CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF

ADMINISTRATIVE TRIBUNAL

Appeals Nos. 477-484/2011
(Maria-Rosa PRÉVOST and others v. Secretary General)

The Administrative Tribunal, composed of:

Mr Christos ROZAKIS, Chair,
Mr Angelo CLARIZIA
Mr Hans G. KNITEL, Judges,

Assisted by:

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

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The Tribunal received eight appeals submitted on 8 April 2001 and registered that same day, from:

- Ms Maria-Rosa PREVOST,	Appeal No. 477/2011
- Ms Carol KENDALL,	Appeal No. 478/2011
- Ms Pascale BOUILLON,	Appeal No. 479/2011
- Ms Isabelle CASTRO-MARTINEZ,	Appeal No. 480/2011
- Ms Veronica JEANNIN,	Appeal No. 481/2011
- Mr Brian O'REILLY,	Appeal No. 482/2011
- Ms Mélina BABOCSAY,	Appeal No. 483/2011
- Mr Jonathan SHARPE,	Appeal No. 584/2011

2. On 10 May 2011, the appellants submitted further pleadings.

3. On 20 June 2011, the Secretary General submitted his observations. The appellants submitted a memorial in reply on 8 August 2011.

4. The public hearing on these appeals was held in the Administrative Tribunal's hearing room in Strasbourg on 2 November 2011. The appellants were represented by Mr Jean-Pierre Cuny, of the Paris Bar, assisted by Mr Giovanni Palmieri. The Secretary General was

represented by Ms Bridget O'Loughlin, Deputy Head of the Legal Advice Department, assisted by Ms Maija Junker-Schreckenberg and Ms Sania Ivedi, assistants in that department.

THE FACTS

I. THE FACTS OF THE CASE

5. The first six appellants are permanent or temporary staff members of the Council of Europe, serving in Strasbourg. The last two are former Council of Europe staff members who retired in 2002 and 1998 respectively.

6. On 27 January 2011, the currently serving appellants submitted an administrative complaint in relation to their pay statement for January 2011 (received on 5 January), which showed that a 0.2% reduction had been applied to the salary scales. They argued that this reduction was contrary to the method in force, and more particularly Article 11 of the 171st Report of the Co-ordinating Committee on Remuneration (CCR) and, according to the appellants, a customary norm guaranteeing the safeguarding of the nominal level of salaries.

7. On 22 February 2011, the two retired members of staff introduced an administrative complaint in relation to their pension statement, showing an identical reduction of 0.2%. Unlike currently serving members of staff, retired staff members receive their pension (and pension statement) during the last week of each month.

8. The Secretary General rejected the administrative complaints submitted by the serving members of staff by decisions dated 24 February 2011 and those submitted by the retired staff members by decisions of 24 March 2011. He stated the following in one of the decisions of 24 February 2011:

> "You request the cancellation of your pay statement for January 2011 which shows a reduction of 0.2% applied to the salary scales and ask for it to be 'replaced by a pay statement guaranteeing full protection of the nominal level of salaries'.
>
> You maintain that the decision taken by the Committee of Ministers is unlawful in that it violates what you claim to be an established practice of ensuring protection of the nominal level of the salaries of staff of the Co-ordinated Organisations as provided for in Article 11 of the Rules on the Remuneration Adjustment Procedure for the staff of the Co-ordinated Organisations.
>
> (…) the Council of Europe is part of the Co-ordinated Organisations which share a co-ordinated remuneration system. In this context, the Committee of Ministers of the Council of Europe adopted the Regulations concerning the Co-ordination system on 8 July 2004 (CM(2004)14).
>
> By virtue of these Regulations, it is the Co-ordinating Committee on Remuneration (CCR) which submits recommendations to the Co-ordinated Organisations, in accordance with the salary adjustment method in force, so that they may take these into account and adjust accordingly the remuneration of their staff.
>
> The CCR makes its recommendation regarding the current adjustment. The CCR's recommendation is the result of a technical application of the criteria contained in the method in question. At its 983rd meeting on 13 December 2006, the Committee of Ministers adopted the 171st Report of the CCR which defined the salary adjustment method for the six-year period from 1 January 2007 to 31 December 2012.
>
> The Rules on the Remuneration Adjustment Procedure for the staff of the Co-ordinated Organisations set out in the annex to the 171st Report of the CCR contain the following provisions:

Article 5: Annual adjustments of basic salaries

(…)

Article 11: Reduction of scales

(…)

In its 205th Report on the annual adjustment of remuneration of the staff of the Co-ordinated Organisations at 1 January 2011, the CCR made the following recommendation to the governing bodies of the Co-ordinated Organisations:

> **Recommendation**
> The Co-ordinating Committee on Remuneration recommends Governing Bodies:
> (a) to approve, subject to the provisions of Article 8 as adopted by the Co-ordinated Organisations, the salary scales at 1st January 2011 resulting from the application of the adjustment indices set out in Annex 2 (cf. attached country tables in Annex 5);
>
> (…).

At its 1099th meeting on 23 November 2010, the Committee of Ministers considered the recommendations made in the 205th Report of the CCR and took the following decision:

> The Deputies, having regard to the recommendations set out in paragraph 4 of the 205th Report of the Co-ordinating Committee on Remuneration (CCR) (document CM(2010)128) concerning the adjustment of remuneration of the staff of the Co-ordinated Organisations, in so far as they concern the Council of Europe,
>
> 1. agreed to adopt, with effect from 1 January 2011, the salary scales resulting from the application of the adjustment indices indicated in Appendix 2 of the 205th Report (the adjustment index for France being -0.2%), as shown in the tables for each state attached to that report, with the exception of the salary scales for B and C grade staff members for Belgium, France, Germany and Hungary which are replaced by the salary scales set out in document CM(2010)128 add;
> (…)
> Adopted Resolution CM/Res(2010)50 on the revision of the Regulations governing staff salaries and allowances, as it appears in Appendix 30 to the present volume of Decisions:
> (…).'

In the current case, (…) the Secretary General and the Committee of Ministers merely applied the CCR's recommendation to adopt the salary scales resulting from the application of the adjustment indices. It emerged from the CCR's 205th Report that the application of the salary adjustment method had resulted in upward variations for five countries, downward variations for 21 countries (including France) and no variation for two countries. It is not disputed that these results were the outcome of the strict and objective application of the salary adjustment method.

