

# Internal justice at CERN

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# CERN in a nutshell

## Conseil Européen pour la Recherche Nucléaire World's largest Particle Physics Laboratory (1954)

Yearly Budget  
**~1200 MCHF**  
(~ 1100 MEUR)

*Experiments  
financed  
externally*



### Personnel

2600 Staff  
800 Fellows

200 Students

13000 Users from  
500 Universities

2000 External  
companies

### 22 Member States

Austria, Belgium, Bulgaria, Check Republic, Denmark, Finland, France, Germany, Greece, Italia, Israel, Hungary, Holland, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden, Switzerland, UK.

### 6 Observers

EU, Japan, JINR, Russia, UNESCO, USA

### 6 Associate Member States

Cyprus, India, Pakistan, Serbia, Turkey, Ukraine, Croatia



# Internal Justice

- Members of the personnel\* may challenge an administrative decision by the Director-General where it adversely affects the **conditions of employment or association** that derive from their contract or from the Staff Rules and Regulations.
- If permitted by the Staff Rules and Regulations, a decision may be challenged internally within the Organization:
  - through a **review procedure**; or (Also known as management review in other IOs)
  - through an **internal appeal procedure**. In this case, the Joint Advisory Appeals Board (JAAB) shall be consulted by the Director-General prior to taking any final decision on the merits. (Also known as Administrative review in other IOs)
- The submission of a request for a review or an internal appeal **shall not suspend** the application of the challenged decision.

*\* It should be noted that since administrative decisions subject to review or internal appeal primarily concern the employment conditions of MPEs, the internal justice system is rarely invoked by the MPAs.*



# Internal Justice

	Request for Review	Internal Appeal
<b>Time limits</b>	Within <b>30 calendar days</b> of notification of the challenged decision.	Within <b>60 calendar days</b> of notification of the challenged decision.
<b>Form</b>	<ul style="list-style-type: none"> <li>• Shall be addressed to the Director-General</li> <li>• Shall be signed by the member of the personnel and</li> <li>• Shall include the following basic documents:               <ol style="list-style-type: none"> <li>a) copy of the challenged decision or of the request for a decision;</li> <li>b) written summary of the reasons.</li> </ol> </li> <li>• Shall relate to individual members of the personnel</li> </ul>	
<b>Receivability</b>	Compliance with scope, time limit, form and lodged by a member of personnel	
<b>Procedure (when receivable)</b>	The DG shall take a <b>decision on the merits within 60 calendar days</b> of receiving it. The procedure shall be <b>confidential</b> . He shall take a new decision, which shall cancel and replace the initial decision and may be the subject of an internal appeal.	The DG shall consult the JAAB before deciding on its merits. The procedure shall be <b>adversarial and confidential</b> . The JAAB may at any time take any <b>investigative measures</b> which it deems necessary. The procedure may last <b>several months</b> (6 to 12),
<b>Composition</b>	Not applicable	<ul style="list-style-type: none"> <li>• one member appointed by the Director-General;</li> <li>• one member appointed by the Staff Association;</li> <li>• one member chosen by the other two members (by mutual agreement)</li> </ul>



# Disciplinary Board

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- The Director-General may take disciplinary action against members of the personnel who, whether intentionally or through carelessness, are guilty of a breach of the Staff Rules and Regulations.
- Having regard to the gravity of the breach or misconduct in question, the disciplinary action may be:
  - a warning;
  - a reprimand;
  - suspension without remuneration or pay for a period not exceeding six months;
  - downward adjustment of the staff member's salary;
  - demotion;
  - dismissal.
- The Director-General shall consult the Joint Advisory Disciplinary Board (JADB) prior to taking any disciplinary action other than a warning or a reprimand or summary dismissal for particularly serious misconduct. In the latter situation, the Director-General may decide to dismiss without notice and without consulting the JADB.

# Complaints before the Administrative Tribunal of the International Labour Organization (ILOAT)

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- A decision may be challenged externally by filing a complaint before the ILOAT:
  - when internal procedures have been exhausted and the decision is final;
  - when an internal challenge is not permitted by the Staff Rules and Regulations\*; or
  - when the complainant is authorised to proceed directly to the Tribunal

# Complaints before the Administrative Tribunal of the International Labour Organization (ILOAT)

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\* An internal appeal shall not be lodged against the following decisions:

