



Provisional version

## Committee on Legal Affairs and Human Rights

# Jurisdictional immunity of international organisations and rights of their staff

## Report\*

Rapporteur: Mr Volker ULLRICH, Germany, Group of the European People's Party

### A. Draft resolution

1. The Parliamentary Assembly refers to its [Resolution 1979 \(2014\)](#) on “Accountability of international organisations for human rights violations”, which underlines the fact that international organisations are subject to the obligations inherent in human rights.

2. The Assembly notes that international civil service law is not codified and employment disputes are dealt with in accordance with the rules governing the functioning of those international organisations, contained in the latter's statutes or regulations, and not with national law.

3. The Assembly notes that international organisations enjoy jurisdictional immunity, which is a “functional” immunity and one which can be waived only in exceptional circumstances. In accordance with the established case law of the European Court of Human Rights in cases concerning employment disputes opposing staff to international organisations, waiving this immunity can be an option only if there are no other “reasonable alternative means” of protecting the rights of those concerned.

4. The Assembly stresses that the staff of international organisations benefit from the human rights and fundamental freedoms as guaranteed by the European Convention on Human Rights (hereafter the “Convention”, ETS No. 5), and in particular the right of access to a tribunal and a fair trial in the event of a dispute with their employers (Article 6 of the Convention) and the right to freedom of association (Article 11 of the Convention). Nonetheless, it notes that there is frequently a lack of democratic and media scrutiny of the functioning of international organisations, which can result in the concealment of certain abuses, especially in the context of employment disputes.

5. The Assembly considers that the Council of Europe member States should exercise greater scrutiny of the functioning of international organisations and focus thought on whether the human rights and fundamental freedoms of staff are upheld, and in particular whether staff have access to a “tribunal” within the meaning of Article 6 of the Convention.

6. In the light of the above, the Assembly recommends that member States of the Council of Europe and the international organisations to which they are Parties:

6.1. introduce, in the international organisations, “reasonable alternative means of protecting” the rights of staff, in accordance with Article 6 of the Convention in all cases where such means of redress are not yet available;

6.2. ensure that these means of redress are also available to trade unions or other groups working to protect the rights of staff;

6.3. introduce procedures for lodging appeals against decisions of the internal tribunals of international organisations in employment disputes;

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\* Draft resolution and draft recommendation adopted by the committee on 11 October 2017.

6.4. bring about greater transparency of the work of international organisations and ensure that information on procedures relating to employment disputes is accessible to their staff.

**B. Draft recommendation**

1. Referring to its Resolution .... (2017) on jurisdictional immunity of international organisations and their staff's right of access to a tribunal, the Parliamentary Assembly calls on the Committee of Ministers to:

1.1. encourage the international organisations to which the member States of the Council of Europe are Parties to look at whether "reasonable alternative means of legal protection" are accessible in the event of disputes between international organisations and their staff;

1.2. invite those international organisations to bring about greater transparency of their staff policies and ensure that information on employment disputes is available to their staff;

1.3. initiate reflection on whether the Organisation's system for dealing with employment disputes complies fully with the requirements of the European Convention on Human Rights (ETS No. 5) and, where appropriate, on how this system can be improved;

1.4. carry out a comparative study of the extent to which the internal remedy systems in international organisations are compatible with Article 6 of the European Convention on Human Rights.

2. The Assembly welcomes the work carried out by the Council of Europe's Committee of Legal Advisers on Public International Law (CAHDI) on the jurisdictional immunity of international organisations and encourages it to look into these issues in greater detail, in particular in the context of disputes between international organisations and their staff.

## **C. Explanatory memorandum by Mr Volker Ullrich, rapporteur**

### 1. Introduction

#### *1.1. Procedure to date*

1. On 29 January 2016 the Bureau of the Parliamentary Assembly decided to refer to the Committee on Legal Affairs and Human Rights, for report, the motion for a resolution on “Jurisdictional immunity of international organisations and rights of their staff”.<sup>1</sup> At its meeting on 7 March 2016, the Committee appointed me as rapporteur. At its meeting in Paris on 13 December 2016, the Committee held a hearing with three experts:

- Ms Mireille Heers, Judge, Administrative Tribunal of the Council of Europe (France),
- Ms Monika Polzin, Professor, Law Faculty, University of Augsburg (Germany) and
- Ms Liesbeth Zegveld, lawyer and professor at the University of Amsterdam (Netherlands).

#### *1.2. The issues at stake*

2. The above-mentioned motion for a resolution puts emphasis on jurisdictional immunity of international organisations (IOs), which allows them not to be arraigned before the courts of the host States. However, it stresses that jurisdictional immunity should not create an area outside the rule of law and that staff members of IOs should not be deprived of the right to a fair trial and be able to defend their rights, including in court. The jurisdictional immunity of an IO should not be allowed to cover abuses of the European Convention of Human Rights (“the Convention”) or of the European Social Charter. The motion also proposes examining the “social rights, both individual and collective” of staff members of IOs and reflecting on how those rights could be strengthened.

3. As the authors of the motion for a resolution pointed out, on 31 January 2014, the Assembly had adopted [Resolution 1979 \(2014\)](#) and [Recommendation 2037 \(2014\)](#) on “Accountability of international organisations for human rights violations”. They were based on the report of our former colleague, Mr José Maria Beneyto (Spain, EPP/CD),<sup>2</sup> which also examined the issue of jurisdictional immunity of IOs, especially in the context of accountability for human rights abuses committed by their staff. As this issue has already been analysed in some detail by Mr Beneyto, I will confine myself to reiterating the main principles concerning the jurisdictional immunity of IOs as well as examples in which it was invoked in cases concerning employment issues. Since the motion for a resolution stresses the need for examining the rights of staff members of IOs, it will be useful to have a general overview of these rights – including immunities and privileges. Nonetheless, I shall focus more specifically on the right of access to a tribunal and not on the social rights of the staff of IOs (which would warrant a more detailed examination, going beyond the scope of this report).

4. The issues presented in this introductory report are complex and several questions arise: how should one define an international civil servant? What is the scope of international civil service law? Is there any legal vacuum or lacuna as far as the enjoyment of the rights enshrined in the Convention by international civil servants is concerned, and especially the right of access to a tribunal within the meaning of the Convention in the event of a dispute with the employer? What are the possible “reasonable alternative means of protection” for international civil servants who are in dispute with their employer? What are the current trends concerning immunity of IOs and, in this respect, what is the current state of the work of the Committee of Legal Advisers on Public International Law (CAHDI)? It is also imperative to look more closely at the structure and composition of internal bodies/administrative tribunals of certain IOs, in order to verify whether they properly address the protection of human rights of staff members, and in particular the rights guaranteed in Article 6 of the Convention.