The purpose of the adjustment method is to take into account and reflect any changes which occur in real terms in the national civil services. These changes may be favourable or unfavourable to the staff of the Co-ordinated Organisations. The current adjustment method makes for stable, foreseeable and transparent results. The method was drawn up so as to closely monitor the general trends in salaries in the national civil services. If the method produced a negative adjustment, this merely reflects the downward trend in the reference civil service salaries.

In this context, it should be pointed out that the Staff Committee approved and supported the implementation of the adjustment method set out in the 171st Report of the CCR, in an agreement signed with the Secretary General on 1 December 2006. Moreover, One Staff, the majority trade union on the Staff Committee, decided not to challenge the salary adjustment method and the negative adjustment it produced in 2011 on the ground that *'the negative 2011 salary adjustment is the result of*

a calculated method that staff representatives have defended tooth and nail over the years'. The Staff Committee (…) does not dispute the fact that the method had been correctly applied and maintains that it is only right to accept the outcome and the resulting minimal reduction in salary for staff in 2011 (…).

The Secretary General notes that the adjustment method has been fully complied with and that your challenge to its application is solely on account of the negative adjustment of salaries. It is unacceptable, on the one hand, to consent to application of the method when the adjustment results in an increase to the salary scales and, on the other, to criticise it and demand that it not be fully applied when the outcome is a reduction. The criteria used by the current adjustment method are objective, appropriate and well-known to staff.

In this instance, the CCR did not recommend the application of Article 11 of the Rules on the Remuneration Adjustment Procedure of the Co-ordinated Organisations provided for in the event of a reduction in salary scales. This article provides that the CCR may recommend suspension of the reduction in salary scales until the following positive adjustment. (…) This is merely an option and not an obligation. It follows that the decision whether or not to apply Article 11 is taken on a case-by-case basis, where the circumstances so permit. It is not intended to be automatically applied each time the salary adjustment method produces a negative result.

For the adjustment of salaries at 1 January 2011, the CCR did not recommend that Article 11 be applied, as it had the authority to do so, as it did not consider this to be expedient. Moreover, Article 11 does not make it possible to cancel the reduction in salary scales, but merely to suspend such a reduction until the following adjustment. The fact is that, given the current financial climate, no-one is in a position to state with any degree of certainty that the forthcoming adjustments would result in an increase in the salary scales.

(…) the Council of Europe is not the only co-ordinated organisation to have applied the reduction in salary scales. (…) all the Co-ordinated Organisations implemented the CCR's recommendations (…), including the OECD, which decided to apply the reduction only with effect from 31 December 2011 on account of the fact that the salaries of its staff were already lower than those in the other Co-ordinated Organisations. (…)

(…) in adopting its decision of 23 November 2010, the Committee of Ministers took account of the reasoned recommendations given in the 205th Report of the CCR. In implementing this decision, the Secretary General was merely fulfilling his statutory obligations.

The Council of Europe Appeals Board acknowledged that in matters of staff remuneration, *"only the Committee of Ministers has the power to lay down [salary] scales and it does so on the basis of the calculation method which it itself adopted"* (decision in Ausems and others v. the Secretary General of 3 August 1987, Appeals Nos.133 to 145/1986). (…)

(…) the Committee of Ministers has a broader margin of manoeuvre regarding salary adjustments. (…) 'the determination of salary levels necessitates taking account of numerous political, legal and economic parameters. Quite evidently, such a matter falls, if not exclusively at least primarily, within the competence of the States which, through their contributions, furnish International Organisations with the resources necessary for the pursuit of the co-operation objectives assigned them. This being so, the competent authorities must be allowed broad scope to appraise all relevant parameters in order to determine salary levels' (Council of Europe Appeals Board, Appeals Nos. 163-164/90 Jeannin and Bigaignon, decision of 26 June 1992).

Consequently, it is for the Committee of Ministers to determine the way in which it will take into account the results of the salary adjustment method. (…) It is perfectly entitled to adopt the salary scales contained in the CCR recommendations without availing itself of the dispensation referred to in Article 11, and even more so given that the CCR recommendation did not ask for this to be done. Like the CCR, the Committee of Ministers did not deem it appropriate to freeze the negative salary adjustment at 1 January 2011, taking all factors into account and in compliance with its powers in this field.

You claim that there has been a violation of an administrative practice obliging the Council of Europe to freeze the salary scales each time the adjustment method produces negative results.

(…)

First of all, the wording of Article 11 of the Rules on the Remuneration Adjustment Procedure explicitly indicates that this provision is of a purely optional nature. (…) When the 171st Report of the CCR was adopted in 2006, it was not decided to make this provision mandatory.

(…)

In any event, even supposing that it were possible to show that there were such an administrative practice, which is disputed, it is clear from established international case-law that 'a practice of salary and pension adjustment, even where repeated, does not bind the Organisation that adopted it, which is at liberty to abandon it provided that it does so lawfully' (see, amongst others, ILOAT judgment 2632 of 11 July 2007, in the case of P.B. and I.N.). (…) Past decisions taken by the Committee of Ministers in the field of salary adjustment should not prejudge the Committee's subsequent decisions on that question. As it fully complied with the salary adjustment method in force, the Committee of Ministers' decision to apply the reduction in salary scales was taken in all legality.

On the matter of acquired rights, the latter could be regarded as having been infringed only if the impugned decision had constituted a fundamental violation of your employment conditions. This is not the case. The Organisation had given no promise that the decision to freeze salary scale reductions would be applied in all circumstances. Decisions taken in the past established no right for Council of Europe staff to obtain an automatic freezing of salary scale reductions resulting from the application of the method in force.

You cite the Appeals Board judgment delivered in Appeals Nos. 101-113/1984 (Stevens and others), deducing therefrom that the Committee of Ministers' decision was taken in violation of this case-law establishing the individual right of Council of Europe staff to maintenance of their salary levels.

The Secretary General disputes the applicability of this case-law to the present case, as it did not concern a reduction in salaries in application of the salary adjustment method, but a salary alteration measure, whereby staff salaries were subject to a levy. The Appeals Board held that *'such a [unilaterally decided] alteration reducing the remuneration of the staff adversely affects their individual rights. In the conditions in which it was carried out, it could only be decided after and in agreement with the staff of the Organisation'*.