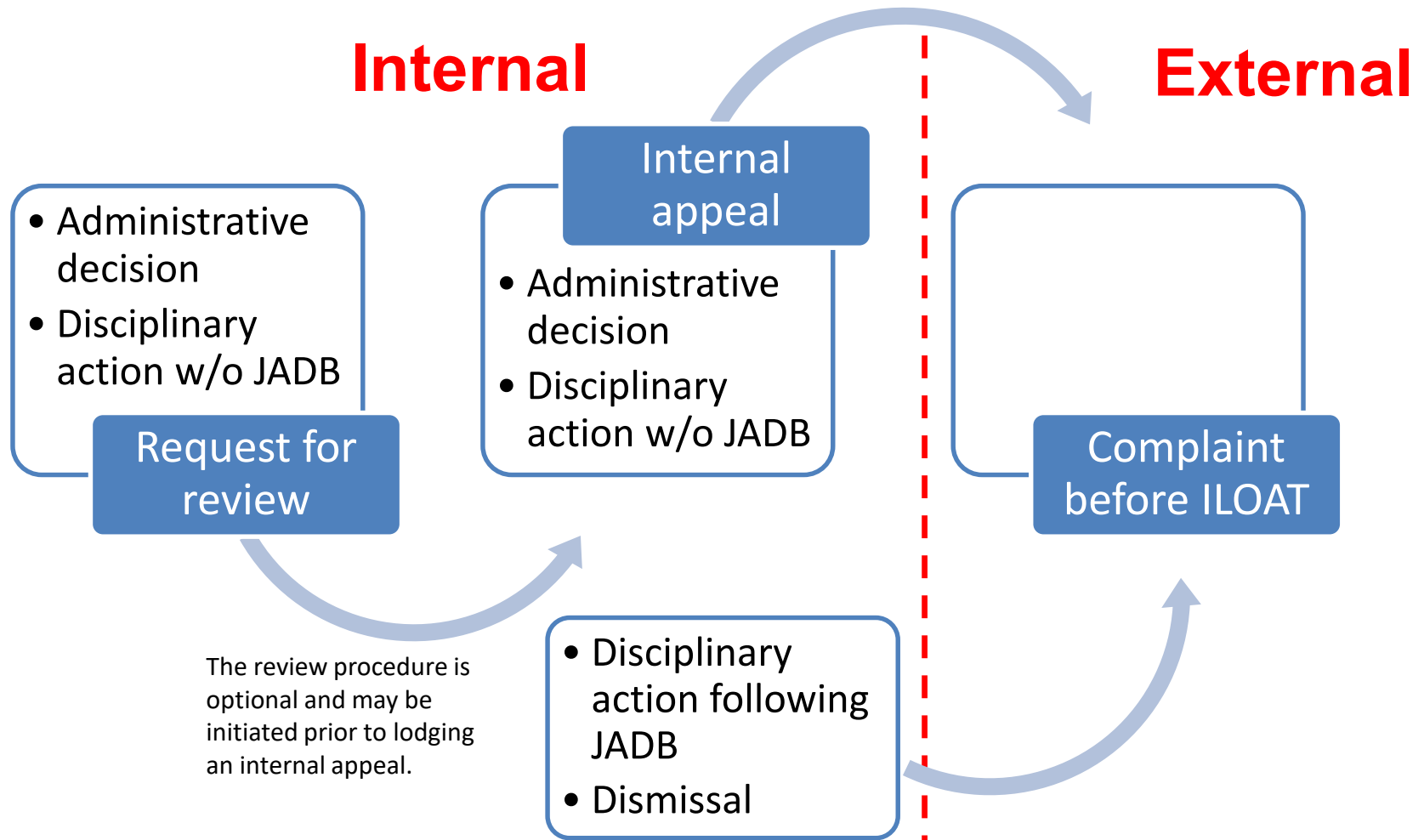
- a) dismissal notified during the probation period;
- b) dismissal of staff members appointed by the Council;
- c) dismissal for particularly serious misconduct;
- d) a decision taken following recommendations by the Joint Advisory Rehabilitation and Disability Board;
- e) a decision taken following recommendations by the Joint Advisory Disciplinary Board;
- f) a decision taken as a result of the procedure for the settlement of disputes provided for in the Rules of the Organization's Health Insurance Scheme.

Any complaint against such decisions shall be referred directly to the ILOAT.





# Internal/external justice flow chart



# Statistics 2014-2018

Year	Int/Ext Justice			Disciplinary actions						
	Review request	Internal appeal	Complaint before ILOAT	Warning	Repri-mand	Site ban	Downward salary adjustment	Demotion	Dismissal in probation period	Dismissal
2018	2	2*	10*	?	?	?	?	?	?	?
2017	4	17	3	3	2	1	1	1	1	
2016	2	3		5	12	1	2		2	
2015	3	2		6	3	3	1		2	2
2014	2	1	4	2	4		4			4
<b>Total # cases</b>	<b>13</b>	<b>25</b>	<b>17</b>	<b>16</b>	<b>21</b>	<b>5</b>	<b>4</b>	<b>1</b>	<b>5</b>	<b>6</b>
success rate #	1/13	1/23	0/7	* Outcome not yet known, source: annual HR report 2014-2017; 2018: SA input, might be incomplete						
success rate (%)	8	4	0							

