CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeals Nos. 492-497/2011, Nos. 504-508/2011, No. 510/2011, No. 512/2011, Nos. 515-520/2011, No. 527/2012 (BARON and others v. Secretary General)

The Administrative Tribunal, composed of:

Mr Christos ROZAKIS, Chair,
Mr Jean WALINE, Judge,
Mr Serkan KIZILYEL, Substitute Judge,

assisted by:

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

has delivered the following decision after due deliberation.

PROCEDURE

1. The Tribunal is seized of twenty appeals submitted and registered on the following dates, by:

- Ms Katia BARON,	appeal No. 492/2011, registered on 12 July 2011
- Mr Robert DIEBOLD,	appeal No. 493/2011, registered on 12 July 2011
- Ms Françoise DEGENS,	appeal No. 494/2011, registered on 12 July 2011
- Mr David-Michel PARROTT,	appeal No. 495/2011, registered on 12 July 2011
- Mr Emin ATAC,	appeal No. 496/2011, registered on 12 July 2011
- Mr Barry TULETT,	appeal No. 497/2011, registered on 12 July 2011
- Ms Anne AMAR,	appeal No. 504/2011, registered on 19 September 2011
- Mr Christophe STOLL,	appeal No. 505/2011, registered on 19 September 2011
- Ms Sylviane POIRIER,	appeal No. 506/2011, registered on 19 September 2011
- Ms Gemma FRY,	appeal No. 507/2011, registered on 19 September 2011
- Mr Richard WIEDER,	appeal No. 508/2011, registered on 19 September 2011
- Mr Marc BIGAIGNON,	appeal No. 510/2011, registered on 19 September 2011
- Mr Emmanuel SIMONET,	appeal No. 512/2011, registered on 4 November 2011
- Mr Didier FAUCHEZ,	appeal No. 515/2011, registered on 30 November 2011
- Ms Daniela BALESTRA,	appeal No. 516/2011, registered on 30 November 2011

- Ms Marie-Odion BILLET, appeal No. 517/2011, registered on 30 November 2011
- Ms Nadine SCHAEFFER, appeal No. 518/2011, registered on 30 November 2011
- Mr James BRANNAN, appeal No. 519/2011, registered on 30 November 2011
- Ms Elisabeth SCARAVELLA, appeal No. 520/2011, registered on 30 November 2011
- Mr Alev GUNYAKTI, appeal No. 527/2012, registered on 27 March 2012

2. On 18 and 28 October 2011 and on 2 January and 18 April respectively the appellants submitted their further memorials.

3. On 10 January and 9 February and 21 May respectively, the Secretary General submitted his observations. The appellants submitted their memorials in reply on 20 February, 7 and 31 March and 3 September respectively.

4. The public hearing on the first twenty appeals took place in the Tribunal's courtroom in Strasbourg on 20 June 2012. The appellants – with the exception of Mr Emmanuel Simonet, who argued his own case – were represented by Mr Marcel Piquemal, honorary university professor, assisted by Mr Giovanni Palmieri. The Secretary General was represented by Ms Bridget O'Loughlin, Deputy Head of the Legal Advice Department, assisted by Ms Maija Junker-Schreckenberg and Ms Sania Ivedi, administrative officers in the same department.

Regarding the twentieth appeal, Professor Piquemal, counsel for the appellant Gunyakti, stated that his client was willing to forego the oral proceedings. The Secretary General having adopted the same position, on 25 September 2012 the Tribunal decided that there was no reason to hold a hearing (Article 23 of the Tribunal's Rules of Procedure).

THE FACTS

I. THE FACTS OF THE CASE

5. The appellants are Council of Europe officials in post in Strasbourg.

6. On 7 July 2010 the Committee of Ministers adopted Resolution CM/Res (2010)8 amending Article 3 of the Regulations governing staff salaries and allowances (Appendix IV to the Staff Regulations). In pursuance of that resolution, which entered into force on 1 January 2011, all staff members henceforth advance to their next step after twice the number of months they would have needed, on the day when the measure took effect, to advance to that step under the former legal rules.

7. On various dates the appellants lodged administrative complaints, all of which were rejected by the Secretary General (Article 59 of the Staff Regulations).

