

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 536/2013 (Staff Committee (XII) v. Secretary General)

The Administrative Tribunal, composed of:

Mr Christos ROZAKIS, Chair,
Mr Jean WALINE,
Mr Rocco Angelo CANGELOSI, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar,
Ms Eva HUBALKOVA, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The Council of Europe Staff Committee lodged its appeal on 6 November 2012. On the same day, the appeal was registered under number 536/2013.
2. On 21 January 2013, the appellant filed a supplementary memorial.
3. On 22 February 2013, the Secretary General forwarded his observations on the appeal. The appellant submitted observations in reply on 25 March 2013.
4. The public hearing on this appeal was held in Strasbourg on 11 April 2013. The appellant was represented by its Chair, Mr Giovanni Palmieri, assisted by Ms Antonia Dinéva, trainee in the Staff Committee, and the Secretary General by Ms Christina Olse, of the Legal Advice Unit in the Directorate of Legal Advice and Public International Law, accompanied by Ms Maija Junker-Schreckenber and Ms Sania Ivedi, administrative officers in the same department.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

5. This appeal concerns events related to a strike movement / work stoppage which took place at the Council on 19 June 2012.

6. On 13 June 2012, the Council of Europe Staff Committee sent the Secretary General a note informing him that, as already indicated to his Private Office, the Staff Committee had decided to organise a “*work stoppage accompanied by an information/discussion meeting open to all staff on 19 June 2012 from 10 am to 12 am*”.

7. On 14 June 2012, the Secretary General replied as follows:

“(…). Heads of Major Administrative Entities have been asked to inform their staff members intending to take part in such a ‘work stoppage’ of their duty to notify their participation to line managers by 5 pm on Friday 15 June. Heads of [Major Administrative Entities] will then inform [the Directorate General of Administration] of the names of staff participating.

I should like to point out that the reasons for such a ‘work stoppage’ have not been communicated. As I consider such reasons to constitute the basis for any collective staff action, I would be grateful if you could communicate to me the reasons for the stoppage as soon as possible.

In accordance with general legal principles governing the matter and well-established case-law on the subject, you will appreciate that the amount corresponding to two hours of pay will be deducted from the salaries of staff members taking part in the ‘work stoppage’.”

8. On 15 June 2012, the appellant published a communiqué on the Organisation’s intranet.

9. On the same day, two Council of Europe trade unions published a joint communiqué on the Organisation’s intranet.

10. Also on the same day, the Director General of Administration sent a memorandum to Heads of Major Administrative Entities in which she reminded them of the arrangements for providing information about staff members participating in the work stoppage. But nothing was said about a salary deduction.

However, in an announcement published on the intranet the same day, the Directorate General of Administration informed staff that they were required to notify their direct managers (N+1) of their intention of joining the stoppage. It added that that this information should reach them by Friday 15 June at 5 pm to enable them to plan work accordingly. The Directorate General of Administration pointed out that, based on the list of participating staff members, it would also be able to make the corresponding pay adjustments.

11. On 18 June 2012, the appellant sent an email to the staff of the Organisation making a number of suggestions to them about notifying their intention of joining the movement and stressing that those had to work (important commitments/meetings of committees, official journey, hosting external consultants/guests, manager’s refusal to release them, etc.), but felt strongly about supporting the cause, could stop work for as long as they could and inform

their manager of the actual duration. They would thus have been able to publicly state their opinion.

12. On the day in question, a number of staff members participated in the work stoppage.

13. On 9 July 2012, the appellant sent the Secretary General the following memorandum:

“It would seem that the department responsible in the [Directorate General of Administration] is in the process of making deductions from the August salary of staff members who took part in a work stoppage on 11 June 2012. A decision of this kind would only be legitimate on the strict condition that the internal regulations of the Council of Europe contained provisions governing the modalities and consequences of work stoppages and strikes, which is not the case.

In the absence of such rules, your decision would be considered, in accordance with international case law, as a disguised disciplinary sanction and would accordingly be censured by the Administrative Tribunal.

The [Staff Committee] will not hesitate to support actions by staff to contest the implementation of your decision. It might also directly contest your decision on the grounds that it violates the existing rules on statutory consultation.

As far as the future is concerned, the [Staff Committee] is perfectly willing to cooperate with your services in preparing draft regulations on the subject. It is hardly necessary to stress, however, that such legislation would not be applicable retrospectively.”