# Statistics 2014-2018

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- Very low use of internal justice processes (which is quite reassuring)
  - Scientific Organization and Culture
  - SRR and circulars well written, resulting from concertation process
  - Sign of a relative social peace (and discerning assistance from Staff Association in orienting each case)
  - Very tight time limits for complainants
- Very low success rate in Review and Appeal procedures (which is quite concerning)
  - SRR and circulars well written, resulting from concertation process → no much room for interpretation
  - Lack of equality of means by design of Review and Appeal processes
  - Cases are mainly assessed on the form rather than on merits
  - HR and legal services are quite efficient and full of resource to defend the Organization
- One «peak» of cases resulting from the last 5-yearly review (16 internal appeals and 7 files before the ILOAT)
- Main challenged decisions: advancement, disciplinary action, award of indefinite contract. Pension and Health insurance issues are treated by ad hoc bodies.

# Comparison with other IOs

## Context

- In 2014, the European Space Agency (ESA) decided to review its Internal Justice System, with a view to modernizing it
- A benchmark exercise was launched in 2017 near five identified IOs:
  - Council of Europe (CoE);
  - Organisation for Economic Cooperation and Development (OECD);
  - European Organization for Nuclear Research (CERN);
  - International Labour Office (ILO) and
  - European Patent Office (EPO).
- The agreed methodology of work consisted of consultation with the Management and Staff Representatives of the above mentioned IOs by way of a written questionnaire sent to all participants (Management and Staff Representatives) followed by an interview with all participants
- Following the above mentioned benchmark exercise, a comparative analysis and synthesis report was sent by ESA Consultant (Ilona SUDRES) in 2018 to all participants, thus including CERN Staff Association and Management
- The following slides, which aim at providing comparative information and data on the Management Review (MR) and Administrative Review (MR) of 5 IOs, are based on information contained in the above mentioned report

	CoE	OCDE	CERN	ILO	EPO
Staff members	2500 HQ 300 FO	3300 HQ	3400 MPEs 13000 MPAs	1000 HQ 1800 FO	3772 HQ 3029 RO

# Comparison with other IOs

## Management review (MR)

	CoE	OCDE	CERN	ILO	EPO
<b>Procedural stage wrt AR*</b>	Choice but at least one	Choice but at least one	optional	mandatory	mandatory
<b>Time limits (claimant)</b>	30 days	2/4 months	30 days	6 months	3 months
<b>Time limits (IO response)</b>	1 month	1 month	2 months	3 months	3 months
<b>Perceived Effectiveness</b>	most emerging conflicts are not pursued further to the next stage of the dispute settlement procedure			about half of the requests for Management Review are pursued further	
<b>Kind of challengeable decisions</b>	All kind of decisions are challengeable	Some restrictions	Some restrictions	Some restrictions	Some restrictions

\* Considering exhaustion of internal remedies & pre-requisite for an Appeal/Complaint to the Administrative Tribunal

# Comparison with other IOs

## Management review (MR) – feedbacks from the participants

- Management Review is a good practice, in theory, because it should allow for an **early** settlement of the dispute.
- However, while some participants were satisfied with the Management Review process within their organization, others were of the view that it was ineffective in practice. The main reason given for this ineffectiveness was the fact that staff members reviewing the decisions through Management Review were **often the same staff members** than those having initially taken or recommended the decision being challenged, thereby making it difficult, if not impossible, to have a fresh look at it when requested to review it.
- It also appeared that this early stage of the dispute settlement procedure seemed to be more effective and positively commented upon in IOs where this (written) process was accompanied (or even preceded) by **face to face exchanges** between staff members and Management.
- The importance of oral communication and **early informal conflict resolution tools** (and willingness on the part of both parties to resolve the conflict at this level) was emphasized by some participants as being necessary for an effective Management Review.

# Comparison with other IOs

## Administrative review (AR)

	CoE	OCDE	CERN	ILO	EPO
<b>Procedural stage wrt MR*</b>	Choice but at least one	Choice but at least one	mandatory	mandatory	mandatory
<b>Time limits (claimant)</b>	30 days	6 months	60 days	1 month	3 months
<b>Time limits (IO response)</b>	One year max. 4-6 months	No strict limit 4-6 months	No strict limit 4-6 months	No strict limit 2,5 years	No strict limit 2,5 years
<b>Internal Advisory body composition</b>	4 staff members including a Chair	6 staff members + 1 external Chair	2 Staff Members + 1 internal Chair	2 staff members + 1 external Chair	2 staff members + 1 external Chair
<b>Legal assistance and representation by lawyer in hearings</b>	allowed	Allowed (not in re-evaluation commission)	<b>not allowed</b> Only assistance by 1 MP or former MP	allowed	allowed
<b>Average # case/year</b>	<10			>20	
<b>Perceived effectiveness</b>	70% favourable to staff members	50% favourable to staff members	<b>100% unfavourable</b> to staff members	50% favourable to staff members	90% unfavourable to staff members
<b>Filtering rate **</b>	30 %	70 %	85 %	40-50%	60 %

\* Considering exhaustion of internal remedies & pre-requisite for an Appeal/Complaint to the Administrative Tribunal.

