

# STATUTE OF THE ADMINISTRATIVE TRIBUNAL

## Article I

### Establishment and General Principles

The Administrative Tribunal of the Organization of American States, established by resolution AG/RES. 35 (I-O/71), adopted by the General Assembly on April 22, 1971, shall be governed by the following principles and the other provisions of this Statute:

- i. As the supreme organ of the Organization of American States, the General Assembly has the final authority to determine the scope and meaning of its own resolutions as it applies them;
- ii. The Tribunal, like all other organs of the Organization, is subordinate to the General Assembly;
- iii. The function of the Tribunal is to adjudicate disputes between the Secretary General and the staff members of the General Secretariat arising out of the employment relationship;
- iv. Determining the general salary policy for the personnel of the General Secretariat is the exclusive responsibility of the General Assembly, and the General Assembly has not delegated that authority to any other organ;
- v. For the adjudication of any disputes involving the personnel of the General Secretariat, the internal legislation of the Organization shall take precedence over general principles of labor law and the laws of any member State; and, within that internal legislation, the Charter is the instrument of the highest legal order, followed by the resolutions of the General Assembly, and then by the resolutions of the Permanent Council, and finally by the norms adopted by the other organs under the Charter - each acting within its respective sphere of competence;
- vi. Any decision of an organ subordinate to the General Assembly which violates the basic principles set out in the foregoing provisions is ultra vires and not binding on the Organization, the General Secretariat, its personnel, or the member States.

## Article II

### Jurisdiction

1. The Tribunal shall be competent to hear those cases in which members of the staff of the General Secretariat of the Organization of American States allege nonobservance of the conditions established in their respective appointments or

contracts or violation of the General Standards for the operation of the General Secretariat or other applicable provisions, including those concerning the Retirement and Pension Plan of the General Secretariat.

2. The Tribunal shall be open to:
  - a. Any staff member of the General Secretariat of the Organization, even after his employment or duties have ceased, and to any person who has succeeded to the staff member's rights upon his death.
  - b. Any other person who can show that he is entitled to rights derived from a contract of employment or an appointment or from a provision of the General Standards or of other administrative regulations upon which the staff member could have relied.
3. For the purposes of this Statute, anyone who is connected with the Secretariat by an appointment, a contract of employment, or some other employer-employee relationship, in accordance with provisions of the General Standards or other administrative regulations shall be considered to be a staff member of the General Secretariat.
4. The competence of the Tribunal may be extended to any Inter-American specialized organization of the Organization of American States as defined in the Charter of the Organization, as well as to any interested American intergovernmental organization, in accordance with the terms established by a special agreement to be concluded for the purpose by the Secretary General with each such specialized organization or interested American intergovernmental organization. Each special agreement shall provide that the specialized organization or interested organization shall be bound by the judgments of the Tribunal and shall include, among others, provisions concerning participation by the organization in the administrative arrangements necessary for the functioning of the Tribunal and its sharing of the expenses of the Tribunal.
5. Any dispute as to the competence of the Tribunal shall be settled by the decision of the Administrative Tribunal, subject to the provisions of Article I of this Statute.
6. The Tribunal shall not be competent to hear a petition where the actions involved occurred prior to April 22, 1971

## **Article III**

### **Election, Qualification, and Service of Members**

1. The Tribunal shall be composed of six members elected by the General Assembly to serve for terms of six years, such terms to be staggered so that one new member is elected each year.
2. 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.
3. A member's term shall begin on the first day of January following the member's election. If a member resigns or otherwise separates from the Tribunal before the expiration of his term, a substitute member shall be elected by the General Assembly, or the Permanent Council if the General Assembly is not in session, to serve for the remainder of that member's term, but the substitute member shall not assume the seniority of the member being replaced.
4. A member may be reelected, but may serve no more than two consecutive terms in office. A member so reelected will lose all the seniority accumulated in his prior term.
5. The Tribunal shall have a President and a Vice President. These offices shall be held successively for one year by each member of the Tribunal, beginning with the two members having the most and second most seniority, respectively.
6. The Tribunal will meet in sessions in panels of three members.
  - a) Two panels shall be chosen by lot from amongst the six members. The most senior member of each panel shall act as the President of that panel.
  - b) After each panel has completed sitting in one session, the President of the Tribunal shall announce the names of the members chosen by lot to constitute the panels for the next two sessions. In the event one of those members resigns or is otherwise unable to serve, he will be replaced by another member of the Tribunal not already serving on the panel, that replacement member to be chosen by the President by lot.
  - c) The following persons are ineligible to serve as members of the Tribunal: permanent representatives of the governments on the organs, agencies, or entities of the Organization; persons who serve permanently on those bodies in any capacity; and staff members of the General Secretariat.

