

**CONSEIL DE L'EUROPE**—————

—————**COUNCIL OF EUROPE**

**TRIBUNAL ADMINISTRATIF  
ADMINISTRATIVE TRIBUNAL**

**Appeal No. 670/2020  
(Irène WEIDMANN (II) v. Secretary General)**

The Administrative Tribunal, composed of:

Mr András BAKA, Deputy Chair,  
Ms Lenia SAMUEL,  
Mr Thomas LAKER, Judges,

assisted by:

Ms Christina OLSEN, Registrar,  
Mr Dmytro TRETAKOV, Deputy Registrar,

has delivered the following decision after due deliberation.

**PROCEEDINGS**

1. The appellant, Ms Irène WEIDMANN, lodged her appeal on 29 September 2020. The appeal was registered the same day under No. 670/2020.
2. The appellant submitted further pleadings on 27 October 2020.
3. The Secretary General submitted her observations on the appeal on 22 December 2020.
4. On 15 January 2021, the appellant filed submissions in reply.
5. Owing to the precautionary measures implemented in Europe because of the pandemic, the hearing in this appeal took place by videoconference, on Wednesday 23 June 2021. The appellant was represented by Mr Giovanni M. PALMIERI, legal adviser on international civil service law, assisted by Ms Elisabeth Y. POUYE. The Secretary General was represented by Ms Sania IVEDI, administrative officer in the Legal Advice and Litigation Department.

## THE FACTS

### I. CIRCUMSTANCES OF THE CASE

6. The appellant is a former staff member of the Council of Europe who retired on 1 August 2014. At the time of retirement, she was posted in Strasbourg and her grade was B3. She is affiliated with the Co-ordinated Pension Scheme governed by the Pension Scheme Rules set out in Appendix V to the Staff Regulations (hereinafter Pension Scheme Rules)

7. In September 2014, the appellant, who is a Swiss national, informed the Administration that she wished to take up residence in Switzerland with effect from November 2014. At the same time, she asked to benefit from the salary scale applicable to that country by availing herself of the option under the applicable provisions, in particular Article 33, paragraph 2, of the Pension Scheme Rules.

8. For this reason, from 1 November 2014 onwards, the appellant's pension was calculated on the basis of the Swiss salary scale.

9. On 1 October 2015, the appellant took up residence in Strasbourg again and informed the Administration of this.

10. In March 2020, the appellant informed the Administration that she had transferred her bank account from Switzerland to France.

11. In an email of 21 August 2020, the International Service for Remuneration and Pensions (hereinafter ISRP), a technical support service that provides assistance with managing pensions and remuneration, informed the appellant of the Council of Europe's decision to take the change in her place of residence from Switzerland to France into account for the purposes of calculating her pension. Consequently, from August 2020 onwards, the scale that was applied to the appellant was the scale applicable to the country of her last posting, i.e. the French scale.

12. On 24 August 2020, the appellant lodged an administrative complaint against this decision. This complaint was dismissed on 23 September 2020.

13. On 29 September 2020, the appellant lodged this appeal.

### II. RELEVANT LAW

14. Article 59, paragraph 2, of the Staff Regulations concerns the complaints procedure and reads as follows:

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

15. Article 60, paragraphs 1 and 2, of the Staff Regulations concerns the appeals procedure and reads as follows:

“1. In the event of either explicit rejection, in whole or part, or implicit rejection of a complaint lodged under Article 59, the complainant may appeal to the Administrative Tribunal set up by the Committee of Ministers .

2. The Administrative Tribunal, after establishing the facts, shall decide as to the law. In disputes of a pecuniary nature, it shall have unlimited jurisdiction. In other disputes, it may annul the act complained of. It may also order the Council to pay to the appellant compensation for damage resulting from the act complained of.”

16. Article 33 of the Pension Scheme Rules (Appendix V to the Staff Regulations) concerns the basis for calculating the pensions of Council of Europe staff members in different situations. Paragraphs 1 to 4 of this article read as follows:

“1. Pensions provided for in the Rules shall be calculated by reference to the salary defined in Article 3 and to the scales applicable to the country of the staff member’s last posting.

2. However, if the former staff member settles subsequently:

i) in a Member country of one of the Co-ordinated Organisations of which he is a national, or  
ii) in a Member country of one of the Co-ordinated Organisations of which his spouse is a national; or  
iii) in a country where he has served at least five years in one of the Organisations listed in Article 1, he may opt for the scale applicable to that country. The option shall apply to only one of the countries referred to in this paragraph, and shall be irrevocable except where paragraph 3 below is applicable.