\*\* The filtering rate is the proportion of cases which are **not** pursued further to the Administrative Tribunal.

# Comparison with other IOs

## Administrative review (AR) – feedbacks from the participants

- **No obvious causal link** in term of effectiveness could be drawn in relation to a specific IJS and, in particular, to specific features such as the presence of an external Chair and the possibility for staff members to benefit from legal assistance and representation.
- The vast majority of the participants were **not satisfied** with the effectiveness of their respective internal advisory body.
- The main reasons given for this dissatisfaction were the **lack of training** of members, the **lack of impartiality** of members (bias towards the Administration or bias towards the staff member), the **inequality of means between the parties** and the **length of the process**.
- This conclusion is in line with the finding that staff members don't avail themselves of Administrative Review where this stage of the process is not mandatory (CoE and OECD).



# CERN Staff Association Position

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- The CERN Staff Association **is not satisfied** with the current processes. Especially, perceived of actual conflict of interest, lack of impartiality, inequality of means between the parties and the length of the process are the main identified drawbacks.
- Working on the internal justice procedures and investigations at CERN is **necessary and urgent**. This observation is shared by several services, and across different levels in the Organisation.
- The Staff Association recalled that as an international organisation, CERN has the duties of a nation in respect of its personnel and must put in place **exemplary processes** related to enquiries and internal justice.
- The Staff Association has requested since 2017 that a **working group** be established as soon as possible, under the aegis of the HR Department with the participation of the SA.
- A first informal meeting is planned next week and **formal discussions in 2020**.



# CERN Staff Association Position

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## Principles to follow

- The general principles of law applicable to the international civil service and applied by the Administrative Tribunal are of prime importance. They include:
  - The **staff's right** to, *inter alia* : due process (including the principle of equality of arms [3688C31] and the adversarial principle [3688C31]), to privacy, and to be heard before any action which affects its status;
  - The **Organization's duties** of, *inter alia* : care, good faith, and not to cause staff unnecessary and undue injury; and
  - The **general principles** of equal treatment, proportionality, and *tu patere legem quam ipse fecisti*.

# CERN Staff Association Position

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## Internal Justice procedures: SA proposals (I)

- In appeal and disciplinary procedures, staff members shall have the right to seek the assistance and presence of **counsel from within or without the Organization**
- Replace the request for review procedure by an **informal conflict resolution and mediation procedure** which promotes **face to face and direct exchanges** between staff members and Management at an early stage of the dispute settlement
- Extend the time limits for the claimant to start
  - the request for review procedure from 30 calendar days to three months
  - the internal appeal procedure from 60 calendar days to six months

# CERN Staff Association Position

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## Internal Justice procedures: SA proposals (II)

- Reinforce the parity of JAAB and JADB by **jointly defining the rules of procedure & procedural steps** and making them transparent to all parties
- Avoid perceived of actual conflict of interest by **assigning the hearing organization** to another service than HR (HR currently being Board organizer and defendant party)
- Although, individual request for review and internal appeal may be submitted and dealt with on a group basis, **allow class actions**, i.e. collective requests for review and collective internal appeals
- On an exceptional basis (case involving top management, where conflict of interest cannot be avoided through the internal procedure), **have recourse to an external arbitration system**

# Concluding remarks

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- At Cern, the administrative decisions can be challenged internally through the review procedure (optional) or the internal appeal procedure
- Very low use of internal justice processes (<10/yr) and very low success rate (0%)
- SA is not satisfied with the current processes. Especially, perceived of actual conflict of interest, lack of impartiality, inequality of means between the parties and the length of the process are the main identified drawbacks
- Regarding Internal Justice procedures, the main enhancements should be to:
  - get the right of assistance and presence of counsel from within or without the Organization
  - extend the time limits for the claimant to start the procedure (3/6 months instead of 30/60 days for respectively the request for review and internal appeal)
- **We are looking very much forward to sharing your experience and receiving your feedbacks on these proposals during the discussion session.**

# Acknowledgments

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- Ilona Sudres, Consultant and responsible for the ESA survey in 2017-2018.
- Staff Association Individual Cases Commission
- Staff Association Legal Commission
- Colleagues nominated by SA in JAAB and JADB

**Big thank-you for your attention  
and your questions !**