

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

Annual Report for 2023
of the President of the EBRD Administrative Tribunal
Chris de Cooker

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PART I INTRODUCTION

1. Under Section IV, 9.04(a) of the Appeals Process Directive dated 9 November 2021 (DIR/2021/28), the President of the EBRD Administrative Tribunal (“Tribunal”) is required to submit an annual report addressed to the President of the Bank. The report is to be made available to the Board of Directors and staff of the Bank.

9.04 Annual Report

(a) The President of the Tribunal shall prepare an annual report indicating, in summary form, the Appeals brought before it in the past year, the decisions taken, and the actions of the Bank in implementing those decisions.

(b) Subject to paragraph 9.03 above, the report shall maintain the essential confidentiality of all parties involved in Appeals brought before the Tribunal. The report shall be addressed to the President and shall be made available to the Board of Directors as well as to staff members of the Bank.

2. In accordance with Section IV, 9.03 (a) of the Appeals Process Directive (DIR/2021/28), all case decisions are published in full (and where applicable anonymised at the request of one of the parties or both) on the Bank’s website in line with the Bank’s commitment to enhancing good governance, openness, transparency and accountability. The link for ease of reference is <http://www.ebrd.com/who-we-are/corporate-governance/administrative-tribunal.html>.

3. The table in part II presents a schematic synopsis of cases decided by the Tribunal in 2023 including an overview of request for an appeal, the decision and the actions carried out by the Bank. A more detailed summary of each case follows the table.

**PART II REPORT ON APPEALS DECIDED BY THE TRIBUNAL IN 2023 AND ACTIONS OF THE BANK IN
IMPLEMENTING THE DECISIONS**

Case Reference / Decision rendered date	Composition of the Tribunal	Details of the request for Appeal by the Appellant against the EBRD (the Respondent)	Tribunal Decision	Action taken and confirmed by the Bank	Full summary in paras:
2021/AT/04 Final decision issued on 13 July 2023	Plenum: Chris de Cooker (Chair) Thomas Laker Maria Vicien- Milburn Marielle Cohen- Branche Joan Powers	<p>In August 2019 the Appellant submitted a report alleging improper behaviour by their line manager. The Managing Director for Human Resources and Organisational Development (“MDHROD”) referred the Appellant’s complaint to the Office of the Chief Compliance Officer (“OCCO”), who after an initial enquiry undertook a formal investigation and reported that there was insufficient evidence to support the Appellant’s allegations. The Appellant was informed by the MDHROD in December 2019 that the alleged improper behaviour by the Appellant’s line manager was not tantamount to misconduct.</p> <p>The Appellant filed a Request for Review of an Administrative Decision (“RRAD”) against the MDHROD’s decision which was referred to the Administrative Review Committee (“ARC”) in June 2020.</p> <p>The ARC Report & Recommendations (“ARC Report”) of May 2021 concluded the MDHROD’s administrative decision should be confirmed, and no remedies granted to the Appellant. The President’s Administrative Review Decision (“PARD”) dated June 2021 accepted the ARC’s recommendation.</p> <p>In August 2021, the Appellant submitted their initial Statement of Appeal to the Tribunal maintaining that the OCCO investigation and the MDHROD’s decision</p>	<p>Upon review of the Appellant’s first Statement of Appeal and the Bank’s Response, the Tribunal determined that both the MDHROD and the ARC had misinterpreted their responsibilities under the dispute resolution scheme, which had deprived the Appellant of the due process that should have been accorded.</p> <p>The Tribunal found that the ARC’s findings of fact were not binding on the Tribunal because they were not based on a consideration of all available evidence. The Tribunal remanded the case to the ARC in February 2022 to conduct a proper fact finding based on the entirety of the OCCO investigation file.</p> <p>The Tribunal considered the continuation of the Appellant’s appeal taking into full account the findings of fact in the second ARC Report.</p> <p>The Tribunal agreed with the Bank’s decision to reject the Appellant’s claims and concluded that the Appellant’s appeal was unfounded.</p> <p>Based on unduly lengthy proceedings and the negative effects on the Appellant’s well-</p>	<p>Action taken by the Bank:</p> <p>In June 2021, the President awarded the Appellant GBP 2,000 “in recognition of the Bank’s commitment to the expeditious resolution of requests submitted through its administrative review and as a good faith gesture to acknowledge the length of time the ARC took to issue its Report in this matter.”</p> <p>In September 2023, and in order to comply with the Tribunal Decision, the Bank awarded the Appellant the sum of GBP 3,000.</p>	4-25