3. On the death of his spouse, a former staff member who settles in the country of which he is a national, or of which such deceased spouse was a national, may opt for the scale applicable in that country. The same option shall be open to the surviving spouse or former spouse of a former staff member and to orphans who have lost both parents.

4. These options, available under paragraphs 2 and 3, shall be irrevocable. (...)”

17. The implementing arrangements for Article 33 of the Pension Scheme Rules in relation to the basis of calculation are laid down in Instruction 33/1, which provides as follows:

“Within the meaning of Article 33, the settlement of a pensioner refers to his principal and effective residence, with the transfer of the permanent and usual centre of his interests and the will to confer stability to such a residence. The option is granted as from the month following the date on which the pensioner proves, to the satisfaction of the Organisation, that he has his principal and effective residence in the country in question. The Organisation may in particular request:

- a recent certificate of residence;
  - a certificate of removal from the population registry of the former place of residence;
  - a copy of a recent invoice (water, gas, electricity, fixed telephone) established after the date of the removal and for the name and address of the person concerned;
  - a copy of the rent contract or of the purchasing deed of the residence;
  - a copy of the removal invoice;
  - evidence of being subject to property or residence tax;
- or any other evidence it deems relevant.”

## **THE LAW**

18. In her appeal, the appellant asks the Tribunal to annul the Secretary General's decision to apply the French salary scale instead of the Swiss scale and to award her compensation for the financial loss suffered. She then asks the Tribunal to reimburse her costs in the amount of EUR 7 000.

19. The respondent asks the Tribunal to declare the appeal unfounded and to dismiss it in full, including the part concerning the award of EUR 7 000 for the costs of these proceedings.

### **I. SUBMISSIONS OF THE PARTIES**

#### **A. The appellant**

20. The appellant raises several points of law based on infringement of the applicable rules, and some general legal principles. She also makes several criticisms of the process followed by the Administration when it took and communicated the impugned decision, while also pointing out that her aim in so doing is not to raise procedural defects, but merely to "help to inform the Tribunal fully".

21. As to the first ground of appeal, the appellant considers that the contested decision results from misinterpretation of Article 33 of the Pension Scheme Rules and the relevant implementing instruction, namely Instruction 33/1 concerning proof of residence. In this regard, she considers that the decision to change the basis for calculating her pension by once again applying the scale applicable in the country of her last posting, i.e. France, instead of the scale applicable in the country for which she had exercised her right of option, namely Switzerland, is contrary to both the letter and the spirit of the rules concerned.

22. In support of this ground, the appellant points out that the option allowed under Article 33, paragraph 2, of the Pension Scheme Rules is irrevocable. This means that the effects of the choice made are final for both the pensioner and the Organisation. According to the appellant, continuing application of the chosen scale is not conditional upon permanent fulfilment of the requirements for this option to be exercised, and if it is granted, this is not a conditional decision that can be revoked, as the provisions do not state that it can lapse and they contain no "condition subsequent or revocation clause".

23. According to the appellant, the way in which the Organisation must exercise its power in this regard admits of no discretion: the Organisation has no power of initiative or discretionary power that would enable it to assess the requirements that must be met in order to benefit from the option at any time other than the time when the option is exercised. The appellant also points out that the Council of Europe never told her that the decision to put her on the Swiss scale was conditional.

24. Contrary to what is alleged by the respondent (see paragraph 32 below), the appellant then states that continuing to apply the Swiss scale in her favour while she is living in France would not be contrary to the principle of equality of treatment between pensioners. She states in

this regard that under the Co-ordinated Pension Scheme, there is no principle that all pensioners living in the same country must be subject to that country's scale. She also refutes the respondent's argument that this continuing application would enrich her unjustly as inappropriate, because unjust enrichment is a concept that international organisations use in relation to dishonest behaviour by their staff.

25. In her second ground of appeal, the appellant alleges a breach of the general principles of law that require protection of legal certainty and legitimate expectation. In relation to this ground, she notes that the impugned decision put an abrupt end to an administrative practice that constitutes law. In this regard, she states that after moving from Switzerland to France in September 2015, she remained on the Swiss scale for four years and 11 months. The impugned decision thus ran counter to her legitimate belief that the effects of her choice of the Swiss scale were irrevocable.

26. The appellant also considers that the Organisation ought to have given her notice before taking the impugned decision, which changed her personal administrative situation adversely.

27. Lastly, the appellant notes that it is not sufficient for the Administration to state that it continued to apply the Swiss scale merely by omission. Since an omission such as this is a clerical error, the onus was on the Administration to prove that it was a clerical error and thus rebut, with supporting evidence, the presumption that administrative decisions comply with the law.

