or other legally enforceable security equivalent to one month's remuneration (salary and post adjustment) at the P-4, step 6 level on the "with dependent" salary scale for headquarters, unless the Secretary General has expressly waived the reconsideration requirement, or unless a

Reconsideration Committee or other formal conciliatory organ constituted by the Secretary General to advise him on the matter has found by a majority vote of its members that the person's claims are meritorious, or unless the Secretariat has failed to respond to a request for a hearing and request for reconsideration presented by the complainant in accordance with the requirements under the Staff Rules and other dispositions of the General Secretariat. Nonetheless, if the person is a former staff member, the amount so required will be the former staff member's last full monthly remuneration (salary and post adjustment), but no more than the amount equivalent to one month's remuneration (salary and post adjustment) at the P-4, step 6 level on the "with dependent" salary scale for headquarters. A special escrow account shall be opened by the Secretary of the Tribunal with the OAS Staff Federal Credit Union as the depository for the filing of bond payments required under this section, and all bond payments made by petitioners shall be maintained in this account for the duration of the proceeding.

Under exceptional circumstances, and in the interests of justice, cases where the complainant, at the discretion of the President of the Tribunal, can demonstrate that his complaint may have substantial merit, but is unable to provide all or part of the filing fee or bond for reasons of indigence, the President may waive the submission of the total or partial security requirement for individuals who are not currently staff members.

7. The Tribunal shall have broad authority to consider or not consider the admissibility of the complaint filed, or the opposing pretrial questions, and may resolve them by means of the incidental proceedings under Article VIII of the Tribunal's Statute or at the time the judgment is issued, if the judges consider that the matters concerned are not pretrial questions.

To properly decide on incidental matters, a brief evidentiary phase may be held to consider the pretrial questions. In such cases, the act or acts providing for evidentiary or incidental pretrial proceedings shall be accompanied by an order adopted by the three members, via fax or any electronic communication medium if the members are away from the Tribunal's headquarters.

Article 34: Answer to the complaint, reply and response

1. The complaint shall be answered within thirty days following the date of its notification to the party, and the answer shall contain, *mutatis mutandis*, the information indicated in Article 26 of these Rules.

Deficiencies in the answer

2. The provisions of Article 29 also apply to the answer.

Reply to the answer; time limits

3. Once the answer is received, the Secretary, within fifteen days, shall transmit a copy of that answer and its appendixes to the complainant, who may file a written reply thereto within fifteen days following the date the answer is received by him.

4. The written reply shall be presented in an original and six copies. If there are appendixes, the provisions of Articles 27 and 28 of these Rules shall apply to them.

Response; time limits

5. Once the reply has been received, the Secretary, within fifteen days, shall transmit a copy of it and its appendixes to the other party, who may make a written response to the reply within fifteen days following the date of receipt thereof by him. The provisions of the preceding paragraph shall apply to the response and its appendixes, if there are any.

Purpose of the reply and response

6. The reply and response referred to in paragraphs 3 to 5 of this Article shall be for the purpose of clarifying the statements contained, respectively, in the documents of the

complaint and the answer thereto, and the Tribunal shall not take into consideration any new petition or modification or addition that would change the matters disputed in those documents.

Article 35: Docketing the case

1. In order to complete the information of the case before placing it on the list of cases pending consideration by the Tribunal, the President may, on his own initiative or taking into account requests made by the parties in the written documents referred to in Articles 26, 33 and 34 of these Rules, obtain any information he considers necessary from any party, witness, or experts.

The President may designate a member of the Tribunal, or the Secretary, to receive or obtain the requested information. When it is a matter of statements or expert opinions, they shall be given under the oath provided for in Article 38(2)(i) (II) of these Rules.

The parties shall be notified so that they may participate in the proceedings referred to in the preceding paragraph. These proceedings shall have the character of preparatory evidence and shall be freely analyzed and evaluated by the Tribunal.

2. When the President considers the documentation to be sufficient, he shall instruct the Secretary to place the case on the list of cases pending consideration by the Tribunal. The Secretary shall notify the parties and all the members of the panel when the case has been placed on the list.

3. The Secretary shall notify the parties the opening date of the session during which the Tribunal will consider the case once it has been set.

4. The President, after consulting the other members whose turn it is to make up the Panel, or the latter if it is in session, may decide on his or its own initiative or on a request by a party on the advancement or postponement of consideration of a case.