On the dates stated in paragraph 1 above, the appellants lodged their appeals under Article 60 of the Staff Regulations.

II. THE RELEVANT LAW

Regulations governing staff salaries and allowances

8. Article 2 - "Basic salary" provides that:

"Staff members' basic salaries shall be determined in accordance with the scales contained in the tables appended. The basic salaries of staff members based in a country for which such scales do not exist shall, until such scales are established, be determined by the Secretary General in a General Rule. In this Rule, the Secretary General shall have due regard to the basic salary applicable in Belgium and apply an appropriate coefficient reflecting the cost and conditions of living in the country concerned. Establishment of scales for any given country shall invalidate the Rule as regards that country."

9. Article 3 – "Steps", as amended by Resolution CM/Res (2010)8 of 7 July 2010 with effect on 1 January 2011, provides that:

"1. Each staff member confirmed in employment shall advance up the scale for his or her grade by the steps shown.

2. Such advancement shall be continuous, from one step to the next starting on the first day of the first quarter (1 January, 1 April, 1 July or 1 October) following a period of twenty-four months, in the cases of paragraph 3, and thirty-six months, in the cases of paragraph 4, after confirmation in employment or following a promotion.

3. For category A staff, advancement to steps 2 to 5 (grades A7 and A6) and 2 to 7 (grades A5, A4, A3 and A2) shall take place after twenty-four months of service in the step immediately below, and advancement to steps 6 (grade A7), 6 to 8 (grade A6) and 8 to 11 (grades A5, A4, A3 and A2) after forty-eight months of service in the step immediately below. Grade A1 staff shall be promoted from step 1 to step 2 after twelve months' service in the step immediately below.

4. For category L staff, advancement to the next step shall take place after thirty-six months of service in the step immediately below.

5. For staff in categories B and C, advancement to steps 2 to 8 shall take place after twenty-four months of service in the step immediately below, and to steps 9 to 11 after forty-eight months' service."

Regulations on the procedure for adjustment to remuneration in the Co-ordinated Organisations (Annex to the 154th report of the CCR)

10. Article 1 – "Scope of Co-ordination" provides that:

"(a) The object of the co-ordination system is to provide recommendations to the Governing bodies of the Co-ordinated Organisations, in accordance with the provisions of these Regulations, concerning:

(i) Basic salary scales, and the method of their adjustment, for all categories of staff and for all countries where there are active staff or recipients of a pension;

(…)

(b) According to the procedure referred to in Article 6, recommendations to the

Governing bodies are made by the Co-ordinating Committee on Remuneration (CCR), to the extent possible in conjunction with the Committee of Representatives of Secretaries/Directors-General (CRSG) and after consultation with the Committee of Staff Representatives (CRP). Where divergent conditions exist in different Co-ordinated Organisations, recommendations on allowances may take the form of frameworks applicable to all the Organisations, within which each Organisation shall have the flexibility to adopt implementing provisions to meet its specific needs. The CCR shall be kept informed of these provisions.

(c) According to the procedure referred to in Article 6, the CCR shall give its advisory opinion on any question falling within its mandate asked by the Governing body of any Co-ordinated Organisation."

11. Article 5 – "Proposals and work programme" provides that:

"(b) The CRSG, after consultation with the CRP, may make proposals relating to matters which fall within the competence of the CCR as defined in Article 1 above, and present them to the CCR accompanied by any comments and views of the CRP."

12. Article 6 – "Recommendations and advisory opinions" provides that:

"(a) Recommendations, in the form of reports, shall be made by the CCR by consensus and, to the extent possible, in conjunction with the CRSG. The CRP shall be consulted on the draft reports with a view to considering its position.

(…)

(e) Advisory opinions of the CCR shall be made by consensus after consultation of the CRSG and the CRP representatives from the Organisation(s) concerned. In case the subject in question is specifically related to one or more Organisations, the CCR delegations whose country is not a member of the Organisation(s) concerned will exercise due restraint in discussions on the adoption of the opinion. If no agreement can be reached among the CCR delegations after two meetings following submission of the request for an opinion, the Chairperson of the CCR shall draft a report in which he/she shall set out the advisory opinion which has the largest support in the CCR. Dissenting opinions provided in writing shall be annexed to the report."