Case Reference / Decision rendered date	Composition of the Tribunal	Details of the request for Appeal by the Appellant against the EBRD (the Respondent)	Tribunal Decision	Action taken and confirmed by the Bank	Full summary in paras:
		<p>were inadequate. The Appellant also considered the ARC Report to be erroneous in its findings of fact.</p> <p>The Appellant requested the Tribunal to hold an oral hearing and to grant compensatory remedies following victimization which had had severe negative consequences on their job and health.</p> <p>The Tribunal issued its Preliminary Decision in February 2022, in which the case was remanded to the newly constituted ARC for further fact finding.</p> <p>The ARC issued a second report in September 2022, which found that there was no procedural irregularity, plus there was insufficient evidence to support a finding of sexual harassment but that the line manager had abused their authority. The ARC recommended payment of moral damages and in October 2022 the President issued a new PARD rejecting the ARC's recommendation.</p> <p>The Appellant submitted a continuation of their Appeal in January 2023 against the decision of the President maintaining that <i>inter alia</i> the applicable procedures had been severely violated. The Appellant requested the case be remanded for further investigation plus the award of compensatory remedies.</p>	<p>being, the Tribunal awarded GBP 5,000 in compensation, from which the GBP 2,000 already paid, be deducted.</p>		

Case Reference / Decision rendered date	Composition of the Tribunal	Details of the request for Appeal by the Appellant against the EBRD (the Respondent)	Tribunal Decision	Action taken and confirmed by the Bank	Full summary in paras:
2023/AT/01 Final decision issued on 6 October 2023	Maria Vicien-Milburn (Chair) Marielle Cohen-Branche Chris de Cooker	<p>In January 2021, the Appellant filed a complaint against their line manager alleging harassment, bullying, abuse of authority and discriminatory treatment. A facilitated resolution was recommended at the time by the MDHROD, which was declined. The Appellant submitted a report to OCCO alleging misconduct by their line manager. Following an initial inquiry, OCCO determined there was insufficient evidence to find misconduct.</p> <p>The Appellant filed a RRAD maintaining that OCCO had not given their complaint proper consideration, which was referred to the ARC.</p> <p>The ARC issued its report on 30 September 2022 confirming that there was no evidence of harassment or abuse of authority.</p> <p>The Appellant challenged the President's Administrative Review Decision (PARD) taken on 20 October 2022 endorsing the ARC Report.</p> <p>The Appeal, which was filed in January 2023, requested <i>inter alia</i> rescission of the PARD and the initiation of a misconduct investigation. The Appellant also requested moral damages and legal costs incurred.</p>	<p>The Tribunal reviewed the evidence and transcripts and concurred with the ARC's conclusion that the managerial decisions were neither illegal nor irrational and saw no reason to depart from the ARC's analysis that claims of abuse of authority and harassment must be dismissed.</p> <p>The Tribunal rejected the Appeal in its entirety but recommended that the parties make efforts to remedy the tensions between the Appellant and management to ensure that the Appellant's contributions are properly acknowledged.</p>	<p>Action taken by the Bank:</p> <p>Discussions are ongoing regarding potential mediation between the Appellant and their line manager.</p>	26-39

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Case Reference / Decision rendered date	Composition of the Tribunal	Details of the request for Appeal by the Appellant against the EBRD (the Respondent)	Tribunal Decision	Action taken and confirmed by the Bank	Full summary in paras:
2023/AT/02 Final decision issued on 11 May 2023	Thomas Laker (chair) Chris de Cooker Joan Powers	<p>In May 2021 the Appellant was appointed Associate Banker (Band level 5).</p> <p>In March 2022 the Bank issued an updated Directive on Compensation of Staff Members Eligible for Internationally Hired Status (DIR/2022/8) ("IHS Directive"), in which IHS status now applied to Band level 5 staff and above.</p> <p>The Appellant applied for retroactive IHS status, which was denied. The Appellant filed a RRAD which was deemed inadmissible by the President. The President also rejected the Appellant's request to grant a waiver.</p> <p>The Appellant submitted a Statement of Appeal to the Tribunal in February 2023 requesting reversal of the President's decision on admissibility and that the Tribunal remand the case for initiation of the administrative review process and/or direct the President to grant a waiver from the requirements of th IHS Directive.</p>	<p>The Tribunal concluded the Appellant's request to remand their case to the administrative review process failed, as both contested decisions in terms of the IHS directive and the President's decision not to grant a waiver were not subject to the administrative review process.</p> <p>The Tribunal rejected the Appeal in its entirety.</p>	N/A.	40-54