In no way can it be deduced from the aforementioned case-law that staff salaries should be regarded as unalterable. While (…) Council of Europe staff are entitled to remuneration in accordance with the salary scales, it is nonetheless the case that these scales are set each year in accordance with the salary adjustment method (…) the purpose of which is to maintain staff salary levels in relation to the salaries paid in the national civil services. The salary adjustment method is therefore essential to ensure that the level of staff salaries is maintained.

Application of this method produces results, from one year to another, which may entail an increase or a reduction in salaries. (…) Until 1 January 2011, Council of Europe staff had benefited from significant salary increases (…). It is perfectly in conformity with staff's individual right to maintenance of their salary that there should also be a reduction where the method produces such a result. (…) The salary adjustments at issue do not in any way modify the legal position of staff.

It is clear from the above that there has been no breach of the statutory and regulatory provisions, of the general principles of law or of practice, that there has been no formal or procedural irregularity, that account has been taken of all relevant factors, that no wrong conclusion has been drawn from the documents in the file, and lastly that there has been no abuse of authority.

None of the reasons submitted justifies departure from the full and complete application of the salary adjustment method and the salary scales as at 1 January 2011 which resulted from that method.

(…)".

9. The Secretary General rejected the administrative complaints submitted by the retired members of staff in decisions adopted on 24 March 2011. These decisions were worded in a similar way to those relating to the currently serving staff, with the appropriate changes of terminology.

10. On 8 April 2011, the appellants submitted the present appeals, registered the same day.

11. On 23 November 2011, following the hearing held in the present appeals, the Human Resources Directorate ("HRD") published the following information on the Council of Europe Intranet:

> "The HRD announces that the Ministers' Deputies have approved the new salary scales for 2012 as proposed by the CCR (Co-ordinating Committee on Remuneration).
>
> The scales, in strict application of the current method, show an increase of 2.4% in France, 1.5% in Austria, 1.0% in Portugal and 2.2% in Belgium and Luxembourg. The scales for Hungary will increase by 0.3% for A-grade staff and 2.1% for B and C-grade staff. Finally, in Turkey the salary scales will increase by 3.8% in comparison with the scales of 1 January 2011, but will show a decrease of 1.3% in comparison with the intermediary scale of May 2011.
>
> Pensions paid will be increased by 7.2% in the UK, 0.9% in Germany and 2.8% in Norway and those in Switzerland will be decreased by 0.8%.
>
> The new scales will be applied to salaries and pensions as from January 2012.
>
> It is recalled that the current method takes into account the Consumer Price Index in the country of the scale, but also a reference index which reflects the changes in purchasing power in the public sector of eight reference countries, and finally a purchasing power parity with Brussels, the central reference for our system. This year, the public sector reference index shows a decrease of 1.4% and the purchasing power parity impact has been tangible in France (+1.7%), in Norway (+ 2.8%), in the UK (+3.6%) and in Hungary (-1.8%).
>
> The Deputies have nevertheless conditionned [sic] their approval of the scales with complementary savings regarding the wage bill (in order to comply with the ceiling related to this expense), which will lead, as a consequence, to further cuts in posts."

II. APPLICABLE LAW

Rules on the Remuneration Adjustment Procedure of the Co-ordinated Organisations (Annex to the 171st Report of the CCR)

12. Article 5 – Annual adjustments of basic salaries:

> "(…)
> 5.2 Salary scales for other countries
>
> 5.2.1 Subject to the provisions of Article 8, the basic salaries for A and L category staff posted in the other countries shall be adjusted at 1 January following the reference period by the salary adjustment calculated on the basis of the national consumer price index, the reference index and by the purchasing power parities as set out in Appendix 2, in order to guarantee a relative equivalency of purchasing power between the scales of the countries concerned.
> 5.2.2 Basic salaries of B and C category staff shall be subject to an adjustment equal to the percentage determined for A and L grade staff of those countries."

13. According to Article 7 – Special adjustments of remuneration:

"When and each time the national consumer price index in a country, as defined in paragraph 4.3 of Article 4, shows an increase of at least 5% within a given reference period starting from 1 July to the following 1 July, the Chairperson on behalf of the CCR, may send to Governing bodies a recommendation providing for a special adjustment of remuneration as soon as he/she has been informed thereof by the Head of the IOS. The 5% threshold shall be measured from the previous 1 July or if a prior special adjustment has been granted during that period, from the date of effect of that special adjustment. The published Report shall serve as notification to the CCR."

14. Article 11 is worded as follows in the French version:

"Baisse des barèmes

Dans le cas d'une baisse des barèmes en application de l'article 5 et, en conséquence, des indemnités fixées en valeur absolue, le CCR peut recommander de suspendre l'effet négatif de l'article 5 pour maintenir les barèmes et indemnités à leur niveau courant jusqu'à l'ajustement suivant."

The English version of this provision, entitled 'Reductions of scales', states:

"In the event of a reduction in the salary scales following the application of Article 5 and consequently in allowances fixed in absolute value, the CCR may recommend suspending the negative effect of Article 5 in order to maintain the salary scales and the allowances at their current level until the following adjustment."

221th Report of the CCR on the Remuneration Adjustment Method for staff of the Co-ordinated Organisations (CCR/R(2011)3 of 19 July 2011)

15. In its report, the CCR mentioned, amongst other things:

"**Former Article 11 (suppressed): Reductions of scales**

11.1 The CCR agreed to delete Article 11, which allows the CCR, in the event of a reduction in the scales and allowances fixed in absolute value, to recommend that the negative effect of Article 5 be suspended, so as to keep the scales and allowances at their current level until the following adjustment. CCR delegates considered that this article was not necessary in the method insofar as Councils were sovereign to decide to apply, or not to apply, a CCR recommendation and could choose to freeze scales in the event of a decrease.

11.2 The CRSG did not support the CCR proposal to delete Article 11, but proposed to amend it to indicate that the Governing bodies of each Organisation could follow up on CCR recommendations as they saw fit, in accordance with their own respective procedures, i.e. deciding not to apply a reduction of scales and to freeze them until the next positive adjustment. The CCR did not support the CRSG proposal. Nevertheless, in a spirit of compromise, the CRSG did not oppose deleting Article 11, on the condition that in the case of a reduction in the scales, the CCR clearly indicates in its recommendation on the annual adjustment, that Councils are sovereign to follow up on CCR recommendations as they see fit, i.e. deciding to apply or not to apply any reduction of scales.

11.3 The CCR agreed to the approach proposed by the CRSG.

14.4 The CRP stated that it could not subscribe to the CRSG approach, on the grounds that deleting this Article would preclude Councils from granting an adjustment higher than the one recommended by the CCR.

