

19 March 2025

Answers for the Administrative Tribunal of the Council of Europe Questionnaire on the subject of general principles

Introduction

The answers to this questionnaire cover the 60 years or so that the Administrative Tribunal of the Council of Europe (ATCE), has been in operation, from the first [decision delivered on 20 August 1968](#) by the Appeals Board of the Council of Europe (ABCE)¹ in *Terrain v. Secretary General of the Council of Europe (SG)* to the latest judgment delivered by the ATCE, namely the [judgment of 5 February 2025](#) on Appeals Nos. 746/2024 and 748 to 758/2024, *A. S. T. and Others v. SG*. They concern decisions on the admissibility and/or merits of appeals lodged with the Tribunal,² excluding decisions handed down on requests for a stay of execution.

What follows is an attempt to highlight certain jurisprudential features that characterise the Tribunal's use of general principles. It does not purport to give an exhaustive picture of the Tribunal's case law in this area.

For editorial simplicity, all references in this document to the decisions of the Tribunal should be understood as encompassing both decisions of the ABCE and decisions of the ATCE.

Since some decisions are cited several times in the course of the document, a list is attached in the appendix, cataloguing all the decisions in question, ordered by reference to the general principle(s) to which they refer.

I. Identification methods

- 1) On what legal basis (written rule, implied power, etc.) does your tribunal recognise the applicability of general principles?

As regards applicable regulatory texts, it should be noted that while the Statute of the ATCE contains no explicit reference to general principles, the Staff Regulations of the Council of Europe (CoE) and the CoE Development Bank refer to them in the preamble as follows:

“The Staff Regulations set out the fundamental conditions of service and the basic rights, duties and obligations of the [Council of Europe] [Bank] staff. They enshrine the broad principles of staff policy for the guidance of the Secretary General [Governor] in the staffing and administration of the [Secretariat] [Bank] (...)

These responsibilities and powers shall be exercised by the [Secretary General] [Governor]

¹ The ABCE, established by decision of the Ministers' Deputies of the Council of Europe in 1965 (see [Concl. \(64\) 136, item XXI and Doc. CM \(64\) 239](#)) was replaced by the Administrative Tribunal in 1994 (see Resolution (94)11 adopted by the Committee of Ministers on 5 April 1994, at the 51st meeting of the Ministers' Deputies).

² Since the entry into force of the Tribunal's new Statute on 1 January 2023, these decisions are now referred to as “judgments”.

in accordance with the principles and ideals promoted by the [Organisation] [Council of Europe], and in particular the rights and principles of the revised European Social Charter and the European Convention on the Protection of Human Rights and Fundamental Freedoms, insofar as these are applicable to an international organisation. In the management of staff, the [Secretary General] [Governor] shall endeavour to guarantee staff members' rights and fundamental conditions of employment, in accordance with the general principles of international civil service law."

The Staff Regulations of the CoE (Article 1) and the CoE Development Bank (Article 2) also enshrine various general principles, such as the duty of the Organisation to act at all times with fairness and due care in its relations with staff members, the right of staff members to protection of human dignity at work, the right to equal treatment without discrimination, and the right to an effective remedy and a fair trial.

Irrespective of such references to general principles in the regulatory texts, it will be observed that the decisions first of the ABCE and later of the ATCE have systematically relied on general principles, in recognition of the implied power enjoyed by these bodies in such matters and which can be regarded as inherent in the very exercise of the judicial function.

As for the "affiliated" organisations, namely the three international organisations that have recognised the jurisdiction of the ATCE, namely the Central Commission for the Navigation of the Rhine (CCNR), the Hague Conference on Private International Law (HCCH) and the Intergovernmental Organisation for International Carriage by Rail (OTIF), a reference to general principles can likewise be found in their respective staff rules, although not in the general provisions but in the section on the conciliation procedure. For example, Article 10 of Annex 1 to the CCNR staff rules reads:

"In order to come to an amicable settlement and propose a solution to the dispute, the conciliator shall apply the relevant statutory and regulatory provisions of the CCNR. The rights and fundamental freedoms set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, as well as the general principles of law, particularly those derived from the international administrative courts, are also an integral part of the applicable law. The conciliator may also propose a solution *ex aequo et bono*."³

In addition, some general principles, such as non-discrimination, are recognised by the staff rules of the affiliated organisations in the section on staff members' basic rights.

2) Does your tribunal make a distinction between "general principles of law derived from national legal systems" and "general principles of law formed within the international legal system", and perhaps other principles (e.g. the general principles of international civil service law, etc.)? If so, which ones, for what reason(s) and what are the implications?

In the case law of the ATCE, differences in terminology can be observed. For example, the Tribunal has cited *inter alia*:

- "the rule of non-discrimination [as being] one of the general principles of law which prevails in the legal system of the Council of Europe where it is enshrined in Article 14 of the European Convention on Human Rights" (ATCE, Appeals Nos. 739/2023, 740/2023 and 741/2023, E. T. and Others v. SG, [judgment of 22 March 2024](#), § 71);
- the "basic rules of fair and open competition" that apply when considering an application

³ A similar provision can be found in Article 10 of Annex 2 (conciliation procedure) to the Staff Rules applicable to officials and personnel of the HCCH, and also in Article 10 of Annex IV (conciliation procedure) of the Staff Regulations of the OTIF.

in a selection process (ATCE, Appeal No. 665/2020, Yuksek (II) v. SG, [decision of 12 February 2021](#), § 69);

- the “ethical principles [that] have to be respected in the conduct of the appraisal process, such as transparency and constructive dialogue between the stakeholders involved in the process” (ATCE, Appeals Nos. 561-564/2015, Kacsandi (I, II, III and IV) v. Governor of the Development Bank, [decision of 26 April 2016](#), §§ 115 and 121);
- the principle whereby all persons believing themselves to be the victim of an act adversely affecting them are entitled to challenge that act through the courts as being “a general principle which holds good in the member states of the Council of Europe and, in the matter of access to employment in the international civil service, in other international organisations too” (ATCE, [decision of 28 April 2015](#), Appeals Nos. 548-553/2014, Cucchetti Rondanini and others v. SG);
- “general principles of law, to which the legal systems of international organisations are subject” which the appointing authority must follow when exercising its discretionary power in recruitment matters (Appeals Board of the Council of Europe (ABCE), Appeals Nos. 115, 116 and 117, Peukert, Müller-Rappard and Bartsch v. Secretary General of the Council of Europe (SG), [decision of 14 February 1986](#), § 99; ATCE, Appeal No. 226/1996, Zimmermann v. SG, [decision of 24 April 1997](#), § 37; Appeal No. 250/1999, Schmitt v. SG, [decision of 9 June 1999](#), § 25; Appeal No. 408/2008, Pace Abu-Ghosh, [decision of 31 March 2009](#), § 46);
- “the administrative-law rule that reasons must be given for any adverse decision” (ATCE, Appeal No. 294/2002, Marchenkov v. SG, [decision of 28 March 2003](#), § 37);
- “general principles of social law [which include] the principle that every employer is obliged to ensure that the staff it employs have proper social security cover” (ATCE, Appeal No. 308/2002, Levy v. SG, [decision of 28 March 2003](#), § 47).

The examples cited show that in its decisions, the ATCE has confined itself to identifying general principles of law, without specifying whether they originate in national or international law. The wording used by the ATCE remains generic therefore, even where, depending on the context in which the general principles were applied, the ATCE has indicated, for example, that they are “administrative law” or “social law” principles, or principles “to which the legal systems of international organisations are subject”.

The distinction made by Marcelo Vázquez-Bermúdez, Special Rapporteur of the International Law Commission, in his first report on general principles of law between “general principles of law derived from national legal systems” and “general principles of law formed within the international legal system”,⁴ is not echoed in the ATCE’s case law therefore. Clearly, the ATCE took the view that these were general principles which represented the lowest common denominator among the different legal systems, with no need to elaborate on them further.

3) How does your tribunal go about identifying a general principle?

- a. By reference to national law? If so, which national law? Does your tribunal do a comparative law analysis, even if it is only a limited one? How are difficulties in translating legal concepts overcome?