Summary report of the 88th joint meeting on 26 September 2007 (CCR-CRSG-CRP)

13. Point 6 - Calendar of meetings and programme of work for 2008

"6.1 The Chairman noted that the review of the expatriation allowance would continue in 2008 if necessary and that, at the request of the German delegation, the Co-ordination would start to examine the salary structure of the Co-ordinated Organisations in the light of the reform at the European Union.

6.2 The German delegate noted that the structure of the salary scales of the Co-ordinated Organisations had remained unchanged since its introduction whereas there had been significant changes in certain international organisations, such as the European Union, which could be used as an example. He went on to say that this

project had been launched without any preconceived ideas and that the aim was to examine what might be possible while taking account of the needs of the Co-ordinated Organisations. He suggested that the review be conducted by the Studies Committee and that it might be useful to study different options such as experience in national civil services and other international organisations. He said that he would like this issue to be approached in an open manner regardless of the budgetary costs that might be incurred or the fears of staffs.

6.3 The Chairman of the CRP wondered whether this exercise fell within the remit of the CCR as described in article 1 of the Regulations relating to Co-ordination. He pointed out that the main difficulty in carrying out this exercise lay in the fact that in the Co-ordination Organisations system there was a link between grade and function, which was not the case in national civil services or the European Union. Moreover, European Union officials who received a favourable report were entitled to be promoted to the next grade even if there were no post vacant, which was not the case in the Co-ordinated Organisations. He recalled that the salary scale system was designed to compensate for the lack of career paths in the Co-ordinated Organisations. The Chairman of the CRP concluded that the comparison was of interest but feared that the CCR might adopt the system that was least advantageous to staff.

(…)

6.8 The CCR's legal advisor noted that article 1 of the Regulations relating to the co-ordination system provided that salary scales fell within the competence of the CCR, which therefore should not exclude examination of their structure".

171st CCR report on the remuneration adjustment procedure of the Co-ordinated Organisations (CCR/R(2011)3 of 19 July 2011)

14. Article 1 – "Duration of validity and subsequent amendments to the rules" provides that:

"1.1 These rules shall determine the remuneration adjustment procedure for the six-year period from 1 January 2007 to 31 December 2012. Should any amendments subsequently be made to these rules, no provision which ceases to apply shall give rise to vested rights."

15. Article 5 – "Annual adjustments of basic salaries" provides that:

" (…)

5.2 Salary scales for other countries

5.2.1 Subject to the provisions of Article 8, the basic salaries for A and L category staff posted in the other countries shall be adjusted at 1 January following the reference period by the salary adjustment calculated on the basis of the national consumer price index, the reference index and by the purchasing power parities as set out in Appendix 2, in order to guarantee a relative equivalency of purchasing power between the scales of the countries concerned.

5.2.2 Basic salaries of B and C category staff shall be subject to an adjustment equal to the percentage determined for A and L grade staff of those countries."

16. Article 8 - "Affordability" provides that:

"8.1 The Committee of Ministers reserves the right, if exceptional or unforeseen circumstances so warrant:

8.1.1 to reduce the annual adjustment recommended by the CCR to the national consumer price index applicable and to phase in the adjustment amount or postpone it until later in the calendar year;

8.1.2 to decide, on a finding by the Secretary General that the Organisation could not otherwise reasonably expect to meet its financial obligations and essential operating requirements, that the annual adjustment recommended by the CCR be awarded in part or not at all, and to decide also on the timing for the payment of any adjustment.

8.2 Action under Article 8.1 shall be taken in accordance with the applicable general legal principles and after appropriate tripartite consultation.

8.3 The Committee of Ministers also reserves the right to determine whether any catch up, retroactive or competitiveness adjustments should be made."

17. Article 12 – "Flexible remuneration management" provides that:

"12.1 After completion of the statutory consultation process of staff, a Secretary/Director General of a Co-ordinated Organisation may make proposals to the Governing body of the Organisation concerned for measures concerning flexible remuneration management. Such measures shall be implemented within the budgetary envelope decided by the Governing body of the Organisation concerned.