(…)

5. Recommendation

The Co-ordinating Committee on Remuneration accordingly invites Governing bodies:

a) to adopt paragraphs 1 and 2 below:

1. The remuneration adjustment procedure for the staff of the Co-ordinated Organisations, set out in Annex I and its relevant Appendices, shall replace the current procedure.

2. This procedure shall come into effect on 1 January 2013. (…)"

THE LAW

16. The appellants request the cancellation of their January 2011 pay statements and pension statements. They maintain that the Committee of Ministers' salary adjustment decision is unlawful as it violates an established practice to protect the nominal level of salaries of the staff of the Co-ordinated Organisations as provided for under Article 11 of the Rules on the Remuneration Adjustment Procedure for staff of the Co-ordinated Organisations.

17. For his part, the Secretary General asks the Tribunal to dismiss the appeals.

I. JOINDER OF APPEALS

18. As the eight appeals are closely interconnected, the Administrative Tribunal orders their joinder under Rule 14 of its Rules of Procedure.

II. SUBMISSIONS OF THE PARTIES

A. On the violation of Article 11 of Annex 1 to the 171st Report of the CCR

19. The appellants criticise the Secretary General's interpretation of Article 11, considering it to be simplistic and flawed.

20. The appellants maintain, referring to the Secretary General's reasoning in rejecting the administrative complaint, that the interpretation of Article 11 of the Rules and the case-law of the Administrative Tribunal of the International Labour Organisation ("ILOAT") is such that the word "may" is used in the same way as in the provisions of the Staff Regulations of the European Space Agency, as interpreted by the ILOAT. The scope of the discretionary power conferred upon the CCR is not made clear in any way. According to the appellants, it is completely in keeping with the ILOAT's interpretation, to interpret "may" as meaning "must". Moreover, "may" has been equated by the Administration with "must" in other cases, without this ever having given rise to any controversy.

21. Even supposing that the CCR could decide not to recommend freezing the nominal value, it must be conceded that it failed to comply with its obligation to give reasons for not doing so. As far as the annual salary adjustment at 1 January 2011 is concerned, in its 205th Report, the CCR simply refrains from recommending application of Article 11 of the method for the 18 countries where the adjustment is negative. The appellants maintain that the CCR could have included the reasons for this in its report.

22. According to the appellants, for the Committee of Ministers' decision to be lawful, it should have been taken following a procedure in which the CCR and the two other Co-ordination bodies (CRSG and CRP) were involved. As the CCR failed to fulfil its obligation

to recommend a freezing of the nominal level of salaries and provide reasons for its decision not to do so, the procedure was unlawful. This procedural defect had an impact on the decision taken by the Committee of Ministers which was required to maintain the freeze of the nominal level, applying Article 11 of the 171st report, and the customary norm in this matter by which it was bound. The appellants firmly believe that Article 11 of the current method has been violated to the detriment of staff members, in that it obliged the CCR to submit a recommendation to the Councils of the Co-ordinated Organisations with the aim of safeguarding the nominal level of staff salaries. The appellants also allege that there was a manifest failure to provide reasons for its decision.

23. In conclusion, the appellants are convinced that Article 11 of the current method has been violated to the detriment of staff, in that it obliged the CCR to submit a recommendation to the Councils of the Co-ordinated Organisations with the aim of safeguarding the nominal level of staff salaries. In addition, a manifest failure to provide reasons meant that the impugned decision was null and void.

24. For his part, the Secretary General maintains that both he and the Committee of Ministers had applied the CCR recommendation to adopt the salary scales resulting from the application of the adjustment indices. In his view, it was clear from the 205th Report of the CCR that the application of the salary adjustment method had resulted in upward variations for five countries, downward variations for 21 countries and no variation for two countries. He states that it was not disputed that these results were the outcome of the strict and objective application of the salary adjustment method.

25. In point of fact, the Staff Committee had approved and supported the implementation of the adjustment method contained in the 171st Report of the CCR. Furthermore, One Staff, the majority trade union on the Staff Committee, had decided against challenging the application of the salary adjustment method and the negative adjustment which had resulted for 2011, on the ground that "the negative 2011 salary adjustment is the result of the calculated method that staff representatives have defended tooth and nail over the years". The Staff Committee did not dispute the fact that the method had been correctly applied and concluded that one had to accept the results and the minimal salary reduction this entailed for staff in 2011.

26. With regard to the appellants' argument that the Staff Committee's progress report of 4 April 2011 had claimed that the "reduction in the nominal level of salaries" was unlawful, the Secretary General replies that in fact, the Staff Committee had stated the following:

> "After due reflection, the Staff Committee decided, by majority vote, not to insist any further, by adopting what seemed to it to be the most realistic and responsible approach: accepting the outcome of the calculations carried out in the context of the salary adjustment method. It took this decision on the basis that the governments had already made it perfectly clear that they would not agree to a nominal freeze. It therefore felt that it would have been pointless to insist any further and that as a result the position of the staff representatives might have been weakened when it came to negotiations on the future salary adjustment method and might give the very negative impression that the staff representatives only agreed to the application of the method when the figures were in their favour and rejected it when they were not."

27. It is clear, therefore, that the Staff Committee was of the opinion that the method had been fully complied with, and that it accepted the decision of the CCR and the Committee of Ministers not to freeze the reduction in the salary scales. The appellants challenge the application of this method, simply because of the negative salary adjustment. The Secretary

General stresses that Article 11 of the Rules on the Remuneration Adjustment Procedure provides the CCR with the option but not the obligation to apply a freeze. With regard to the appellants' argument that the term "may" in this provision should be understood to mean "must", the Secretary General maintains that this would be contrary to the principle of interpretation whereby words must be given useful effect. If one were to interpret Article 11 of the Rules on the Remuneration Adjustment Procedure in this way, this would invalidate a key term in this provision. The very nature and purpose of this article is to leave it to the discretion of the CCR to decide whether or not, once the method has been applied, to recommend a freezing of the resulting negative adjustment of salaries. The drafters' intention was to give this provision an optional nature. Moreover, Article 12 of the Rules, on flexible remuneration management, provides that "a Secretary/Director General of a Co-ordinated Organisation may make proposals to the Governing body of the Organisation concerned for measures concerning flexible remuneration management. (…) In the event that the Governing body of a Co-ordinated Organisation decides to implement flexible management of salary scales, the salary scales as adjusted in compliance with Article 5 of the rules shall remain in force in each Co-ordinated Organisation (…)". Furthermore, Article 11 is included, along with Article 12, in the part entitled "Chapter VIII: Other arrangements". The fact is that if Article 11 imposed an obligation to freeze negative salary adjustments, this provision would be found, along with Article 5, in the part entitled "Chapter III: Annual adjustments of basic salaries". The decision to include Article 11 reflects the drafters' intention to give it a purely optional nature. Consequently, if one refers to the customary meaning of the terms used in Article 11, taken in their context and in the light of the purpose of the Rules, this provision establishes an option and not an obligation.