Case Reference / Decision rendered date	Composition of the Tribunal	Details of the request for Appeal by the Appellant against the EBRD (the Respondent)	Tribunal Decision	Action taken and confirmed by the Bank	Full summary in paras:
2023/AT/03 Final decision issued on 20 July 2023	Joan Powers (chair) Chris de Cooker Thomas Laker	<p>In March 2022 the Appellant's candidacy for a vacancy did not proceed beyond the first interview raising concerns about (un)conscious bias by the hiring manager, and how the decision making had been conducted.</p> <p>The Appellant subsequently filed a RARD, which was forwarded to the ARC. The ARC report found that the selection process was tainted by (un)conscious bias and the process was procedurally flawed. It recommended financial compensation as well as payment of moral damages.</p> <p>The President in her PARD concurred that the selection decision was procedurally flawed but did not agree with the ARC that there was (un)conscious bias.</p> <p>The Appellant's appeal sought reversal of the finding of the President that the administrative decision was not tainted by (un)conscious bias, and upward adjustment in the compensation granted.</p>	<p>The Tribunal noted from a previous decision (EBRDAT 2019/AT/09), guidance recommending that the Bank develop a procedure for documenting the short-listing stage, but which had not been followed.</p> <p>In its Decision, the Tribunal rescinded the President's decision in part.</p> <p>The Tribunal ordered the Bank to compensate the Appellant, through the payment of additional moral damages, in the amount of GBP 5,000.</p> <p>All other claims were rejected.</p>	<p>GBP 5,000 was paid to the Appellant in August 2023.</p> <p>Amendments are being made to the Procedure on Filling Vacant Positions in order to address the points made in the Tribunal Decision.</p>	55-66

EBRDAT 2021/AT/04

4. In August 2019 the Appellant submitted a report alleging improper behaviour by their Line Manager. The MDHROD referred the Appellant's complaint to OCCO pursuant to Section IV, Paragraph 1.3(c)(ii) of the Procedure on Harassment-Free and Respectful Workplace (RWP) who, after an initial enquiry, undertook a formal investigation. The Appellant was interviewed and alleged to have been sexually harassed by their line manager. This allegation was also reported to the City of London police. OCCO found that there was insufficient evidence to support the Appellant's allegations of sexual harassment. The Appellant was informed by the MDHROD in December 2019 that the alleged improper behaviour by the Appellant's Line Manager was not tantamount to misconduct and that the matter would be referred for managerial action.

5. In April 2020, the Appellant appealed the MDHROD's decision to the Bank's VPHR, who confirmed the MDHROD's decision. In May 2020 the Appellant filed a Request for a Review of an Administrative Decision ("RRAD") with the President under the Directive on the Administrative Review Process ("ARP") (DIR/2019/16). The President referred the case to the ARC on 4 June 2020.

6. On 15 May 2020, the Appellant tendered their resignation from the Bank.

7. The ARC did not conduct interviews and after several delays issued its ARC Report in May 2021, based on the written reasons from the MDHROD and OCCO for their decisions. The report concluded that the contested decision by the MDHROD be confirmed, and no remedies granted.

8. The PARD, which was issued on 8 June 2021, accepted the ARC's recommendations and awarded GBP 2,000 "in recognition of the Bank's commitment to the expeditious resolution of requests submitted through its administrative review and as a good faith gesture to acknowledge the length of time the ARC took to issue its Report in this matter."

9. In August 2021, the Appellant submitted their initial Statement of Appeal to the Tribunal maintaining that the OCCO investigation was inadequate and contesting the MDHROD's decision. The Appellant also considered the ARC Report to be erroneous in its

findings of fact. The Appellant requested the Tribunal to hold an oral hearing and to grant compensation to remedy their victimization, which had had severe negative consequences on their job and health.

10. The Tribunal concluded that 1) because the MDHROD's decision was flawed and violated Bank law, the administrative decision in this case must be rescinded; 2) the procedures followed by the ARC were also flawed, as the findings of fact were based on an OCCO investigator's summary and not the underlying OCCO report and evidence.

11. The Tribunal issued a Preliminary Decision on 5 February 2022 finding the ARC's fact-finding processes to be insufficient and remanding the case to the newly constituted ARC.

12. Following interviews with witnesses, the ARC issued a second report in September 2022, which found that there was no procedural irregularity or sufficient evidence to support a finding of sexual harassment but concluded that the line manager had abused their authority. On this basis, the ARC recommended to the President that the Appellant receive GBP 10,000 as moral damages, from which the GBP 2,000 already paid be deducted.

13. In October 2022 the President issued a new PARD rejecting the ARC's recommendation.

14. The Appellant filed the continuation of their appeal in January 2023. The Appeal maintained that (i) OCCO's determination was based on a vitiated and irrational process, relying on personal judgment with no reliable evidence; (ii) applicable procedures were severely violated; and (iii) the Bank's evasiveness in providing a transparent response negatively affected core evidence.

15. The Appellant requested an oral hearing and that the case be remanded to the investigation stage. They also requested compensatory remedies, moral compensation and anonymity.

16. The Tribunal noted that the Appeal(s) concerned a former member of staff against their line manager, who has now also left the Bank.

17. The Tribunal's assessment was that the case did not warrant an oral hearing. It also stated that it had sufficient facts to assess the legal situation and would, in its deliberations, take full account of the findings of fact in the ARC's Report, which were based on the testimony of many staff members who knew the Appellant during their employment at the Bank. The Tribunal agreed to anonymity on the understanding that an absolute guarantee cannot be given.