It would seem that there are no examples in the Tribunal’s case law of an explicit reference to national law, whether of a particular country or of a group of countries, to justify applying a

⁴ Mr Vázquez-Bermúdez, *First report on general principles of law*, document A/CN.4/732, 5 April 2019, § 22, §§ 188- 253 and Draft conclusion 3.

general principle in a given case. Nor, it appears, does the Tribunal ordinarily carry out a comparative law analysis when applying general principles.⁵

It does nevertheless seem reasonable to contend that many principles of administrative law as applied in national law have inspired international civil service law and are reflected in the Tribunal's case law. As mentioned in answer to question No. 2, when applying general principles, the Tribunal does not undertake an analysis of the different legal systems to which they relate, the assumption being that the principles in question represent the lowest common denominator among those systems.

In the words of C.F. Amerasinghe:

"While it is established that the internal law of an international organization is not constituted by municipal law (...), there are circumstances in which municipal law becomes relevant as a source of the internal law of organizations applicable to the employment relationship. As was said in Volz by the ILOAT, municipal law is taken note of in so far as such law embodies general principles of law. Thus, in so far as general principles of law which are reflected in municipal law are applied by tribunals, municipal law is, indirectly at least, a source of the internal law of international organizations applicable to the employment relationship. However, in this situation it is more appropriate to consider general principles of law as the source of the law applied rather than municipal law *per se*."⁶

b. By reference to your tribunal's previous case law?

If there is ATCE case law on general principles that is likely to apply in a given case, it is often cited by the Tribunal as the primary source of inspiration, it being understood that the ATCE is not bound by its own prior decisions. As explained in legal scholarship:

"General principles of law or principles of international law have been applied by international administrative tribunals upon their own initiative to the employment relationship in international organizations. As a consequence, these tribunals have often supported their decisions based on such principles by citing precedents which may be their own previous judgments or those of other tribunals or courts. (...) judicial precedent cannot as such be considered a source of law. It is the general principle of law (..) that is the real source of law (...) [as it is not] disputed that a judgment in a previous case decided by the same tribunal cannot bind the parties in a subsequent case."⁷

Referring to its own precedents is something the ATCE does specifically in cases where a party to a dispute raises a legal argument on which the ATCE has already been called upon to rule. Consider, for example, the [judgment of 22 March 2024](#) (Appeal No. 742/2023, I. S. v. SG) which refers to the [earlier decision of 4 April 2023](#) (Appeals Nos. 722/2022, 731/2022, 732/2022 and 733/2022, Orekhova and Others v. SG). In this decision of 4 April 2023, the ATCE had already taken a stand on whether, following the cessation of the Russian Federation's membership of the CoE, it was contrary to the principle of non-discrimination to treat staff members with Russian nationality differently, depending on whether they were employed under fixed-term or indefinite-term contracts, and concluded that it was not (§ 66).

It should also be noted that, even when there are precedents in its own decisions, the Tribunal often refers to the case law of other tribunals as well, to show that a particular viewpoint is widely accepted.

⁵ See, however, the ATCE's review of the extent to which CoE member states had accepted the social protection standards established by international treaties developed within the CoE in its [decision of 28 March 2003](#) (ATCE, Appeal No. 308/2002, Levy v. SG, § 48).

⁶ C.F. Amerasinghe, *The law of the international civil service as applied by International Administrative Tribunals*, vol. 1, Oxford, Clarendon Press, 2^e ed. 1994, p. 177.

⁷ Ibid., p. 193.

c. By reference to the case law of other international administrative tribunals? If so, which ones? Is this reference explicit in the judgments handed down or does your tribunal refer to such case law only when preparing judgments?

As a general observation, it is interesting to note that the ATCE has referred to the case law of the Administrative Tribunal of the International Labour Organization (ILOAT), in particular in its Judgment No. 1333 of 1994, *Franks and Vollerling*, in connection with its power to rule on applications submitted to it, having regard to the “general principles of law and basic human rights” (see ATCE, [decision of 9 October 2018](#), Appeals Nos. 587/2018 and 588/2018, *Jannick Devaux (II) and (III) v. SG*, § 98).

The Tribunal has also made numerous explicit references to the case law of other international administrative tribunals when asserting a principle, it being understood that the Tribunal does not always specify whether the principle in question is a general one.⁸ See, in particular, the references to the case law:

- of the ILOAT, on the principle of proportionality in matters relating to disciplinary measures,⁹ the principle that all candidates in a recruitment procedure must be treated on an equal footing and completely impartially¹⁰ or the principle of acquired rights;¹¹
- of the Administrative Tribunal of the North Atlantic Treaty Organization (NATO Administrative Tribunal), in relation to the principle that it is the responsibility of each staff member to inform themselves about the tax legislation applicable in their country of residence and that this responsibility cannot be shifted to their employer;¹²
- of the Administrative Tribunal of the Organisation for Economic Co-operation and Development (OECD Administrative Tribunal), regarding the circumstances in which a procedural irregularity can lead the Tribunal to find that a decision is null and void;¹³
- of the administrative dispute tribunals of the United Nations where, for example, the Tribunal has found, without explicitly relying on a general principle of law, that an administrative decision “must be assessed in the light of all the facts which had occurred and were known to the Administration at the relevant moment”;¹⁴ or where the Tribunal has held that the personal impartiality of a judge must be presumed until there is proof to the contrary;¹⁵ or that the fact that appointments have been renewed in the past does not amount to a promise of renewal,¹⁶ or that the legitimate expectation of the renewal of a fixed-term contract cannot be created by very good or outstanding performance;¹⁷
- of the General Court of the European Union in matters relating to European Union civil

⁸ A meticulous study of references to the case law of these tribunals was made by Jason Morgan-Foster, in an article published in 2024 in the *Chicago Journal of International Law*. See “[International Administrative Tribunals and Cross-Fertilization: Evidence of a Nascent Common Jurisprudence?](#)”, *Chicago Journal of International Law*, p. 366, footnote 157.

⁹ See ATCE, [decision of 20 June 2019](#), Appeal No. 594/2018, *Bauer v. Governor of the Council of Europe Development Bank*, § 63.

¹⁰ See ABCE, [decision of 25 March 1994](#), Appeal No. 172/1993, *Feriozzi-Kleijssen v. SG*, § 31.

¹¹ See ATCE, [decision of 26 September 2012](#), Appeals Nos. 492-497/2011, 504-508/2011, 510/2011, 512/2011, 515-520/2011, 527/2012, *Baron and others v. SG*, § 53.

¹² See ATCE, [judgment of 5 February 2025](#), Appeals Nos. 746/2024 and 748 to 758/2024, *A. S. T. and others v. SG*, § 64.

¹³ See ATCE, [decision of 27 January 2022](#), Appeal No. 673/2021, *C v. Governor of the CoE Development Bank*, § 97.

¹⁴ See ATCE, [decision of 1 February 2023](#), Appeal No. 720/2022, *E v. SG*, § 62.

¹⁵ See ATCE, [decision of 8 January 2021](#), Appeal No. 625/2019, *Brannan (IV) v. SG*, § 15.

¹⁶ See ATCE, [decision of 9 October 2018](#), Appeals Nos. 587/2018 and 588/2018, *Jannick Devaux (II) and (III) v. SG*, § 109.

¹⁷ See ATCE, [decision of 12 June 2023](#), Appeals Nos. 723/2022, *Zaytseva v. SG*, § 50.

service disputes, regarding the conditions that must be met for the Organisation to incur non-contractual liability;¹⁸ regarding the factors to be considered in determining whether differential treatment gave rise to discrimination between internal candidates and external candidates in a competition;¹⁹ or, lastly, to define the contours of the principle of legitimate expectation.²⁰

These numerous references to case law seem to corroborate the trend mentioned in legal scholarship²¹ towards a convergence in the development of international civil service law in terms of general principles.

d. By explicit or implicit reference (please specify) to an international text, e.g. with regard to general principles relating to human rights? If so, which text(s)?

- When relying on general principles, the ATCE may also explicitly refer to provisions in binding international legal instruments such as international treaties. These are mainly, but not exclusively, international treaties concluded within the CoE, in particular the European Convention on Human Rights (ECHR). In most cases, the Tribunal upholds a general principle of law or a principle of international law as reflected in the ECHR by reference to the interpretation given by the European Court of Human Rights (the Court). The reference to the Court's case law may be implicit.

