CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeals Nos. 640/2020-644/2020, 646/2020-648/2020
(John PARSONS (V) and others v. Secretary General of the Council of Europe)
and
Appeals Nos. 649/2020, 652/2020-660/2020 and 664/2020
(Nathalie VERNEAU (II) and others v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Mr András BAKA, Deputy Chair,
Ms Françoise TULKENS,
Mr Christos VASSILOPOULOS, Judges,

assisted by:

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

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The Tribunal received eight appeals (Nos. 640/2020-644/2020 and 646/2020-648/2020), lodged and registered on the dates indicated below, from:

- Mr John PARSONS (V), appeal No. 640 lodged and registered on 2 April 2020;

- Mr Alfonso ZARDI (VI), appeal No. 641 lodged and registered on 2 April 2020;

- Ms Bridget O'LOUGHLIN (II), appeal No. 642 lodged and registered on 2 April 2020;

- Mr Simon PALMER, appeal No. 643 lodged and registered on 3 April 2020;

- Mr Ulrich BOHNER (VI), appeal No. 644 lodged on 30 March 2020 and registered on 6 April 2020;

- Mr Johannes DE JONGE (III), appeal No. 646 lodged on 3 April 2020 and registered on 6 April 2020;

- Ms Mélina BABOCSAY (VII), appeal No. 647 lodged on 30 March 2020 and registered on 15 April 2020; et

- Mr Hanno HARTIG (III), appeal No. 648 lodged on 3 April 2020 and registered on 20 April 2020.

2. On 17 April 2020, the appellants filed further pleadings.

3. On 18 June 2020, the Secretary General forwarded her observations on these appeals. The appellants filed a memorial in reply on 15 July 2020.

4. The Tribunal also received eleven other appeals (Nos. 649/2020, 652/2020-660/2020 and 664/2020), lodged and registered on the dates indicated below, from:

- Ms Nathalie VERNEAU (II), appeal No. 649 lodged and registered on 23 April 2020;

- Ms Penelope DENU (IV), appeal No. 652 lodged on 30 March 2020 and registered on 5 May 2020;

- Ms Sabine EMERY, appeal No. 653 lodged and registered on 5 May 2020;

- Ms Violette GRAS, appeal No. 654 lodged and registered on 5 May 2020;

- Ms Anne-Marie KLEIN, appeal No. 655 lodged and registered on 5 May 2020;

- Ms Silvia MUŇOZ BOTELLA, appeal No. 656 lodged on 30 April 2020 and registered on 5 May 2020;

- Ms Ilda OLIVEIRA, appeal No. 657 lodged and registered on 5 May 2020;

- Ms Linette TAESCH, appeal No. 658 lodged and registered on 5 May 2020;

- Ms Morven TRAIN, appeal No. 659 lodged and registered on 5 May 2020;

- Mr Yannick TROADEC, appeal No. 660 lodged and registered on 5 May 2020; and

- Mr Timothy CARTWRIGHT, appeal No. 664 lodged and registered on 13 May 2020.

5. On 25 May 2020, the appellants filed further pleadings.

6. On 25 June 2020, the Secretary General forwarded her observations on these appeals. The appellants filed a memorial in reply on 21 September 2020.

7. Owing to the precautionary measures implemented in Europe because of the pandemic, the hearing in the appeal took place by videoconference rather than physically on 29 October, as planned. The appellants Verneau (II) and others were represented by Ms Laure Levi and Ms Mélodie Vandenbussche, of the Brussels Bar. The appellants Parsons (V) and others were represented by Mr Giovanni Palmieri, legal adviser on international civil service law, and Ms Laure Levi. The Secretary General was represented by Mr Jörg Polakiewicz, Director of Legal

Advice and Public International Law (Jurisconsult), assisted by Ms Sania Ivedi, administrative officer in the Legal Advice and Litigation Department.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

8. The eleven appellants in appeals Nos. 649/2020, 652/2020-660/2020 and 664/2020 (hereafter "the Verneau case") are Council of Europe staff members working at the Organisation's headquarters. They are all permanent members of staff assigned to various departments of the Council. The appellant in appeal No. 654/2020 is a former staff member of the Organisation from which she has been in receipt of a retirement pension since February 2020.

9. The eight appellants in appeals Nos. 640/2020-644/2020 et 646/2020-648/2020 (hereafter "the Parsons case") are former staff members of the Organisation from which they are in receipt of retirement pensions.