7. The composition of the Administrative Tribunal shall reflect the two major legal traditions of the Hemisphere, the common-law tradition and the civil-law tradition.

## **Article IV**

### **Frequency of Sessions**

The Tribunal shall hold regular sessions at dates set by its rules, subject to there being a case or cases on its list of pending cases that, in the opinion of the President, justify the meeting. Special sessions may be convoked by the President when required by pending cases.

The Tribunal may hold sessions if at least three of its members are present.

## **Article V**

### **General Secretariat Support**

1. The General Secretariat shall provide the Tribunal with the technical and secretariat services necessary for its functioning.
2. Operating expenses of the Tribunal, including honorariums, per diem allowances, and travel expenses of its members for attending meetings, shall be defrayed by the Organization.

## **Article VI**

### **Admissibility of the Complaint**

1. The Tribunal shall admit a complaint only:
  - a) When the person concerned has exhausted the procedures provided in the General Standards or in other existing provisions, and the Secretary General has made the corresponding final decision;
  - b) When the procedures referred to in the preceding paragraph have not been exhausted, but the interested party and the Secretary General agree that the case should be presented to the Tribunal; and
  - c) When the situation contemplated in paragraph 3 of this article occurs.
2. For the complaint to be admissible, the person 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 the employees who serve away from headquarters, the period during which a complaint may be filed shall be one hundred and twenty days. In such case, the date of filing of the complaint shall be the date appearing on the postmark of the Post Office in which it was deposited.

3. If the Secretary General fails to make a final decision within thirty days following the date on which the procedures provided for in subparagraph (a) of paragraph 1 of this article have been completed, the interested party may have recourse to the Tribunal and his complaint shall be admissible as if such a decision had been taken. The same criterion shall apply during the reconsideration phase stipulated in the Staff Rules, if the Secretary General fails to comply with the regulatory periods stipulated for setting up a Joint Advisory Committee on Reconsideration, or if said Committee was set up, but it did not make its recommendations in time. In both cases, the interested party may have recourse to the Tribunal within 30 days following the date on which the omission or delay of the Secretary General occurred.
4. In exceptional cases, and for reasons that should be explained in the judgment, the Tribunal may admit a petition even if it is presented after the period of ninety or one hundred and twenty days provided for in the two preceding paragraphs.
5. The filing of a complaint shall not have the effect of suspending implementation of the decision contested.
6. Complaints may be filed in any of the four official languages of the Organization of American States.
7. 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 lesser of the former staff member's last full monthly remuneration (salary plus post adjustment) or one month's remuneration (salary and post adjustment) at the P-4, step 6 level on the "with dependent" salary scale for headquarters.

## **Article VII**

### **Arbitration, Conciliation, Mediation, and Settlements**

1. Except as otherwise stated below, the Tribunal shall recognize the finality of all settlement agreements, releases, agreements to arbitrate, and agreements to seek conciliation or mediation, and may not reopen, review, or adjudicate the issues finally resolved by those agreements or procedures, absent the express consent of all parties thereto.
2. Notwithstanding the above, the Tribunal may vacate and remand an otherwise binding arbitration decision and award, in whole or in part, where a party proves by clear and convincing evidence that:
  - a) The 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;
  - b) The award was procured through corruption or misconduct of the arbitrators;
  - c) The arbitrators failed to follow the material provisions of the rules of procedure, if any, agreed to by the parties, or otherwise exceeded their authority; and where the Tribunal decides not to vacate and/or remand the award, it shall confirm it.
3. Also notwithstanding paragraph 1 above, the Tribunal may, at the request of either party, correct an otherwise binding arbitration decision and award where it is clear that:
  - a) 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;
  - b) 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; and where the Tribunal decides not to correct the award, it shall confirm it.
4. In disputes over the classification level of a post, the President of the Tribunal shall, at the request of a party or at his own discretion, request an audit of the post in question from a qualified independent job classification expert selected in accordance with the Rules of Procedure, and, absent clear and convincing evidence of corruption or misconduct on the part of the classification expert, the Tribunal shall confirm the results of the audit as final and binding on the parties.
5. The Tribunal may recommend that the parties to a claim over which it otherwise has jurisdiction submit to binding or non-binding arbitration, conciliation, or

mediation. If the parties accept that recommendation, the Tribunal shall suspend further proceedings before the Tribunal in that matter pending the conclusion of the arbitration, conciliation, or mediation process recommended. 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.