While it frequently refers to the provisions of international texts when invoking general principles, the ATCE makes no determination as to their applicability in the Organisation's internal legal system. The Tribunal's approach recalls the comments made by the then President of the European Committee of Social Rights, Giuseppe Palmisano, on the 50th anniversary of the ATCE:²²

"Within the autonomous internal legal system of an international organisation (which is essentially composed of statutory provisions, administrative rules, staff regulations and labour contracts), international rules and principles on the protection of fundamental rights, including those established by treaties concluded in the framework of the organisation, are not per se legal sources. They can rather be considered legal sources, having legal value, if and to the extent that the legal sources of the internal order of the organisation make an explicit reference – a *renvoi* – to them; or also as general principles of law, which judges in international administrative tribunals can legitimately and usefully consider and apply to assess and decide cases brought before them."

- The Tribunal's case law includes references to the **ECHR** and/or the case law of the Court, in particular where the following general principles are concerned:

❖ *The principle of non-discrimination:*

In *E. T. and Others v. SG*, the Tribunal found that differential treatment based on nationality – supernumerary transfer as part of a risk management measure – did not amount to discrimination as it could be considered objectively justified by the pursuit of a legitimate aim

¹⁸ See ATCE, [judgment of 5 February 2025](#), Appeals Nos. 746/2024 and 748 to 758/2024, *A. S. T. and Others v. SG*, § 20.

¹⁹ See ATCE, [decision of 25 January 2024](#), Appeal No. 738/2023, *C. A. v. SG*, § 38.

²⁰ See ATCE, [decision of 12 June 2023](#), Appeal No. 723/2022, *Zaytseva v. SG*, § 51.

²¹ See M.B. Akehurst ("[i]nternational administrative tribunals behave as if the internal laws of different organizations formed part of a single system of law [and it is] clear that the internal laws of different organizations bear a remarkable resemblance to each other, and can therefore establish strong precedents for each other"), as cited by Jason Morgan-Foster, *ibid.*, page 342.

²² See "[Common focus and autonomy of international administrative tribunals](#)", proceedings of the colloquy held to mark the 50th anniversary of the establishment of the ATCE, on 19 and 20 March 2015, p. 39, <http://rm.coe.int/tace-proceedingsinternationalcolloquy/16807179f2> (accessed on 19 March 2025).

and the measures taken remained proportionate to that aim, pursuant to the case law of the Court on Article 14 of the European Convention on Human Rights. See its [judgment of 22 March 2024](#) on Appeals Nos. 739 to 741/2023, *E.T. and Others v. SG*, § 71:

“The Tribunal’s established case-law is that the rule of non-discrimination is one of the general principles of law which prevails in the legal system of the Council of Europe where it is enshrined in Article 14 of the European Convention on Human Rights. This rule protects individuals, placed in analogous situations, from discrimination and prohibits different treatment for which there is no objective and reasonable justification (ATCE, Appeal No. 719/2022, *Gurin v. Secretary General*, decision of 31 January 2023, paragraph 59; ATCE, Appeal No. 557/2014, *Hedman v. Secretary General*, decision of 10 December 2015, paragraph 64). The Tribunal has specified in this respect that “a breach of the principle of equal treatment is deemed to have occurred when two categories of persons whose situations in fact and in law display no essential differences are treated differently and there is no objective justification for such difference in treatment”. In this respect, differences in treatment, which are justified by an objective and reasonable criterion, and remain proportionate to the aim sought, do not constitute a breach of the principle of equal treatment. (ATCE, Appeals Nos. 661/2020 and 662/2020, *Bohner (VII) and Cagnolati v. Secretary General*, decision of 27 April 2021, paragraph 90). As regards specifically the condition of citizenship, the Tribunal held that “[e]xcluding a staff member from a post on the ground of his or her nationality, when no particular nationality is required for the post and no such requirement has been indicated”, would amount to a breach of the Staff Regulations which prohibits discrimination (ATCE, Appeal No. 590/2018, *Korljan v. Secretary General*, decision of 30 January 2019, paragraph 95).”

Whereas it is implicit in the above-mentioned case of *E. T. and Others v. SG*, the reference to the Court’s case law on the principle of non-discrimination is explicit in the [decision of 4 February 2005](#), Appeal No. 321/2003, *Nyctelius v. SG*, §§ 49 and 50:

“49. In its *Sheffield and Horsham* judgment (...), the European Court of Human Rights said:

“75. (...) Article 14 affords protection against discrimination in the enjoyment of the rights and freedoms safeguarded by the other substantive provisions of the Convention. However, not every difference in treatment will amount to a violation of this Article. Instead, it must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment, and that there is no reasonable or objective justification for this distinction.

Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law...”

50. In its judgment of 29 April 2002 in *Pretty v. United Kingdom* (ECHR 2002-III), the Court confirmed that principle as follows:

“88. For the purposes of Article 14 a difference in treatment between persons in analogous or relevantly similar positions is discriminatory if it has no objective and reasonable justification, that is if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover, the Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a differential treatment”.

A similar approach can be found in the Tribunal’s earlier decisions. See for example:

- [decision of 21 April 1982](#) on Appeal No. 76/1981, *Pagani v. SG*, §§ 31-33, in which the Tribunal held that the decision to assign the appellant to a different post because she was not French mother tongue was not discriminatory as it was objectively and reasonably justified, for organisational reasons;
- [decision of 20 December 1984](#) on Appeal No. 100/1984, *Van Lamoën*

v. SG, §§ 59-60, which dismissed the appellant's argument that his situation was the result of an unjustified difference in treatment between permanent staff and temporary staff assigned to the same post.

❖ *The principle of the rule of law:*

In its [decision of 24 April 1997](#) (Appeal No. 226/1996, Zimmermann v. SG, §§ 26-28), the Tribunal, drawing on Articles 31 to 33 of the Vienna Convention on the Law of Treaties of 23 May 1969 and also on the Court's judgment in Golder v. United Kingdom, invoked the principle of the rule of law when declaring itself competent *ratione personae* to consider an appeal lodged by a candidate in a competition based on qualifications, when the Staff Regulations restricted the right to appeal to external candidates who had been "allowed to sit a competitive recruitment examination".

❖ *The principle of legal certainty:*

In its [decision of 27 January 2022](#), on Appeal No. 674/2021, Mendez Carvalho v. SG, § 50, the Tribunal applied the principle of legal certainty, as interpreted by the Court, before concluding that the appeal was inadmissible, being out of time:

"The Tribunal also points out, with reference to the principles laid down by the European Court of Human Rights, that the primary purpose of the thirty-day time limit stipulated in Article 59, paragraph 3 b), of the Staff Regulations (and the sixty-day time limit under Article 60, paragraph 3, of the Staff Regulations) is to maintain legal certainty. It must be ensured that cases raising general points of law or concerning the regulations of an international organisation such as the Council of Europe are examined within a reasonable time and that the authorities of the Organisation and/or other persons concerned are not kept in a state of uncertainty for a long period of time (see, *mutatis mutandis*, European Court of Human Rights (ECHR), Case of Sabri Güneş v. Turkey [Grand Chamber], Application No. 27396/06, paragraph 39, 29 June 2012). These time limits also enable a potential appellant to consider submitting a complaint and, where applicable, lodging an appeal with the Tribunal."

The principle of legal certainty, as interpreted by the Court, frequently comes up in the case law of the Tribunal. Wording similar to that used in Mendez Carvalho v. SG can be found in the [decision of 21 October 2021](#), Appeal No. 672/2020, Kowalczyk-Kędziora v. SG, §§ 29-30. In the [decision of 4 July 2003](#), Appeal No. 309/2002, Belyaev v. SG, § 28, the Court's interpretation of this principle led the Tribunal to declare that "objections to admissibility should as a general rule be raised in *limine litis*".

❖ *The principle of impartiality*

Lastly, the Tribunal sometimes refers to the case law of the Court when interpreting a general principle or a written provision that constitutes a specific example of a general principle. See, for instance, the [decision of 12 February 2021](#), Appeal No. 665/2020, Yuksek (II) v. SG, §§ 70, 71 and 82, on the principle of (administrative) impartiality:

"70. (...) Indeed, the duty to act impartially is incumbent not only on the authority competent for issuing the final decision, but also on bodies responsible for making a recommendation to this authority. The case-law in question takes into consideration the influence such bodies may exert on the ultimate decision (ILOAT, Judgments 4234, consideration 3, 2667, consideration 5, and 3958, consideration 11), whilst specifying that the degree of impartiality required of the members of such bodies is proportionate to the function they perform (ATCE, decision No. 346/2005 Carlos BENDITO (III) v. Governor of the Council of Europe Development Bank, 19 May 2006).