## **2. Definition and rights of staff members of IOs**

5. Since the beginning of 20th century and especially after the First World War (with the work of the League of Nations) and the Second World War, IOs have played an increasingly important role in all areas of international co-operation, and the Council of Europe is one example of this trend. Although it is difficult to give the exact number, most sources indicate that there are over 250 IOs;<sup>3</sup> in the 1990s the number of

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<sup>1</sup> [Doc. 13905](#), reference 4185.

<sup>2</sup> [Doc. 13370](#).

<sup>3</sup> Depending on the source, as of October 2015, there were either 325 or 150, see <https://www.psa.ac.uk/insight-plus/blog/how-many-international-organisations-are-there-yearbook-international>. The Union of International Associations estimated that there were 265 in 2014; Union of international associations, *Yearbook of International Organisations*.

international civil servants was estimated at around 90,000 and it is most probably even higher today.<sup>4</sup> Among IOs, the United Nations, the European Union and the World Bank are the largest employers, with, respectively, more than 40,000, 30,000 and 10,000 members of staff, whereas the number of staff in the other IOs is lower.<sup>5</sup> The Council of Europe employs just over 2,000 people.<sup>6</sup>

6. The legal personality of IOs, a relatively new phenomenon, has been firmly established since the Advisory Opinion of the International Court of Justice (ICJ) of 11 April 1949 on *Reparation for Injuries Suffered in the Service of the United Nations*, in which the ICJ ruled that the United Nations (UN) possessed international legal personality. The possession of legal personality means that IOs may conclude treaties and that privileges and immunities may be granted to them under domestic law.<sup>7</sup>

7. In the same opinion, the ICJ included its definition of an international “agent”, understanding it “in the most liberal way, that is to say, any person who, whether a paid official or not, and whether permanently employed or not, has been charged by an organ of Organisation with carrying out, or helping to carry out, one of its functions – in short, any person through whom it acts”.<sup>8</sup> The ICJ definition refers to a very broad category of persons and also includes people working on short-term missions such as consultants. Legal opinion sometimes contrasts this with “international civil servants”, who work for an international organisation in a “continued and exclusive way”.<sup>9</sup> Although there is no uniform definition of the term, it is generally accepted that staff members of various categories and with different conditions of service, make up the “international civil service” and the legal rules which apply to them and which have not been codified constitute “international civil service law”, in line with the approach adopted by public law, and in particular the administrative law of states.<sup>10</sup>

8. In the *Reparation for Injuries* opinion, the ICJ also stressed that in order to ensure the independence of the agent and of the organisation itself (the UN in this case), “it is essential that in performing his duties he need not have to rely on any other protection than that of the Organisation (save of course for the more direct and immediate protection due from the State in whose territory he may be)”.<sup>11</sup> Staff members of international organisations shall not seek or receive instructions from any government, including their own, or any other external authority. Their independence is usually clearly reaffirmed in IOs’ constitutive acts, for example in [Article 100 of the Charter of the United Nations](#), [Article 9 of the International Labour Organisation \(ILO\) Constitution](#), [Article VI of the UNESCO Constitution](#) or Article 36 [of the Statute of the Council of Europe](#).

9. Staff members of IOs enjoy a number of “functional” privileges and immunities, which are to some extent based on those of (national) diplomats, although the legal situation of both categories of officials is quite different.<sup>12</sup> These privileges and immunities are usually specified in conventions, including those establishing IOs (for example, in the Council of Europe – in Article 40 a) of the [Statute of the Council of Europe](#) and Articles 16-19 of the [General Agreement on Privileges and Immunities of the Council of Europe](#)) and/or in bilateral agreements signed with the host States (for example, agreements between the Swiss Federal Council and the [World Health Organisation](#), (WHO), the [ILO](#) and the [Bank for International Settlements](#) concerning the legal status of these organisations in Switzerland).

10. These are mainly: immunity from jurisdiction for all acts performed in the discharge of duties; exemption from direct taxation (income tax), exemption from immigration restrictions and alien registrations

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2013-2014, vol. 5, Leiden, Brill. 50<sup>th</sup> edition. 2013, xiv-449 p. 25, not counting the intergovernmental organisations comprising fewer than three member States or three international organisations.

<sup>4</sup> H-J Priess, “The International Civil Service”, in Wolfrum (ed.), *United Nations: law, policies and practice*, 1995 pp.94-99, at p. 95. In 1980, the same number was mentioned in the official document of the Council of Europe, 2202, vol. 2, CJ-PI (80), 1, 5 November 1980, Committee of Experts, p. 8.

<sup>5</sup> Internal Justice Systems of International Organisations Legitimacy Index 2016, accessible at: [http://www.coe.int/T/AdministrativeTribunal/Source/IJS\\_LegitimacyIndex2016\\_BrettonWoodsLaw.pdf](http://www.coe.int/T/AdministrativeTribunal/Source/IJS_LegitimacyIndex2016_BrettonWoodsLaw.pdf).

<sup>6</sup> <http://www.coe.int/en/web/jobs/hq-strasbourg>.

<sup>7</sup> ICJ, [Reparations for Injuries suffered in the Service of the United Nations](#), Advisory Opinion, ICJ Reports 1949, p. 179

<sup>8</sup> *Ibid.*, p. 177.

<sup>9</sup> Nguyen Quoc Dinh, *Droit international public*, L.G.D.J., Paris 1999, p. 623.

<sup>10</sup> See, in particular, Nicolas Nyembo Baatie, [Statut juridique des fonctionnaires internationaux: cas du secrétaire général de l'ONU](#), see chapter II, section 1; Xavier Pons Rafois, *International Civil Service*, Oxford Bibliographies, 2014, Introduction; P. Klein, *La responsabilité des organisations internationales dans les ordres juridiques internes et en droit des gens*, coll. “de droit international” vol. 37, Brussels, Bruylant, 1998, xxxii-673 pp. 227-280 and Yves Beigbeder, *Civil Service, International*, in: *Max Planck Encyclopaedia of Public International Law* (last updated in January 2007), paragraph 2.

<sup>11</sup> ICJ, footnote 7 above, p. 183.

<sup>12</sup> For more on this subject, see Linda Frey and Marsha Frey, *International officials and the standard of diplomatic privilege*, *Diplomacy and Statecraft*, 9:3, 1-17, 1998.

and repatriation; privileges in respect of exchange facilities and repatriation in times of international crisis (the same as for diplomats), the right to import free of duty furniture and effects at the time of first taking up their post. Most of these privileges and immunities are extended to the spouses of staff members and other relatives dependent on them. They are based on the “functional principle”<sup>13</sup> and are granted to officials as being necessary for the fulfilment of their functions; in other words, in the interest of the IO and not for the personal benefit of the individuals themselves. Tax privileges are intended to avoid exorbitant advantages to the seat State, which would otherwise be able to collect in the form of taxes a sizeable part of the staff salaries funded by the budgetary contributions of all member states. Jurisdictional immunities may be waived by the organisation in question, where, in its opinion, the immunity would impede the legitimate course of justice.