28. For the salary adjustment at 1 January 2011, the CCR did not recommend application of Article 11, as it took the view that this was not expedient. Moreover, Article 11 does not authorise cancellation of the reduction in salary scales, but simply suspension until the following positive adjustment. In view of the current economic climate, no-one is able to say that subsequent salary adjustments would result in an increase in the salary scales.

29. The Council of Europe is not the only Co-ordinated Organisation to have applied the reduced salary scales. Indeed, all Co-ordinated Organisations implemented the CCR recommendations, including the OECD, which decided to apply the reduced salary scales with effect from 31 December 2011 since the salaries of OECD staff were already lower than those of the other Co-ordinated Organisations. It is clear that in adopting its decision of 23 November 2010 the Committee of Ministers took account of the reasoned recommendations contained in the CCR's 205th Report, and that the Secretary General was merely fulfilling his statutory obligations.

30. With regard to the appellants' allegation that the CCR had failed to meet its obligation to give reasons for its decision not to recommend a freezing of the reduction in the salary scales, the Secretary General reiterates that the CCR has no obligation to recommend the freezing of the salary scales in the event of a negative adjustment. In his view, there would have been a requirement to provide reasons if application of Article 11 was mandatory and if, by not doing so, the CCR had failed to apply the method. But this was not the case. There was no decision not to apply the provision, given that the latter was optional. Accordingly, there was no obligation for the CCR to give reasons for its decision not to recommend application of this provision.

31. In accordance with the principles derived from international administrative case-law in the field of salary adjustments, the Organisation is required only to provide reasons for not following the reference norm. However, in this case, the method was fully complied with and the CCR recommendation echoed the results that had been obtained from the strict application of the method. The CCR's recommendation was therefore self-justifying, as it was the result of the technical work of applying the criteria contained in the method. The reasons for the reduction in the salary scales in this instance are clear to see in the CCR's 205th report. The fact that there is no formal statement of reasons for the decision not to recommend a freezing of the reduction in salary scales does not prevent the Tribunal from exercising its review of lawfulness. Furthermore, the appellants were informed of the reasons for the individual measures they were challenging in the replies to their administrative complaints. The Secretary General concluded that the fact that no reasons were given for the CCR's decision not to recommend application of Article 11 of the Rules was in no way prejudicial to the appellants and did not represent a procedural defect.

B. On the violation of the customary norm guaranteeing the protection of the nominal level of salaries of the staff of the Co-ordinated Organisations

32. The appellants maintain, first of all, that in accordance with international case-law (ICJ, Rec 1956, p. 91), there are customs that have developed in the internal law of international organisations. They refer in this connection to how the protection of the nominal level of salaries has evolved in the Co-ordinated Organisations and note that it was only with effect from 1976 up to 1 January 2011 that the parameters used for calculating the annual adjustment could produce a reduction in the nominal level of salary scales. Between 1976 and 2011, the method applied had resulted in a reduction of the nominal level on nine occasions, i.e. in 1995, under an adjustment method which required over-payment to be recovered over a set period, and on eight occasions under a method offering the "possibility" for the CCR to recommend maintaining the nominal level of salaries. A reduction in the nominal level occurred in 2001, 2003, 2005, 2007 and 2008 and did not give rise to any difference of interpretation between the CCR and the other two collective bodies. In contrast, in 2009, the CCR's refusal to protect nominal levels led to a protest from the CRP.

33. Regarding the annual salary adjustment at 1 January 2011, the CCR in its 205th Report quite simply refrains from recommending application of Article 11 of the method for the 18 countries for which the adjustment is negative. The appellants maintain that, for the first time, the decision not to freeze the scales was applied to countries in which an increase was not due to exceptional adjustments leading to a salary scale, at 31 December of a given year, higher than the scale obtained, by application of the method, at 1 January of the following year.

34. The appellants also criticise the methodological error committed by the Secretary General in rejecting their administrative complaints, arguing that the representatives of the staff of the Co-ordinated Organisations adopt a legal position as part of their "position" appended to each CCR recommendation. They underline the fact that the CRP reconfirmed the existence of a customary rule.

35. The appellants maintain, moreover, that the staff in each Organisation can pursue their objective other than through judicial channels. In this connection, they note that the staff of the OECD obtained an agreement that the reduction would be applied only on 31 December 2011. However, the Administration in the Council of Europe is very little disposed to consult with staff on these questions. The situation is different in the other organisations, where there

are either institutional "negotiation" mechanisms or a spirit of good will enabling "political" compromises to be reached. Even though, at present, there do not appear to be any proceedings in progress, this possibility remains open in the near future. Nonetheless, the appellants argue that the fact that there are no proceedings does not diminish the scope of the CRP's opposition in principle to the decision taken by the CCR and the Councils to disregard the guarantee of maintaining the nominal level of salaries. The appellants conclude from this that there is a practice of protecting nominal levels.

36. The appellants accept that this practice does not yet constitute proof of the existence of a custom. Accordingly, they cite the other constituent element of international custom, namely *opinio juris sive necessitatis*, which consists of a belief on the part of the national delegates, members of the CCR, that they had an obligation to apply the rule of protecting the nominal level of salaries. The appellants consider that the protection of nominal levels was viewed by the CCR as an established principle, and consequently a sort of act the performance of which was not discretionary and which was therefore mandatory for the CCR. They conclude that the practice of protecting the nominal level of salaries which had developed within Co-ordination can be seen as a genuine international custom, and that this customary rule has been violated in the instant case.