12.2 In the event that the Governing body of a Co-ordinated Organisation decides to implement flexible management of salary scales, the salary scales as adjusted in compliance with Article 5 of the rules shall remain in force in each Co-ordinated Organisation. They shall be used as the basis for the calculation of pensions payable under the terms of the Pension Scheme of the Co-ordinated Organisations as well as for pensions paid by any other pension scheme approved by the Governing body of a Co-ordinated Organisation which provides for the same method of adjustment.

12.3 Any Governing body of an Organisation may seek the opinion of the CCR on measures relating to flexible remuneration management before introducing them. The CCR shall be kept informed of such measures after approval by the Governing body concerned".

THE LAW

I. JOINDER OF THE APPEALS

18. The twenty appeals being related, the Tribunal decides to join them in accordance with Article 14 of its Rules of Procedure.

II. THE ARGUMENTS OF THE PARTIES

19. The appellants request the setting aside of the decisions not to grant them the step provided for as from – depending on the case – April, July and October 2011 or January 2012, before the contested measure came into force. They consider that the decision of the Committee of Ministers to double the interval between the grant of step increments is unlawful because it was taken in breach of the regulations on the Co-ordination system, and because it was an arbitrary decision infringing their acquired rights.

20. According to the appellants, the decisions impugned are unlawful because they were taken in breach of the Co-ordination regulations. Furthermore, they breach two general principles of law, namely the prohibition of arbitrary decisions in remuneration matters and the protection of acquired rights under international public service law.

A. Breach of the Co-ordination regulations

21. Referring to paragraph (i.) of Article 1 of the Regulations on the procedure for adjustment to remuneration in the Co-ordinated Organisations (see paragraph 10 above), the appellants maintain that step increments are an integral part of basic salary scales and thus fall within the scope of Co-ordination as defined in Article 1. In this connection the appellants also refer to point 6 of the summary report of the 88th CCR-CRSG-CRP joint meeting (see paragraph 13 above). According to them, the fact that the intervals between step increments fall within the scope of Co-ordination does not necessarily mean that identical rules must be adopted on this matter in all the Co-ordinated Organisations. However, the Co-ordination regulations preclude an Organisation's omitting to consider the question at co-ordinated level. In other words, if the Secretary General had wished to alter the intervals between step increments, he ought to have acted in accordance with Article 5b of the Co-ordination regulations (see paragraph 11 above) and obtained the agreement of the CRSG in order for the latter to "make proposals relating to matters which fall within the competence of the CCR as defined in Article 1 and submit them to the CCR, accompanied by any comments and views of the CRP" as required by point (d) of the said Article 5.

22. In the opinion of the appellants, if the Secretary General had followed that procedure he would have complied with substantive formalities, ie enabled the CRP to formulate comments and opinions on this point, and possibly enabled it to request a meeting of the concertation group envisaged in Article 7 of the regulations. However, the Secretary General did not follow that path: wrongly believing himself to be relieved of any obligation arising from these regulations, he turned his back on the Co-ordination procedure and resorted to a procedure which, while being more expeditious, is internal to the Organisation and thus unacceptable in a matter falling within the Co-ordination sphere.

23. For his part, the Secretary General requests the Tribunal to dismiss the appeals. He observes, firstly, that there is no provision of the regulations which refers to the intervals between the grant of step increments. It is not in dispute that the basic salary scales associate monetary values to each step within each grade in a category. However, while the Co-ordination sphere covers the value of steps, it does not cover the procedures for step advancement, including the intervals for granting step increments. Moreover, neither the salary adjustment method set out in the 171st report of the CCR nor the salary scales for 2011 and 2012 contain any rules on the procedures for granting step increments.