## **Article VIII**

### **Disposition of Preliminary Questions**

1. Within twenty days after receiving the complaint, the respondent may submit a motion requesting that the Tribunal dismiss the entire complaint, or any part thereof, based on lack of jurisdiction under Articles I and II of the Tribunal's Statute, failure to satisfy the requirements of admissibility under Article VI of the Statute, or failure to make a claim upon which relief can be granted.
2. Upon receipt of that motion, the complainant shall have twenty days to file with the Tribunal a written response in opposition. The respondent may file a reply to the response in opposition within twenty days of his receipt of same.
3. Within thirty days of receiving the last of the pleadings to be submitted under paragraph 2 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.
4. 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.
5. 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.
6. For good cause shown, the President of the panel may extend the time limits for filing the pleadings and taking the decisions provided for under this Article.

7. Failure of the respondent to make a Motion to Dismiss under this Article shall not bar 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.
8. The Tribunal shall establish other summary procedures within its Rules of Procedure for the disposition of evidentiary questions and other pretrial issues consistent with its authority under Article XIII of this Statute.

## **Article IX**

### **Damages, Indemnities and Liabilities**

1. If the Tribunal finds that the complaint is well founded, either in whole or in part, it shall so state in its judgment and shall provide that the challenged decision shall be rescinded, that the obligation for which claim is made shall be complied with, or that the right of the complainant shall be restored in such manner as the Tribunal may deem appropriate.
2. In all cases in which the Tribunal rules that the complainant shall be reinstated in service, in its judgment it shall fix the amount that is to be paid to him for the injury suffered in the event that the Secretary General does not, within thirty days following the date on which he is notified of the judgment, order his reinstatement in service; however, this indemnity shall not exceed the equivalent of two years' basic salary of the complainant. In exceptional cases, the Tribunal may order payment of a higher indemnity up to one more year, and shall state the reasons justifying such payment.

If the Secretary General does not make use of the power provided for in the preceding paragraph, the complainant may, nevertheless, choose to accept the indemnity agreed upon instead of being reinstated to service.

3. In all cases involving an indemnity, the indemnity shall be fixed by the Tribunal and paid by the Organization of American States or, as appropriate, by the specialized organization participating under the terms of paragraph 4 of Article II.
4. Should the Tribunal find that the procedure prescribed in the General Standards or other applicable provisions has not been observed, it may, on its own initiative or at the request of either of the parties, order that the case be remanded to the Secretary General so that the error in the procedure may be corrected. When a case is remanded under these circumstances, the Tribunal may order payment to the complainant of an indemnity, which shall not exceed the equivalent of his basic salary for three months, for such injury as may have been caused by the delay.



5. The Tribunal may order the losing party to pay the prevailing party an indemnity for attorney's fees and costs incurred by the prevailing party when the losing party has brought a clearly frivolous claim or objection, did not have solid grounds for litigating, has been totally defeated, or has been proven to have acted with actual malice. The maximum amount that can be awarded for the total of attorney's fees and costs so incurred by the prevailing parties or party shall 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 judgment involving up to ten complainants, and twice that amount in a judgment involving more than ten complainants. The Tribunal may require a party seeking attorneys' fees and costs to prove actual costs and fees incurred up to the above-corresponding maximum amount established under this Article.

## **Article X**

### **Judgments**

1. The Tribunal shall take all decisions by a majority vote.
2. Except as provided in Articles XI and XII, judgments shall be final and without appeal.
3. The judgments shall state the reasons on which they are based and shall be written in any of the four languages of the Organization of American States, in one original which shall be deposited in the archives of the General Secretariat of the Organization.
4. A certified copy of the judgment shall be provided to each of the parties in the case, and to other interested persons at their request.

## **Article XI**

### **Correction of Clerical Errors and Revision based on Discovery of Previously Unknown Facts**

1. The Secretary General or the complainant may apply to the Tribunal for revision of a judgment on the basis of the discovery of a fact or document of such a nature that it may be a decisive factor and which, when the judgment was given, was unknown to the Tribunal or to the party seeking revision, provided that such ignorance was not due to fault or deceit by that party. Such application must be made within thirty days of the discovery of the fact or document and within one year of the date of the judgment.

2. Clerical or arithmetical errors in judgments, or errors arising therein from any slip or omission, may be corrected by the Tribunal at any time, either on its own initiative or at the request of one of the parties.