Article 36: Duties of the Secretary

1. The Secretary shall be responsible for receiving and transmitting all documents and making all notifications.

2. The Secretary shall open a record file for each case, in which all measures taken for its trial shall be recorded, with indication of the dates thereof. He shall also record the dates on which his office receives, issues, or delivers every document related to the case; the dates on which the parties receive such documents, whether they have been delivered by the Secretariat or been sent by some means in which acknowledgment of receipt and the date thereof are recorded. Finally, he shall record the date of every notification the Secretariat makes, and any other data that should be recorded on the file.

3. The transmittal of documents and notifications shall be considered accomplished fifteen days after their dispatch to the address of the interested party by certified mail with return receipt requested, unless there is evidence to the contrary or the Tribunal expressly decides otherwise. The Secretary shall include the corresponding proofs of mailing in the file.

4. The Secretariat shall also be responsible for sealing and numbering in order the pages and receipts in the file.

5. The personnel of the Secretariat shall keep the cases handled by the Tribunal in strictest confidence during the course of the proceedings.

Article 37: Actions for properly deciding the case

When the Tribunal meets, it shall admit the evidence it considers admissible and shall reject any that it considers inadmissible or useless.

It may also order any action to be taken that it considers useful for properly deciding on the case, including the decision to conduct oral debate if it deems necessary under the provisions of Article 39.

Article 38: Witnesses and Experts

1. The Tribunal in its sole discretion, based on the submissions of the parties, shall decide whether it is appropriate or necessary to hear witnesses or experts.

2. In cases where the Tribunal may call witnesses and experts, the following rules apply:

(a) The parties may put questions to them through the President, who may reject questions or cross-examination questions that he considers improper.

Experts named by the Tribunal; private hearing

(b) When it is a matter of the designation of an expert named by the Tribunal, the Tribunal itself may obtain the information and clarifications it considers necessary for the best elucidation of the matters that are the subject of the expert opinion in a private hearing with the expert, without participation by the parties, although the parties shall have the right to request a public hearing in order to freely question the expert about his opinion.

Costs

(c) Witnesses proposed by the parties who are admitted by the Tribunal shall be presented by the proposing party to make their statements at the corresponding hearing. The expenses connected with their presentation shall be borne by the proposing party.

Number of witnesses

(d) Each party may offer only up to five witnesses. The Tribunal may increase or reduce that number.

Appearances by staff members

(e) When it is a matter of officials or employees of the Organization of American States proposed as witnesses, and who are at headquarters, the Tribunal shall request the General Secretariat that they appear, without this involving any expense for the parties.

Putting an end to statements

(f) In those cases in which the Tribunal considers that the statement of a witness or the cross-examination has been sufficient in relation to the disputed facts, it may put an end to the statement.

Summary of statements

(g) The Secretary of the Tribunal shall prepare minutes containing a summary of the statements of the witnesses and experts in relation to the disputed facts.

Verbatim entries in the minutes

(h) In exceptional cases the Tribunal may order that the testimony or the pertinent fact of it appear verbatim in the minutes.

Oaths taken by witnesses and experts

(i) I. Witnesses shall take the following oath: "I swear (or, *I commit myself*) to tell the truth, the whole truth, and nothing but the truth."

II. Experts shall take the following oath: "I swear (or, *I commit myself*) to give my expert opinion in accordance with my sincere belief and understanding."

Direction on the hearing

(j) The President of the Tribunal shall have the fullest authority in the direction of the hearing.

Article 39: Oral debate

1. The Tribunal may, on its own initiative or at the request of any party, order oral debate to be held.
2. Oral debate shall be limited to statements by the parties.
3. The Tribunal shall establish the order to be followed in the oral debate, and may authorize the parties to express briefly their observations on any point that they may arise in the course of the oral debate on which they have not previously commented.
4. Each party, and each third party interested in the case, shall have up to thirty minutes for his statement in the oral debate and subsequently up to ten minutes to make comments once the statement of the opposing party has been made.
5. In special circumstances, the President may extend or reduce the time for the statements, observing equality in the proceeding.
6. The President of the Tribunal shall have the fullest authority in the direction of the oral debate.
7. The statements of the parties, or interested third parties, in the oral debate are considered oral pleas in behalf of what has been stated by the same parties or third parties in the written procedure, for which reason, since they do not constitute evidence, they shall not appear in the file or form part of it.

Article 40: Extension of time periods

In exceptional cases, on its own initiative or at the request of a party, any time period established in these Rules may be extended or a new one granted, if the Panel so decides when it is in session, or the President does so in consultation with the other members whose turn it is to make up the panel to consider the case.