18. The Tribunal found no reason to deviate from the ARC's findings of fact and found no evidence that the Bank inappropriately made any efforts to influence witness testimonies. Interviews were thorough and answers given were extensive and detailed.

19. The Tribunal also found no procedural irregularities in the investigation with regard to the Appellant's complaints, which fulfilled the requirements of the Bank's internal legal framework as laid down in the Directive on Conduct and Disciplinary Rules (DIR/2021/29).

20. As stated in the Tribunal's Preliminary Decision, there were shortcomings in OCCO's investigations, but it was satisfied that the ARC compensated for these deficiencies by speaking to witnesses who had not been previously interviewed by OCCO. The Tribunal considered the Appellant's concerns regarding OCCO's investigations but found no procedural irregularities.

21. In its Decision, the Tribunal addressed the substantive questions whether there was sufficient evidence to conclude that the Appellant had been sexually harassed and/or was the victim of an abuse of authority by the former line manager. The Tribunal, applying the standard of preponderance of evidence, concluded there was not sufficient proof that the Appellant had been sexually harassed and, therefore, as the burden of proof was not met, upheld the Bank's decision to reject the Appellant's claim.

22. With regard to the allegations by the Appellant of their line manager's abuse of authority, the Tribunal considered whether the line manager had improperly used their position of authority against the Appellant. It also took into account that managers are expected to give honest and constructive feedback to those they supervise. The Tribunal

recognised the Appellant's line manager should have been more temperate in their management style when criticising the Appellant's unsatisfactory work performance and poor conduct, however the Tribunal did not see sufficient evidence that the line manager had exceeded their authority or entered into the sphere of bullying, harassment or abuse of power.

23. The Tribunal concluded that the Appellant's appeal was unfounded in its entirety.

24. The Tribunal took note that the proceedings concerning the Appellant's harassment complaint began in August 2019. Following the initial ARC report, the President awarded the Appellant GBP 2,000 in recognition of the slowness of the process. The process was further delayed as the Tribunal had reason to remand the case to the ARC for additional findings of fact, increasing the length of proceedings further. Given the sensitivity of its subject, and the negative effects of the unduly lengthy proceedings on the Appellant's well-being, the Tribunal found it appropriate to award a total sum of GBP 5,000 as compensation, from which the amount of GBP 2,000 already paid to the Appellant would be deducted.

25. In September 2023, and in order to comply with the Tribunal Decision, the Bank awarded the Appellant the sum of GBP 3,000.

EBRDAT 2023-AT-01

26. In January 2021, the Appellant filed a complaint to the MDHROD, against their line manager, alleging harassment, bullying, abuse of authority and discriminatory treatment. A facilitated resolution was recommended at the time by the MDHROD, which was declined by the Appellant. The Appellant proceeded to submit a report to OCCO alleging misconduct by their line manager. Following an initial inquiry OCCO determined there was insufficient evidence to conclude misconduct.

27. The Appellant filed a RRAD maintaining that OCCO had not given their complaint proper consideration, which was then referred to the ARC.

28. The ARC issued their report on 30 September 2022 confirming there was no evidence of harassment or abuse of authority and that there was no evidence of any breach of the Bank's internal policies nor of any other procedural irregularity.

29. On 20 October 2022 the President issued their PARD on the ARC report, agreeing with the conclusions of the ARC.

30. On 16 January 2023 the Appellant submitted their Statement of Appeal to the Tribunal. The Appellant requested rescission of the PARD arguing it was unlawful because the ARC and OCCO applied incorrect legal tests with regard to burden of proof and failed to provide a demonstrable basis for their decisions or to consider relevant factors such as the Appellant's perspective.

31. The Tribunal examined whether OCCO and the ARC had properly interpreted the Code of Conduct for EBRD Personnel, which defines harassment, bullying and abuse of authority, and also addressed the OCCO investigative process and the ARC process. The Tribunal reviewed the records and notes made by the OCCO Inquiry Officer and found that the initial inquiry conducted by OCCO to determine whether the behaviour of the accused could constitute misconduct and should be referred for an investigation, was lawful and was correctly conducted under the rules of the Bank and international administrative law. The Inquiry Officer determined there was insufficient evidence to warrant moving forward to a formal investigation of whether misconduct had occurred. The Tribunal found that OCCO provided demonstrable reasons for its conclusions.

32. The Appellant also requested new evidence be admitted for some matters that had come to light since the issuance of the ARC Report. The Tribunal examined the evidence and found that the matters referred to were available to the Appellant prior to the conclusion of the ARC proceedings and could not constitute new evidence. The Tribunal therefore rejected the Appellant's request to enter new evidence on to the record.

33. The Tribunal next assessed the adequacy of the ARC's investigation into the Appellant's claims, addressing first the issue of the burden and standard of proof and second, whether the process had manifest errors in the findings of fact.