14. On 19 July 2012, the Director General of Administration replied as follows:

“The Secretary General has asked me to reply on his behalf to your letter dated 9 July 2012.

...

It is inherent to the right to strike that there are financial implications for all employers taking strike action. The case-law of international jurisdictions confirms this approach. Therefore deductions will be made from salaries of the staff members who have participated in the ‘work stoppage’.

Finally, I am pleased to note that the Staff Committee is willing to engage in constructive dialogue with my services with a view to clarifying the legal framework of the modalities of strike action”.

15. On 13 August 2012, the appellant submitted an administrative complaint to the Secretary General under Article 59, paragraph 2, of the Staff Regulations, alleging, inter alia, a violation of its right to be consulted on any general measure implementing a statutory provision.

16. On 12 September 2012, the Secretary General dismissed the administrative complaint as inadmissible and/or ill-founded. After objecting that the complaint was inadmissible

because it was out of time and because the act complained of did not cause prejudice to the appellant, the Secretary General argued inter alia, as to the merits of the administrative complaint, that he was under no obligation to consult the appellant: at the very most, this was a possibility open to him.

17. On 6 November 2012, the Staff Committee lodged this appeal.

II. APPLICABLE REGULATIONS

1. Duties and obligations of staff

18. Part III of the Staff Regulations deals with the duties and obligations of staff. Article 31, concerning unauthorised absence, reads as follows :

“Staff members may not absent themselves from their duties without authority. If they do so without valid reason, the Secretary General may deduct an appropriate amount from their remuneration, and disciplinary measures may be taken against them”.

2. Powers of the Staff Committee

19. Article 59, paragraphs 2 and 8 c), of the Staff Regulations, concerning the power of the Staff Committee to submit administrative complaints, reads as follows :

“2. Staff members who have a direct and existing interest in so doing may submit to the Secretary General a complaint against an administrative act adversely affecting them, other than a matter relating to an external recruitment procedure. The expression ‘administrative act’ shall mean any individual or general decision or measure taken by the Secretary General or any official acting by delegation from the Secretary General.

(...)

8. The complaints procedure set up by this article shall be open on the same conditions *mutatis mutandis*:

(...)

c. to the Staff Committee, where the complaint relates to an act of which it is subject or to an act directly affecting its powers under the Staff Regulations;”

20. Appendix I of the Staff Regulations contains the Regulations on staff participation. Part II thereof concerns the Staff Committee. The relevant provisions are Articles 4 and 5, which read as follows :

Article 4 – General attributions

“1. The Staff Committee shall represent the general interests of the staff and contribute to the smooth running of the Council by providing the staff with a channel for the expression of their opinions. It may also defend the interests of retired staff and other beneficiaries of the Pension Scheme.

2. The committee shall be responsible for organising elections of staff representatives to those bodies of the Council where provision is made for such representation, unless it is expressly provided that the said representatives shall be appointed directly by the committee.

3. The committee shall participate in the management and supervision of social welfare bodies set up by the Council in the interests of its staff. It may, with the consent of the Secretary General, set up such welfare services.”

Article 5 – Matters within the competence of the Secretary General

“1. The Staff Committee shall bring to the notice of the Secretary General any difficulty having general implications that concerns the interpretation and application of the Staff Regulations. It may be consulted on any difficulties of this kind.

2. The Staff Committee may propose to the Secretary General any draft implementing provisions relating to the Staff Regulations, as well as any measures of a general nature to be taken by him or her concerning the staff.

3. The Secretary General shall consult the Staff Committee on any draft provision for the implementation of the Staff Regulations. He or she may consult it on any other measure of a general kind concerning the staff.”

THE LAW

21. In its appeal, the appellant asks the Tribunal to “annul the deductions made on the August 2012 pay slips of certain staff members who participated in the work stoppage organised by the [appellant] on 19 June 2012”.

22. For his part, the Secretary General asks the Tribunal to declare the appeal inadmissible and/or ill-founded.

I. AS TO THE ADMISSIBILITY OF THE APPEAL

A. Parties’ submissions

23. The Secretary General objects that the appeal is inadmissible for two reasons. He submits that the administrative complaint was out of time and that the appeal does not relate to an act of which the appellant is the subject.

24. As to the first objection, the Secretary General says that the appellant was informed on 14 June 2012 that a salary deduction would be applied to staff members who participated in the work stoppage organised by it, and this information was also posted on the Organisation’s intranet. The administrative complaint was therefore out of time.