Article 41: Provisional decisions of the President

During the interval between sessions, the President may decide, provisionally, that any part of the procedure be suspended, submitting that decision to the Panel at its next meeting for final decision. The President may also decide about any action that is requested in writing having for its purpose some verification useful to the eventual decision on the case.

Article 42: Designation of representatives

1. The parties, from the beginning of the proceedings or at any stage thereof, may act for themselves or through a representative especially designated in a document delivered to the Secretary in one original and six copies. The party shall sign the document and his signature shall be authenticated by the Secretary of the Tribunal or by a competent notary of the place where the document is signed.
2. The complainant may designate as his representative a member of the staff of the General Secretariat of the OAS, except those staff members serving in the Secretariat for Legal Affairs or in the Department of General Legal Services.
3. Notifications made to the representatives of the parties shall be considered made to the parties themselves.

Article 43: Remanding the case because of procedural error

If the Tribunal considers that the case should be remanded so that, under Article IX, paragraph 4 of the Statute, the required procedure may be instituted or the procedure may be corrected, it shall notify the parties accordingly. The Tribunal shall pass a

judgment on the merits of the complaint if within ten days from the date on which such a notification was given no statement on the matter has been received from the Secretary General.

CHAPTER VII **THIRD PARTY INTERVENTION**

Article 44: Voluntary intervention

Any person to whom the Tribunal is open may apply to intervene in a case at any stage, on the ground that he has a legal right that may be affected by the judgment to be given by the Tribunal.

Article 45: Mandatory intervention

Any person to whom the Tribunal is open and whose legal right may be affected by the judgment may also be called to participate in the proceedings, at the request of any of the parties or on the initiative of the Tribunal.

Article 46: Intervention by the Secretary General and other authorities

The Secretary General of the OAS, the equivalent administrative officer of an Inter-American Specialized Organization to which the competence of the Tribunal has been extended in accordance with Article II, paragraph 4, of the Statute, or the Chairman of the Retirement and Pension Committee may intervene in a case at any stage of the proceedings if he considers that his administration may be affected by the judgment to be given by the Tribunal.

Article 47: Procedure for third party intervention

1. The provisions set forth in Chapter VI regarding the preparation and presentation of the document by which a complaint is submitted shall apply, *mutatis mutandis*, to the requests to intervene provided for in the preceding Article.

2. The Secretary of the Tribunal shall transmit copies of the request to the parties. The President shall decide which documents already submitted or that may be submitted during the hearing of the case are to be transmitted by the Secretary to a person who intervenes in accordance with the provisions of this Article.

Article 48: Ruling on third party intervention

The Tribunal, if were in session, or the President, after consultation with the members of the Tribunal who will constitute the upcoming panel and under the conditions stipulated in Article 41 of these Rules, shall decide on the admissibility of any request to intervene made by a third party.

CHAPTER VIII **COMPLAINTS ALLEGING NONOBSERVANCE OF THE PROVISIONS OF THE RETIREMENT AND PENSION PLAN**

Article 49: Time limits for complaints against Retirement and Pension Committee decisions

In the case of a complaint against a decision by the Retirement and Pension Committee provided for in Section I of the Retirement and Pension Plan for the members of the staff of the General Secretariat, the time limits prescribed in Article VI, paragraphs 2, 3 and 4 of the Statute and Article 33, paragraph 2, of these Rules shall be calculated from the date of the receipt by the party concerned of the notice of the decision contested.

CHAPTER IX **JUDGMENT**

Article 50: Judgments, voting and other formalities relating to decisions

1. The presiding member of each sitting panel shall designate one of its members to serve as the first opining judge and to prepare a draft judgment.

2. When a draft has been prepared, and a copy delivered to each member, it shall be open for discussion and put to a vote by the Tribunal.

3. The draft shall become the judgment of the Tribunal if it is approved by a majority vote.

4. The separate explanation of a member's vote that differs in whole or in part from the

statement of the reasons or the conclusions of a judgment shall be included as an appendix to that judgment.

5. The three members of the Tribunal that took part in the Panel shall sign the judgment.

6. In the event that a majority of the Tribunal votes against the draft, another member shall be designated by the President to prepare a new draft judgment, which shall be submitted to the Tribunal for approval.