34. The Appellant maintained *inter alia* that the ARC failed to take into account the Appellant's perception of the line manager's conduct and its impact, including consideration

that the line manager's conduct was offensive and belittling. According to the Appellant, the ARC also failed to attach any weight to the comments of colleagues or consider the cumulative effect of the allegations. The Appellant felt the ARC should have considered whether the line manager's conduct amounted to misconduct and that subjecting their claims to a preponderance of evidence standard was improper.

35. The Tribunal noted that, in its report, the ARC determined that in international administrative law, the burden of proof concerning harassment and abuse of authority lies with the individual making those allegations, and that the ARC appropriately referenced the proper burden and standard of proof in its report and applied them both to the facts of this case and to its review of the OCCO investigation. As the ARC applied the proper burden and standard of proof, the Tribunal rejected the Appellant's claims on this point.

36. The Tribunal also considered the sufficiency of the evidence before the ARC and the Appellant's allegations of manifest errors of fact in the ARC report. The Appellant maintained *inter alia* the ARC's investigations did not properly address the line manager's pattern of behaviour, the re-allocation of clients or work, which impeded the ability of the Appellant to work effectively and deliver objectives. The Tribunal found the ARC considered the totality of the Appellant's documentary evidence plus it held hearings interviewing witnesses, and correctly concluded that the evidence did not support the allegations made by the staff member against their line manager and that most of issues related to business strategies and managerial options that do not reach the threshold of misconduct. The Tribunal reviewed the evidence and transcripts and concurred with the ARC's conclusion that the managerial decisions were neither illegal nor irrational and saw no reason to depart from the ARC's analysis that claims of abuse of authority and harassment must be dismissed.

37. The Appellant requested anonymity and Tribunal agreed to limit to the maximum extent the possibility of identification of the Appellant or other staff members concerned or facts that may identify them.

38. The Tribunal rejected the Appeal in its entirety, but noting that the Appellant is a valued banker, recommended that the parties make efforts to remedy the tensions present between the Appellant and management to ensure that the Appellant's contributions are properly

acknowledged.

39. Discussions are ongoing regarding potential mediation between the Appellant and their line manager.

EBRDAT 2023/AT/02

40. The Appellant submitted a Statement of Appeal in February 2023 seeking the status of International Hired Staff (“IHS”), as applied to staff who are appointed to or transfer to mobility assignments on or after 1 April 2022 in accordance with the Directive on Compensation of Staff Members Eligible for Internationally Hired Status, DIR/2022/8, issued in March 2022 (“IHS Directive”).

41. The Tribunal noted that the Appellant was appointed as ‘Associate Banker (Band level 5)’ as from 1 May 2021. At that time, due to the Bank’s internal rules, only staff in positions higher than Band level 5 were eligible for IHS status and the associated benefits and allowances.

42. The Appellant raised the issue of applying retroactively for IHS status with the Head of Employee Relations and People Solutions & Advisory (“Head of ER”), who informed the Appellant in June 2022 that their application for IHS status had been denied as there was no provision in the Staff Handbook to make retroactive changes.

43. On 5 August 2022 the Appellant submitted a RRAD to the MDHROD, which was rejected on 5 September 2022 on the grounds that the Head of ER’s message did not give rise to a new individual decision in relation to IHS eligibility that would be subject to the administrative review process in accordance with the Directive on the Administrative Review Process (DIR/2022/1) (“ARP Directive”).

44. On 31 October 2022, the Appellant submitted a second RRAD to the Bank’s President, which the President deemed inadmissible as there had been no individual decision. Further, the President rejected the Appellant’s request to waive the requirements of the internal rules on IHS status.

45. On 16 February 2023, the Appellant submitted the present appeal, in which the Appellant maintained their request for administrative review was admissible, given that following their request for application of the new IHS policy, the Appellant received a new individual response to this request. The Appellant requested the Tribunal to reverse the President's decision on admissibility and remand the case for initiation of the administrative review process and/or to direct the President to grant a waiver from the requirements of the IHS Directive, which had been denied.

46. The Tribunal noted that, in March 2022, the Bank had adopted new rules on eligibility for IHS status, applicable for appointments and transfers to mobility assignments on or after 1 April 2022. From then on, staff appointed or transferred to positions at Band level 5 or higher would be considered eligible for IHS status.

47. With regard to the request in the Appeal for the Tribunal to remand the case, the Tribunal noted that the Appellant was contesting the new version of the IHS Directive insofar as it excluded their eligibility as such, rather than a legal error/mistake in applying the Directive to their individual case. With respect to the denial by the President to grant a waiver, the Tribunal noted that any related decision be considered as an individual decision taken by the President, which is reviewable by the Tribunal in accordance with Section IV, para. 3 (c) (i) of the ARP Directive.

48. The Tribunal concluded the Appellant's request to remand their case to the administrative review process failed, as neither contested decision, i.e., the application of the IHS Directive and the President's decision not to grant a waiver, was subject to the administrative review process. The Bank's internal law does not foresee a prelitigation procedure in such cases and establishes the Tribunal's competence to review such decisions directly.