10. On 21 November 2019, the Committee of Ministers adopted Resolution CM/Res(2019)30, amending the Pension Scheme Rules (Appendix V to the Staff Regulations) (hereafter "the Co-ordinated Pension Scheme Rules" or "CPSR") on the basis of the recommendations made in the 263rd Report of the Co-ordinating Committee on Remuneration (CCR). In this report, the CCR had recommended amending the annual method for adjusting the pensions in the Co-ordinated Pension Scheme ("CPS") by moving from a method using the salary adjustment index for salaries of serving staff to one based on inflation.

11. On 10 December 2019, an announcement published on the Council of Europe Intranet portal informed staff of this amendment to the CPSR. The announcement stated that with effect from 1 January 2020, CPS pensions would be automatically adjusted in accordance with the relevant consumer price index.

12. All retired staff in receipt of a CPS pension, including the appellants in the Parsons case, were informed of this change in December 2019 in an information note enclosed with their December 2019 payslips.

13. Between 27 January and 21 February 2020, the appellants in the Verneau case, and between 3 and 21 February 2020, the appellants in the Parsons case lodged administrative complaints requesting the annulment of the changes to the pension adjustment method as reflected in their January 2020 payslips.

14. By decisions dated 26 February, 6 March and 11 March 2020, the Secretary General rejected the administrative complaints of the appellants in the Verneau case.

15. By decisions dated respectively 4, 5 and 6 March 2020, the Secretary General also rejected the administrative complaints of the appellants in the Parsons case.

16. Between 2 April and 13 May 2020, the appellants in the Verneau and Parsons cases lodged the present appeals against the rejection of their administrative complaints.

II. RELEVANT LAW

17. The Council of Europe is a member of a network of international organisations which share a co-ordinated remuneration and allowances system. The legal framework defining the operation of the co-ordination system is set out in the Regulations concerning the co-ordinated system adopted by the Committee of Ministers of the Council of Europe on 8 July 2004 (document CM(2004)14). Under these regulations, the purpose of the co-ordination system is to make recommendations to the governing bodies of the Co-ordinated Organisations concerning the CPSR (Article 1 (a) (ii) of the Regulations concerning the co-ordinated system).

18. The CPSR, which apply to staff entering into service at the Council of Europe prior to 1 January 2003, are to be found in Appendix V to the Staff Regulations.

19. The present appeals relate to the application by the Secretary General of the amendment to the annual pension adjustment method under this scheme, further to Committee of Ministers Resolution CM/Res(2019)30. The Committee of Ministers' decision was primarily reflected in Article 36 of the CPSR, entitled "Adjustment of benefits", insofar as the pensions paid by the CPS would, with effect from 1 January 2020, be revalued in line with the consumer price index for the country of the scale used to calculate each pension and no longer in accordance with the salary adjustment index. Up to 31 December 2019, the said Article 36 provided as follows:

> "1. Should the Council of the Organisation responsible for the payment of benefits decide on an adjustment of salaries in relation to the cost of living, it shall grant at the same time an identical adjustment of the pensions currently being paid, and of pensions whose payment is deferred.
>
> Should salary adjustments be made in relation to the standard of living, the Council shall consider whether an appropriate adjustment of pensions should be made*.
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> * On [date of approval], the Council [of the Organisation] approved the recommendation made in the Co-ordinating Committee's 150th Report, paragraph 12 a) which, from that date, forms an integral part of Article 36 of the Pension Rules and reads as follows.
>
> Article 36 of the Pension Scheme Rules, relating to the arrangements for the adjustment of benefits, shall be interpreted, in all circumstances and whatever the current salary adjustment procedure, as follows:
>
> Whenever the salaries of staff serving in the Co-ordinated Organisations are adjusted -- whatever the basis for adjustment -- an identical proportional adjustment will, as of the same date, be applied to both current and deferred pensions, by reference to the grades and steps and salary scales taken into consideration in the calculation of these pensions."

20. Article 36 of the CPSR is now worded as follows:

"1. Pensions shall be adjusted annually in accordance with the revaluation coefficients based on the consumer price index for the country of the scale used to calculate each pension.

Pensions shall also be adjusted in the course of the year, for any given country, when prices in that country show an increase of at least 6%.

2. At regular intervals, the Secretary General shall establish a comparison of the difference between increases in salary and increases in pensions, and May, where appropriate, propose to the Committee of Ministers measures to reduce it.

3. When the beneficiary of a pension dies, any reversion, orphan's and/or dependant's pensions that May be due shall be calculated as follows:

i) The pension(s) shall be calculated:

- with reference to the scale in force on 31 December 2019 if the deceased pensioner's entitlement was assessed prior to 1 January 2020;

- with reference to the scale in force at the date on which the deceased former staff member's pension was assessed if such entitlement was assessed from 1 January 2020.

ii) Said scale shall be updated, as from that date, by application of the pensions revaluation coefficients for the country in question.