## **B. The Secretary General**

28. The Secretary General disputes the well-foundedness of the grounds put forward by the appellant.

29. With regard to the first ground, the Secretary General observes that in taking its impugned decision, the Administration did not revoke the appellant's option; rather, it found that the requirements that needed to be met for the option to be granted were no longer fulfilled, particularly the requirement in Instruction 33/1 for the pensioner to prove that his or her principal and effective residence is in the country concerned "with the transfer of the permanent and usual centre of his interests and the will to confer stability to such a residence".

30. The Secretary General notes that the impugned decision arises out of an interpretation of the provisions in question which is consistent with the interpretation criteria laid down in the Vienna Convention on the Law of Treaties and applied by the Tribunal, and is an interpretation in good faith that accords with the letter, context, object and purpose of both Article 33 of the Pension Scheme Rules and Instruction 33/1 concerning the rule in question. In particular, this interpretation is consistent with the goal of enabling pensioners to benefit from a scale that corresponds to the cost of living in the country where they are permanently and effectively resident and guarantees the same level of purchasing power as in the duty country.

31. According to the Secretary General, the interpretation drawn by the appellant would open the door to abuse, because it would mean that a pensioner who can opt for a salary scale

applicable to one country that is more advantageous than the one applicable to the country of his/her last posting to take up residence in the former country for a short time with no genuine intention of residing there on a long-term basis, solely in order to benefit from this option unconditionally in future, with no possibility that the place of residence requirement will be enforced and checked once the option has been granted. Furthermore, the line of argument taken by the appellant has already been dismissed in a similar case by the Administrative Tribunal of the International Labour Organization as “absurd” (Administrative Tribunal of the International Labour Organization (ILOAT), [Judgment No. 2292](#), consideration 12).

32. The Secretary General also notes that the appellant’s interpretation is contrary to the principle of equality of treatment between pensioners. This principle requires the appellant, who is in the same situation as pensioners residing in France, to receive a pension that gives the same purchasing power, and hence a pension in an amount equal to that received by pensioners residing in France who hold the same grade and are at the same step and have contributed for the same amount of time. If the Swiss scale continued to be applied in this case – which would result in an increase in the amount of the appellant’s pension – this would enrich her unjustly.

33. With regard to the appellant’s second ground of appeal, the Secretary General observes that the delay in updating the salary scale is the result of an unintentional omission. Therefore, this delay could not give rise to a practice on which the appellant could rely and which would have created rights in her favour. The aim of the impugned decision was to put an end to an irregularity under Article 33 of the Pension Scheme Rules and cannot be regarded as abandonment of a practice resulting in a breach of the principles of legal certainty and legitimate expectation.

34. The Secretary General also notes that although regrettable, the lateness in updating the scale benefited the appellant. This is because it enabled her to go on receiving, until July 2020, a pension calculated on the basis of the Swiss scale which was far higher than the one to which she was entitled by virtue of her residence in France from October 2015 onwards.

35. In deciding not to give retroactive effect to the impugned decision, the Organisation also behaved in a kind and caring manner towards the appellant. The Secretary General underlines in this regard that it could have given retroactive effect to the impugned decision pursuant to the rule on recovery of overpayments (Article 38 of the Staff Regulations) because the appellant knew, or at least ought to have known, that she no longer met the requirements to benefit from the Swiss scale from October 2015 onwards.

36. The Secretary General concludes that the grounds of this appeal are unfounded and that the appeal must be dismissed.

### **C. The Tribunal’s assessment**

37. This dispute relates to the Administration’s decision to apply the French scale for the purposes of calculating the appellant’s pension due to her move to France, after she had previously benefited from the Swiss scale, having exercised the right of option under Article 33 of the Pension Scheme Rules. The appellant asserts that this decision is contrary to the rule in

question and the legal principles of legal certainty and legitimate expectation. The respondent Organisation, meanwhile, maintains that the contested decision is entirely within the rules.

38. It is pointed out that under the first paragraph of Article 33 of the Pension Scheme Rules (which is quoted above in paragraph 16), pensions subject to the rule in question are generally calculated on the basis of the scale applicable to the country of the staff member's last posting. As an exception to this rule, pensions can be subject to the scale applicable to another country where the staff member settles subsequently and for which he/she exercises a right of option, in the situations referred to in the second paragraph of the aforementioned article. One of these situations allows for the possibility of opting for the scale of a member country of one of the Co-ordinated Organisations of which the staff member is a national. Instruction 33/1 (which is quoted in paragraph 17 above) states that within the meaning of Article 33, a pensioner's settlement must be understood to mean "his principal and effective residence, with the transfer of the permanent and usual centre of his interests and the will to confer stability to such a residence."