49. The Tribunal's evaluation took into account 1) the contested decision of 21 June 2022, and 2) the subject of the dispute, i.e. the President's decision on admissibility as well as her decision to not allow an exception, based on the Appellant's circumstances, to retroactively apply IHS status.

50. The Tribunal noted that Section II of the IHS Directive includes clear and specific rules

about eligibility for IHS status to different groups of staff members, depending on their respective dates of appointment or transfer to mobility assignments. Thus, these dates constitute a “requirement” of the Directive at stake, from which the President, pursuant to Section V of the IHS Directive, may—in her discretion—grant a deviation.

51. The Tribunal did not find a legal error regarding the President’s discretionary decision not to grant a waiver and to deny the Appellant’s request, as the President was fully aware of the relevant facts of the Appellant’s situation and took them into consideration.

52. The Tribunal was not competent to address the Appellant’s contention regarding the alleged unfairness of not applying the new rules of the IHS Directive to them. Such handling would exceed the Appellant’s request to remand the case to the level of administrative review and, therefore, would violate the principle of *ne ultra petita*.

53. The Appellant requested anonymity for both their identity as well as that of their Resident Office, which was granted by the Tribunal, who agreed to limit to the maximum extent possible *inter alia* any exposure of facts that may identify participants in the process.

54. In its decision dated 11 May 2023, the Tribunal rejected the Appeal in its entirety.

EBRDAT 2023/AT/03

55. This case concerned a challenge by the Appellant to a recruitment process in which their candidacy did not continue beyond the first interview round. In the pre-litigation stages, the Appellant claimed not to have received full and fair consideration in the process and raised two principal arguments: (i) the selection process was procedurally flawed, and (ii) the selection process was tainted by the involvement of the hiring manager who was (un)consciously biased. The case was heard by the ARC, which found in favour of the Appellant as to both aspects and recommended to the President of the Bank that the Appellant be compensated accordingly, in the amount of three months’ salary for loss of chance and GBP 5,000 for moral damages, based on medical evidence.

56. The President of the Bank accepted the ARC’s finding as to procedural flaws in the selection process following a breach of the requirements of the Bank’s Procedure for Filling

Vacancies (PRO/2021/21) and the recommendation for financial compensation as well as moral damages. However, the President disagreed with the ARC's overall conclusion that there was unconscious bias on the part of the hiring manager, finding that this was not well founded.

57. The Appellant filed a Statement of Appeal in April 2023, challenging the validity of the President's decision and her reasoning for rejecting the ARC's finding of (un)conscious bias by the hiring manager in connection with the impugned selection process.

58. The Appellant requested anonymity, which was granted by the Tribunal, on the basis that it would limit to the maximum extent possible any exposure of facts that may identify participants in the process.

59. In the Statement of Appeal, the Appellant challenged the President's decision to reject the ARC's findings concerning (un)conscious bias, claiming it was an error to dismiss the ARC's findings that the selection process was tainted by bias. The compensation granted by the President in the PARD was redress only for the losses due to procedural breaches and moral injury. The Appellant requested additional compensation to account for the bias that tainted the process plus the inadequate redress for the Bank's material breaches of its own internal law, and the impact this had had on the Appellant.

60. The Appellant sought the following remedies – first, reversal of the finding of the President that the administrative decision was not tainted by (un)conscious bias; and second, upward adjustment in the compensation granted/remedial measures in the amount of 15 months' salary.

61. In its evaluation, the Tribunal relied on the facts found by the ARC but made its own legal assessment of the validity of the President's decision, in particular with respect to the issue whether the recruitment process was tainted by (un)conscious bias on the part of the hiring manager, such that the Appellant's candidacy did not receive full and fair consideration.

62. The Tribunal noted that that the ARC had found that the Appellant had not been

afforded full and fair consideration for the applied for position. The ARC report took into consideration *inter alia* the factual background of the case and looked at the professional and inter-personal relationship between the Appellant and the hiring manager over the years. The ARC noted there were two procedural breaches in the selection process. First, there was a lack of involvement by HR in the process and the hiring manager's ultimate selection of a candidate who had not passed their probationary period. Second, the hiring manager did not select the Appellant to be interviewed in the second round, based on "[their] own perceptions and (un)conscious bias about [the Appellant's] competencies for the role."

63. It was the view of the Tribunal that the serious procedural flaws in the recruitment process identified by the ARC preclude it from reaching a firm view as to whether the Appellant was treated on an equal footing with other candidates and with full impartiality. However, the Tribunal noted that in a previous case (EBRDAT 2019/AT/09), it had recommended that the Bank develop a procedure for documenting the short-listing stage, which would include reasons as to why individual candidates have or have not been short-listed. However, this guidance was not followed in the initial interview process in this case, such that it was not possible for the Tribunal to assess whether the decision to exclude the Appellant from the second round of interviews was fair and impartial.