4. If the beneficiary of an invalidity pension, which was not awarded under Article 14, paragraph 2, reaches the age limit laid down in the Staff Rules and Regulations, his invalidity pension shall be converted, in accordance with Article 17, paragraph 2, to a retirement pension calculated using the following method:

i) The pension shall be calculated:

- with reference to the scale in force on 31 December 2019 if the invalidity pension was assessed prior to 1 January 2020;

- with reference to the scale in force at the date on which the invalidity pension was assessed if such pension was assessed from 1 January 2020.

ii) Said scale shall be updated, as from that date, by application of the pensions revaluation coefficients for the country in question.

5. If the beneficiary of a pension exercises one of the options under Article 33, the following calculation shall be made:

i) The pension shall be recalculated:

- with reference to the scale in force on 31 December 2019 for the country selected if the pension was assessed prior to 1 January 2020;

- with reference to the scale in force at the date of its assessment for the country selected if the pension was assessed from 1 January 2020.

ii) Said scale shall be updated, as from that date, by application of the pensions revaluation coefficients for the country in question."

21. The relevant provision concerning staff members' contribution to the scheme is to be found in Article 41 of the CPSR. This article was also amended on 21 November 2019, the date on which the Committee of Ministers adopted Resolution CM/Res(2019)31, whereby the staff contribution rate was increased from 9.5% to 11.8%. Consequently, with effect from 1 January 2020, Article 41 of the CPSR is worded as follows:

"Article 41 – Staff members' contribution – costing the scheme

1. Staff members shall contribute to the Pension Scheme.

2. The staff members' contribution to the Pension Scheme shall be calculated as a percentage of their salary and shall be deducted monthly.

3. The rate of the staff contribution shall be set so as to represent the cost, in the long term, of one-third of the benefits provided under these Rules.

4. The rate of the staff contribution shall be 11.8%.

5. An actuarial study shall be carried out every five years for all the Organisations, using the method described in Annex. In accordance with the results of that study, the staff contribution rate shall automatically be adjusted, with effect from the fifth anniversary of the preceding adjustment, the rate being rounded to the nearest first decimal.

However, in the event of exceptional circumstances, the Co-ordinating Committee on Remuneration could recommend that the date of that study, and of any adjustment of the contribution rate resulting therefrom, be advanced.

In such a case, the normal five-year interval between two studies and any adjustment of contributions resulting therefrom shall begin as from the date of that supplementary study except for a new application of the provisions of the preceding sub-paragraph.

6. Contributions properly deducted shall not be recoverable. Contributions improperly deducted shall confer no right to pension benefits; they shall be refunded at the request of the staff member concerned or those entitled under him without interest."

22. The scale for calculating pensions under the CPS is regulated by Article 33 of the CPSR which, as amended by Resolution CM/Res(2019)30 of 21 November 2019, taking effect from 1 January 2020, is worded 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.

5. If the staff member, spouse, former spouse or orphan opts for the scale of a country referred to in paragraph 2, but there is no scale approved by the Organisation for that country, the scale applicable to the country in which the Organisation responsible for paying his pension has its headquarters shall be applied temporarily until a scale had been adopted for the country chosen.

6. The amount of the pension based on the scale chosen shall be calculated in accordance with Article 36.

7. The provisions of paragraph 2 above do not apply to the benefits under Article 11. However, a staff member who settles in a country of which he is a national may have the leaving allowance provided for in Article 11 ii) calculated in accordance with the scale for that country, provided such a scale has been approved by the Organisation at the time of his departure."

THE LAW

23. The appellants in both the Verneau and Parsons cases seek primarily the annulment of *"the decisions to implement the Council's decision to amend Article 36 of the CPSR"*. In the alternative, the appellants in the Verneau case seek *"compensation for the damage suffered (...), which corresponds to the loss of their pension rights"*, and the appellants in the Parsons case seek *"compensation for the damage suffered, which corresponds to the contributions paid to ensure that pensions were adjusted on the same basis as salaries"*. In addition, the appellants in both the Verneau and Parsons cases are seeking the sum of €8,000 by way of reimbursement of the costs incurred by their appeals, while the appellants in the Verneau case are also seeking the symbolic sum of €1 for the non-material damage suffered.