71. In the light of the above, the Tribunal finds that it was for the Administration, pursuant to

the principles of equal treatment and impartiality mentioned above, to ensure that the stage of the selection procedure taking place before the Appointments Board was properly organised so that all members of the selection panel had the necessary independence to preclude any doubt as to their objectivity (Judgment in *CG v EIB*, EU:F:2014:187, paragraph 61).

(...)

82. Lastly, the Tribunal takes the view that when an issue of impartiality arises with regard to a person who was part of a collegial body such as the Appointments Board, considering the confidentiality of the deliberations of the Board, it may be impossible to ascertain a person's actual influence in the decision-making, thus leaving the impartiality of the Board open to genuine doubt (see *mutatis mutandis*, ECtHR, *Morice v. France* [GC], paragraph 89; *Otegi Mondragon v. Spain*, paragraph 67; *Škrlj v. Croatia*, paragraph 46; *Sigríður Elín Sigfúsdóttir v. Iceland*, paragraph 57)."

- With regard to the **European Social Charter** and the **European Code of Social Security**, see the study that was made of these treaties by the ATCE in its [decision of 28 March 2003](#) on Appeal No. 308/2002, *Levy v. SG*, where the appellant challenged the decision not to grant him unemployment compensation at the end of his temporary contract. The ATCE noted that, in particular, the two aforementioned instruments allowed the states parties to accept only some of the obligations described therein, with the system of social security to be progressively raised to a higher level if necessary. It inferred from this that it could not be said that at the time of its decision, the CoE had a duty to recognise the staff members' right to unemployment insurance:

"46. The Tribunal has likewise examined the appellant's argument that the general principles of European social law place an obligation on the Organisation to protect its temporary staff against unemployment.

47. The Tribunal confirms that, in performing its function as a judicial body, it is obliged also to take into account the general principles of law which must prevail in international organisations' legal systems (see *Artzet v. Secretary General*, No. 8/1972, decision of 10 April 1973). General principles of social law include the principle that every employer is obliged to ensure that the staff it employs have proper social security cover. That principle is binding on the Council of Europe's legal system and applies to all the Organisation's staff (see *Farcot and others v. Secretary General*, Nos 52-75/1981, decision of 23 February 1983, para. 66, with reference to the European Social Charter, Article 12).

48. In the field of European protection of social rights, the European Social Charter, which came into force in February 1965 and which 25 Council of Europe member states have ratified requires member states (Article 12) to establish or maintain a system of social security; to maintain the system at a satisfactory level at least equal to that required for ratification of International Labour Convention No. 102 concerning Minimum Standards of Social Security; and to endeavour to raise progressively the system of social security to a higher level. Convention No. 102(1952), which 40 International Labour Organisation member states have ratified, requires them to implement at least three of the nine parts setting out requirements regarding medical care, sickness benefit, unemployment benefit, old-age benefit, employment-injury and occupational-illness benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit.

The European Code of Social Security, which came into force in March 1968 and which 18 Council of Europe member states have ratified, established standards higher than the social security minima laid down in Convention No. 102. As a rule, states parties have to implement at least six of the nine parts setting out the different benefits.

Lastly, the economic and social rights (Part II) in the Revised European Charter, which came

into force in July 1999 and which 15 Council of Europe member states have ratified, can likewise be accepted selectively subject to the higher overall acceptance requirement of at least 16 articles (63 numbered paragraphs), including six of a selection of nine articles. Article 12, which is one of the selections, requires that the party maintain its social security scheme at a satisfactory level at least equal to that required for ratification of the European Code of Social Security and endeavour to progressively raise the social security system to a higher level.

49. All the European instruments, incidentally, refer to the Council of Europe's aim of achieving greater unity between its member states for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms.

50. Trends in European protection of social rights indicate that, under general principles of law applying in international organisations' legal systems, the Council of Europe, as an employer, must ensure that all its employees have proper social security cover. The Council is accordingly required to further develop its system of social security. The Tribunal notes that Council of Europe temporary staff are protected against the main social risks except unemployment. In view of the small number of Council of Europe member states which have ratified the aforementioned instruments, and regard being had also to the system of selective acceptance of obligations, the Tribunal, while conceding that unemployment benefit is an important part of social cover, cannot conclude that, at present, there is a general principle of European social law which places an obligation on the Council of Europe to insure all its staff against the contingency of unemployment."

- The Tribunal has also applied general principles, in particular the principle of *pacta sunt servanda* and the principle of *rebus sic stantibus*, with reference to the **Vienna Convention on the Law of Treaties** of 1969 and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986. See in particular *Alberelli (III) and others v. SG* ([decision of 20 June 2019](#), on Appeals Nos. 595-601/2018, §§ 93 and 104).

The Tribunal has also referred on several occasions to the "general rule of interpretation" arising from the Vienna Convention on the Law of Treaties, see for example § 49 of the [decision of 29 January 1998](#) of the ATCE, Appeals Nos. 231-238/1997, *Fuchs and others v. Secretary General*:

"Even where Council of Europe internal rules are concerned, the Tribunal has to be guided by Articles 31 to 33 of the Vienna Convention on the Law of Treaties of 23 May 1969, which primarily contain generally accepted principles of international law, referred to by the European Court of Human Rights in its case-law (see ECHR, *Golder v. United Kingdom* judgment of 21 February 1975, Series A No. 18, p. 14, para. 29; ATCE No. 266/1996 of 24 April 1997, *Zimmermann v. Secretary General*, para. 24).

The "general rule of interpretation", as set out in Article 31 para. 1 of the Convention, reads:

"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

e. By some other method?

In some instances, the Tribunal applies a general principle without mentioning the source. See, for example, the reference that was made to the general principle of the rule of law in the ATCE [decision of 12 July 2007](#) on Appeals Nos. 361-365/2006 and 368/2006, *Babocsay and others v. SG*, mentioned below (under question No. 8, c).

If more than one method is used, please number them in order of preference, if any.

The ATCE does not rank general principles according to their origin.

4) Can your tribunal rely on a general principle *proprio motu*?

It will be observed from the Tribunal's case law that, pursuant to the principle *iuria novit curia*, the Tribunal may rely on a general principle *proprio motu*, without being bound by the arguments of the parties. In *Alberelli (III) and others v. SG* ([decision of 20 June 2019](#), Appeals Nos. 595-601/2018, §§ 93 and 104), for example, the Tribunal invoked the principles of *pacta sunt servanda* and *rebus sic stantibus* on its own initiative, even though the parties to the disputes had relied on other general principles to support their arguments.

II. Relationship with other sources

5) What legal value does your tribunal attach to general principles in relation to the various types of secondary legislation produced by the organisation (decisions adopted by organs of the organisation, including organs composed of states - e.g. General Assembly of the United Nations - or representatives of states - e.g. the Committee of Ministers of the Council of Europe -), in relation to the instrument establishing the organisation and in relation to other sources of international law? Why?

Insofar as this question relates to the hierarchy of norms that apply in the Organisation's internal legal system, it will be observed that there is a tendency for the ATCE to ensure that norms derived from the Organisation's regulatory acts are interpreted in a way that is compatible with general principles.

That said, in the event of a conflict between the regulatory acts of the Organisation - whether adopted by the Committee of Ministers or by the Secretary General - and a general principle, it may be that the Tribunal will apply the general principle, depending on the particular circumstances of the case. For example:

- in *Artzet (I) v. SG* (decision of 10 April 1973, Appeal No. 8/1972), the ABCE examined the legality of an act adopted by the Committee of Ministers, specifically Resolution (69) 38 which indicated which staff members were to be treated as having family responsibilities, making a distinction between staff based on their sex.

The ABCE held that the impugned decision to deny the appellant's request to be granted family allowances on the basis of that resolution was compatible "neither with the Statute of the Council of Europe nor with the general principles of law, whose legal weight is greater than that of the resolution in question" (§ 25 of the decision) - the general principle at issue in this case being that of non-discrimination based on sex and equal pay for male and female workers. The Board stated that it "cannot agree that an intergovernmental organisation should ignore in its internal administration the principles which are proclaimed in its own Statute as being the aims of the Organisation, and confirmed in other Conventions adopted within the Organisation for application, by its Members" (*ibid.*).