64. The Tribunal thus concluded that the recruitment process did not include measures to preclude any potential bias in the consideration of the Appellant's candidacy. In the view of the Tribunal, this defect, and the impact it had on the Appellant's health and wellbeing, warranted the payment of additional moral damages to the Appellant.

65. In its Decision dated 20 July 2023, the Tribunal rescinded the President's decision in part and ordered the Bank to compensate the Appellant through the payment of additional moral damages in the amount of GBP 5,000. All other claims were rejected.

66. The Bank implemented the Decision by awarding GBP 5,000 to the Appellant in August 2023. Amendments are also being made to the Procedure on Filling Vacant Positions in order to address the points made in the Tribunal Decision.

PART III INFORMATION REGARDING THE ADMINISTRATIVE TRIBUNAL, ITS COMPOSITION AND ITS ACTIVITIES IN 2023

67. On 23 March 2006, the Board of Directors approved the Review of the Grievance and Appeals Procedures (BDS06-039 final), and on 25 July 2006 it approved the implementation of the Appeals Procedures (BDS06-132 and BDS06-132(rev1)). The Appeals Procedures became effective on 3 December 2007 upon the appointment of the judges of the Administrative Tribunal. As of 1 April 2019, the Appeals Procedures were transposed into the new “directive” template and became the Appeals Process Directive (DIR/2019/14). Effective from 9 November 2021 the Directive on the Appeals Process (DIR/2021/28) was amended, in accordance with the terms of the Appeals Process, following consultation with the Chair of the Budget and Administrative Affairs Committee (BAAC), the Staff Council and the President of the EBRD Administrative Tribunal (EBRDAT).

68. There have been no amendments to the Directive on the Appeals Process (DIR/2021/28) since the last Annual Report of the President of the EBRD Administrative Tribunal.

69. The composition of the Administrative Tribunal during 2023 remained as follows:

- Chris de Cooker was appointed on 3 December 2018. His current appointment end date is 2 December 2024. Mr de Cooker was elected President of the Tribunal on 30 December 2022.
- Maria Vicien Milburn was appointed on 3 December 2018. Her current appointment end date is 2 December 2024.
- Thomas Laker was appointed on 3 December 2020. His current appointment end date is 2 December 2026.
- Joan Powers was appointed on 3 December 2022. Her current appointment end date is 2 December 2025.
- Marielle Cohen-Branche was appointed on 3 December 2022. Her current appointment end date is 2 December 2025.

70. Chris de Cooker attended the BAAC meeting on 6 June 2023 to present his 2022 Annual Report to Board Members. Board of Directors raised questions to the President of the Tribunal on *inter alia* the following issues: the low number of cases, the Bank’s dispute

resolution processes, and comparisons between the EBRD and the tribunals of other IFIs.

71. The Administrative Tribunal met on 8 June 2023 for their Annual Meeting with representatives of stakeholders in the administrative review process (officers of the Bank, the Staff Council, the Staff Legal Advisor and the ARC Chair).

72. The Administrative Tribunal is assisted in its work by the AT Secretariat, who is appointed by the President of the Bank. The function of the AT Secretariat is documented in the Appeals Process Directive and its Rules of Procedure.

PART IV CONCLUSION

73. During 2023, the Tribunal received three new appeals and issued a decision for each of these appeals during the course of the year. In addition, a final decision was issued for an appeal, which was initially lodged in 2021. In 2022, however, the Tribunal remanded this case to the ARC, which issued a new report later that year.

74. This compares with two appeals in 2022, five appeals in 2021 and six appeals in 2020. The appeals of 2023 concerned allegations of abuse of authority, a regulatory issue, and an appeal concerning the recruitment process. The Tribunal will hold a second Town Hall in 2024, which provides an opportunity for staff of the Bank to engage with the Tribunal and the ARC chair to gain first-hand insight and understanding of the Bank's internal dispute resolution system.

Chris de Cooker

President of the EBRD Administrative Tribunal

29 April 2024

**ANNEX 1 BOARD DOCUMENTATION ON APPOINTMENTS AND RE-
APPOINTMENTS OF JUDGES SERVING ON THE ADMINISTRATIVE
TRIBUNAL DURING 2022**

Reappointment of a member of the Administrative Tribunal (BDS23-120)

In September 2023 the Board of Directors approved on a no-objection basis the re-
appointment of Thomas Laker for a second term as a member of the Administrative Tribunal.