24. The Secretary General, for her part, asks the Tribunal to declare the appeals inadmissible and, in the alternative, ill-founded and to reject the applications for the award of the sum of €8,000 by way of reimbursement of all the costs incurred.

I. JOINDER OF APPEALS

25. Given the connection between the appeals in the Verneau and Parsons cases, the Administrative Tribunal orders their joinder pursuant to Rule 14 of its Rules of Procedure.

II. EXAMINATION OF APPEALS

A. Admissibility

1. *The Secretary General*

26. In all the appeals, the Secretary General raises several grounds of inadmissibility.

27. First, the Secretary General submits that the appeals are inadmissible on the ground of being out of time, pursuant to Article 59, paragraph 3, of the Staff Regulations, which requires complaints to be submitted within 30 days from the date of publication of the act concerned, in the case of a general measure.

28. With regard to the appellants in the Verneau case, the Secretary General notes that they had been informed on 10 December 2019, via the announcement on the Intranet, of the implementation, with effect from 1 January 2020, of the change in the method of adjusting pensions paid under the CPS.

29. The Secretary General states that the appellant in appeal No. 654/2020 (which is part of the Verneau case), was no longer a staff member in January 2020 and that she therefore did not receive a pay slip in January 2020. The Secretary General maintains that the appellant does not specify the act against which her complaint of 19 February 2020 was directed.

30. Consequently, the Secretary General submits that it is the date of 10 December 2019 that must be taken as the starting point of the thirty-day period for lodging an administrative complaint, which therefore expired on 9 January 2020. However, the appellants did not submit their complaints until between 27 January and 21 February 2020.

31. With regard to the appellants in the Parsons case, the Secretary General considers that the measure in question was brought to their attention by means of the information note enclosed with their December 2019 payslips. This note was sent to all CPS pensioners either by post on 16 December 2019 or by email on 20 December 2019.

32. Accordingly, the date on which the information note was received is the date to be taken as the starting point; the appellants therefore had a period of 30 days expiring on 20 January 2020 at the latest in which to lodge their administrative complaints, whereas they did not lodge their complaints until between 3 and 21 February 2020.

33. Second, the Secretary General submits that both the Verneau and Parsons cases are inadmissible in view of the lack of any disadvantage suffered by the appellants, as their legal position remains unchanged. As to the appellants who are still serving staff members (see paragraphs 1 and 8 above), the Secretary General notes that when their respective pensions are settled, the contested decision will not affect the amount of the pension or the benefits to which they will be entitled. As for the appellants who are already in receipt of a pension (see paragraphs 4 and 9 above), the Secretary General maintains that they have not been deprived of their pensions or of the benefits to which they are entitled, nor of their CPS contributions.

34. For all the appellants, both serving and retired, the Secretary General points out that retirement pensions continue to be based on the last salary received, at a rate of 2% per completed year of service, up to 70% of that salary, with a tax adjustment of approximately 50% for pensioners residing in countries where such pensions are taxable. Pursuant to Article 40(2) of the CPSR, the payment of pensions remains guaranteed collectively by the member states of the Council of Europe. Although an inflation adjustment may result in a slightly lower pension increase than an adjustment in line with salary trends in some Council of Europe member states, Article 36 of the CPSR still guarantees that pensions maintain the same purchasing power over time. Indeed, the retired appellants benefited from an absolute

guarantee of their purchasing power, as shown by the payslips attached to each of their appeals.

35. The Secretary General further argues that there is no demonstrable significant difference over the long term based on the pension adjustment method applied. It is somewhat complex to assess how the situation will develop over time. Consequently, there is no certainty of any disadvantage. The only aspect that can be clearly measured is the positive impact of the contested amendment on the contribution rate of staff and on the cost of the scheme. Moreover, it is not possible to predict how the rules on the salary adjustment method will evolve in the future.

36. Third, with regard to the appellants in the Verneau case, the Secretary General maintains that the contested decision was not applied individually to the appellants in January 2020. They are staff members and their salaries were adjusted in accordance with the salary adjustment method. The smaller increase in the contribution rate of staff members affiliated to the CPS, as reflected in the January 2020 payslips, does not constitute an administrative act which directly and currently affects them adversely, within the meaning of Article 59, paragraph 2, of the Staff Regulations. On the contrary, it is a measure favourable to the staff members since the contested decision made it possible to limit the increase in their contribution rate. In the case of the appellant in appeal No. 654/2020 (part of the Verneau case), in January 2020 she was neither a staff member nor a pensioner and the decision in question was not implemented individually in respect of her in any way whatsoever. The appellants therefore have no interest in taking action against the change in the method of adjusting pensions paid under the CPS.