11. As regards employment relationships within IOs, every organisation has its own public service system, according to its own particular features. Employment issues within IOs are usually regulated by internal staff regulations. Disputes between IOs and their staff members are subject to the jurisdiction of internal administrative tribunals (such as, in the United Nations, the Dispute Tribunal – UNDT – and the Appeals Tribunal – UNAT; the World Bank Administrative Tribunal – WBAT; the International Labour Organisations Administrative Tribunal – ILOAT or the Administrative Tribunal of the Council of Europe) or other alternative means of dispute resolution. Potential conflicts that may arise between a staff member and his or her organisation over employment may concern issues such as recruitment procedures (including promotions and transfers), the level of remuneration or pension, social security, leave, personal administrative files, the enjoyment of privileges and immunities or the right to freedom of association (including belonging to trade unions).

12. The relationships of employment within an IO are governed either by a contractual system or a statutory system, or a combination of both.<sup>14</sup> As stated in the report of the (former) Budget Committee of our Assembly (rapporteur: Mr Giuseppe Aleffi, Italy, Group of the European People’s Party) on the “Nature and scope of the contractually acquired rights of Council of Europe staff”, virtually all IOs, including the Council of Europe, are influenced by the concept of “contractual relationship”, which assumes that the relationship between a staff member and the organisation is based on a contract, i.e. a bilateral act. On the other hand, a “statutory relationship” refers to the appointment of civil servants by acts of authority, i.e. formal acts based on the agreement of the employed person. The latter type of relationship is characteristic of the European Union’s civil service,<sup>15</sup> as well as many national civil services.

13. “Acquired rights” is another concept of international civil service law, which is a feature of almost all IOs, including the Council of Europe. It is one of the most complex and refers to the inviolability of the conditions of employment stipulated in the contract, provided that such conditions could have been regarded as fundamental by the member of staff concerned when he or she decided to join the organisation. “Acquired rights” are explicitly referred to in the staff regulations of certain organisations (WHO, ILO, UNESCO, the International Atomic Energy Agency – IAEA, the International Maritime Organisation – IMO, FAO, OECD, the European Space Agency and – to some extent – the North Atlantic Treaty Organisation (NATO)). In other IOs, including the Council of Europe, the concept of acquired (and contractual) rights has been implemented through the decisions of administrative tribunals. But, as stressed in the report by Mr Aleffi, *“the internal law of international organisations has a number of gaps. International administrative tribunals – of which there are at present 23 for a total of 100,000 international civil servants – are in practice faced with cases which cannot be resolved simply by reference to the internal law of the organisation. Accordingly, in order to fill the gaps, these international tribunals have to turn to “international principles of law” or “international principles of the international civil service”* (paragraph 13). He also noted that these principles had not been codified and they were very often based on the law of the countries of continental Europe and France in particular. To sum up, in international civil service law, there are agreements setting up the IOS, secondary law (regulatory acts) and the “general principles of law”.<sup>16</sup>

### 3. Jurisdictional immunity of international organisations and disputes concerning employment

14. The principles concerning IOs’ immunity from national jurisdictions (jurisdictional immunity) were set out in the above-mentioned report of our former colleague Mr Beneyto on the “Accountability of international organisations for human rights violations”. Therefore, I will merely summarise them in brief below.

<sup>13</sup> [Doc. 2158](#) of 11 January 1967, report of our Committee on “The Privileges and Immunities accorded to international organisations and their staff” (Rapporteur: Mr von Merkatz), paragraph 11 of the report.

<sup>14</sup> For more details on this subject, see Xavier Pons Rafois, footnote 10 above.

<sup>15</sup> [Doc. 8868](#) of 11 October 2000, paragraphs 1-4 and 12-14.

<sup>16</sup> See the foreword by Giovanni M. Palmieri in the proceedings of the colloquy held in Luxembourg on 1 and 2 April 2011, *Les évolutions de la protection juridictionnelle des fonctionnaires internationaux et européens. Développements récents*, edited by G.M. Palmieri, Bruylant, Brussels 2012, pp. IX-X.



15. Granting IOs immunity from national jurisdiction has been a long-standing practice and its purpose is to enable them to fulfil their functions independently, free from unilateral interference by governments, including the government of the host state.

16. With regard to state immunity, there is a distinction between acts *jure imperii*, which are of a sovereign nature where a foreign nation exercises purely governmental functions, and *jure gestionis*, which are of a commercial nature. Foreign States are usually immune from litigation regarding the former category of acts. Whereas state immunity has over time been increasingly limited, IOs' immunity has been interpreted as general and absolute, despite the fact that it has been granted only so far as it is required for the effective fulfilment of their functions. It is therefore a "functional immunity", the aim of which is to enable IOs to carry out their roles without excessive interference from their member States and to prevent the courts in a member State from ruling on the legality of their acts. This type of immunity derives from international treaty law, whereas state immunity derives from customary law and the principle of the sovereign equality of states.<sup>17</sup> There is no single definition of the functional immunity of IOs; it is defined by the relevant treaties.<sup>18</sup> An IO can waive its immunity, but where it does not do so, there is no generally accepted limit to functional immunity in international law. The absence in international law of any trend towards the relaxation of the jurisdictional immunity of IOs was recently confirmed by the European Court of Human Rights ("Court") in its decision in the *Klausecker v. Germany* case,<sup>19</sup> concerning an employment dispute with the UN and in the *Kokakshvili v. Georgia* case,<sup>20</sup> concerning the dismissal of a female employee in the OSCE office in Tbilisi. As Ms Polzin stated at the hearing in December 2016, there is much discussion about this issue among legal commentators.<sup>21</sup> The most consistent trend towards limitation of this immunity is to be seen in disputes concerning employment law, where there is no other dispute settlement mechanism within the IO ("reasonable alternative means of protection", to use the terminology of the European Court of Human Rights). Certain domestic courts hold that an IO's immunity can be waived where the latter has no such mechanism available to an individual.<sup>22</sup> Ms Polzin commented that this trend could result in a new ordinary law rule in international law. [The judgment of the Belgian Court of Cassation of 21 December 2009](#) in the *Western European Union (WEU) v. Siedler* case would appear to be a good example to illustrate this: in this case, the Court of Cassation confirmed the judgment of the Brussels Labour Court of 17 September 2003 in which the latter lifted the immunity of the Western European Union (which was dissolved on 20 June 2011) because of the inadequate judicial protection present in the organisation. The Belgian courts held that the WEO's appeal board was not independent as its term of office was very short (2 years) and its members were appointed by an intergovernmental committee. Accordingly, the dispute could be dealt with by the Belgian courts.