Forms of redress

7. The Tribunal's judgment may include any form of redress it deems necessary and appropriate to properly settle the matter in dispute, including but not limited to reinstatement, affirmation of individual rights and responsibilities, and damages. In addition the Tribunal may order the losing party to pay the prevailing party an indemnity for attorney's fees and costs. The payment of additional sanctions may be ordered in cases where the Tribunal considers that the losing party has brought a clearly frivolous claim or defense, did not have solid grounds for litigating, has been totally defeated, has clearly acted with disregard or malice toward the rights and interests of the other party, or has unnecessarily prolonged the proceedings. The maximum amount that can be awarded for the total of attorneys' fees and costs shall ordinarily not exceed the equivalent of one month's remuneration (salary and post adjustment) at the P-4, step 6 level on the "with dependent" salary scale for headquarters, in a process involving up to ten complainants, and twice that amount in a process involving more than ten complainants.

Clarification of the judgment

8. For the purposes of Article XI, paragraph 2, of the Statute, any of the parties may request, in writing, a clarification of the judgment, within thirty days following the date of his notification thereof. The Tribunal shall decide as appropriate, without reconsidering the merits of the case.

CHAPTER X PROCEDURE FOR REVIEW

Article 51: Procedure for the correction of drafting errors, for review based on the discovery of previously unknown facts, and after motions based on allegations of *ultra vires* decisions

1. The Tribunal's decisions are final and binding upon all parties, subject to the provisions of paragraphs 2 and 3 of this Article concerning review by the Tribunal for the correction of administrative errors or the discovery of new evidence, and the review procedures set forth in Article XII of the Statute with respect to the limited question as to whether the decision concerned is *ultra vires* jurisdictionally or procedurally under the Tribunal's Statute.

2. Any party may request that the Tribunal reviews a judgment based on the discovery of a fact or document of such nature as to constitute a potentially decisive factor and which, at the time the judgment was rendered, was not known to the Tribunal nor to the party requesting review, provided that its discovery is not attributable to the party's own negligence or fraud. The request shall be submitted within thirty days following the discovery of the fact or document and within one year of the date of the judgment.

3. The Tribunal may at any time, either *ex officio* or at the request of one of the parties, correct mathematical or drafting errors in the judgments, or errors in the judgments resulting from any oversight or omission.

4. The provisions of Chapter VI on procedure shall be applied, *mutatis mutandis*, to the procedure for review provided for sections 2 and 3 of this Article.

CHAPTER XI GENERAL PROVISIONS

Article 52: Staff Association

The Tribunal may provide that duly authorized representatives of the Staff Association of the General Secretariat be heard in a particular case.

Article 53: Computation of time periods

1. Except when specifically provided in a different form, in the computation of procedural time periods every day shall be counted, whether working days, weekends, or holidays; however, if a time period would end on a weekend or holiday, it shall be extended to the next following working day.

2. The official calendar in use at the headquarters of the General Secretariat will be followed in determining working days, weekends, and holidays.

Article 54: Distribution of decisions

The Secretary shall send a copy of the procedural decisions taken at each session to each party and to each member of the Tribunal.

Article 55: Communications to members

All communications and notifications to the members of the Tribunal shall be made through the Secretary.

Article 56: Report to the General Assembly

The Tribunal through its President shall annually send a report on its activities during the preceding year to the General Assembly, through the Secretary General of the Organization and the appropriate commission.

Article 57: Seniority of members

For the purposes of these Rules, seniority of members of the Tribunal shall be counted from the first day of January following the member's election.

Article 58: Gender

The use of the masculine pronoun in these Rules shall be translated as referring either the masculine or feminine gender, as circumstances may require.

Article 59: Disposition of all other questions

All questions that are not expressly provided for in these Rules shall be resolved by decision of the Tribunal in each particular case.

Article 60: Amendment of Rules of Procedure

The Tribunal may amend these Rules at any of its sessions, after being approved by a majority of the members of the Tribunal as a whole.

CHAPTER XII **TRANSITORY PROVISIONS**

Article 61: Entry into force

These Rules of Procedure shall enter into force as of May 1, 1999, with the exception of standards or requirements established by statutory provisions approved by General Assembly Resolution AG/RES. 1526 (XXVII-O/97), which entered into force immediately. However, any complaint submitted prior to the effective date of these Rules of Procedure shall be governed by the earlier applicable Rules of Procedure.

Article 62: Age limit for members of the Tribunal

The age limit specified in Article 1 (2) (b) of these Rules shall not apply to Judges who are sitting on the Tribunal as of May 1, 1999.

OAS Official documents are those published by the General Secretariat that are classified as part of the Official Records Series. Documents may be issued in one or more of the OAS official languages.