37. For his part, the Secretary General states that the customary norm claimed by the appellants has not been established. The conditions for the creation of a customary right have not been fulfilled since, on the one hand, there is no constant and repeated practice, and on the other, the obligation cited has not been broadly acknowledged as being legally binding. First of all, custom requires consistency with the practice. Yet the precedents cited by the appellants do not allow one to conclude that there is a constant and uniform practice, on account of the random and irregular nature of the practical opportunities afforded to the CCR to adopt a given approach vis-à-vis the freezing of a negative salary adjustment. The Secretary General notes, moreover, that there are precedents where a reduction in salaries was applied in 1995 and 2009.

38. The Secretary General adds that a customary rule exists only if the reasons for the act in question derived from an awareness of a legal obligation. For that to be the case, it would be necessary for the CCR and the Committee of Ministers to feel legally bound and, at the same time, to have decided to depart from the rule to which they felt themselves bound. But this is not the case. On the one hand, the wording of Article 11 of the Rules on the Remuneration Adjustment Procedure explicitly confers on this provision a purely optional nature. It is revealing to note in this connection that when the 171st Report of the CCR was adopted in 2006, it was not decided to give this provision mandatory force, and thereby codify its allegedly mandatory nature. On the other, the CCR expressed its position on the matter as follows in the context of the salary adjustment at 1 January 2009: "The CCR considers that, following the legal context of salary adjustment recommendations (…), the application of Article 5, paragraph 5.1.3 is the rule to comply with and that Article 11 represents a derogation from that rule, which in this instance did not seem appropriate". The fact that the CCR does not have an obligation in this matter has been acknowledged by the CRSG which noted that "the application of Article 11 was not compulsory but could be decided on a case by case basis".

39. The Secretary General also contends that the method in question is designed to reflect the economic reality in member states. In order to ensure equity, it is important that the salaries of staff of the Co-ordinated Organisations vary in line with those of national civil

servants in the reference countries. This is the purpose of the method and its effectiveness resides in the fact that when there is a reduction in the salaries of national civil servants, this also impacts on the staff of the Co-ordinated Organisations. The Secretary General argues that it would be neither fair nor in keeping with the method to claim that the latter provides for the mandatory freezing of salary reductions, since no commitment had been entered into in this respect. The Secretary General concludes from this that the appellants have failed to prove the existence of a customary rule.

40. In any event, it is clear from international case-law that "a practice of salary and pension adjustment, even where repeated, does not bind the Organisation that adopted it, which is at liberty to abandon it provided that it does so lawfully' (see, amongst others, ILOAT judgment 2632 of 11 July 2007, in the case of P.B. and I.N.). Consequently, decisions taken in the past by the Committee of Ministers in the field of salary adjustment should not prejudge subsequent decisions taken by that body in that field.

41. The Secretary General concludes that the Organisation has given no promise that the decision to freeze salary scales would be applied in all circumstances. Decisions taken in the past have given Council of Europe staff no right to obtain the automatic freezing of salary reductions resulting from the application of the method in force.

C. On the violation of the rights of staff and retired staff to compliance with the scales laid down by the Committee of Ministers

42. The appellants refer to the Stevens and others case (No. 101-113/1984) heard by the Council of Europe Appeals Board (CEAB) on 15 May 1985 regarding the "crisis levy" introduced under the 191st Report of the Co-ordinating Committee of Government Budget Experts (CCG), which the CEAB found to be unlawful. The Appeals Board noted, inter alia, that remuneration was subject only "to the contributions provided by the Staff Regulations (contributions for social cover and the pension scheme) (…). (…) Such an alteration reducing the remuneration of the staff adversely affects their individual rights. In the conditions in which it was carried out, it could only be decided after and in agreement with the staff of the Organisation (…)".

43. The appellants claim that in this decision, the CEAB laid down a principle that staff salaries and pensions may be reduced – once the Committee of Ministers had adopted the salary scales – only for the following reasons: the contributions provided for by the Staff Regulations and contributions for social cover and the pension scheme. In other words, "the CEAB ruled as unlawful not only the "crisis levy" but also any imposed reduction on the salary scales approved by the Committee of Ministers except for the aforementioned reasons".

44. Given that the reduction in nominal salaries could not be regarded as either a "contribution" provided for by the Staff Regulations or a contribution "for social cover" or "the pension scheme", the impugned measures should be considered unlawful.

45. For his part, the Secretary General maintains that the appellants do not specify exactly how their right to compliance with the salary scales adopted by the Committee of Ministers had been violated, as they do not challenge the fact that the amount of their salaries and pensions with effect from 1 January 2011 do indeed correspond to the amounts appearing in the salary scales in force since that date, as approved by the Committee of Ministers.

46. The Secretary General disputes the similarity between the case to which the appellants refer and the subject matter of the present appeal. The decision in the Stevens and others case was not a decision whereby the Committee of Ministers had approved the salary scales resulting from the adjustment method, but a decision to subject the amount of salaries as laid down in the salary scales to a temporary levy. In the present appeal, no similar interference had affected the amount of salary and pensions as set out in the salary scales for the period in question: the Committee of Ministers had merely approved the salary scales as they had resulted from the method, and the salaries received by the appellants did indeed correspond to those scales. The downward variation of salary scales in force in 2011 in comparison with the salary scales in force at 1 January 2011 was the result of the application of the adjustment method and was not a salary modification measure. The individual right of staff to the amounts indicated in the salary scales in force at 1 January 2011 has therefore not been violated since staff received the amounts indicated in those salary scales.

47. The Secretary General maintains that the issue of adopting salary scales which may show a reduction or an increase depending on the results of the method, is unconnected with the question of decreases – such as a temporary levy – in salaries which in the Stevens and others decision were ruled to be unlawful. Once the salary scales have been adopted by the Committee of Ministers, staff do indeed have an individual right to the amounts indicated in the scales. Accordingly, no reduction in salary, other than the contributions provided for in the Staff Regulations, can be implemented once these scales have been adopted.

48. While Council of Europe staff are entitled to be paid the salary set out in the salary scales, it is nonetheless true that these scales are determined each year by applying the salary adjustment method and are therefore bound to evolve in line with the results of this method, the aim of which is to maintain the level of staff salaries in relation to the salaries paid in national civil services. This method is therefore essential to guarantee that the level of Council of Europe staff's salaries is maintained in relation to the salaries of national civil servants.

49. Application of this method can, from one year to another, produce results which may entail either an increase or a reduction in salaries. Indeed, up to 1 January 2011, Council of Europe staff serving in France benefited from significant increases in their salaries as a result of the application of the method in question. The Secretary General maintains that it is perfectly compatible with staff's individual right to maintenance of their salary as determined for the reference period, that a reduction in salary also be applied when the method produces such a result. Accordingly, the salary adjustments in question do not in any way alter the legal situation of staff, and there has been no violation of their individual rights.