17. Nonetheless, the decision in the *WEU v. Siedler* case remains an isolated example<sup>23</sup> and in the majority of cases the domestic courts do not lift the immunity of international organisations. For example, at the 50<sup>th</sup> meeting of the CAHDI, in September 2015,<sup>24</sup> the delegation of Norway described a case concerning a NATO employee claiming compensation for damages as a consequence of alleged discrimination and whistleblowing reprisals; the district court had dismissed the claim on the grounds that NATO enjoyed immunity and that any domestic lawsuits could lead to different interpretations and constitute an obstacle to international co-operation.

18. At the December 2016 hearing, Ms Zegveld, who has advised SUEPO – the staff union of the European Patent Office (EPO) for several years, hoped to see a change in the case law of the Dutch courts following the *SUEPO and Others v. the European Patent Office* case. This case concerned the right of access to legal redress of SUEPO and other EPO staff unions. SUEPO is an external staff union with local unions in the countries where the EPO has its offices, in particular in Germany and the Netherlands. Today, almost half of EPO staff (3400 out of 7,000 staff members, 2,500 of whom work in the Netherlands) are

<sup>17</sup> See ICJ, judgment of 3 February 2012 [Jurisdictional immunities of the state \(Germany v. Italy: Greece intervening\)](#), §57.

<sup>18</sup> See, for example, Article 105 paragraph 1 of the Charter of the United Nations.

<sup>19</sup> Decision of 6 January 2015, Application No. 415/07, paragraph 75.

<sup>20</sup> Decision of 1 December 2015, Application No. 21110/03, paragraph 35.

<sup>21</sup> See, for example, Niels Blokker, *International Organizations: The Untouchables?*, in: Blokker/Schrijver, *Immunity of International Organizations*, Leiden 2015, p. 1 (2); Jan Klabbers, *An Introduction to International Organizations Law*, Cambridge 2013, p. 153, and Emmanuel Gaillard/Isabelle Pingel-Lenuzza, *International Organizations and Immunity from Jurisdiction: To Restrict or to Bypass*, 51 *Int'l & Comp. L.Q.* 1 (2002), p. 1.

<sup>22</sup> See in particular the judgment of the Swiss Federal Supreme Court (Civil Division) of 2 July 2004 (published in part as BGE 130 I 312); the judgment of the French Court of Cassation, Labour Division, of 25 January 2005 (Bull. No. 16). For other examples, see August Reinisch (Ed.), *The Privileges and Immunities of International Organizations in Domestic Courts*, Oxford 2013.

<sup>23</sup> See footnote 16 above, p. XIV.

<sup>24</sup> [CAHDI \(2015\) 23](#), paragraph 28.

members of SUEPO. As the EPO did not recognise this union and refused to deal with it in any way, the union brought the case to the Dutch courts. In a judgment of 17 February 2015, the Hague Appeal Court confirmed the judgment of the court of first instance, which had lifted the EPO's jurisdictional immunity and ruled that SUEPO and the other staff unions had no means of protecting their rights under the Convention, because there were no internal remedies and the fact that they could not appeal to the Administrative Tribunal of the International Labour Organisation, which has jurisdiction regarding labour disputes involving EPO staff. The Appeal Court found a violation of the freedom of association and the lack of any means of redress within the EPO.<sup>25</sup> Subsequently, the EPO refused to implement the Appeal Court's ruling and had submitted an appeal on points of law to the Dutch Supreme Court. The latter delivered its judgment on 20 January 2017 and set aside the judgments of the Appeal Court and the court of first instance, ruling that the Dutch courts had no jurisdiction to deal with cases referred by the unions against the EPO. There was no justification for waiving immunity as it could not be concluded that the protection of fundamental rights within the EPO was deficient. There was a guarantee of access to a tribunal, as union members, in an individual capacity, could appeal to the EPO's internal bodies and to the ILOAT.<sup>26</sup>

19. As stressed by Mr Beneyto in his report, Unless jurisdictional immunity is waived by the organisation itself, "(...) international organisations are as immune from suits in national courts regarding employment or contractual disputes as they are from attempts to question the legality of policy decisions".<sup>27</sup> While States are subject to the jurisdiction of their domestic judicial authorities, IOs do usually not have similarly strong internal judicial systems. Moreover, they "often act outside the public eye (...)", contrary to States which are subject to parliamentary review and other extra-judicial accountability such as that by the media,<sup>28</sup> Immunity does not exempt IOs from complying with human rights norms, and employment issues can involve a number of human rights concerns, including the right of access to a tribunal or the right to a fair trial (Article 6§1 of the Convention) or the right not to be discriminated against (Article 14 of the Convention).<sup>29</sup> In its [Resolution 1979 \(2014\)](#) on "Accountability of international organisations for human rights violations", the Assembly called on Council of Europe member States and the IOs of which they are Parties to "formulate clear guidelines regarding the waiver of immunity for international organisations or otherwise limiting the breadth of the immunity they enjoy before national courts, in order to ensure that the necessary functional immunity does not shield them from scrutiny regarding, in particular, their adherence to standards concerning non-derogable human rights" (paragraph 7.3. of [Resolution 1979](#)). In its [Recommendation 2037 \(2014\)](#) concerning the same subject, the Assembly recommended, amongst other things, that member States "examine the status of international organisations within their national legal systems and ensure that arrangements are in place for the waiver of immunity when this is required" (see paragraph 2.2). Replying to the latter, the Committee of Ministers said that the CAHDI regularly discussed the issue of the immunity of IOs and had observed "an increase in practice and case law related to the scope of this immunity and to the question of the availability of "reasonable alternative means" in the framework of the relevant organisation for effective protection of the rights under the European Convention on Human Rights".<sup>30</sup> It emerges from the most recent CAHDI meeting reports that this Committee regularly looks at the question of the immunity of IOs, in particular in the context of the settlement of private law disputes in which an IO is a party.<sup>31</sup> The CAHDI is also informed by member States of the recent practice of the domestic courts in this regard and has a database on matters relating to the immunity of IOs, with examples of legislation and case law.<sup>32</sup> The most recent discussions held by the CAHDI concluded that it was essential to strike the right balance between the need to maintain the independence of IOs and the need to protect victims of any abuse on the part of the administration. Several delegations felt that it was necessary to adopt a tailor-made approach for each IP and to take account of the differences between IOs' *jure imperii* and *jure gestionis* acts (as in the case of states).<sup>33</sup>

<sup>25</sup> This judgment was brought to the attention of the CAHDI at its meeting on 15 and 16 September 2016; see [CAHDI \(2016\) 23](#), paragraph 47.

<sup>26</sup> The relevant extracts of this judgment have been translated into English and published on the SUEPO website: <https://suepo.org/documents/43873/55894.pdf>.