39. The aim of the provisions in question was to give a pensioner the benefit of a salary scale corresponding to the cost of living in the country where he/she is settled and guaranteeing purchasing power on a level corresponding to that which the pensioner enjoyed in the duty country.

40. At the time when the appellant exercised the right of option allowed by Article 33, there is no doubt that she fully met the requirements to benefit from the Swiss scale as at 1 November 2014: she was a national of the country concerned and was able to demonstrate that she had moved her principal and effective residence to it, as required by the implementing provision in Instruction 33/1. It is not disputed that the appellant no longer met these requirements from the time when, in October 2015, she moved to France and moved her principal and effective residence to that country.

41. Because the appellant could no longer show that she met the requirements that would entitle her to benefit from the Swiss scale, her administrative situation was contrary to the applicable rules and the Administration had a duty to take the steps necessary to bring her situation into line with them. The Tribunal points out in this regard that it is a general principle of law that every authority is required to comply with the rules which it has itself laid down, as long as they do not amend, suspend or revoke them (the principle of *tu patere legem quam ipse fecisti*).

42. In these circumstances, the Administration applied the applicable rules to the letter when it decided to base the calculation of the appellant's pension on the scale applicable to the country to which she had moved and hence to stop calculating it on the basis of the scale applicable to the country that she had left in the interim.

43. The appellant states in this regard that the option she exercised as a Swiss national in deciding to settle in her country of origin is irrevocable under paragraph 2 of Article 33 of the Pension Scheme Rules and that the Organisation therefore cannot revoke this option if she moves to another country. The Tribunal cannot subscribe to this view because in a case such as this, it is not the Organisation who "revokes" the option freely exercised by the pensioner; rather, it is

the latter who decides to settle somewhere other than in the country of which he/she is a national and, as a result, can no longer benefit from the salary scale applicable to this country.

44. As has already been ruled by another international administrative tribunal quoted by the respondent Organisation (see paragraph 31 above), the appellant's view would have the absurd consequence that the recipient of a pension calculated on the basis of the situation in a given country could change residence and settle in any territory of a State, whether or not it is a member of the Organisation, while continuing to benefit from the same advantages. Such an interpretation is not consistent with the object and aim of the applicable rules and would give rise to abuses, because it would mean that a pensioner need only reside briefly in a country whose scale is more advantageous for him/her to be able to benefit from it for life even after taking up stable and effective residence in another country.

45. In the light of the foregoing, the appellant's first ground of appeal based on a breach of Article 33 of the Pension Scheme Rules must be dismissed as unfounded.

46. With regard to the appellant's second ground, the Tribunal notes that it is an established fact that the appellant gave the Administration notice that she had moved back to Strasbourg at the time of the events, in September 2015. However, it was established during the oral proceedings in this appeal that it was only in March 2020, when the appellant gave notice that she had transferred her bank account from Switzerland to France, that the Administration became aware of the irregular situation that the appellant was in because her pension was still being calculated on the basis of the Swiss scale when it ought to have been calculated on the basis of the French scale.

47. In these circumstances, and in the light of the Administration's duty to remedy the identified irregularity (see paragraph 41 above), the question that arises for the Tribunal is whether the time taken to remedy it was appropriate having regard to the principles of legal certainty and legitimate expectation. In answer to this question, the Tribunal concludes that the Organisation did not violate the requirements of legal certainty and legitimate expectation in dealing with the appellant's situation in August 2020, five months after noticing the irregularity that this case concerns.

48. The Tribunal also notes that the Administration decided not to apply with retroactive effect the decision to update the scale used to calculate her pension, and bore full responsibility for its delay in implementing the impugned decision after the date on which the appellant moved to France.

49. Therefore, the appellant's second ground must be dismissed as unfounded.

### III. CONCLUSION

50. It follows from the foregoing that this appeal is unfounded and must be dismissed.



For these reasons,

The Administrative Tribunal:

- Declares the appeal unfounded and dismisses it;
- Orders that each party shall bear its own costs.

Adopted by the Tribunal by videoconference on 18 October 2021 and delivered in writing pursuant to Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 21 October 2021, the French text being authentic.

The Registrar of the Administrative  
Tribunal

The Deputy Chair of the  
Administrative Tribunal

Christina OLSEN

András BAKA