25. The Secretary General adds that, as regards the appellant’s complaint that it was not informed of the date on which the deductions would be made or of the relevant modalities, the appellant received the information on 9 July 2012 (paragraph 13 above).

26. With regard to the second objection, the Secretary General contends that this appeal does not relate to an act of which the appellant is the subject. He submits that the subjects of the act are the staff members who received the pay statement with a deduction for the work

stoppage in which they participated. He adds that the appellant cannot take the place of the subjects of the act, who, in principle, are the only persons with a direct personal interest in contesting it, assuming that the other conditions for lodging an appeal are met. In the instant case, the appellant claims to be acting to defend the interests of others, but the Tribunal does not have jurisdiction to hear class actions. In this connection, the Secretary General notes that between 22 August and 7 September 2012, 22 administrative complaints were submitted by staff members against the salary deduction. These complaints were dismissed and no appeal was lodged against these dismissals.

27. The Secretary General disputes the appellant's claim that the impugned decision infringes its rights under the Staff Regulations. In this connection, the appellant relies on Article 5, paragraph 3, of the Regulations on staff participation (Appendix I to the Staff Regulations), which provides as follows: "The Secretary General shall consult the Staff Committee on any draft provision for the implementation of the Staff Regulations. He or she may consult it on any other measure of a general kind concerning the staff."

28. As regards the implementing provisions of the Staff Regulations, reference should be made to Article 62, which provides as follows: "The Secretary General shall issue rules, instructions or office circulars laying down the provisions for implementation of these Regulations." Draft rules, instructions and office circulars are indeed submitted to the appellant for consultation. In the case in point, as the appellant itself mentions, draft regulations on work stoppages have been in preparation since the announcement of the 19 June 2012 work stoppage, but have not yet been finalised. It has never been disputed that the appellant must be consulted on the draft regulations/internal agreement currently in preparation and it will be. In fact, it should be noted that the appellant is already involved in this process on an exceptional informal basis.

29. Regarding the appellant's reference to the concept of "any other measure of a general kind concerning the staff", if it were to be accepted that this concept includes the decision to deduct part of the salary of staff members who participate in a work stoppage – which is disputed -, it is true that the Secretary General would be able to consult the appellant. However, he is under no obligation to do so because the article cited above provides that the Staff Committee may be consulted on measures of this type, not that it must automatically be consulted.

30. The Secretary General observes that, insofar as the complaint does not concern powers conferred on the appellant under the Staff Regulations, the latter has no interest in bringing proceedings and its complaint, and hence its appeal, are therefore inadmissible.

31. For its part, the appellant believes its appeal to be admissible.

32. In reply to the first objection of inadmissibility, namely that the administrative complaint was out of time, the appellant submits that it is untrue that it was "fully aware on 9 July 2012 at the latest that the deductions complained of would be applied to the August 2012 salary". The appellant stresses that its above-mentioned letter of 9 July referred only to rumours. Furthermore, the reply from the Director General of Administration did not specify the date on which the salary deduction would be applied.

The appellant submits that, in this connection, reference should be made to the provisions of Article 59 of the Staff Regulations, under which the time limit for submitting an

administrative complaint if the act complained of has been neither published nor notified is “30 days from the date on which the complainant learned thereof”.

The appellant claims that it was never informed that the Secretary General had decided not to consult it on the modalities of the salary deduction, or for that matter on the date when the deduction would be made. The Secretary General is therefore wrong to claim that the appellant “failed to complain in good time about not having been consulted on the modalities of the salary deduction”.

33. As to the second objection, namely that the appeal did not relate to an act of which the appellant was the subject, the appellant alleges that the Secretary General does not answer its argument based on Article 59, paragraph 8 c), of the Staff Regulations, according to which the complaints procedure is open to “the Staff Committee, where the complaint relates to an act of which it is subject or to an act directly affecting its powers under the Staff Regulations”.

The appellant considers that the act complained of (the salary deduction) infringes its rights under the Staff Regulations in that a prior step required by the regulations was not taken, namely mandatory consultation of the Staff Committee.

In the appellant’s view, the arguments set out by the Secretary General in paragraphs 23 to 27 of his observations actually concern the merits of the case and not the issue of admissibility. In its opinion, the Secretary General is actually attempting to argue the point that consultation of the Staff Committee was purely optional in this case. The appellant will therefore return to this point when considering the merits.

34. In conclusion, the appellant considers that the two objections of inadmissibility raised by the Secretary General do not stand up to criticism and, therefore, cannot succeed.