## **Article XII**

### **Review of Judgments**

1. Judgments of the Tribunal may be reviewed by an ad hoc Administrative Tribunal Review Panel (Review Panel) only in instances where the Tribunal's judgment is alleged to be ultra vires because it exceeds the Tribunal's authority in relation to its jurisdiction, competence, or procedures under this Statute. The Review Panel shall not have competence to reexamine the merits of the underlying dispute.
2. A petition for review may be perfected by presenting it to the Chair of the Permanent Council. Each such petition shall set forth the legal and factual bases supporting the allegation that the Tribunal's decision in the first instance was ultra vires. That petition must be presented to the Chair of the Permanent Council within forty-five days of the appellant's receipt of the Tribunal's judgment.
3. Upon receipt of the petition, the Chair of the Permanent Council shall constitute a Review Panel. The Review Panel shall be composed of three members. One of the members of the Review Panel shall be chosen by lot from amongst those Tribunal members who did not in the first instance hear the case being reviewed. Two members shall be chosen ad hoc from amongst the members of other administrative tribunals of other international organizations whose tribunal secretariats have their headquarters in Washington, D.C. The two ad hoc members shall be selected by the Chair of the Permanent Council, in consultation with the duly appointed representatives of the Secretary General and of the opposing parties. The Chair of the Permanent Council shall designate one of the ad hoc members to serve as President of the Review Panel, and shall determine the compensation paid to members, in consultation with the Secretary General and subject to the availability of resources.
4. Simultaneous with petitioning for review, the appellant must notify the appellees directly or through their duly authorized representatives of the petition by sending them a copy of the petition. The appellees shall have forty-five days from the date of receipt of the petition to submit in writing any observations they may have on the petition. Those observations shall be submitted directly to the Review Panel, with a copy to the appellant. Upon receipt of these observations, the appellant shall have twenty days to file a written response with the Review Panel and the appellee. The Review Panel may, at its discretion, request additional submissions of the parties. Appeals shall be decided based upon the written submissions, and without oral argument before the Review Panel, except in extraordinary circumstances as the President of the Review Panel deems appropriate.

5. The Review Panel shall follow the principles of law and procedures set out in this Statute. With prior notice to the parties, and in order to facilitate an orderly review process, the President of the Review Panel may adopt additional ad hoc procedures based on generally accepted principles of due process and consistent with the rules of procedure adopted by the Inter-American Commercial Arbitration Commission.
6. For good cause shown, the President of the Review Panel may extend the time limits for filing the pleadings provided for under this Article.
7. The decision of the Review Panel on the questions presented in the petition for review shall be binding on the Organization and all other parties, provided it is supported by a majority of the Review Panel's members. Otherwise, the Tribunal's original decision shall control.
8. Pending the conclusion of the review process, the obligation to make payment under the Tribunal's judgment shall be suspended; however, if the decision of the majority of the members of the Review Panel conclusively reaffirms the Tribunal's judgment, the appellant shall owe interest on the judgment amount beginning sixty days after the date of the original judgment at the average money-market rate for commercial banks in Washington, D.C., for the period running from the date interest begins to accrue until the date of payment.
9. The Review Panel may order the appellant to pay the appellee an indemnity for attorney's fees, the costs incurred by the appellee in defending the Tribunal's judgment, and the costs of constituting the Review Panel, when the appellant has brought a clearly frivolous appeal, did not have solid grounds for litigating, has been totally defeated, or has been proven to have acted with actual malice. The maximum amount that can be awarded for the total of attorney's fees and costs so incurred by the appellee shall not exceed the equivalent of six months' remuneration (salary and post adjustment) at the P-4, step 6 level on the "with dependent" salary scale for headquarters.
10. Before admitting the petition for review of a person who is not a staff member, the Chair of the Permanent Council shall require that person to submit a filing fee, a bond, or other legally enforceable security in the amount equivalent to six months' remuneration (salary and post adjustment) at the P-4, step 6 level on the "with dependent" salary scale for headquarters. This fee shall be held by the Secretary General in escrow pending the outcome of the review and the award by the Review Panel of any costs or attorney's fees against the appellant.
11. The General Secretariat shall provide secretariat services to the Review Panel through the Secretariat of the Administrative Tribunal. The estimated costs of those services shall be included in the proposed program-budget of the Administrative Tribunal, and monies paid by an appellant for the cost of those services pursuant to

a Review Panel order shall be available to cover or reimburse the cost of those secretariat services.

### **Article XIII**

#### **Rules of Procedure**

The Tribunal shall establish its own rules of procedure, in accordance with the provisions of the present Statute.

### **Article XIV**

#### **Amendments to the Statute**

The present Statute may be amended only by the General Assembly.

### **Article XV**

#### **Gender**

The use of the masculine pronoun in this Statute shall be interpreted to connote either the masculine or feminine gender, as circumstances may require.