

# **RULES OF PROCEDURE OF THE ADMINISTRATIVE TRIBUNAL**

## **CHAPTER VI PROCEDURE**

### **Article 26: Filing of the complaint**

The complaint shall be presented to the Tribunal through its Secretary, and may be written in any of the official languages of the Organization and shall contain a maximum five-page summary thereof and of its chapters. The complaint shall not exceed 40 one-and-half-spaced (1.5) pages in length, not including the aforementioned summary, unless otherwise authorized. Such authorization is to be requested based on the grounds of the case and with sufficient advance notice such that, once the Tribunal has ruled, within five days of receipt of the request, the complainant has the time necessary to prepare the complaint.

The font size to be used for the complaint and its corresponding summary shall not be less than 12 points.

#### 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.

(g) Anonymity

Any complainant who does not wish to have his name included in the case documents the Tribunal makes public may so request with good reason upon submitting his claim or at any point prior to the case being placed on the docket for consideration by the Tribunal. The Secretary of the Tribunal shall transmit the request to the respondent, providing the respondent five days to respond.

The President of the Tribunal may grant the complainant authorization to litigate anonymously, under the terms provided for in the preceding paragraph, when making his name public may cause him harm. If the President decides against granting such authorization, the complainant shall be accorded a five-days period of time to determine whether to pursue or withdraw his complaint.

**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 form or in true copies. They should also be listed and numbered in the order in which he cites them.

Only the relevant portions of the documents having to do with the case are to be attached as an appendix.

To the extent possible, the complainant shall endeavor to avoid attaching duplicate copies of the appendixes.

The appendixes shall not exceed a total number of 60 pages unless authorization has been granted under the same terms stipulated for the complaint.

**Article 28: Number of copies**

The complainant should present his complaint (and its appendixes if applicable) to the Secretary together with a printed and an electronic copy. If the complainant lives away from the headquarters of the Tribunal, he may send his complaint and the corresponding copies by certified mail.

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 copies required in the preceding paragraph.

### **Article 29: Deficiencies in the complaint**

If the complaint does not meet the requirements established in Article 26, the Secretary shall point out the deficiencies to the complainant and give him a period of five days to make the appropriate corrections. If this is done within the set time period, the complaint shall be deemed to have been presented on the original date. Otherwise, the President shall rule, subject to a report from the Secretariat, that the complaint is considered as not presented.

### **Article 30: Transmittal of the complaint to the other party**

Once the complaint has been received, the Secretary shall, within five 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, once the procedures provided for in Article VI.1.(a) of the Statute have been completed, the Secretary General fails to make a final decision within thirty days following the date on which he was to do so, the interested party may have direct

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 Chapter XII of 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.

The periods of ninety and one hundred and twenty days provided for in paragraph 1 of this article 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 President of the Tribunal, via fax or any electronic communication medium if he is away from the Tribunal's headquarters.

#### **Article 34: Answer to the complaint, replication, and rejoinder**

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

##### Deficiencies in the answer

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

##### Replication to the answer, time limits

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

4. The replication shall be presented in an original along with a printed and an electronic copy. Regarding its length, the provisions of Article 26 governing the complaint shall apply. If there are appendixes, the provisions of Articles 27 and 28 of these Rules shall apply to them.

#### Rejoinder, time limits

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

#### Purpose of the replication and the rejoinder

6. The purpose of the replication and the rejoinder referred to in paragraphs 3 to 5 of this Article shall be to clarify 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 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 irrelevant.

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

## **Article 38: Witnesses and Experts**

1. The Tribunal on its own initiative or at a party's request 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) Presentation of witnesses

Each party may, in its written complaint or answer, as the case may be, or at the Tribunal's request, offer up to five witnesses. The Tribunal may decide to increase or decrease that number.

Together with name of the witness, each party must indicate the specific points that said witness will address.

(b) Naming of experts: Procedure

In the event the Tribunal deems it necessary, it may, at a party's request or on its own initiative, order that an expert intervene in the case. For such cases, the Secretary shall maintain in its files a list of qualified experts by specialty from which it shall put together a list of three persons to present to the President of the Tribunal so that he may select one of them.

During the selection process, the President shall examine the geographic location of each available expert, his honoraria, any conflicts of interest that might exist with the Organization, and his professional experience, among other factors, with a view to selecting the most suitable expert.

(c) Responsibility for calling witnesses and experts

Every witness or expert admitted by the Tribunal must be called by the Secretariat by means of a "Notice to Appear." The date and time of the respective hearing at which the witness or expert is to appear shall be indicated.

When officials or employees of the Organization of American States at headquarters are proposed as witnesses, the Tribunal shall ask the General Secretariat to have them appear without this involving any expense for the parties.

(d) Witness and expert costs

Any expenses connected with the presentation of witnesses shall be borne by the proposing party.

The calling of experts and any expert costs shall be borne by the Tribunal.

## Common provisions for witnesses and experts during hearings

### (e) Oaths taken by witnesses and experts

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

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.”

### (f) Questioning

Once the President of the Tribunal has questioned the witness or expert, questioning by the parties shall begin, starting with the party that proposed him and continuing with the other.

The declarants shall respond directly to the questions put to them, and the President may reject any questions or cross-examination questions that he considers out of order.

The experts alone have the right to consult documents, written notes, and publications and to use technical media when making their statements.

### (g) Duration of statements

In each case the Tribunal shall establish the length of time the witness or expert will have for his statement.

### (h) Private hearing with the expert

The Tribunal 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.

### (i) Termination of statements

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.

(j) Summary of statements

The Secretariat shall prepare a summary of the hearings of witnesses and experts. A complete recording of the hearings shall be kept.

(k) Verbatim minutes

In exceptional cases the Tribunal may order that the testimony or the pertinent part of it appear verbatim in the minutes.

(l) Venue of the hearing

Hearings of witnesses and/or experts may take place at the headquarters of the OAS General Secretariat or by means of videoconferencing.

(m) Direction of the hearing

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 the Tribunal's own initiative or at a party's request, any time period established in these Rules may be extended or a new one granted, if the President of the Tribunal so decides.

#### **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 members of the Tribunal 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 one copy. 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.