B. The Tribunal’s assessment

35. Before considering the two objections of inadmissibility raised by the Secretary General, the Tribunal must clearly establish the subject-matter of the appeal, and especially the *petitum* laid before it.

36. As to the first question, it is clear from the wording of the administrative complaint of 13 August 2012 (paragraph 15 above) and from the grounds of appeal appended to the appeal form that the appellant’s aim in taking this action was to secure recognition of an infringement of its right to be consulted under Article 5, paragraph 3, of the Regulations on staff participation. In the first of these documents, the appellant admittedly alleges “a violation of the duty of information towards the staff and disregard for the principle of legal certainty, in addition to the specific violation of [the appellant’s] rights in a situation (...)”. Clearly, however, its main aim was to complain of a lack of consultation and the addition of a claim whose admissibility is doubtful to say the least does not detract from the admissibility of its main ground of appeal, which plainly falls within the scope of Article 59, paragraph 8 c), of the Staff Regulations.

37. As to the *petitum*, it may also be seen that the appellant is not seeking the annulment of the act adversely affecting it – namely the application of an implementing provision of the Staff Regulations - but rather the annulment of individual administrative decisions adversely affecting a number of staff members which were taken in execution of the aforementioned

implementing provision. However, the Tribunal need not to concern itself at this stage with the decision to be taken in that connection because this question has no bearing on the admissibility of the appeal, but it will need to be decided during the examination of the merits of the appeal if the Tribunal finds it to be well-founded.

38. As to the first objection, namely that the administrative complaint was out of time, the Tribunal notes that, in its administrative complaint of 13 August 2013, the appellant complained of the execution by the Organisation of its decision to make a salary deduction. Now, the appellant did not learn of the execution of the measure which it considers to have been taken in breach of its right of consultation until it was informed by the staff members concerned that a deduction had been made on their August pay statements. It is true that the appellant had been informed in advance that these deductions had been decided. However, leaving aside the fact that the appellant complains that it was not consulted and not that it was not informed, a difference which does not affect the issue of whether the complaint was out of time or not, the fact remains that the measure in question was not taken by means of a written instrument such as an instruction or office circular. Consequently, it was not possible to find out about the execution of this measure until it was actually executed at the beginning of August 2012. Hence, it was only from the time that the deductions were put in place that the appellant's interest in submitting an administrative complaint became an "existing" interest within the meaning of Article 59, paragraph 2, of the Staff Regulations. Accordingly, the administrative complaint cannot be considered out of time and, for this reason, the Secretary General's objection to this effect must be dismissed.

39. As to the second objection, namely that the appellant was not the subject of the decision to make a salary deduction, the Tribunal notes that, while also complaining about the decision to make a salary deduction, the appellant claims above all that the decision was taken without consulting it. Clearly, therefore, it was submitting an administrative complaint to contest "an act directly affecting its powers under the Staff Regulations" (Article 59, paragraph 8 c), of the Staff Regulations).

40. In conclusion, the two objections raised by the Secretary General are unfounded and must be dismissed.

II. AS TO THE MERITS OF THE APPEAL

1. The appellant

41. The appellant submits first of all that the work stoppage which it organised was equivalent to a strike, that such action is permitted in accordance with a general principle of law and, lastly, that the Organisation is entitled to make deductions from the salary of staff members who participated in the strike.

42. It adds that, in the absence of specific rules governing this matter, the applicable provision is that contained in Article 31 of the Staff Regulations (paragraph 18 above) concerning unauthorised absence. Since this provision is not self-executing, because the expression "appropriate amount" requires clarification, there is a need for implementing provisions. The same applies to the questions of identification of the staff members concerned and the "corresponding pay adjustments" mentioned in the communiqué. Since these questions fall within the scope of the aforementioned Article 31, the Secretary General should have submitted them to the appellant in order to obtain its opinion. Since the Secretary

General did not do so, it should be concluded that Article 5, paragraph 3, of Appendix I to the Staff Regulations has been violated. It adds that this provision permits no exceptions and the fact that it was informed that deductions would be made changes nothing, because it had not been consulted on the measures for implementation of Article 31. Lastly, the fact that the Secretary General has a power of discretion is irrelevant since this power must be exercised in compliance with the law and take account of the substantive formalities required under the Staff Regulations, such as the obligation to consult the appellant on any provision for the implementation of those Regulations.

43. In conclusion, the appellant seeks the annulment of the contested administrative acts, namely the deductions made from the salaries of the staff members who participated in the work stoppage.