D. On the principles of fairness which requires equality as regards charges and good faith

50. The appellants claim that in the case of Ausems and others (Nos. 133-145/1986, decision of 4 August 1987), the CEAB laid down two general principles of law which the Committee of Ministers must uphold. The first is the principle of "fairness which requires equality as regards charges" between serving national civil servants and Council of Europe staff, and between retired staff of the national civil services and retired staff of the Organisation. In their view, if the Committee of Ministers takes decisions placing serving or retired staff "in more disadvantageous situations than those of the corresponding staff in the civil services of the reference countries (…) the principle of good faith is violated".

51. The appellants allege that serving staff in the Council of Europe and the Co-ordinated Organisations have been placed in a more disadvantageous situation than that of the corresponding staff in the civil service of the reference countries (with the exception of civil servants in Spain) and that the two aforementioned principles have therefore been violated to the detriment of serving staff.

52. As regards retired staff, the appellants claim that the violation of the two principles is manifest given that retired staff in the reference countries have in no way been subjected to a reduction in their nominal level of pension. This is why retired Council of Europe staff, including the appellants, have been placed in a more disadvantageous situation than that of retired staff of the civil services in the reference countries.

53. The Secretary General maintains that the appellants have not shown how the principle of fairness which requires equality as regards charges has been violated, claiming only that the situation of Council of Europe staff was more disadvantageous than that of national civil servants, conceding at the same time that national civil servants have been faced with reduced salaries in real terms. But the fact is that the criteria used by the salary adjustment method guarantee parallelism between salary levels in the national civil services of the reference countries and salary levels of the staff of the Co-ordinated Organisations, taking account of trends in net salaries after taxation in the reference civil services.

54. The purpose of the adjustment method is to take into account and reflect any changes which occur in real terms in the national civil services. These changes may be favourable or unfavourable to the staff of the Co-ordinated Organisations. The current adjustment method makes for stable, foreseeable and transparent results. The method was drawn up so as to closely monitor general trends in salaries in the national civil services. If the method produced a negative adjustment, this merely reflects the downward trend in the reference civil service salaries.

55. The Secretary General then disputes the applicability to the present case of the decision given in the Ausems and others case, referred to by the appellants, which related to a deduction applying only to some Netherlands civil servants and which could not, therefore, apply across the board to serving and retired Council of Europe staff. Unlike the present case, the aforementioned case concerned the taking into account of only one of the elements used in calculating the impugned reference index.

56. According to the Secretary General, the method and criteria used to determine the salary adjustment were fully complied with. Moreover, the appellants do not challenge the fact that serving and retired civil servants in the reference countries have been faced with reductions in their salaries and pensions in real terms. Accordingly, it is incorrect to argue that the reduction in the salary scales at 1 January 2011 is to their disadvantage in comparison with the situation of the staff of the national civil services, as this reduction was the mathematical result of the downward trend, in the same proportion, of the national civil service salaries in the reference countries, and as Council of Europe staff are in the same situation, the principle of fairness which requires equality as regards charges has not been violated.

57. The Secretary General concludes from this that by adhering to the strict application of the salary adjustment method, the Organisation, following the CCR recommendations, has not

violated the principle of good faith. By approving the salary scales at 1 January 2011 as they resulted from the application of the salary adjustment method in force, the Committee of Ministers honoured its commitments.

E. The Parties' conclusions

58. In conclusion, the appellants ask the Administrative Tribunal to annul the decision contained in their pay statements and pension statements for the month of January 2011 in which their scale had been reduced by 0.2% in nominal terms, and to award the sum of €9,500 for all the costs incurred in this appeal.

59. For his part, the Secretary General asks the Tribunal to declare the appeals ill-founded and to dismiss them. Moreover, he notes that the appellants had submitted their appeals in circumstances in which it had been clearly explained to them that the reduction in the salaries scales had resulted from the strict application of the method. As the Administration had been very transparent and had rigorously followed all the relevant procedures, the appellants could not claim to have been misled by the conduct of the Council of Europe authorities.

II. THE TRIBUNAL'S ASSESSMENT

60. Before examining the allegations of the appellants point by point, the Tribunal deems it appropriate, if not necessary, to comment on the general aspect of the present appeals. The measure of which the appellants complain is certainly unfavourable for all staff in the Organisation. However, account must be taken of the extent of its gravity.

61. The extent of the gravity of a measure, deriving from the principle of *de minimis non curat praetor*, relates to the idea that the violation of a right must reach a minimum level of gravity to justify examination of the merits by a court. The assessment of this level will depend on the circumstances of the case in question. It covers criteria such as the monetary impact of the question at issue or what the case represents for the appellant. The Tribunal accepts, however, that the impact of a pecuniary damage should not be calculated in abstract terms, as a modest pecuniary damage could be significant for certain people on account of their personal situation or the economy of the country in which they reside.

62. The Tribunal notes that the present appeals concern a reduction in the salary scales of 0.2% for the year 2011, which represents, in its view, a relatively modest financial impact. Moreover, there is nothing in the files to indicate, and nor do the appellants claim this to be the case, that they were in an economic situation such that the measure in question would have had sufficient repercussions for the facts complained of to reach the minimum level of gravity justifying judicial examination of the merits of the present appeals.

A. On the violation of Article 11 of Annex 1 to the 171st Report of the CCR

63. The Tribunal notes that the key point of the dispute between the parties resides in the interpretation of Article 11 of the Rules, and more particularly in the fact that the CCR "may" recommend suspension of the negative effect of Article 5 to maintain the salary scales and allowances at their existing level until the following adjustment in the event of a reduction in the scales in application of Article 5 of the said Rules.

64. For the Tribunal, the ordinary meaning of "may" is clear: it grants the subject concerned the discretion to do or not do something. The Tribunal believes that the text of Article 11 of the Rules grants the CCR a purely discretionary power. It also notes that the appellants have not proved the existence of a custom which could have some influence on this discretionary power.