24. In any event, the Secretary General argues that the said CCR report contains Article 12 on flexible management of remuneration, which gives each Organisation great flexibility in the management of remuneration. Thus each Organisation is free to manage its salary scales in accordance with its needs, the only rule laid down on the matter being that the CCR be simply informed *a posteriori.*

25. The Secretary General also observes that Co-ordination is a common system for adjusting the salaries and allowances of the staff of the Co-ordinated Organisations and does not superimpose a higher decision-making body on the organs of the Council of Europe. Its purpose is to recommend uniform solutions to remuneration questions common to all the Organisations. By adopting the regulations on the Co-ordination system, the Committee of Ministers did not transfer its powers to the CCR. It is neither the purpose nor the function of Co-ordination to take the place of the governing bodies of the Co-ordinated Organisations in matters of management: the latter retain their full sovereignty and their powers where internal management and decision-making are concerned. It is important to stress that staff policies – such as procedures and intervals for granting step increments – remain within the jurisdiction of each Organisation and are not within the terms of reference of the CCR. The Secretary General adds that the question of intervals between step increments is not a question common to all the Co-ordinated Organisations and consequently is not a suitable matter for Co-ordination.

26. From this, the Secretary General concludes that the adoption of Resolution CM/Res (2010)8 amending Article 3 of the Regulations governing staff salaries and allowances (Appendix IV to the Staff Regulations) does not constitute a breach of the regulations relating to the Co-ordination system.

B. Breach of the general principle of law which prohibits arbitrary decisions

27. The appellants consider that the contested decisions pursue the sole aim of achieving savings at the expense of staff, and in their opinion this breaches the general principle of law which prohibits all arbitrary decisions. On this point they refer to judgment No. 832 of the Administrative Tribunal of the International Labour Organisation (ILOAT) in which the Tribunal clearly ruled that "an international organisation should refrain from any measure which is not warranted by its normal functioning or the need for competent staff. It is bound by the general principles of law such as equality, good faith and non-retroactivity. It will act from reasonable motives and avoid causing unnecessary or undue injury". (see paragraph 16 above). Furthermore, the ILOAT stated, in its judgment No. 1821 of 28 January 1999, that "the mere desire to save money at the staff's expense is not by itself a valid reason for departing from an established standard of reference" (see paragraph 7 above).

28. The appellants also argue that step relegation is contained in the Council of Europe Staff Regulations as one of the most serious disciplinary measures. Based on the structure of the scales in force at the time when the appellants were recruited, the doubling of step intervals would be tantamount to imposing a step relegation every two years. In their view, this simple reasoning makes it possible to class as excessive the prejudice caused by the Organisation to the appellants.

29. For his part, the appellant Simonet argues that, on the basis of the scale in force at the time of recruitment, the doubling of step intervals is tantamount to imposing a step relegation

every two years. In his opinion, it cannot be argued that the recruitment conditions may mean implicit acceptance of being subjected in the future to treatment which, at the time of recruitment, constituted such serious sanctions. Thus the transferability clause cannot reasonably be invoked. By its significance and scope, the measure clearly exceeds what normal understanding allows such a clause to encompass. Furthermore, respect for the conditions of recruitment may be regarded as a matter of customary usage within the Organisation. Landmark dates have been set for all earlier reforms of a similar magnitude, for example in respect of the residence allowance, travelling time or the pensions scheme.

30. The appellants submit that the grounds invoked by the Secretary General are not reasonable and that the principle of proportionality has not been respected. The underlying motive for the measure comes down to making the staff pay for a part of the Organisation's programme which the Committee of Ministers does not wish to finance otherwise. Consequently, the prejudice caused to the staff is also excessive in purely financial terms, affecting salaries and having very strong repercussions on future pensions. This also applies to the pensions of those staff members who, having worked in a national administration, have asked for their pension rights to be transferred to the Organisation.

31. The appellant Simonet argues that the purpose and effect of extending the intervals between steps is to circumvent the material and formal conditions for applying the affordability clause. In his opinion, the measure is both directly contrary to the performance in good faith of the undertakings arising from the method and constitutes misuse of authority. Moreover, the unlawfulness of the measure is further confirmed by Article 1.1 of the regulations. *A contrario*, the regulations themselves recognise that they create vested rights, as least as long as they remain in force. No revision of the regulations has been embarked on within Co-ordination, and in any event the stability of the remuneration adjustment method cannot be called into question before the set period has expired. On this point the appellant refers to the decision in Ausems and others v. Secretary General (ATCE, appeal No. 133-145/0986 - Ausems and others v. Secretary General, decision of 3 August 1987).