ANNEX 2 *CURRICULA VITAE* OF JUDGES SERVING ON THE ADMINISTRATIVE TRIBUNAL DURING 2023

Chris de Cooker (President of the EBRD Administrative Tribunal) (Dutch) has more than 45 years of direct experience in international administrative law. He was an academic for nine years at the University of Leiden, where he developed a special course on international administration. Between 1984 and 2011 (when he retired), Mr de Cooker worked at the European Space Agency in a number of posts, including Head of Staff Regulations and Central Support Division and Head of International Relations Department. Since 2010, he has been a judge at a number of international arbitration and administrative tribunals. He is currently President of the Asian Development Bank Administrative Tribunal, of the Administrative Tribunal of the ICMD, and of the SKAO Independent Employment Tribunal, as well as judge at the GAVI Appeals Tribunal and the OECD Administrative Tribunal. He was President of the NATO Administrative Tribunal from 2013-2023 and an *ad hoc* judge for staff appeals in the Special Tribunal for Lebanon in 2018 and 2021. He was Chair of the Appeal Board of the Global Fund from 2016-2020 and of the BIPM Appeals Committee from 2020-2023. He is a member of the Panel of Independent Reviewers of the Asian Infrastructure Investment Bank and Mediator in ITER. He has been advising many international organisations, in particular on their respective internal justice systems.

Marielle Cohen-Branche (French) has over 20 years of judicial experience and served as a judge at the French *Cour de Cassation* from 2003 to 2012. Ms Cohen-Branche served as a member of the World Bank Sanctions Board from 2007 to 2012 and was a member of the Sanctions Commission at the French Stock Exchange Regulator (*Autorité des Marchés Financiers – AMF*), where she currently acts as their ombudsperson. Ms Cohen-Branche was a senior executive and legal manager at an international banking institution. Ms Cohen-Branche was appointed as a judge to the World Bank Administrative Tribunal in 2013 and in 2019 was appointed as the Vice President of the Tribunal. Ms Cohen-Branche was awarded the French *Légion d'honneur* and the *Mérite national* for her distinguished national service.

Thomas Laker (German) has over 30 years of experience as a Judge of administrative law courts. In addition to his office as Presiding Judge at the Administrative Tribunal of Hamburg, Germany, for the past 15 years, Mr Laker has served as a Judge on various international

administrative tribunals for several different international organisations, among them, the United Nations, the United Nations Relief and Works Agency for Palestine Refugees, the Organization for Security and Co-operation in Europe the Council of Europe, the North Atlantic Treaty Organisation, the International Tribunal for the Law of the Sea and the Kosovo Specialist Chambers. Mr Laker was among the first generation of judges to have established the new system of administration of justice at the United Nations and served as the President of the United Nations Dispute Tribunal twice, from 2010-2011 and from 2013-2014.

Joan Powers (American) has over 35 years of legal experience in the field of international administrative law. Ms Powers was in the Legal Department of the International Monetary Fund from 1984 to 2009. As Assistant General Counsel of the IMF, she had principal responsibility for providing advice on administrative legal matters, in particular, the legal aspects of the employment framework and the internal justice system, including cases before the Grievance Committee and the IMF Administrative Tribunal, the standards of conduct and the related investigative and disciplinary processes. Since retiring from the IMF, she has been a consultant to over a dozen public international organizations on various aspects of their internal legal framework. Ms Powers is currently a judge on the GAVI Appeals Tribunal. She has served as the Chair of the Appeals Commission of the International Federation of Red Cross and Red Crescent Societies since 2018, and as the Chair of the Appeal Board of the World Intellectual Property Organisation since 2020.

Maria Vicien-Milburn (Spanish and Argentinian) is an independent international arbitrator in commercial and investment disputes, and a specialist in public international law. She is the Chair of the World Bank Sanctions Board, and judge of the Administrative Tribunals of the Inter-American Development Bank and the International Monetary Fund. She has over 30 years' experience as a senior international civil servant at the United Nations. She served as General Counsel of the United Nations Economic, Social and Cultural Organisation (UNESCO) between 2009 and 2014, and prior thereto between 1999 and 2009 as Director and Deputy of the General Legal Division, Office of the Legal Advisor of the United Nations. She acted for 14 years as the Registrar of the United Nations Administrative Tribunal. She has also been engaged by the International Criminal Court on a short term assignment as a dispute resolution expert.

ANNEX 3 GLOSSARY OF TERMS

Appeal	Statement of Appeal
ARC	Administrative Review Committee
ARP	Administrative Review Process
ARP Directive	The Bank's Directive on the Administrative Review Process (DIR/2022/1)
ARC Report	ARC Report and Recommendations
Appeals Process Directive	The Bank's Directive on the Appeals Process (DIR/2021/28)
CCO	Chief Compliance Officer
Code of Conduct	Code of Conduct for Bank Personnel effective 11 November 2021
EBRD	European Bank for Reconstruction and Development
EBRDAT	EBRD Administrative Tribunal
Head of ER	Head of Employee Relations and People Solutions & Advisory
IHS	International Hired Staff
MDHROD	Managing Director, Human Resources & Organisational Development
OCCO	Office of the Chief Compliance Officer
PARD	President's Administrative Review Decision
President	President of the EBRD
RRAD	Request for Review of an Administrative Decision
RWP	Procedure on Harassment-Free and Respectful Workplace (RWP)
Tribunal	EBRD Administrative Tribunal
VPHR	Vice President for Human Resources