65. The Tribunal notes that the salary scales are adopted annually by the Committee of Ministers, taking into consideration the CCR recommendations (see paragraph 45 above). The CCR draws up its recommendations by applying the adjustment method in force, which reflects changes occurring in real terms in the national civil services. As the Secretary General indicated in his decisions of 24 February and 24 March 2011 (see paragraphs 8 and 9 above), these changes may be favourable or unfavourable to the staff of the Co-ordinated Organisations, which include the Council of Europe. Depending on the situation and actual circumstances, the CCR may or may not recommend suspending the negative effect by virtue of Article 11 of the Rules. With regard to the salary adjustment for the year 2011, it did not make such a recommendation.

66. It is true that in previous years, the CCR recommendations were, with the rare exceptions mentioned by the parties, positive. This resulted in salary scales showing an increase in salaries or, at least, a nominal freezing of salaries. However, the Tribunal cannot conclude from this that favourable recommendations, and therefore an increase in salaries or a freezing of salaries, would be automatic. In his decisions, the Secretary General quite rightly pointed out (see paragraphs 8 and 9 above) that the Committee of Ministers has a broad margin of appreciation which, however, the Tribunal underlines, is not unlimited, and is not obliged to follow the CCR recommendations. While it decided not to apply the freezing of the negative salary adjustment at 1 January 2011, the Tribunal finds nothing in the appellants' files to indicate that this decision was not taken in full awareness of the facts and in view of all the data available to it.

67. In the light of these considerations, the Tribunal believes that it is not possible to conclude from the practice pursued in salary adjustments, and the way in which the CCR and the Committee of Ministers exercise their power, that Article 11 of the Rules must be interpreted as containing an obligation on these bodies to apply this article and freeze the negative salary adjustment. The large number of years during which the salaries of Council of Europe staff were adjusted upwards or maintained their existing level (paragraph 29 above) does not in any way influence this finding, as it is merely a consequence of the situation of the national economies.

68. The Tribunal adds that the discretionary nature of the CCR's power is confirmed by the English text of the rules which uses the expression "the CCR may recommend" (see paragraph 14 above). This is also clear from the 221st Report of the CCR on the Salary Adjustment Method for the staff of the Co-ordinated Organisations in which the CCR proposes deleting this provision (see paragraph 15 above).

69. This part of the appeals must therefore be rejected.

B. On the violation of the customary norm guaranteeing the protection of the nominal level of salaries of the staff of the Co-ordinated Organisations

70. The appellants claim that the practice of maintaining the nominal level of salary is an international custom.

71. The Tribunal points out that two elements must be in place to acknowledge the existence of a custom, namely the continuity of precedents attesting to the same practice and the conviction that one must comply with a legal obligation (*opinio juris sive necessitatis*). Referring to its considerations and preceding conclusions regarding the discretionary nature of the power of the CCR under Article 11 of the Rules, and to the practice followed by the CCR and the Committee of Ministers, the Tribunal considers that the practice of maintaining the nominal level of salaries cannot be seen as an international custom. There has therefore been no violation by the Secretary General in this regard.

72. The Tribunal therefore rejects this part of the appeals.

C. On the violation of the rights of staff and retired staff to compliance with the scales laid down by the Committee of Ministers

73. The appellants, referring to the Stevens and others case, allege that their individual rights have been violated, as the salary scales have been reduced for a reason which is not listed in those set out in the case-law of the Appeals Board.

74. Like the Secretary General, the Tribunal considers that, despite certain similarities, the subject matter of the present appeals is different from that in the Stevens and others case. Although the result for the appellants is the same, i.e. a lower salary, the procedures applied in the two cases are totally different.

75. In the Stevens and others case, the Committee of Ministers approved the salary scales, and then introduced a temporary levy (see §§ 63 to 65) which the Appeals Board declared to be unlawful, stating that "the levy introduced by Resolution (54) 2 disregarded the right of the appellants to the payment of the remuneration provided for in the scales for the period under consideration and that consequently the levy is illegal" (see § 69). In contrast, the Appeals Board did not question the right of the Committee of Ministers to amend the criteria used for fixing the scales, stating in this connection that "This is not to call into question the right of the Committee of Ministers, who drew up the criteria for fixing the scales, to vary these criteria" (see § 66).

76. In the present appeals, contrary to the Stevens case, the Committee of Ministers "did not modify the criteria in laying down new salary scales" reducing them by 0.2%, but chose not to avail itself of the dispensation contained in Article 11 of the Rules which, as the Tribunal has already noted, was optional.

77. In conclusion, this part of the appeals must be rejected

D. On the principles of fairness which requires equality as regards charges and good faith

78. The appellants allege that Council of Europe staff have been placed in a more disadvantageous situation than that of the corresponding staff in the civil services of the reference countries (with the exception of civil servants in Spain), and that, consequently, the

principle of "fairness which requires equality as regards charges" and the principle of good faith (see paragraphs 48 and 49 above) have been violated.

79. The Secretary General maintains that the appellants have not shown how the principle of fairness which requires equality as regards charges has been violated.

80. The Tribunal considers, like the Secretary General, that the criteria used by the salary adjustment method guarantee parallelism between the level of salaries in the national civil services in the reference countries and that of the salaries of Council of Europe staff. It is clear that this method takes account of salary trends in the reference civil services and reflects the changes taking place in real terms in national civil services. Of course, such changes may be favourable or unfavourable to the staff of the Co-ordinated Organisations. However, the Tribunal is of the opinion that the adjustment method in force makes it possible to obtain stable and transparent results. As this method follows salary trends in national civil services, the fact that it results in negative adjustments reflects solely the downward trend in the reference civil services salaries. Accordingly, while the reduced salary scales at 1 January 2011 are disadvantageous for staff – both serving and retired – of the Council of Europe, it is the logical result of the downward trend, in the same proportion, of national civil service salaries in the reference countries. The Tribunal can therefore not conclude that the principle of fairness which requires equality as regards charges has been violated.

81. The Tribunal further believes that the interpretation of the two principles to which the appellants refer, in particular the principle of good faith, requires proof to be established that they have actually and deliberately been violated. Taking into consideration all the factual and legal circumstances, it considers that by applying strictly the salary adjustment method, and bearing in mind the CCR recommendations, the Committee of Ministers and the Secretary General acted in compliance with the principle of good faith.

82. This part of the appeals must therefore be rejected.

For these reasons,

The Administrative Tribunal,

Declares the appeals unfounded and dismisses them;

Decides that each party will bear its own costs.

Adopted by the Tribunal in Strasbourg on 16 April 2012, and delivered in writing pursuant to Rule 35 paragraph 1 of the Tribunal's Rules of Procedure, on 20 April 2012, the French text being authentic.

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