2. The Secretary General

44. The Secretary General focuses first on the appellant's statement that "under international case law, rules relating to strikes must take the form of statutes and, in any case, not be retrospective, failing which they would be unlawful".

45. By way of a preliminary observation, it may be noted that, at present, the Staff Regulations contain no provision authorising the appellant to call on the staff to observe a work stoppage and that, in the absence of regulations governing the modalities of a work stoppage, it must be concluded that, in calling on the staff to participate in a work stoppage, the appellant is relying on general principles of law.

46. Furthermore, according to the appellant's argument, in the absence of relevant rules, staff members participating in a strike (and therefore not working) should nevertheless be paid for work not done.

47. However that may be, contrary to what the appellant maintains, the Secretary General's decision to deduct from the salary of staff members who participate in a work stoppage an amount corresponding to the duration of the work stoppage is perfectly legal.

48. After reiterating the terms of Article 31 (paragraph 18 above), the Secretary General asserts that this provision is equivalent to the well-known principle of payment for services rendered. He adds that, under internal regulations, he is entitled not to pay staff members who stop work for the time not worked. In his view, this decision is not a "provision for the implementation of the Staff Regulations" which should accordingly be submitted to the appellant for consultation, but is founded in Article 31 of the Staff Regulations and, in the absence of rules relating specifically to strikes, on general principles of law and existing case law and practice

49. The Secretary General argues that the loss of pay corresponding to the period of a work stoppage is an unquestioned principle. In this connection he refers to settled international administrative case law (see, inter alia, ILOAT judgment no. 314).

50. Furthermore, Council of Europe practice in the matter of salary deductions has also been followed. It should be remembered that a salary deduction for time not worked was applied to Council of Europe staff members who participated in the 1998 strike. To his knowledge, none of the staff members concerned had submitted a complaint alleging this decision to be unlawful.

51. As already pointed out, the appellant was fully informed and aware, as of 14 June 2012, that the work stoppage of 19 June 2012 would result in a salary deduction, i.e. before the work stoppage actually took place.

52. It cannot be argued, therefore, that the decision to deduct two hours' pay from the salaries of the staff members who participated in the work stoppage was taken retrospectively. Indeed, the whole staff and the appellant were notified of this decision before it was applied.

53. The Secretary General agrees that it would be desirable to have rules dealing with all strike-related matters. He notes, however, that, prior to the facts of the case, the appellant did not see fit to avail itself of the possibility offered in paragraph 2 of Article 5 of the Regulations on staff participation (paragraph 20 above).

54. After making a legal analysis of the case law cited by the appellant, the Secretary General comes to the conclusion that it is not suggested anywhere in this case law that, in the absence of rules relating specifically to strikes, the Organisation does not have the right to make a salary deduction, or, *a fortiori*, that it should have consulted the appellants before making a salary deduction. On the contrary, he confirms the settled international administrative case law on this matter, according to which pay is due for services rendered and, in the absence of rules relating specifically to strikes, the regulations in force will be applied.

55. However that may be, it must be acknowledged that, in this case, it was not a question of making a larger salary deduction than those specified for other cases of absence (and hence of imposing a disguised disciplinary sanction), but simply of applying the principle of payment for services rendered as provided in Article 31 of the Staff Regulations, namely non-payment of the time for which the staff members concerned stopped work (two hours' salary deduction for two hours of work not done).

56. The appellant raises further questions about the identification of the staff members who took part in the strike and the calculation of the salary deductions.

57. On the first point, it should be remembered that only those staff members who suffered a salary deduction would have an interest in bringing proceedings against a decision and its implementing arrangements which they considered unlawful.

58. As to the manner in which the deduction was calculated, it is very simple and was communicated to those staff members who so requested.

59. In view of the very short time between the announcement of the work stoppage and the work stoppage itself, it is true that it was not possible to provide full information about the method for calculating the contested salary deduction before the work stoppage took place.

60. However, even supposing that the appellant's decision on whether or not to call on staff to observe the work stoppage had depended on the method for calculating the salary deduction, being fully aware that this decision would be implemented, the appellant could have approached the Directorate of Human Resources to obtain information on the method of calculation.

61. It must be concluded that there has been no breach of the regulations, no violation of general legal principles or legal practice and no formal or procedural defect, that all relevant

elements have been taken into account, that no erroneous conclusion has been drawn from the case file, and lastly that there has been no misuse of power.

