

DECISION OF THE COUNCIL OF THE SQUARE KILOMETRE ARRAY OBSERVATORY
ESTABLISHING THE INDEPENDENT EMPLOYMENT TRIBUNAL

REGULATIONS OF THE TRIBUNAL

1. In accordance with Article 8(3)(g) of the Convention establishing the Square Kilometre Array Observatory of 12 March 2019, the Council hereby establishes an Independent Employment Tribunal and provides for its Regulation and Rules of Procedure.
2. In discharging their functions in a Member State, and except to the extent that in any particular case such immunity has been waived by the Council as set out in Regulation 3 below, the Judges of the Tribunal enjoy the following privileges and immunities:
 - a. Immunity from legal process in respect of all acts performed by them in their official capacity, including their words spoken or written. This immunity shall continue to be accorded even after the termination of their appointment with the Tribunal. This immunity shall not apply to road traffic offences and damage resulting from a vehicle driven by them.
 - b. Inviolability of all their official papers and documents related to the exercise of their function within the scope of their official capacity as a Judge of the Tribunal.
3. The privileges and immunities provided for in these Regulations are not established for the personal benefit of those persons in whose favour they are accorded. Their purpose is solely to ensure unimpeded functioning of the Tribunal and the complete independence of the persons to whom they are accorded.
4. The Council have a duty to waive any relevant immunity in all cases wherever retaining it would impede the course of justice and it can be waived without prejudicing the interests of the SKAO and the independence of the Tribunal.
5. The working language of the Tribunal is English.

Jurisdiction

6. The Independent Employment Tribunal (the "Tribunal") shall have jurisdiction to rule on applications at first instance or appeals brought by employees or by former employees (or by their heirs and assigns in the event of the death of the employee) of the Square Kilometre Array Observatory ('SKAO'), or any other person who falls within the scope of application of the rules and policies governing staff or recruitment of employees of the SKAO (excluding CSIRO Staff and SARAO Staff working under an Agreement for Bi-lateral Collaboration), against an express or implicit decision of the Director-General. Applications at first instance will be admissible only if the SKAO 's internal dispute resolution procedures have been exhausted. The Tribunal has jurisdiction to rule on complaints alleging non-observance of the terms of appointment of SKAO staff, and of such provisions of the Staff Policies as are applicable to the case.
7. The Tribunal shall settle any issue arising concerning its own jurisdiction.

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8. The Tribunal applies the Rules of Procedure set out in Annex to these Regulations. The Tribunal may amend its Rules of Procedure, following consultation with the Director-General.

Composition

9. The Tribunal is composed of six judges.

Qualifications

10. Judges must be independent, in particular from the SKAO and its Member States and have experience in employment matters and international administrative law. They should be qualified lawyers with a minimum of 10 years standing or jurisconsults of recognised competence.
11. Judges will ensure they perform all duties impartially and conscientiously and will preserve the secrecy of the deliberations in the Tribunal.
12. A former judge of the Tribunal may not be employed as an employee or consultant of SKAO for a period of two years after such person has served on the Tribunal.

Appointment and term of office

13. The judges of the Tribunal will be appointed by the Council from a list recommended by the Director-General following internal consultations including with the Staff Association, and SKAO will endeavour to ensure that different nationalities from SKAO's Member States are represented within the list of proposed judges. Former SKAO employees or candidates with a current commercial relationship with SKAO (either personally or through their employer) will not be eligible for appointment.
14. Judges are appointed for a term of five years, with reappointment permissible for two terms.
15. Without prejudice to Regulation 9, should a judge's term of office expire while an application or appeal is still pending, that judge is permitted to hear the application or appeal through to conclusion of the proceedings.
16. Judges shall, by majority vote, elect a President and Vice-President from their membership every three years. (Re-election is permissible for two terms).
17. A judge may indicate their intention to resign in writing to the President (or if the President, in writing to Council). The judge shall continue to hold office until they have been replaced, unless the President (or the Vice President in the event that the President requests to resign) agrees that the judge may resign with immediate effect. The new judge will be appointed for a full term.
18. A judge shall hold office on good behaviour. A judge's appointment shall only be terminated by:
 - a. Their resignation or death;

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- b. The expiry of their term;
- c. Their incapacity such that they cannot reasonably carry out their duties, as established by the Tribunal acting unanimously; the member concerned shall not take part in the Tribunal's deliberations; or
- d. Council on the unanimous decision of the remaining judges that the judge in question is unsuited for further service.