32. For his part, the Secretary General points out that the adoption of the measure was warranted by the general economic context and at the same time was set in the broader framework of the reform process principally intended to increase the reactivity of the Council of Europe. He has suggested several measures to control the growth of staff expenditure and to avoid having to make further cuts in the Organisation's operational capacity. In particular, he has carried out a critical examination of the system of indemnities and allowances, recruitment conditions have been revised downwards and waiting times for promotion to twinned posts have been increased, in order to reduce the wage bill on a lasting basis. There has been targeted suppression of posts and functions. Doubling the intervals between two steps has helped to control the growth in staff expenditure, while keeping within the Organisation the human resources absolutely necessary for the implementation of the Council of Europe's operational activities. Indeed, had this measure not been adopted, suppressions of posts or functions would have been far more numerous than the 57 cases planned. Average budget savings resulting from this measure are in the region of 600,000 euros, corresponding to at least ten or so posts each year for the coming ten years. The Secretary General is convinced that this was a measure which respected the proportionality criterion and was justified by the present and future situation of the Organisation.

33. The Secretary General contests the appellants' argument that the measure at issue is tantamount to a disciplinary step relegation measure. For one thing, the measure does not seek

to reduce the steps already granted to staff members but to double the period for advancement to future steps. For another, it is a general measure affecting the conditions of advancement from one step to the next and henceforth part of the staff remuneration system.

34. Regarding the appellants' assertion that the measure is unfair, in that the doubling of the intervals between steps does not affect in the same manner those staff members whose careers have progressed in such a way that they are at the bottom, at the top or at the end of the scale, the Secretary General emphasises that the Administration has taken great care to ensure maximum fairness in the implementation of the measure. Further, when the Staff Regulations are reformed it is inevitable that a general measure affects certain categories of staff in different ways depending on the particular personal and professional situation of each individual. It is up to the Organisation to use its discretionary power to judge whether it is necessary and appropriate to apply different rules to different categories of staff. In the instant case, the difference of situation referred to by the appellants does not require staff members to be subjected to different rules. Moreover, as regards those staff members who have reached the last step in their grade, they will likewise be affected by the doubling of step intervals if they are promoted to a higher grade.

35. From this the Secretary General draws the conclusion that the Council of Europe has not failed in its obligations. In his opinion the measure impugned is designed to safeguard the future, and improve the health, of the Organisation's worrying financial situation, and thus safeguard the employment of its staff.

C. Breach of the general principle of law which protects vested rights

36. The appellants argue that the measure doubling the intervals between steps is such as to affect the economy of the contract binding them to the Organisation, and conclude from this that the general principle of law which safeguards respect for acquired rights has consequently been breached.

37. They observe that the Secretary General denies neither the existence of this general principle of law nor its application to the internal law of the Council of Europe. However, although he agrees with them that the concept of acquired rights extends to those provisions of the regulations which are such as to lead the person concerned to take up employment and then remain in service, the Secretary General considers that it cannot be convincingly argued that the prospect of step advancements every 36 months instead of every 18 months would have dissuaded civil servants from entering the service of the Council of Europe.

38. The appellants point out that this general principle of law constitutes a veritable barrier preventing international organisations from unilaterally changing the rules which govern civil servants' status. Referring to the case-law of the Administrative Tribunal of the World Bank (Decision No. 1 of 5 June 1981 – de Merode, Lamson-Scribner, Reese, Reisman-Toof, Ruberl, Shapiro v. World Bank), the appellants cite the limitations on the power unilaterally to amend non-fundamental, non-essential elements: (a) changes must not have retroactive effect; (b) they must not be unrelated to the proper functioning of the organisation and its duty to attract the most qualified staff; (c) changes must be based on a precise evaluation of the relevant situation; (d) they must be made in good faith; they must not be discriminatory; changes must be made in a reasonable manner seeking to avoid excessive and unnecessary harm to the staff. According to the appellants, these conditions are not satisfied in their case.

39. In support of their arguments the appellants also cite the relevant case-law of the ILOAT, the OECD appeals board and the NATO appeals board. They consider that the decisions contested in the instant case infringe an important element which underlay their decision to join the Organisation. Among the main elements which determine a person's entry into the service of an organisation is the principal remuneration, as well as the accompanying indemnities and allowances.