62. In conclusion, the Secretary General asks the Tribunal to declare the appeal unfounded and to dismiss it.

3. The Tribunal's assessment

63. The Tribunal notes that, under the Staff Regulations, the Secretary General is obliged to consult the appellant on any "provision for the implementation of the Staff Regulations" (Article 5, paragraph 3, first sentence, of the Regulations on staff participation), whereas, in the case of "any other measure of a general kind concerning the staff", there is no obligation to consult, only the possibility of consultation. It is therefore important to determine whether the impugned measure comes under the first sentence or the second.

64. The Tribunal does not agree with the appellant that what is at issue is the application of Article 31 of the Staff Regulations prohibiting unauthorised absences. There are several reasons for this.

65. First, it would be wrong to compare absence because of a strike with unauthorised absence because the right to strike is a widely recognised right whose exercise cannot be made subject to prior authorisation of the kind involved in the application of Article 31.

66. Secondly, this same article also mentions that "disciplinary measures may be taken". Admittedly, the Secretary General never said that he was applying Article 31, and even if staff members may have thought that the salary deductions might be a sanction against them for striking, the fact remains that linking the impugned measure to Article 31 would be tantamount to recognising the principle that participation in a strike might give rise to sanctions, which is legally unacceptable.

67. The Tribunal must accordingly ascertain whether the impugned measure might have been regarded as a provision for the implementation of another article of the Staff Regulations.

68. The Tribunal first notes that, as observed by the parties, independently of its recognition and the rules governing it, the right to strike derives from a general principle of law and that if that principle had been incorporated into the Organisation's written law, the appellant would have been consulted when it was adopted, and the Organisation would have applied it in connection with the strike at issue.

69. The Tribunal also notes that, in the absence of such a provision in the Staff Regulations, it is perfectly conceivable that the appellant should have been consulted on the adoption of the *ad hoc* provisions replacing it in this specific case. Now, the Tribunal considers that these provisions were not regulatory but administrative in nature, and in fact this interpretation given by the Tribunal is consistent with the wording of Article 5, paragraph 3, first sentence, insofar as that wording refers simply to provisions and not to regulatory acts, despite the wording of Article 62 of the Staff Regulations, which is designed to govern regulatory rather than administrative acts.

70. The Secretary General having failed to consult it, the appellant's right of consultation under the Staff Regulations was clearly infringed. The information which the Secretary

General provided to staff and to Heads of Administrative Entities by means of memoranda and to the appellant in his correspondence with it between 13 June and 19 July 2012 cannot replace consultation. Moreover, in its letter of 9 July 2012 (paragraph 13 above), the appellant raised the question of consultation in explicit terms, but it received no reply on this specific point on 19 July.

71. The Tribunal further notes that while it is true that there is a general principle of payment of salary for work done, the fact remains that salary deductions must have the same legal basis as provisions relating to salary, which are governed by the Staff Regulations; accordingly, in the absence of a delegation from the Committee of Ministers, the Secretary General had no authority – regulatory or administrative – to make this salary deduction.

72. In conclusion, the appeal is well-founded and the contested decision must be annulled.

73. Regarding the conclusions to be drawn from this decision, the Tribunal notes that the appellant asked it to annul the deductions made by the Secretary General from the salaries of the staff members who participated in the work stoppage.

74. Under Article 60, paragraph 2, second sentence, of the Staff Regulations, “[i]n disputes of a pecuniary nature, [the Tribunal] shall have unlimited jurisdiction”. However, the request which is submitted to it must be in line with the power which the appellant has to contest an act complained of and must be in proportion to it. The deductions in question were admittedly acts of execution of the impugned provision, and it is therefore questionable whether they are lawful given that the provision on which they are based is not. However, the appellant does not have the power to ask the Tribunal to rule on this point as it was not directly affected by the implementation of the impugned provision; its request to annul the salary deductions must therefore be dismissed.

75. For this reason, the Tribunal can only decide to annul the impugned provision, but by that decision it cannot order the reimbursement of the deductions made.

For these reasons, the Administrative Tribunal:

Dismisses the objections of inadmissibility raised by the Secretary General;

Declares the appeal well-founded;

Annuls the Secretary General’s decision to make salary deductions without consulting the appellant.

Adopted by the Tribunal in Strasbourg on 27 June 2013 and delivered in writing in accordance with Rule 35, paragraph 1, of the Tribunal’s Rules of Procedure on 28 June 2013, the French text being authentic.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

S. SANSOTTA

C. ROZAKIS