- In its [decision of 3 August 1987](#), Appeals Nos. 133-145/1986, *Ausems and others v. SG*, the ABCE implicitly affirmed the primacy of the general principle of good faith over the regulatory provisions on salaries and allowances that the Committee of Ministers adopts in order to implement the recommendations of the joint body of the "Co-ordinated Organisations". It is to be noted that the Board annulled not the Committee of Ministers resolution in question, but rather "the individual decisions whereby the Secretary General

applied to retired staff the decision of the Committee of Ministers taking into account [a special deduction] in the fixing of salaries of Council of Europe staff decisions”:

“78. When it updates the Regulations governing Staff Salaries and Allowances on the basis of this method and these criteria, the Committee of Ministers is required, as is any other authority which implements a decision which it has taken, to ensure the observance of general principles of law to which the legal systems of international organisations are subject.

79. Like the principle of legitimate expectations, the principle of good faith, which is based on well-established international legal precedent, recognises the fact that the staff of international institutions and their representative must be entitled to rely on the respect by the administrative authorities of the undertaking entered into by such authorities (see CJEC, Case 81/72 Commission of the European Communities v. Council of the European Communities, 5 June 1973, [1973] ECR 575).

(...)

86. In these circumstances, the balance in respect of charges on salaries has been destroyed to the detriment of retired Council of Europe staff insofar as in the reference country retired civil servants are not affected by the deduction [complained of].

(...)

88. It follows that by including [the deduction] in the calculation of the figures supplied by the Netherlands Government as representing the “net remuneration of national civil servants taken as reference” (Article 5 of Annex II to the above-mentioned 159th report), the Committee of Ministers has disregarded the principle of good faith with regard to retired staff of the Council of Europe.”

- In *Cucchetti Rondanini and others v. SG* ([decision of 28 April 2015](#), Appeals Nos. 548-553/2014), the Tribunal set aside a regulatory provision in favour of the general principle regarding access to a tribunal, stating that “all persons believing themselves to be the victim of an act adversely affecting them are entitled to challenge that act through the courts. That is a general principle which holds good in the member states of the Council of Europe and, in the matter of access to employment in the international civil service, in other international organisations too” (§ 63 of the decision).

In the case in question, the regulatory provision at issue, contained in the Staff Regulations, as amended by Resolution CM/Res(2010)9 of the Committee of Ministers of 7 July 2010, had had the effect of restricting the right of staff to lodge appeals with the Tribunal against decisions to exclude them from external recruitment procedures. The aforementioned resolution was adopted following an earlier decision of the Tribunal ([decision of 9 June 1999](#), [Appeal No. 250/1999](#), *Schmitt v. SG*). In this case, the Tribunal had rejected the argument that the appeal lodged by a staff member (who had been unsuccessful in an external recruitment procedure) was inadmissible. Insofar as the regulations appeared to discriminate between external and internal candidates, the Tribunal went on to observe that such discrimination “cannot be eliminated by reducing staff members’ statutory rights” (§ 16 of the decision).

The opposite situation can also arise, in the sense that the Tribunal may decide to allow secondary legislation produced by Organisation to take precedence, while pointing out that the norm introduced by this legislation is not consistent with a given general principle. For example,

- In its [decision of 9 October 2018](#), Appeals Nos. 587/2018 and 588/2018, Jannick Devaux (II) and (III) v. SG, le Tribunal was called upon to consider the applicability of the principle of equal treatment in a case where the appellant complained that her salary had been reduced following a change in her contractual status (from a fixed-term contract to a temporary contract), even though, she argued, the tasks she was required to perform under the two different types of contract were the same.

The Tribunal declared the appeal unfounded on the ground that “the situation in which the appellant found herself as a temporary staff member was a direct result of the strict application of the existing rules” (§ 69 of the decision), after observing that “[t]he strict application of the rules of the Organisation in the present case cannot in itself be deemed to amount to a breach of the general principles of law” (§ 66 of the decision).

6) Has your tribunal ever agreed to examine, if only by way of an objection, the legality of an act adopted by a body composed of states in relation to a general principle? If so, what were the implications, both legally (for the instrument in question) and politically (within the organisation)?

Partial answers to this question can be found in the answer to question 5 above, insofar as it concerns acts adopted by the Committee of Ministers.

As for the case of Cucchetti Rondanini and others v. SG mentioned there, it should be noted that the regulatory framework criticised by the Tribunal with regard to the conditions to be met by staff seeking to challenge decisions rejecting their applications in an external recruitment procedure has since evolved. Under the rules applicable at the time, only staff members and candidates outside the CoE who had been allowed to sit a competitive recruitment examination could make use of the available remedies (provided they related to an irregularity in the examination procedure). This restriction on the right to appeal no longer applies since, following the administrative reform that came into force on 1 January 2023, any external candidate, whether they were allowed to sit a competitive recruitment examination or not, may lodge an appeal with the Tribunal (provided that the procedure is directed against irregularities in the selection process directly affecting the appellant) (see Article 14.10.3 of the CoE Staff Regulations).

7) Could you give at least one example of a general principle in procedural matters, one example of a general principle in substantive matters (e.g. the principle of independence, the principle recognising acquired/essential rights, etc.) and one example of a general principle in matters relating to human rights protection, regarding the status of the principle in the hierarchy of norms?

To answer this question, reference will be made to the above-mentioned ATCE decisions.

- **Example of a general principle in procedural matters:**

In its [decision of 1 February 2023](#), Appeal No. 720/2022, E v. SG, the Tribunal declared an appeal lodged by a person seconded to the Organisation to be admissible, prioritising the **general principle of the right of access to a court** over the applicable regulatory provisions, namely the provisions of the Staff Regulations of the CoE and those of the Regulations on secondments to the Council of Europe, under which seconded officials do not have standing to bring a case before the Tribunal.

The Tribunal relied on the same principle in Cucchetti Rondanini and others v. SG ([decision of 28 April 2015](#), Appeals Nos. 548-553/2014) when declaring the appellants' appeals against the decision not to accept their applications in an external competition admissible, allowing

this principle to take precedence over the rule that restricted their right to appeal. The Tribunal may be considered to have ruled on the status of the general principle in question in the hierarchy of norms when it stated, in § 63 of the award:

“(…) the Tribunal cannot accept the amendment of 7 July 2010 to the Staff Regulations – which is inconsistent not only with its case-law but also with a general principle of law – and consequently, considering itself bound, uphold the objection of inadmissibility on grounds of the Secretary General’s claim of incompatibility *ratione materiae*, based on the wording of Article 59, paragraphs 2 and 8 d), of the Staff Regulations as amended; on the contrary, the Tribunal has a duty to reject it.”

- **Example of a general principle in substantive matters:**

In its [decision of 3 August 1987](#), Appeals Nos. 133-145/1986, Ausems and others v. SG, the ABCE implicitly affirmed the primacy of the general **principle of good faith** over the regulatory provisions adopted by the Committee of Ministers regarding the salaries and allowances of Council of Europe staff.

- **Example of a general principle in matters relating to human rights protection:**

The cases of Cucchetti Rondanini and others v. SG ([decision of 28 April 2015](#), Appeals Nos. 548-553/2014) and E v. SG ([decision of 1 February 2023](#), Appeal No. 720/2022) are likewise worth mentioning here, insofar as the Tribunal was guided by the Court’s case law on Article 6 of the ECHR and **the right of access to a court**. The reference to Article 6 of the ECHR is explicit in E. v. SG, as can be seen from §§ 49 and 50 of the decision of 1 February 2023:

“49. The Tribunal considers that, in the light of the applicable regulations, seconded officials do not, in principle, have standing to bring a case before the Tribunal. The Regulations on secondments to the Council of Europe clearly set out the principle that the rules which apply to Council of Europe staff members apply only to seconded officials under conditions which it specifies. None of the provisions of these regulations makes Articles 59 and 60 of the Staff Regulations on disputes at the Council of Europe applicable to seconded officials.

50. Nonetheless, the Tribunal points out that Article 6, paragraph 1, of the European Convention on Human Rights, as interpreted by the European Court of Human Rights, secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal (judgment of 21 February 1975, in the case of Golder v. the United Kingdom, paragraph 36). Pursuant to this principle, the Tribunal considers that it is its task to ascertain whether in the present case, the appellant could submit their complaints to some form of judicial review.”