40. For his part, the Secretary General maintains that one of the criteria by which the existence or otherwise of an acquired right can be determined is the nature of the right at issue. He observes that step advancement is an element of regulations, and that a regulatory provision may be amended at any time in the interests of the service. Consequently, it is not an acquired right. In this connection he refers to ILOAT judgment No. 832 (Ayoub and others). Furthermore, the development of civil servants' careers entrails rights not every aspect of which can remain intangible. In this context the Secretary General cites judgment No. 365 (Lamadie (No. 2) and Kraanen), also of the ILOAT, which found that an intrinsically variable factor like prospects for career development, perhaps over several decades, cannot be regarded as an acquired right.

41. The Secretary General emphasises the well established principle that there is an acquired right to a possibility of regular advancement, but not an acquired right to a certain rate or speed of advancement. The measure challenged by the appellants is designed to double the interval between two career steps. Thus it merely slows the rate of staff members' advancement to the step above. The prospect of advancement is not abolished and the rate of advancement, henceforth 24 months instead of 12 months, or 36 months instead of 18 months, depending on category, is more than reasonable in the opinion of the Secretary General.

42. In conclusion, the Secretary General requests the Administrative Tribunal to declare the appeals ill-founded and to dismiss them.

III. THE ASSESSMENT OF THE TRIBUNAL

43. The Tribunal notes that is seized of a series of requests for the setting aside of administrative decisions reflected in the pay slips of the appellants, taken in accordance with the regulatory change decided by the Committee of Ministers following the adoption by Co-ordination of the reports within its remit.

The Tribunal makes the preliminary observation that there is a certain similarity between the general aspect of the present appeals and the general aspect of the appeals which gave rise to the Prevost and others appeal (ATCE, appeal No. 477-484/2011, Prevost and others v. Secretary General, decision of 20 April 2012, paragraph 60). In fact, the appellants, like their colleagues in the afore-cited appeals, complain of an unfavourable measure which has consequences for the staff of the Organisation as a whole. However, the Tribunal observes that in the present economic situation, budget management is a paramount necessity which must be applied all the more strictly as the Council of Europe is an international organisation financed by the member states, whose contributions come from their own national budgets funded by taxpayers. In these circumstances, the staff of the Council of Europe – one of the international organisations – must not only bear in mind the salary aspect of their employment, but must also show understanding if unpopular measures are unavoidable in order to ensure the ongoing functioning of the Organisation. On the other hand, they are entitled to expect that the member states, acting as good *paterfamilias* in a concern for the

interests both of the Organisation and of its staff, balance the consequences of these restrictions whenever circumstances permit.

A. Breach of the Co-ordination regulations

44. The appellants consider that the contested decisions are unlawful because they were taken in breach of the Co-ordination regulations.

45. The Tribunal agrees with the appellants' argument that step increments are an integral part of basic salary scales and fall within the scope of Co-ordination as defined in Article 1 of the Regulations on the procedure for adjustment to remuneration in the Co-ordinated Organisations (see paragraph 21 above). However, it observes that none of the texts submitted to it establishes the rule whereby a certain interval must be maintained between step increments granted.

46. Furthermore, even supposing that the Secretary General – as the appellants claim – ought to have acted in accordance with Article 5b of the Regulations, the Tribunal points out that the bodies mentioned in that provision, and indeed everywhere else in the Regulations, have the power only to produce and submit recommendations or advisory opinions; that limitation flows clearly from Articles 1 and 6 of the said Regulations. At the same time, the Tribunal notes that the Secretary General enjoys a degree of flexibility in the management of remuneration. More particularly, Article 12.3 of the CCR report (see paragraph 17 above) permits, but does not oblige, him to seek the opinion of the CCR on the measure he wishes to introduce and to inform the CCR accordingly once such a measure has been introduced.

47. In the light of these considerations, the Tribunal finds that the Secretary General has not breached the Co-ordination regulations. It therefore dismisses this ground of appeal.

B. Breach of the general principle of law which prohibits arbitrary decisions

48. The appellants allege that the contested decisions pursue the sole aim of achieving savings at the expense of staff, in breach of the general principle of law which prohibits all arbitrary decisions.

