



Federation of International  
Civil Servants' Associations

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## Tips and Information Newsletter for International Civil Servants

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### The accountability gap in EUFOR: when “final and binding” judgments are ignored

#### Introduction

*For your information, the MAT (Mission Appeals Tribunal) does not apply to FICSA member organizations; the outcome is highly concerning for all international administrative tribunals. The MAT decision, which relies on the same principles of global administrative law as the ILOAT/UNDT systems, is moving away from the rule of law and the principle of parity and could also be interpreted as suggesting that other organizations can refuse to enforce a tribunal's judgment.*

The institutions of the European Union and the United Nations promote the rule of law as a fundamental principle of their governance. Yet, in their real-life practice, this principle may falter. This article explores a striking example of such a failure from Judgment No. 1 and No. 3 of 2023 of the Mission Appeals Tribunal (MAT) in proceedings commenced by former employees against the European Union Force (EUFOR) in Bosnia and Herzegovina. In these two judgments, the MAT ordered EUFOR to pay significant compensation to the applicants for breaches of their employment rights. Two years on, these judgments have still not been implemented by EUFOR. This exposes a fatal accountability gap in the system: that despite an entity that has submitted itself to the MAT's jurisdiction receiving a lawful judgment, the lack of any effective mechanism to enforce that judgment renders the judgment meaningless and the parties unable to compel compliance.

#### Legal and institutional framework

EUFOR is a military mission established by the Council of the EU under a UN mandate and functioning in cooperation and mutual assistance with NATO.<sup>1</sup>

The MAT was established as the second instance judicial body to adjudicate employment disputes arising from administrative decisions made by Mission Commanders against civilians working in missions governed by Mission Civilian Rules.<sup>2</sup>

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<sup>1</sup> <https://www.euforbih.org/index.php/en/>

<sup>2</sup> <https://jfcnaples.nato.int/about-us/mission-appeals-tribunal#:~:text=Role%20of%20the%20MAT,decision%20of%20the%20Mission%20Commander>

Rule 2 of the MAT's Rules of Procedure (**ROP**) sets out the scope of competence of the Tribunal and provides that the MAT is competent to hear appeals against final or implicit<sup>3</sup> administrative or disciplinary decisions, provided the appellant has exhausted all available channels of administrative review under the applicable Mission Civilian Rules or Civilian Staff Regulations. The Tribunal's competence extends to Mission Civilians, Local Civilian Hires, International Civilian Hires, and International Civilian Consultants employed directly by NATO Missions or Operations. The Tribunal has jurisdiction over all disputes arising on or after 1 July 2022, with limited retroactive jurisdiction for appeals that were filed before this date. Rule 45(e) of the ROP provides that its judgments are "*final and binding on all parties*".

By voluntarily submitting itself to the exclusive jurisdiction of the MAT, EUFOR recognised the Tribunal as the final authority to resolve employment-related disputes between the Mission and its staff members. Therefore, unlike other EU institutions, EUFOR is not subject to the jurisdiction of the Court of Justice of the European Union for employment matters.

In theory, these provisions appear sufficient to guarantee certainty and finality to the parties to MAT proceedings. In practice, however, the absence of any rules on enforcement leaves compliance with a MAT judgment dependent on the goodwill of both the civilians and the Missions rather than the Tribunal.

### **Judgment MAT/EUFOR/01 and MAT/EUFOR/03**

In this case, the two appellants were long-serving International Civilian Consultants (**ICCs**) with EUFOR in Bosnia and Herzegovina, from the UK and Austria respectively, who claimed discriminatory treatment by EUFOR as compared to Local Civilian Hires (**LCHs**). Unlike LCHs, the ICCs were not entitled to pension, social security, severance pay, extended sick leave, and overtime pay, despite being exposed to the exact same circumstances of work. The appellants also claimed moral damages for denial of justice as before they were retroactively granted access to the MAT's jurisdiction, various supervisors and bodies had ignored or refused to issue an administrative decision on the basis that they claimed to lack competence to determine the case. This included EUFOR, as the appellants had originally commenced the case in accordance with EUFOR's Civilian Staff Rules; the Supreme Headquarters Allied Powers Europe, being the operational headquarters for EUFOR; and the European External Action Service as the representative of the Council of the European Union (**EU**), being the body that launched EUFOR.<sup>4</sup>

The appellants argued that their unequal treatment was in violation of the well-established principle under EU and public international law of non-discrimination and equal pay. EUFOR argued that EU law was not applicable to staff in field missions, who are covered by the Mission Civilian Rules instead. The MAT considered that "*the most relevant EU provisions – i.e., the principle of equality of law and the principle of non-discrimination included in the Charter of Fundamental Rights – are hermeneutically incorporated and/or deductible from the principles of international administrative law*"<sup>5</sup>. The MAT held that the appellants had not provided sufficient evidence to support their claim regarding the absence of overpayment and that the denial of participation in the pension scheme was not unlawful.<sup>6</sup> However, with respect to the sick leave and severance

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<sup>3</sup> 'Implicit decisions' are defined as decisions implicitly created in the absence of a final decision being issued by the Mission within certain time periods.

<sup>4</sup> See EUFOR chain of command: <https://www.euforbih.org/index.php/en/background>.

<sup>5</sup> Judgment No. MAT/EUFOR/01, [39].