As for the **principle of equal treatment**, it will be observed that the Tribunal addressed the issue of its place in the hierarchy of norms in its [decision of 9 October 2018](#), Appeals Nos. 587/2018 and 588/2018, Jannick Devaux (II) and (III) v. SG, when it noted that “international organisations are bound to abide by the principle of equal treatment and in particular to comply with the requirement that there be equal pay for work of equal value; if their rules do not ensure adherence to that principle and the requirement of equal remuneration, it is their duty to initiate procedures that do” (§ 68 of the decision). It accordingly invited the Organisation to “consider defining appropriate rules in order to prevent further cases of *de facto* unequal treatment from occurring”, pointing out that “[a]s a source of law, moreover, Rule No. 1232 [governing temporary contracts] is subordinate to the general principles of law and to the Staff Regulations, Article 3 of which aims to ensure equal treatment between staff members and which applies to temporary staff by reason of Article 2.1 of Rule No. 1232” (§ 69 of the decision).

In [Kling \(III\) v. SG](#), the ATCE considered the limits that may be placed on staff's **freedom of expression** in terms of their duties and obligations, in particular the duty of loyalty. It concluded that as a disciplinary measure, a reprimand was not manifestly disproportionate ([decision of 22 December 2005](#), Appeal No. 345/2005, §§ 38-41).

In [Artzet \(I\) v. SG](#) mentioned above in reply to question No. 5, the ABCE explicitly referred to the **principle of the absence of discrimination based on sex** as having greater legal weight than a Committee of Ministers resolution (decision of 10 April 1973, Appeal No. 8/1972, § 25).

8) What function(s) does your tribunal assign to general principles? For example, are they intended to:

a. fill gaps in written law?

The interpretative function of general principles, in particular by making it possible to fill gaps in written law, is evident in the case law of the ATCE.

The application of the principle of the right of access to a court in the [decision of 1 February 2023](#), Appeal No. 720/2022, E v. SG, can be considered an example of a general principle being used to fill a gap in the law. The Tribunal inferred from the Court's case law on Article 6 § 1 ECHR that the appellant, as an official of a member state, must be able to obtain a judicial review of the Secretary General's decision not to renew their secondment with the Organisation (§ 54 of the decision). Noting that the Council of Europe enjoyed judicial immunity before national courts, the Tribunal sought to ascertain whether the appellant had had a reasonable alternative means of asserting their rights and, more specifically, whether they had had direct access to arbitration. On finding that that was not the case (§§ 55-57 of the decision), the Tribunal concluded:

"In the absence of reasonable alternative remedies capable of protecting the appellant's rights effectively, the Tribunal is required to fill the gap by declaring this appeal admissible" (§ 58 of the decision).

b. facilitate the interpretation of written provisions, e.g. by interpreting written provisions in the light of general principles?

In its [decision of 25 January 2024](#), Appeal No. 737/2023, G. T. v. SG, the ATCE drew on "general legal principles, including the rights of the defence" (§ 32) to interpret the applicable provision on termination of the employment contract of a locally recruited temporary staff member in the event of manifest unsuitability or unsatisfactory work. In this case, the provision concerned was Article 8, paragraph c, of Rule No. 1234 of 15 December 2005, under which the Secretary General may terminate the contract "with one month's prior notice and after a written warning". The Tribunal based its decision on the reading given to similar provisions by the ILOAT and considered that the letter notifying the appellant of the termination of his contract could not serve both as notice and as a written warning:

"In view of the above and having regard to the relevant case law (Administrative Tribunal of the International Labour Organisation (ILOAT), Judgment No. 4674, consideration 17; ILOAT, Judgment No. 3911, consideration 11 and cited case law; ILOAT, Judgment No. 1484, consideration 8; ILOAT, Judgment No. 1082, consideration 18), the Tribunal considers that the written warning serves the specific purpose of informing the staff member of the consequences which they face if they fail to remedy shortcomings in conduct, performance or of any other kind which might justify certain measures, such as dismissal, being taken against them. In the context of Article 8 c) of Rule No. 1234, the written warning should therefore enable staff members in situations of manifest unsuitability or unsatisfactory work to understand the criticisms levelled against them and attempt to remedy the shortcomings, in the knowledge that they risk losing their jobs if they fail. This differs from the situations provided for in Article 8 a) and b), where the wrongdoing staff members are accused of is of

such a nature and seriousness that granting them the benefit of this “last chance” to improve their conduct is not justified.”

c. Ensure substantive rule of law (*Rechtsstaatlichkeit*), for example pursuant to general principles relating to human rights, including within international organisations?

In addition to the aforementioned decisions referring to the principle of the rule of law (such as the ATCE [decision of 24 April 1997](#), Appeal No. 226/1996, Zimmermann c/ SG), the ATCE can be considered to have - implicitly – pursued the objective of ensuring the rule of law, notably:

- when it applied the principle of non-retroactivity in the [decision of 10 December 2015](#), Appeal No. 557/2014, Hedman v. SG.

In this case, the appellant had complained about a rule laid down by the Secretary General being applied to her, one which significantly increased the rate of her contribution to the Organisation’s medical scheme under which she was insured as a pensioner. Although the rule had entered into force on 1 January 2014, it had been adopted by the Secretary General on 29 January 2014 and the appellant had not been informed until 6 February 2014. The Tribunal held that “the Organisation has proceeded in a manner that is incompatible with the principle of legal certainty, one aspect of which is the non-retroactivity of rules of law” (§ 72 of the decision).

- when, in Yeo v. SG, in seeking to determine whether the impugned decision had no legal basis, as alleged by the appellant, it drew on the case law of the European Court of Human Rights. See [decision of 13 December 2011](#), Appeal No. 476/2011, Yeo v. SG, § 49:

“The Tribunal recalls the case-law of the European Court of Human Rights, according to which the expression “in accordance with the law” not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V). As regards foreseeability, a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences do not need to be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (*Kokkinakis v. Greece*, 25 May 1993, paragraph 40, series A no. 260-A). The same principle incontestably applies to the internal rules of the Council of Europe and it is for the Tribunal to ensure that it is observed.”

- In its [decision of 12 July 2007](#), Appeals Nos. 361-365/2006 and 368/2006, Babocsay and others v. SG, the Tribunal explicitly mentioned the principle of the rule of law. It considered that, in the light of “general legal principles, in particular that of the rule of law”, the Secretary General had committed a breach in the exercise of his powers in administrative and budgetary matters in deciding not to put the question of the retroactive correction of salaries and pensions for the years 2003, 2004 and 2005 to the Committee of Ministers (§ 42 of the decision). This decision had been taken in a context where the Co-ordinating Committee on Remuneration, in its report concerning the salary adjustment for 2006, had invited each Co-ordinated Organisation to draw the appropriate lessons from the fact that the reference index

applied to these years had not taken into account the statutory reduction in working hours in the French civil service from 39 hours to 35 hours, and had therefore been underestimated (see § 39 of the decision).

III. Establishing the boundaries of principles

9) Where a general principle is applicable, how is it delimited? Have there been any cases where the general principle has been found to have been violated? Could you illustrate your answer, if applicable, with regard to the following areas:

The examples given below in reply to this question show that the definition of the contours of general principles depends to a great extent on the circumstances of each case.

a. human rights principles;

In its [decision of 28 February 1992](#), Appeal No. 167/1991, *Parsons (I) v. SG*, the ABCE found that the Organisation had violated the **principle of non-discrimination** in a case where, faced with a choice between candidates of equal merit, it had chosen the female candidate because of her sex.²³

In this case, the Board rejected the respondent's argument that the contested decision was justified in the light of "the fundamental principles which arose out of national and international law and practice" and which aimed "to remedy inequalities which in fact existed between male and female members of staff" (§ 22 of the decision). It considered that "legitimate and justified as this objective certainly is, the scrupulous respect of the regulations, as well as of the principle which forbids a different treatment of the staff which may result in discriminatory treatment (Article 3 of the Staff Regulations) is of too great an importance to be sacrificed in order to implement staff policy, even if it is inspired by the desire to achieve effective equality between staff members of both sexes." (§ 24 of the decision). Lastly, it stated that "[i]n order to attain such a goal, in the opinion of the Board, other means should be considered, such as those which appear to have been recommended by the Committee for Equality between Women and Men, that is the amendment of the Regulations on Appointments and a precise indication included in the vacancy notice" (§ 25 of the decision).

b. procedural rights;

In its [judgment of 25 January 2024](#), Appeal 737/2023 *G. T. v. SG*, the ATCE held that in the light of "general legal principles, including the **rights of the defence**" (§ 32), there had been a violation of the appellant's right to be given a written warning and also of his right to be heard. See § 37 of the judgment:

"As to the right to be heard provided for in Article 9 of Rule No. 1234, the Tribunal clarified its scope in paragraphs 38 and 39 of its [decision of 5 September 2006](#) on Appeal No. 353/2005, *C.G. v. Secretary General*. In that case, the Tribunal held that a temporary staff member's right to be heard in the event of termination of his employment "must necessarily be construed as a right intended to enable the staff member concerned to defend himself or herself. Since it is a guarantee given to the staff member, this [right] cannot be interpreted as being confined to mere questioning and to listening to the staff member's on-the-spot replies." The Tribunal has also stated that "the exercise of the right of defence, and in particular the right to be heard, also implies that the Administration must give due consideration to the observations thus submitted by the person concerned

²³ It should be noted that the regulatory situation has since evolved in this respect, as Article 430.1 of the Staff Rule on entry into service now states that "[a]t the time of appointment, preference between suitable candidates shall be given to the candidate of the gender which is under-represented in the relevant grades within the category to which the vacancy belongs".

by examining, with care and impartiality, all the relevant aspects of the case. The right to be heard must thus enable the Administration to investigate the case in such a way as to take a decision in full knowledge of the facts,” while pointing out that “the existence of a violation of the right to be heard must be assessed in the light, in particular, of the legal rules governing the matter concerned” (ATCE, Appeal No. 651/2020, [decision of 13 July 2021](#), *B v. Secretary General*, paragraphs 88 and 89).”

c. duty of care, i.e. positive obligations for the competent authority;

The ATCE found a violation of the duty of care in its [decision of 9 October 2018](#), Appeals Nos. 587/2018 and 588/2018, Jannick Devaux (II) and (III) v. SG.

In this case, the appellant had been employed on a fixed-term contract that had reached its maximum duration. When the contract expired, even though the guidelines called for a one-year waiting period between ending a fixed-term contract and starting a temporary one, the appellant had been awarded a four-month temporary contract in the interests of the department, to enable her to finish the project she had been managing under her fixed-term contract. The appellant challenged the decision not to renew her temporary contract on its expiry – a decision that been based on the one-year waiting period rule that applied to staff coming to the end of a fixed-term contract.

In its decision, the Tribunal found that the appellant had no vested right to be offered a new temporary contract. It also conceded that “the Secretary General needed to make cutbacks in response to the very serious budgetary difficulties facing the Organisation and which, generally speaking, might have been considered valid grounds for the decision not to renew a contract”.

Nevertheless, the Tribunal considered that “[g]iven the many years for which she had been working for the Organisation, however, the appellant deserved to be treated with greater respect, as befitted her status”. It concluded that “in the particular circumstances of the present case, where all the conditions for renewing the temporary contract for a period of at least two months or even three months had been met (...) and where the Organisation had already waived the waiting-period rule, having offered the appellant a temporary contract immediately after her fixed-term contract ended, the refusal to offer her a new contract, which would have been in the interests of the department, was contrary to the interests of the Organisation and appellant alike” and therefore “contrary to the general principles of law, namely the principle that there is a duty of care” (§§ 109 and 111 of the decision).

Conversely, the ATCE considered that the duty of care did not include an obligation for the Organisation to offer a new contract to a Russian staff member, in a situation where the non-renewal of his fixed-term contract was a consequence of the fact that he no longer fulfilled the requirement to possess the nationality of a member state of the Organisation. See the [ATCE judgment of 22 March 2024](#), Appeal No. 742/2023, I. S. v. SG, § 46:

“As to the alleged risk of retaliation from the Russian authorities, the Tribunal notes that the appellant did not specify what other measures of protection he/she possibly expected to receive from the Secretary General apart from the annulment of the decision not to offer him/her a new contract. Irrespective of the fact that it was legally impossible for the Organisation to offer the appellant a new employment contract (...), the Tribunal does not consider that the Organisation’s duty of care towards its staff entails the duty to offer a contract. Therefore, the appellant’s claim that the refusal to offer him/her such a contract entailed the failure to protect him/her is without merits.”

d. Acquired/essential rights;

The ATCE found a violation of the appellants’ acquired rights in Cucchetti Rondanini and others

([decision of 28 April 2015](#), Appeals Nos. 548-553/2014). On that basis, the Tribunal set aside the Organisation's decision to exclude the appellants from an external recruitment procedure pursuant to a regulatory provision that had entered into force after they were recruited and which limited the total length of employment of staff members on fixed-term contracts to five years, all positions combined. The Tribunal provided the following rationale for its decision:

“[B]earing in mind the aforementioned principle of acquired rights the Tribunal believes that this rule could not validly be applied to the appellants' case, since they had been recruited two years previously when the content of the old Article 20 of the Regulations on Appointments gave them a legitimate expectation of being able to continue their respective professional careers with the Council of Europe, one option being that they would be able to take part in a new recruitment competition” (§ 69 of the decision),

after pointing out that:

“a right is acquired if its holder can enforce it, regardless of any amendments to a text. A right conferred by rule or regulation and significant enough to have induced someone to join an Organisation's staff must be deemed an acquired right. Curtailment of that right without the holder's consent is a breach of the terms of employment which civil servants are entitled to assume will be honoured (ATCE, *Baron and others v. Secretary General*, Appeals Nos. 492-497/2011, 504-510/2011, 512/2011, 515-520/2011 and 527/2012, decision of 26 September 2012).” (§ 66 of the decision).

Conversely, in its [decision of 20 April 2021](#), Appeals Nos. 640/2020-644/2020, 646/2020-648/2020, Parsons (V) and others v. SG, and Appeals Nos. 649/2020, 652/2020-660/2020 and 664/2020, Verneau (II) and others v. SG, the ATCE found that “the right to receive a pension and the principle of adjusting the amount of that pension are acquired rights, the abolition or substantial modification of which is liable to fundamentally change the general structure of the employment contract and, consequently, to affect those rights” (§ 184 of the decision). However, it considered that the new adjustment method, whereby pensions would be revalued in line with the consumer price index and no longer in accordance with the salary adjustment index, neither violated the acquired rights of retired staff nor entailed a breach of the solidarity between serving and retired staff, nor infringed the parallelism between salary increases for civil servants in the so-called “reference” civil services and those of staff in the Co-ordinated Organisations (§§ 188 - 190 of the decision).

e. any other principle you wish to mention?

Of possible interest here is the position expressed by the ATCE in a recent case concerning the general **principle that requires the Administration to give reasons for its decisions**, particularly with regard to the possibility of articulating these reasons at the various stages of the administrative proceedings (see [judgment of 25 November 2024](#) of the ATCE, Appeal No. 743/2024, B. S. v. Governor of the Development Bank of the Council of Europe). Drawing on the case law of the ILOAT and the EU courts, the ATCE stated:

“[T]he Tribunal points out that the relevant case law establishes the principle that “the reasons for an act must, in principle, be communicated to the staff member at the same time as the decision adversely affecting them” (ATCE, Appeal No. 606/2019, *Céline Cosset v. Secretary General of the Council of Europe*, [decision of 30 October 2019](#), paragraph 73). It also accepts, depending on the specific circumstances surrounding the decision, that it may be sufficient to supply the beginnings of a statement of reasons in the initial decision provided that adequate reasons are given when the complaint against the decision is dismissed ([judgment of the European Union Civil Service Tribunal of 11 July 2013](#), Tzirani c/ Commission, F-46/11, paragraph 159, and case law cited). The relevant case law states that the existence of the beginnings of a statement of reasons is subject to a detailed assessment by the courts ([judgment of the Court of Justice of the European Union of 11 June 2020](#), Commission c/ Di Bernardo, C-114/19 P, paragraph 55). In cases in which an

administrative complaint has been lodged, courts or tribunals must check whether the reasons given to a staff member in the context of the dispute enabled them, among other things, to challenge them on appeal (ILOAT, [judgment No. 2112 of 30 January 2002](#), Nasrawin, paragraph 5) and to defend their interests in full knowledge of the facts (ILOAT, [judgment 1317 of 31 January 1994](#), Amira, paragraphs 24 and 28, and case law cited)" (§ 56 of the judgment).