49. The Tribunal has already referred to the general economic situation facing all the international organisations as well as the different member states (see paragraph 43 above). It follows the Secretary General in observing that the doubling of the intervals between step increments is not the first or only measure taken to ensure the proper functioning of the Organisation during the period of economic difficulty. It is in the nature of things that measures taken in such circumstances are generally bound to be unpopular. The Tribunal accepts that the measure stems from the concern to keep within the Organisation staff who would have been dismissed if it had not been possible to remunerate them by means of the moneys saved by the doubling of step intervals. Consequently, in the view of the Tribunal the measure in dispute is in keeping with the aims of the Organisation, which must be concerned, in the interests of the entire staff, to safeguard their employment and protect their recruitment conditions (see, *mutatis mutandis*, ILOAT, De Los Cobos and Wenger, judgment No. 391 of 24 April 1980).

50. Having taken all the arguments of the parties into consideration, the Tribunal does not believe that the measure in question was taken without regard to a legal rule or basis; not does

it consider that it was the result of free choice on insufficient grounds or failed to reflect a logical necessity. Referring to its earlier considerations, the Tribunal disagrees with the appellants' argument, based on ILOAT case-law, that the contested measure stemmed from a mere desire to make savings at the expense of the staff and is not justified by normal functioning or the concern to recruit qualified staff (see paragraph 27 above). Although step relegation is one of the disciplinary measures that may be imposed on staff (see paragraph 28 above), the Tribunal nevertheless considers that it would be very simplistic to equate the doubling of step intervals with a disciplinary sanction. It is true that both measures have a negative effect on staff incomes. However, all the circumstances in which they were taken, and the persons affected by them, are diametrically different. Moreover, the fact that the step intervals have been put in place in no way affects the application of the Staff Regulations governing disciplinary sanctions should the need arise.

51. Consequently, the Tribunal considers that, despite the negative effect on the income of Council of Europe staff as a whole, the measure in question did not breach the general principle of law which prohibits all arbitrary decisions. It therefore dismisses this ground of appeal.

C. Breach of the general principle of law which protects acquired rights

52. The appellants further allege that the contested measure also breaches another principle of law, namely the protection of acquired rights.

53. The Tribunal points out that a right is acquired if its beneficiary is able to demand respect for it, notwithstanding any textual amendment. A right is to be deemed acquired if it is conferred by a provision of the statute or regulations and is sufficiently important to have led a staff member to decide to take up employment with an organisation. Curtailing such a right without the consent of the beneficiary breaches the conditions of employment on the continuance of which civil servants may rely (see ILOAT, De Cobos and Wenger, judgment afore-cited).

54. In the instant case, the Tribunal observes that Article 1.1 of Annex I to the 171st CCR report stipulates that in the event of amendments prior to 31 December 2012, no provision which ceases to apply shall give rise to vested rights (see paragraph 14 above). Furthermore, contrary to the opinion of the appellants, the doubling of step intervals has not affected the appellants' status as regards their possible advancement in the development of their own careers as officials of the Organisation. The Tribunal does not exclude the possibility that even if the appellants had imagined, when they signed their respective contracts, that the Organisation might find itself in an uncomfortable financial situation some years later, they would not have considered when taking their decision to join the Organisation that such measures as the doubling of step intervals would be taken. However, this is not a factor which constitutes acquired rights.

55. In the light of all these considerations, the Tribunal concludes that the contested measure has not breached the general principle of law which protects acquired rights. It also dismisses this ground of appeal.

56. In conclusion, the appeals are ill-founded and must be dismissed.

For these reasons, the Administrative Tribunal,

Orders the joinder of the appeals;

Declares the appeals ill-founded and dismisses them;

Decides that each party shall pay its own costs.

Adopted by the Tribunal at Strasbourg on 25 September 2012 and delivered in writing in accordance with Article 35 paragraph 1 of the Tribunal's Rules of Procedure of 26 September 2012, the French text being authentic.

Registrar of the Administrative Tribunal	Chair of the Administrative Tribunal
S. SANSOTTA	C. ROZAKIS