<sup>27</sup> See footnote 2, paragraph 30.

<sup>28</sup> *Ibid.*, paragraph 29.

<sup>29</sup> *Ibid.*, paragraphs 27 and 47.

<sup>30</sup> Paragraph 7 of the reply of the Committee of Ministers to [Recommendation 2037 \(2014\)](#), [Doc. 13581](#) of 10 July 2014.

<sup>31</sup> See, in particular the reports of the 52<sup>nd</sup>, 51<sup>st</sup> and 50<sup>th</sup> meetings (15 and 16 September 2016, 3 and 4 March 2016 and 24 and 25 September 2015 respectively: [CAHDI \(2016\) 23](#), [CAHDI \(2016\) 16](#) et [CAHDI \(2015\) 23](#).

<sup>32</sup> <http://www.coe.int/en/web/cahdi/database-immunities>.

<sup>33</sup> [CAHDI \(2016\) 23](#), paragraph 21.



#### 4. Case law of the European Court of Human Rights concerning labour disputes in international organisations

20. Dispute resolution procedures within IOs have been addressed by the European Court of Human Rights in a number of cases under Article 6§1 of the Convention. The case law of the Court in these cases can be summarised as follows.<sup>34</sup>

21. In a number of cases concerning labour disputes in IOs of which Council of Europe member States are members, the Court found that those applications were incompatible *ratione personae* with the provisions of the Convention, as the impugned decisions emanated from an internal body of an IO or an international tribunal outside the jurisdiction of the respondent States and stressed that IOs had a separate legal personality (for example, in two cases concerning staff disputes in European Union institutions – *Boivin v. 34 member States of the Council of Europe*<sup>35</sup>; *Connolly v. 15 member States of the European Union*<sup>36</sup> and in a case concerning proceedings before the Administrative Tribunal of the Council of Europe – *Beygo v. 46 member States of the Council of Europe*).<sup>37</sup>

22. In this context, the Court also examined whether the member States of the Council of Europe could be held responsible under the Convention for acts or omissions relating to their membership of an IO. It referred to the principles it established in the *Bosphorus* judgment,<sup>38</sup> in which it had found that States, as Contracting Parties to an IO, remained responsible for the acts and omissions of their organs. It also established a presumption according to which a State did not depart from the requirements of the Convention if its action was taken in compliance with international legal obligations flowing from its membership of an IO and where the relevant organisation protected fundamental rights in a manner which could be considered “at least equivalent to that which the Convention provided”.<sup>39</sup> The Court referred to these principles in the *Gasparini v. Italy and Belgium* case, following a complaint lodged by a NATO civil servant, who had contested the fairness of proceedings before the NATO Appeal Board (CROTAN) concerning a dispute over an increase in pension contributions. The Court found that the case was admissible, but manifestly ill-founded. It deducted from the *Bosphorus* principles that when transferring part of their sovereign powers to an IO, member States were under an obligation to monitor that the rights guaranteed by the Convention received within that organisation an “equivalent protection” to that secured by the Convention system. However, a State’s responsibility under the Convention could only be incurred if the protection of fundamental rights offered by the IO concerned was “manifestly deficient”.<sup>40</sup> The Court found that the rules governing the proceedings before CROTAN complied with the requirements stemming from Article 6§1 of the Convention and that the protection offered to the applicant by NATO was therefore not “manifestly deficient”.

23. In a few other cases concerning disputes over employment in IOs, the Court did not find that the applications were incompatible *ratione personae* and focused on the issue of the jurisdictional immunity of IOs. In *Beer and Regan v. Germany* and *Waite and Kennedy v. Germany*<sup>41</sup> it examined, under Article 6§1 of the Convention, complaints of applicants who had been placed at the disposal of the European Space Agency (ESA) and had tried, to no avail, to obtain employment status. Following proceedings instituted by the applicants, the German courts declared their actions inadmissible, relying on ESA’s immunity from jurisdiction. The Court found that the limitation of the applicants’ right of access to a court (to German courts in these cases) had a legitimate aim, as the jurisdictional immunity was meant to ensure the proper functioning of IOs. It was also proportionate to this aim, as the applicants could and should have had recourse to the ESA Appeals Board, which the Court considered as “reasonable alternative means to protect

<sup>34</sup> For more details, see the document drafted by the Research Division of the Court Registry, [La jurisprudence de la Cour européenne des droits de l’homme sur le contentieux du travail des organisations internationales](#), (only in French), summarising the case law until 1 December 2014. See also paragraphs 92 to 97 of the *Klausecker c. Germany* decision, footnote 19, above.

<sup>35</sup> Decision of 9 September 2008, Application No. 73250/01.

<sup>36</sup> Decision of 9 September 2008, Application No. 73274/01.

<sup>37</sup> Decision of 1 June 2009, Application No. 36099/06. Concerning this case, see also the article by Sergio Sansotta, [The Administrative Tribunal of the Council of Europe and the European Convention on Human Rights](#), 2013.

<sup>38</sup> *Bosphorus v. Ireland*, judgment of 30 June 2005 (Grand Chamber), Application No. 45036/98.

<sup>39</sup> *Ibid.*, paragraphs 155 and 156. Concerning IOs’ labour disputes, see also [Coöperatieve Producentenorganisatie van de nederlandse Kokkelvisserij U.A. v. the Netherlands](#), decision of 20 January 2009, Application No 13645/05.

<sup>40</sup> *Gasparini v. Italy and Belgium*, decision of 12 May 2009, Application No. 10750/03 (in French only). See also paragraph 97 of the *Klausecker v. Germany* judgment, footnote 19 above, in which the Court reiterated that “an alleged violation of the Convention was not attributable to a Contracting Party because of a decision or measure emanating from an organ of an international organisation [...], where it has not been established (...) that the protection of fundamental rights generally offered by the said international organisation was not “equivalent” to that secured by the Convention and where the state concerned neither directly nor indirectly intervened in the commission of the impugned act”.

<sup>41</sup> Judgments of 18 February 1999, Applications Nos. 28934/95 and 26083/94.

effectively their rights under the Convention.” The Court stressed that “the test of proportionality cannot be applied in such a way as to compel an international organisation to submit itself to national litigation in relation to employment conditions prescribed under national labour law” and the application of national law to such matters would “thwart the proper functioning of international organisations and run counter to the current trend towards extending and strengthening international co-operation”.<sup>42</sup> It therefore concluded that there had been no violation of Article 6§1 of the Convention.