Recusal

- 19. No judge may take part in the disposal of any application at first instance or appeal in which they have previously taken part in any capacity.
- 20. (a) Should a judge have concerns about their own impartiality and/or have a possible conflict of interest in relation to an application at first instance or appeal, they should recuse themselves from any further participation in the examination of the relevant application or appeal and notify the President;
- (b) If for some special reason the President considers that a judge should not take part in the disposal of an application at first instance or on appeal, they shall notify that judge accordingly;
- (c) Any difficulty arising as to the application of this Regulation shall be resolved by the other judges of the Tribunal acting by a majority, after hearing the judge concerned, who shall not take part in the deliberations of the Tribunal;
- (d) The Secretariat shall notify the parties of any recusal in accordance with this Regulation, though it shall not disclose the reasons for such recusal.

Management of applications at first instance

- 21. Applications at first instance must be submitted to the Tribunal Secretariat within 90 calendar days following communication of the final decision by or on behalf of the Director-General on a matter falling within the Tribunal's competence. Such a final decision shall indicate in writing that it may be challenged before the Tribunal.
- 22. After an application at first instance has been lodged, the President shall promptly assign a judge to hear the application, including the President themselves, with due consideration to the principle of rotation, whenever possible, as well as equitable distribution of workload and subject to availability. The application shall in principle be heard by a single judge. The President may, when circumstances of the case so require and following consultation with the assigned judge, decide that the application at first instance is heard by a panel of three judges. The Tribunal Secretariat will inform the parties, in good time, of the identity of the judge or, where applicable, the judges chosen to hear the application.
- 23. If the similarities between two or more applications at first instance so require, the President may decide to join such application for the purposes of the hearing and, possibly, the judgment.
- 24. A judge or, where applicable, a panel of three judges, shall exercise, in respect of the application, all the powers of the Tribunal defined in these Regulations and the Tribunal Rules of Procedure.

Appeals and Clarification of a Judgment

25. Decisions of the Tribunal at first instance are final unless they are appealed.
26. The Tribunal may at any time, of its own motion or on application of a party, correct clerical or arithmetical mistakes, or errors arising from any accidental slip or omission.
27. Where they are of the view that the operative provisions of a judgment are ambiguous or incomplete or inconsistent either with each other or with reasons in point of law, any party may, within 30 calendar days from the day of notification of the judgment, request the Tribunal to clarify its provisions.
28. A party may appeal against a judgment of the Tribunal at first instance on the grounds that:
 1. An error of law or an error of fact of decisive importance to the judgment has been made;
 2. The judgment is irrational or shows clear evidence of bias; or
 3. New evidence of a determining fact which was not known to the Tribunal or the appellant at the time of the Tribunal's judgment, and which could not have reasonably been known before the judgment was handed down has come to light.
29. Where an appeal is brought on the basis of Regulation 28.1 or Regulation 28.2, the appeal must be lodged with the Tribunal Secretariat within two months of the notification of the judgment at first instance.
30. Where an appeal is brought on the basis of Regulation 28.3, the appeal must be lodged with the Tribunal Secretariat within 30 calendar days from the date of discovery of the fact or the evidence and, in any event, within six months from notification of the judgment in question.
31. Appeals will be heard by three judges, not including the judge, or where applicable, the judges, who heard the original application.
32. The written procedure following the appeal will be limited to a response by the responding party, unless decided otherwise by the President.
33. Decisions of the Tribunal on appeal are final and binding.

Resources

34. Judges will be engaged and remunerated for actual work completed, including travel time in relation with the activities of the Tribunal based on:
 - (a) Remuneration per day, or half day, at a rate determined in advance by Council (having regard to levels of judicial compensation in Member States) and reviewed at least every three years;
 - (b) Reimbursement for expenses where applicable, such as travel expenses and meals, will be calculated in line with SKAO's relevant expenses provision of the Staff Regulations as updated from time to time;
 - (c) No adverse changes shall be introduced with regard to judges' remuneration and other essential conditions of service during their term in office.

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35. The relevant departments of SKAO shall provide the judges of the Tribunal with full information on the functioning of SKAO and its policies and guidance procedures to facilitate the exercise of their duties.
36. The Tribunal will be assisted by a Tribunal Secretariat composed of a Secretary and, if needed, assistants to the Secretary:
 - (a) The members of the Secretariat will be appointed, and may be removed, by SKAO in agreement with the President of the Tribunal;
 - (b) In the exercise of their duties, the Secretary and their assistants must be wholly impartial and will be subject only to the authority of the Tribunal;
 - (c) The SKAO will provide the Tribunal Secretariat with all necessary resources and training;
 - (d) The work of the Secretary and their assistants will be part of their official duties.