<sup>6</sup> Judgment No. MAT/EUFOR/01, [47] and [75].

pay, the MAT found that the appellants had been subjected to unreasonable differential treatment compared to similarly situated staff.<sup>7</sup> The MAT also held that EUFOR had violated the appellants' rights to an effective remedy such that they were entitled to moral damages. EUFOR was ordered to make payment of significant sums to the appellants within 90 days of the judgment, with interest to accrue after that point.

Instead of making these payments, EUFOR filed a motion for revision of the judgment. It argued that its financial regulations made compliance with the ordered payment impossible, while also raising objections on the competence of the Tribunal and contesting the merits of the judgment. In Judgment MAT/EUFOR/03, the MAT rejected the motion and reaffirmed its competence, noting that EUFOR was not raising any new facts but merely new legal arguments. The MAT recalled that its judgments are final and binding under Rule 45 of the ROP and that "*EUFOR bears the responsibility of accommodating MAT's judgments since it has accepted its jurisdiction*"<sup>8</sup> and condemned EUFOR for abuse of proceedings. In response, EUFOR wrote to the appellants and the Tribunal, stating that it "*did not agree*" with the judgments and would not pay. Today, two years after the judgments have been issued, the judgments remain unenforceable, and the appellants have not received the amounts awarded to them by the three judges of an independent and impartial judicial body.

### **The accountability gap**

These judgments expose the limits of the internal justice system for staff working in missions within the MAT's exclusive jurisdiction: they have no enforcement mechanism for a MAT judgment and have no access to any national or European jurisdiction to enforce a MAT judgment either.

The MAT ROP contains no provisions on the execution of judgments. While Rule 45 declares MAT decisions to be "*final and binding*", there is no mechanism for supervising compliance, setting deadlines for enforcement, or empowering any higher authority to intervene if a mission refuses to implement a ruling. As a result, a binding judgment exists in law but is unenforceable in fact, and staff are left without remedy even after years of litigation.

In practice, the MAT has not issued any further judgments since the two non-implemented decisions of 2023. Whether or not this is a mere coincidence, the absence of subsequent case law highlights the structural weakness of a system in which rulings may be disregarded without consequence. The judges of the MAT do not have any power or authority to require EUFOR to enforce their judgments. It is possible that, having seen the precedent set by these judgments, EUFOR is actively discouraging staff from bringing disputes under the Mission Civilian Rules or seeking informal resolution of cases so that they do not proceed to the MAT. It is also possible that, seeing the lack of MAT judgments or perhaps hearing of the unenforceability of the judgments, civilians are discouraged from pursuing their cases to the court of last resort.

### **Comparison with UN and ILO Administrative Tribunals**

Unlike the MAT, the statutes of the UN and ILO Administrative Tribunals provide for applying to execution in case of non-compliance with a judgment – see Articles 12(4) of the UNDT Statute, 11(4) of the UNAT Statute, and VI (1) of the ILOAT Statute. However, just like the MAT, despite their judgments being "binding", these tribunals also lack external enforcement powers or mechanisms. Compliance depends on the willingness of

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<sup>7</sup> Judgment No. MAT/EUFOR/01, [87] and [93].

<sup>8</sup> Judgment No. MAT/EUFOR/03, [90].

the organisations themselves, which is only backed by political oversight. At the UN, this oversight takes the form of the Secretary-General's periodic reports on the administration of justice to the General Assembly. At the ILO, member organisations are responsible for implementing judgments internally and are ultimately accountable to their member States through their own governing bodies. To date, even without clear legal safeguards, implementation appears to be secured through the cooperation of the organisations themselves. Given that there is no structural guarantee that such cooperation will continue, and that international organisations today face ongoing financial and restructuring crises, what needs to be done to ensure that these internal justice systems can actually provide real and enforceable remedies to the parties?

### **Call for reform**

The refusal of EUFOR to implement final MAT judgments reveals not only a profound accountability gap in an EU institution, but also a blatant disregard for the very legal framework to which EUFOR itself subscribed. This is a conscious decision to ignore binding rulings, leaving the appellants without remedy even after years of litigation. This case sets a dangerous precedent that every entity under the MAT's jurisdiction can treat its staff members unfairly or outside of established legal principles and suffer no consequences. EUFOR's position is effectively telling the world that it considers itself unanswerable to anyone, let alone an independent and impartial judicial authority.

The only way to resolve this situation would be the introduction of enforcement rules into the ROP, which grant power and authority for the MAT to oversee the implementation of judgments, and real consequences for a party's failure to comply with such provisions. In this particular case, such amendments would only be of value if they were applicable retroactively. While new rules are generally not given retrospective application, there have only been three judgments issued by the MAT since its inception, of which two concern this case, and so there is no real risk or further exposure to the organisations under the MAT's jurisdiction if such an amendment was made.

The current system is clearly insufficient to provide adequate protection to staff members of EUFOR and other missions within the MAT's jurisdiction. For as long as EUFOR refuses to comply with the MAT judgments, it is undermining both individual rights and the EU's credibility as an alleged champion of the rule of law. The only way to hold EUFOR to account is for the Council of the EU, as the ultimate body overseeing EUFOR, to assume its responsibility and ensure that such an unashamed infringement of fundamental rights is not left unaddressed.

This example must also serve as an important reminder to the entire international administrative legal system to introduce enforcement mechanisms so that the judgments being published by various tribunals are worth the paper that they are written on, and the system as a whole continues to carry legitimacy and authority.

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