24. More recently, in January 2015, the Court confirmed its previous case law and dismissed the applications lodged in respect of two employment disputes with IOs in the aforementioned *Pérez v. Germany*<sup>43</sup> and *Klausecker v. Germany* cases. In the first case, a former staff member of the UN complained, on the one hand, about the allegedly deficient procedures before the UN internal appeal bodies and the UNAT concerning the termination of her service, and on the other, about the lack of access to German courts because of UN jurisdictional immunity. The Court rejected both complaints for non-exhaustion of domestic remedies, stating that the applicant should have first lodged a complaint before the Federal Constitutional Court (however, concerning the first complaint, the Court considered that the issue of “equivalent protection” offered by the UN could be questioned in the circumstances of this case). In the second case, the applicant, a candidate for a position in the European Patent Office (EPO), was eventually rejected by the EPO because of his disability and complained about the lack of access to a tribunal in relation with the procedures he had instituted before the German courts (the Federal Constitutional Court, which declared his complaint inadmissible, confirmed that EPO enjoyed immunity from the jurisdiction of the German courts) as well as those instituted before the EPO’s bodies and the Administrative Tribunal of the ILO. Concerning the first set of proceedings, the Court referred to *Beer and Regan v. Germany* and *Waite and Kennedy v. Germany* and noted that the applicant had “reasonable alternative means” to protect his rights under the Convention, as the EPO had offered him an arbitration procedure. Concerning the proceedings before the EPO and ILOAT, the Court reiterated the principles stemming from the *Bosphorus* and *Gasparini* cases, and found that, in view of the said arbitration offer, the protection of fundamental rights within the EPO was not “manifestly deficient”<sup>44</sup> and rejected the application as manifestly ill-founded.

## 5. Some examples of the competent bodies for labour disputes within IOs

### 5.1. Exhaustion of administrative remedies

25. In order to have a brief overview of employment dispute systems in the various IOs (which will, however, be necessarily incomplete given the number of IOs and the constraints of this report), I shall look more closely at the systems in the United Nations (UN), the World Bank, the ILO, the European Union (EU), the EPO and the [six co-ordinated organisations](#), which are the Organisation for Economic Co-operation and Development (OECD), NATO, the ESA, the European Centre for Medium-Range Weather Forecasts (ECMWF), the European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT) and the Council of Europe. I shall look at the different bodies (judicial and quasi-judicial) with which complaints from the staff of these organisations are lodged and then the status of these bodies (can they be considered courts?) and whether or not there is an appeal court.

26. Before initiating proceedings before an internal court (or “quasi-court”), staff are obliged to exhaust all administrative remedies, by filing an administrative complaint before the administrative body which has issued the impugned decision. At the UN, this is a request for a management evaluation submitted to the Secretary General (see Rule 11.2 of the [Staff Regulations](#)), at the EU, a complaint submitted to the appointing authority (see Article 90.2 of the [Staff Regulations of Officials of the European Communities](#)), at the World Bank and the ILO, every internal means of redress available within the Organisation (see Article II.2 of the [Statute of the World Bank Administrative Tribunal](#) and Article VII.1 of the [ILOAT Statute](#)). The [Service Regulations of the EPO](#) provide that the staff member concerned must first submit a request for review before lodging an internal appeal to the Appeals Committee; once the latter has issued its decision, a complaint may then be filed with the ILOAT (see Articles 109 -113 of the Service Regulations).

27. In the case of the co-ordinated organisations, at NATO, before filing an appeal with the Administrative Tribunal (NATO/AT), staff must exhaust all internal means of redress, namely, in principle, an administrative review followed by a complaint in writing to the Head of the NATO body with authority to rescind or modify the challenged decision (see Articles 61 and 62 and Annex IX to the [NATO Civilian Personnel Regulations](#)). At the OECD and the Council of Europe, the complainant must first apply to the Secretary General (with a

<sup>42</sup> *Beer and Regan v. Germany*, paragraphs 53, 58 to 59 and 62, and *Waite and Kennedy v. Germany*, paragraphs 62, 68 to 69 and 72.

<sup>43</sup> Decision of 6 January 2015, Application No. 15521/08.

<sup>44</sup> *Klausecker v. Germany*, see footnote 19 above, paragraphs 76 and 106.

“written request” – see Article 3, Annex III to the OECD [Staff Regulations, Rules and Instructions applicable to Officials of the Organisation](#) and an administrative complaint – see Articles 59 and 60 of the Council of Europe [Staff Regulations](#), at EUMETSAT and ECMWF – to the Director-General (see Article 37 of the [EUMETSAT Staff Rules](#) and Article 1 of Annex VII to the [ECMWF Staff Regulations](#)). At the ESA, when a staff member considers that a decision taken affecting him or her should be rescinded, he or she must first seek the opinion of the Advisory Board, unless the parties agree not to seek the said opinion (Regulation 30.1 (ii) of the [ESA Staff Regulations](#)).

## 5.2 *Competent bodies to deal with employment disputes*

### 5.2.1. *United Nations*

28. At the UN, following General Assembly Resolution 63/253 of 24 December 2008 and a reform introduced in 2009, there is a two-tier system for resolving employment disputes: the UN Dispute Tribunal (UNDT) and the UN Appeals Tribunal (UNAT). The UNDT is competent to hear applications filed by serving or former members of staff in respect of an administrative decision they allege to be in non-compliance with their terms of appointment or their contract of employment (see Articles 2 (a) and 3 of the UNDT Statute). An appeal can be lodged against the UNDT’s decisions with the UNAT, in accordance with the conditions laid down in Article 2 of the UNAT Statute.

29. THE UNDT comprises three full-time judges and two half-time judges appointed by the General Assembly. The UNAT comprises seven judges. No judge in either of these tribunals may be of the same nationality. Judges are appointed with due regard given to geographical balance and gender balance and must be of high moral character and impartial. Judges at the UNDT must have at least ten years’ judicial experience in the field of administrative law, while those at the UNAT must have at least 15 years’ experience in the field of administrative law, employment law or the equivalent within one or more national or international jurisdictions. They are appointed for a non-renewable term of seven years (See Article 4 of the [UNDT Statute](#) and Article 3 of the [UNAT Statute](#)).<sup>45</sup>

### 5.2.2. *European Union*

30. Pursuant to Article 270 of the [Treaty on the Functioning of the European Union](#) (TFEU), the Court of Justice of the European Union (CJEU) has jurisdiction in any dispute between the European Union and its servants within the limits and under the conditions laid down in the [Staff Regulations of Officials of the European Communities](#) (see Article 90§2) and the regime applicable to other servants of the Union.

31. In accordance with Article 2 of [Regulation 2016/1192 of the European Parliament and of the Council](#) of 6 July 2016 on the transfer to the General Court of jurisdiction at first instance in disputes between the European Union and its servants, the General Court of the European Union (GCEU) shall exercise at first instance jurisdiction in disputes between the Union and its servants. Pursuant to this regulation, all cases pending before the Civil Service Tribunal (a specialist tribunal set up further to a decision of the Council of the European Union of 2 November 2004 and dissolved by the above regulation) were transferred to the GCEU on 1 September 2016. As the EU judicial system comprises two courts, the CJEU and the GCEU, the former is also competent to examine appeals, on points of law only, against decisions of the GCEU (Article 56 of the [Protocol on the Statute of the CJEU](#)).