ATCE response to the questionnaire on the subject of general principles: APPENDIX

Substantive principles

- The principle of non-discrimination / equality of treatment:
 - o ABCE, [decision of 10 April 1973](#), Appeal No. 8/1972, Artzet (I) v. SG, § 25;
 - o ABCE, [decision of 21 April 1982](#), Appeal No. 76/1981, Pagani v. SG, §§ 31 to 33;
 - o ABCE, [decision of 20 December 1984](#), Appeal No. 100/1984, Van Lamoën v. SG, §§ 59 and 60;
 - o ABCE, [decision of 28 February 1992](#), Appeal No. 167/1991, Parsons (I) v. SG, §§ 22, 24 and 25;
 - o ABCE, [decision of 25 March 1994](#), Appeal No. 172/1993, Feriozzi-Kleijssen v. SG, § 31;
 - o ATCE, [decision of 4 February 2005](#), Appeal No. 321/2003, Nyctelius v. SG, §§ 49 and 50;
 - o ATCE, [decision of 9 October 2018](#), Appeals Nos. 587/2018 and 588/2018, Jannick Devaux (II) and (III) v. SG, §§ 66, 68 and 69;
 - o ATCE, [decision of 4 April 2023](#), Appeals Nos. 722/2022, 731 to 733/2022, Orekhova and Others v. SG, § 66;
 - o ATCE, [decision of 25 January 2024](#), Appeal No. 738/2023, C. A. v. SG, § 38;
 - o ATCE, [judgment of 22 March 2024](#), Appeals Nos. 739 to 741/2023, E. T. and Others v. SG, § 71;
 - o ATCE, [judgment of 22 March 2024](#), Appeal No. 742/2023, I. S. v. SG, § 43;
- The general principles of law which apply in the legal systems of international organisations which the appointing authority is required to follow when exercising its discretionary power in matters relating to recruitment:
 - o ABCE, [decision of 4 February 1986](#), Appeals Nos. 115 to 117/1985, Peukert, Müller-Rappard and Bartsch v. SG, § 99;
 - o ATCE, [decision of 24 April 1997](#), Appeal No. 226/1996, Zimmermann v. SG, § 37;
 - o ATCE, [decision of 9 June 1999](#), Appeal No. 250/1999, Schmitt v. SG, § 25;
 - o ATCE, [decision of 31 March 2009](#), Appeal No. 408/2008, Pace Abu-Ghosh, § 46;
- The principles applicable in matters relating to social protection: ATCE, [decision of 28 March 2003](#), Appeal No. 308/2002, Levy v. SG, §§ 46, 47 and 50;
- The principle of proportionality in respect of disciplinary measures: ATCE, [decision of 20 June 2019](#), Appeal No. 594/2018, Bauer v. Governor of the Council of Europe Development Bank, § 63;
- The principle of acquired rights:
 - o ATCE, [decision of 26 September 2012](#), Appeals Nos. 492 to 497/2011, 504 to 508/2011, 510/2011, 512/2011, 515 to 520/2011, 527/2012 (Baron and others v. SG), § 53;
 - o ATCE, [decision of 28 April 2015](#), Appeals Nos. 548 to 553/2014, Cucchetti Rondanini and others v. SG, §§ 66 and 69;
 - o ATCE, [decision of 20 April 2021](#), Appeals Nos. 640/2020 to 644/2020, 646/2020 to 648/2020, Parsons (V) and others v. SG, and Appeals Nos. 649/2020, 652/2020 to 660/2020 and 664/2020, Verneau (II) and others v. SG, §§ 184 and 188 to 190;

- The principle that it is the responsibility of each staff member to inform themselves about the tax legislation applicable in their country of residence, and that this responsibility cannot be shifted to their employer: ATCE, [judgment of 5 February 2025](#), Appeals Nos. 746/2024 and 748 to 758/2024, A. S. T. and Others v. SG, § 64;
- The principle that an administrative decision “must be assessed in the light of all the facts which had occurred and were known to the Administration at the relevant moment”: ATCE, [decision of 1 February 2023](#), Appeal No. 720/2022, E v. SG, § 62;
- The principle of the rule of law:
 - o ATCE, [decision of 24 April 1997](#), Appeal No. 226/1996, Zimmermann v. SG, §§ 26 to 28;
 - o ATCE, [decision of 12 July 2007](#), Appeals Nos. 361 to 365/2006 and 368/2006, Babocsay and others v. SG, § 42;
- The principle of legal certainty:
 - o ATCE, [decision of 4 July 2003](#), Appeal No. 309/2002, Belyaev v. SG, § 28;
 - o ATCE, [decision of 13 December 2011](#), Appeal No. 476/2011, Yeo v. SG, § 49;
 - o ATCE, [decision of 21 October 2021](#), Appeal No. 672/2020, Kowalczyk-Kędziora v. SG, §§ 29 and 30;
 - o ATCE, [decision of 27 January 2022](#), Appeal No. 674/2021, Mendez Carvalho v. SG, § 50;
- The principle of impartiality:
 - o ABCE, [decision of 25 March 1994](#), Appeal No. 172/1993, Feriozzi-Kleijssen v. SG, § 31;
 - o ATCE, [decision of 12 February 2021](#), Appeal No. 665/2020, Yuksek (II) v. SG, §§ 69, 70, 71 and 82;
- The principle of good faith:
 - o ABCE, [decision of 3 August 1987](#), Appeals Nos. 133 to 145/1986, Ausems and others v. SG, §§ 78, 79, 86 and 88;
 - o ATCE, [decision of 29 January 1998](#), Appeals Nos. 231 to 238/1997, Fuchs and others v. SG, § 49;
 - o ATCE, [decision of 20 June 2019](#), Appeals Nos. 595 to 601/2018, Alberelli (III) and others v. SG, § 93;
- The principle of legitimate expectation:
 - o ATCE, [decision of 9 October 2018](#), Appeals Nos. 587/2018 and 588/2018, Jannick Devaux (II) and (III) v. SG, § 109;
 - o ATCE, [decision of 12 June 2023](#), Appeal No. 723/2022, Zaytseva v. SG, §§ 50 and 51;
- The principle *pacta sunt servanda*: ATCE, [decision of 20 June 2019](#), Appeals Nos. 595 to 601/2018, Alberelli (III) and others v. SG, § 93;
- The principle *rebus sic stantibus*: ATCE, [decision of 20 June 2019](#), Appeals Nos. 595 to 601/2018, Alberelli (III) and others v. SG, § 104;
- The principle relating to freedom of expression: ATCE, [decision of 22 December 2005](#), Appeal No. 345/2005, Kling (III) v. SG, §§ 38 to 41;

- The principle of non-retroactivity: ATCE, [decision of 10 December 2015](#), Appeal No. 557/2014, Hedman v. SG, § 72;
- The principle of the duty of care:
 - o ATCE, [decision of 9 October 2018](#), Appeals Nos. 587/2018 and 588/2018, Jannick Devaux (II) and (III) v. SG, § 109;
 - o ATCE, [judgment of 22 March 2024](#), Appeal No. 742/2023, I. S. v. SG, § 46;

Procedural principles

- The principle of the right of access to a tribunal:
 - o ATCE, [decision of 9 June 1999](#), Appeal No. 250/1999, Danielle SCHMITT v. SG, § 16;
 - o ATCE, [decision of 28 April 2015](#), Appeals Nos. 548 to 553/2014, Cucchetti Rondanini and others v. SG, § 63;
 - o ATCE, [decision of 1 February 2023](#), Appeal No. 720/2022, E v. SG, §§ 49, 50 and 58;
- The principle of the obligation to give reasons for administrative decisions:
 - o ATCE, [decision of 28 March 2003](#), Appeal No. 294/2002, Marchenkov v. SG, § 37;
 - o ATCE, [judgment of 25 November 2024](#), Appeal No. 743/2024, B. S. v. Governor of the Council of Europe Development Bank, § 56;
- The principle concerning the conditions under which a procedural irregularity can lead the Tribunal to find that a decision is null and void: ATCE, [decision of 27 January 2022](#), Appeal No. 673/2021, C v. Governor of the Council of Europe Development Bank, § 97;
- The principle that the personal impartiality of a judge must be presumed until there is proof to the contrary: ATCE, [decision of 8 January 2021](#), Appeal No. 625/2019, Brannan (IV) v. SG, § 15;
- The principle that in order for the Organisation to incur non-contractual liability, three cumulative conditions must be met: ATCE, [judgment of 5 February 2025](#), Appeal Nos. 746/2024 and 748 to 758/2024, A. S. T. and Others v. SG, § 20;
- The principle of the right to be heard: ATCE, [judgment of 25 January 2024](#), Appeal No. 737/2023, G. T. v. SG, §§ 32, 36 and 37.