32. As at 19 September 2016<sup>46</sup> there were 44 judges at the GCEU and 28 judges at the CJEU (plus 11 advocates general). They are appointed by common accord of the governments of the member States, after consultation of a panel responsible for giving an opinion on the candidates’ suitability. Their term of office is six years, which is renewable (see Articles 253-255 of the TFEU).

### 5.2.3. *Other IOs*

33. Any staff member of the World Bank group may refer to the **World Bank Administrative Tribunal** (WBAT) any question relating to the non-observance or his or her contract of employment or terms of appointment (Article II.1 of the [Statute](#) of the WBAT). There are seven members of the WBAT, all of whom

<sup>45</sup> For further information on the functioning of these two tribunals, see Matthew Happold, *The Reform of the United Nations Administrative Tribunal: An Introduction* and Louise Otis and Eric H. Reiter, [The reform of the United Nations Administration of Justice System: the United Nations Appeals Tribunal after one year](#), in *Les évolutions de la protection juridictionnelle des fonctionnaires internationaux et européens. Développements récents*, see footnote 16 above, pp. 11-13 and 15-40.

<sup>46</sup> [http://curia.europa.eu/jcms/jcms/Jo2\\_7033/en/](http://curia.europa.eu/jcms/jcms/Jo2_7033/en/).

must be of different nationalities, and who are appointed for a term of five years, which may be renewed only once. They are appointed by the Executive Directors of the Bank, after appropriate consultation, from a list of candidates put forward by the President of the Bank. For the purpose of establishing the list of candidates, the President appoints an advisory committee with relevant experience (See Article IV.1 and 2 of the Statute of the WBAT). These provisions also set out the competences required for the position of judge; they must possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence in employment relations, international civil service or IO administration).

34. The **ILO Administrative Tribunal**, which is also competent to hear appeals from staff of the EPO, examines complaints “alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case”, and disputes concerning the compensation provided for in cases of invalidity, injury or disease incurred by an official in the course of her or his employment (Article II.1 and 2 of the [Statute](#)). Its seven judges, all of whom must be of different nationalities, are appointed for a three-year term by the International Labour Conference (Article III of the [Statute](#)).

#### 5.2.4. Co-ordinated organisations

35. Three co-ordinated organisations – the OECD, NATO and the Council of Europe (which will be looked at separately) – have set up administrative tribunals, while the other three have appeals boards.

36. Since 1 July 2013, the **NATO Administrative Tribunal** has replaced the former NATO Appeals Board. It is competent to hear any dispute of an individual nature brought before it by a current or retired NATO staff member, or a person entitled under him or her, who believes that a decision adversely affecting him or her does not comply with the NATO Civilian Personnel Regulations or the conditions of appointment. The NATO Administrative Tribunal is composed of five members who must be of the nationality of one of the member states. These members, all of different nationalities, are appointed by the North Atlantic Council for a five-year term, renewable once. They must have the qualifications required for appointment to high judicial service or be a jurisconsult of recognised competence in a field or fields relevant to the work of the Tribunal (Article 6.1.1. of Annex IX to the [Civilian Personnel Regulations](#)).

37. **The OECD Administrative Tribunal**, which since 1992 has replaced the former OECD Appeals Board, is competent to resolve any issue relating to the interpretation and application of the Regulations, Rules and Instructions in force and the conditions of appointment (see Article 1 of Annex III to the Regulations, Rules and Instructions applying to the officials of the Organisation). It is composed of three judges and three deputies, who must be of different nationalities and may not be members of the Organisation. They are appointed by the OECD Council for a renewable three-year term from among persons of proven impartiality who are jurists or otherwise highly qualified in labour law or civil service law or in the field of labour relations at national or international level (Regulation 22 of the [Regulations, Rules and Instructions applying to the officials of the Organisation](#)).

38. **The European Space Agency** has an “Appeals Board, independent of the Agency, to hear disputes relating to any explicit or implicit decision taken by the Agency and arising between it and a staff member, a former staff member or person entitled under him” (Regulation 33.1 of the [Staff Regulations](#)). The Appeals Board is composed of six members of different nationalities, appointed by the Council of the Agency. The members are independent; they may not be members of the staff of the Agency nor of a delegation of a member state. They must not seek or accept instructions from anyone whatsoever. They are appointed for a six-year term, which may be renewed (Regulation 34 of the [Staff Regulations](#)).

39. Staff members of **EUMETSAT and ECMWF** may challenge decisions of the Director General before the Appeals Board, comprising a Chair and two members, who may be replaced by deputies and who are appointed for a renewable three-year term by the EUMETSAT and ECMWF Council, respectively, from a list of independent candidates proposed by the Director General (Article 38 of the [EUMETSAT Staff Rules](#) and Article 39 of the [ECMWF Staff Regulations](#)).

#### 5.2.5. Administrative Tribunal of the Council of Europe

40. The Administrative Tribunal of the Council of Europe (ATCE) is competent to hear disputes between the Organisation and its staff, former staff, those entitled under these two categories of persons and external candidates allowed to sit a competitive recruitment examination, provided that the conditions set out in Article 60 paragraphs 1 and 3 of the Staff Regulations are fulfilled, namely where a complaint has been rejected by the Secretary General. The jurisdiction of the Administrative Tribunal has been recognised by the Central Commission for the Navigation of the Rhine (CCNR).



41. The ATCE is composed of three judges who are not staff members of the Council of Europe; one judge (and one deputy) shall be appointed by the European Court of Human Rights from among those who hold or who have held judicial office in a Council of Europe member State or with another international judicial body, other than present judges of the Court. The two other judges are appointed by the Committee of Ministers from among jurists or persons of high standing, with great experience in the field of administration. The judges of the ATCE are appointed for a term of three years and may be reappointed (see Article 1 of the [Statute of the ATCE](#)). As pointed out by Judge Heers at the December 2016 hearing, most judges are appointed by the Committee of Ministers (and not the Assembly, which has no role in this election, contrary to what happens in respect of the judges of the Court) and the vacancy notices are not published. Nonetheless the ATCE judges are now professional jurists and not former ambassadors as was the case in the past.

42. Unfortunately, the scope of this report does not make it possible for me to analyse in detail the case law of the ATCE (nor, moreover, that of the other IO internal tribunals). Nonetheless, as stated by Judge Heers at the December 2016 hearing, the ATCE offers broad and sometimes bold protection on certain points, even though it has not imposed the rule – recognised in national and EU law – whereby a number of fixed-terms contracts should lead to an indefinite-term contract (and some specialists in this field have been more critical of its case law).<sup>47</sup> Its Statute contains no reference to the European Social Charter, but the latter is applicable in terms of “general principles of law”. The ATCE has, on several occasions, underlined the need to ensure an effective and in-depth appeal against the power of the administrative authority, which could be discretionary but not arbitrary. The scrutiny of the ATCE is limited, as it finds against the Organisation only where there have been manifest errors of assessment. However, there have been cases where it has been particularly critical of the administration. For example, in a decision of 28 April 2015,<sup>48</sup> following the elimination of six persons from a recruitment procedure, it held that the role of the administration of an IO was to treat staff in a way that respected their “human dimension” and expressed concern about the “highly bureaucratic manner” in which the recruitment procedure had been handled. The ATCE had also found the way in which the Organisation pursued its contractual policy regrettable (see paragraph 71 of the decision) and recommended that it introduce a system of transparent information (see paragraph 75 of the decision).

## 6. Conclusions

43. In view of the foregoing, the immunity of IOs still remains fairly absolute, contrary to that of States, which has been subjected to some limitations; it is difficult to challenge this immunity before national and international courts. The European Court of Human Rights has recognised its existence and is clearly reluctant to consider cases concerning disputes over issues of employment in IOs, even when they might have implications for human rights, in particular the right of access to a tribunal and the right to fair a trial. Some of these cases have been considered as incompatible *ratione personae* (with the exception of the *Gasparini* case), while in others the Court referred to the tests of “manifestly deficient” protection and that of “proportionality” under Article 6§1 of the Convention and relied on the concept of “reasonable alternative means” of protection. No such application before the Court has led to the finding of any violation of the Convention and it seems that the Court tries to protect in any way possible the autonomy of IOs.<sup>49</sup>

44. Even though the legal arguments for maintaining the jurisdictional immunity of IOs remain solid and this system works relatively well in practice, the case of the unions at the EPO – recounted by Ms Zegveld at the December 2016 hearing – shows that this immunity can be abused in the event of poor management and internal conflicts within an IO. Following the case brought by SUEPO and the other unions before the Dutch courts, EPO management had started a campaign against members of SUEPO; some of them had been dismissed or suspended, or their salaries or pensions had been cut. As the EPO is subject to no public scrutiny, its Administrative Council, the organisation’s supervisory body, has done nothing to prevent unfair disciplinary proceedings and internal investigations. As a result, the activities of IOs, which often lie beyond the democratic scrutiny of national parliaments and the media, should be more transparent and monitored more closely by states, which are held responsible for the abuses taking place in these organisations. This case also shows the importance of upholding freedom of association in cases of disputes with employers,

<sup>47</sup> See in particular, Jean-Pierre Cuny, “Le Tribunal Administratif du Conseil de l’Europe (TACE), in the proceedings of the colloquy held in Luxembourg on 1 and 2 April 2011, *Les évolutions de la protection juridictionnelle des fonctionnaires internationaux et européens. Développements récents*, see footnote 16 above, pp. 215-244.

<sup>48</sup> [Appeals Nos. 548-553/2014, Clelia Cucchetti Rondanini and others v. Secretary General](#).

<sup>49</sup> For a critical overview of the recent case law, see article by Anne-Marie Thevenot-Werner, [L’érosion de l’obligation, pour les Etats membres, de garantir le droit d’accès au juge au sein des organisations internationales? Les décisions Perez et Klausecker rendues par la CEDH](#), *Revue de droit allemand, Chronique Droit International Public*, July-December 2015.

especially if the employer is an IO, and the need for trade unions to have access to all available means of redress.

45. The right of access to a tribunal and a fair hearing is a paramount right and staff members of IOs should benefit from this right to the same extent as those subject to national employment law rules. This is particularly necessary in cases involving significant psychological suffering, such as cases of harassment or discrimination at work, as the arbitration or mediation mechanisms in place in the majority of IOs are unable to solve these problems and provide appropriate legal protection to the victims. This is why “alternative reasonable means of protection”, fulfilling the criteria of a “tribunal” within the meaning of Article 6 of the Convention must be set up in IOs. A cursory examination of the employment dispute system in a number of IOs makes it clear that even though most of them have a sort of internal tribunal to deal with disputes between staff and the administration (especially following the reforms implemented over the last decade at NATO, the UN and the EU), which is accessible after exhaustion of the administrative means of redress, the members of these justice systems are often appointed by the executive bodies of the organisation and the provisions of some of the statutes or regulations are not sufficiently precise regarding the competences required for the position of judge in those tribunals. Furthermore, only the UN and the EU – two organisations which have an appeal system which comes with guarantees – have introduced a two-tier justice system. In order to assess more fully the extent to which these tribunals fulfil the criteria of Article 6 of the Convention, it would be useful to analyse their case law, but unfortunately, that has not been possible for this report.

46. A comparative analysis of these internal justice systems comes up against several difficulties, in particular a certain lack of transparency as the basic reference documents are not always easy to find and the IO sites are not always up to date with regard to the rights of staff. It is interesting to note that a study of the internal justice systems of 30 IOs (including the UN, the ILO, the EU and four of the co-ordinated organisations – the exceptions being the Council of the Europe and the ECMWF) has recently been undertaken ([Internal Justice Systems of International Organisations Legitimacy Index 2016](#)). In this study, the following criteria were taken into account in assessing the justice systems: their structure, the applicable legal provisions and clarity thereof, and the functioning, competence and structure of the first and second instance bodies. Following an overall assessment of these criteria, the ten IOs which were given the highest scores were; the Commonwealth Secretariat, the UN, the EU, the World Bank, the International Monetary Fund, the European Bank for Reconstruction and Development, the OECD, the EPO, the International Maritime Organisation and the World Health Organisation. In this classification, the ILO, NATO the ESA, EUMETSAT and the OSCE came, respectively, in 14<sup>th</sup>, 18<sup>th</sup>, 25<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup> positions.

47. In conclusion, international civil service law is not subject to any codified legal system and the European Convention on Human Rights remains of limited applicability in this field. However, States Parties to the Convention must verify whether IOs offer “equivalent protection”; certain authors believe there is a customary rule of international law whereby IOs are bound by international standards relating to the protection of human rights.<sup>50</sup> The Council of Europe, as an international organisation tasked with the protection of human rights and the rule of law, should look more closely at these questions.

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<sup>50</sup> See [Internal Justice Systems of International Organisations Legitimacy Index 2016](#) and the conclusions of Luigi Condorelli in the proceedings of the colloquy held in Luxembourg on 1 and 2 April 2011, *Les évolutions de la protection juridictionnelle des fonctionnaires internationaux et européens. Développements récents*, see footnote 16 above, p. 350.