37. In view of the foregoing, the Secretary General asks the Tribunal to declare the appeals inadmissible, in both the Verneau and Parsons cases.

2. *The appellants*

38. All the appellants in the Verneau and Parsons cases point out that, in accordance with the Tribunal's case law, they are not able to appeal against a general act adopted by the Committee of Ministers (see ATCE, Appeals Nos. 182-185/1994, Auer and Others v. Secretary General, decision of 26 January 1996, paragraph 54 with further references). The appellants note that they had been informed only of the general decision by which the Committee of Ministers had adopted the 263rd Report of the CCR, and of the individual decisions reflected in their payslips or pension statements. In their view, it is surprising that the Secretary General should claim that they should have challenged a general decision which she does not cite because it does not exist. The appellants conclude that their appeals are not inadmissible for being out of time.

39. As to the allegedly uncertain nature of the disadvantage as raised by the Secretary General, the appellants, referring to international administrative case law (see International Labour Organisation Administrative Tribunal (ILOAT), Judgment No. 1712, Aelvoet (No. 6) and others (1998) recital 10; International Labour Organisation Administrative Tribunal (ILOAT), Judgment No. 1330, Bangasser, Dunand, Marguet-Cusack and Sheeran (No. 2)

(1994), recital 4, and the European Court of Justice (see Commission v. Alvarez Moreno, Judgment of 10 January 2006, C-373/04 P, EU : C:2006:11, paragraph 42), consider that their legal position has been changed by the contested administrative acts. The latter infringe the principle of solidarity between serving and retired staff, and the parallelism between changes in adjustments in the Co-ordinated Organisations and in the eight so-called reference civil services, and lead to the end of the system of purchasing power parities. Furthermore, these changes were made in breach of an agreement that the appellants' representatives had reached in 1994 with the Co-ordination bodies.

40. Lastly, as regards the appellant in appeal No. 654/2020 (which is part of the Verneau case), the appellants explain that her last day of work was on 31 December 2019. Although she received no pay (or pension) in January 2020, she became a pensioner in February 2020. The appellant had benefited from an "early retirement" scheme, which required her to resign on 31 December 2019, with her entitlement to her pension rights beginning in February 2020. The appeal clearly states that the contested decision is the February 2020 pension statement, insofar as it gave details of the decision to change the pension adjustment method.

41. Consequently, the appellants ask the Tribunal to dismiss all the objections as to admissibility raised by the Secretary General.

3. *The Tribunal's assessment*

42. The Tribunal notes that the Secretary General, through these three objections, argues that the appeals of the appellants, whether serving members of staff (the appellants in the Verneau case) or retired members of staff (the appellants in the Parsons case) are inadmissible.

43. First, the Secretary General considers that the appeals of the serving and retired staff were submitted late, outside the time limits provided for in the Staff Regulations for lodging a complaint against an act adversely affecting them and, where applicable, for bringing the dispute before the Tribunal.

44. In this connection, the Tribunal underlines the importance of compliance with the prescribed time-limits when lodging an administrative complaint, in order to ensure observance of the principle of legal certainty in the interests of both the Organisation and its staff (see ATCE, appeal No. 416/2008, Švarca v. Secretary General, decision of 24 June 2009, paragraph 33, with other references).

45. The Tribunal also points out, with reference to the principles laid down by the European Court of Human Rights, that the main purpose of the thirty-day time-limit provided for in Article 59(3) of the Staff Regulations (and of the sixty-day time-limit provided for in Article 60(3) of the Staff Regulations) is to maintain legal certainty. This is to ensure that cases which raise general questions of law or concern the regulations of an international organisation, including the Council of Europe, are examined within a reasonable time and to avoid the authorities of the Organisation and/or other persons concerned being kept in a state

of uncertainty for a long period (see, *mutatis mutandis*, European Court of Human Rights (ECHR), Case of *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 39, 29 June 2012). These time-limits also enable a potential appellant to consider whether to lodge a complaint and, if necessary, to lodge an appeal with the Tribunal.

46. In this context, the Tribunal also reiterates that it can hear a case only once a final internal decision of the Organisation has been adopted. It considers that the dates of final decisions for the purposes of Article 59(3) of the Staff Regulations (and, in parallel, Article 60(3) of the Staff Regulations) must be established having regard to the subject-matter of the case and the essential objective which the appellant seeks to achieve (see, *mutatis mutandis*, European Court of Human Rights (ECHR), *Wisniewska v. Poland*, no. 9072/02, § 71 with a further reference, 29 November 2011).

47. The Tribunal notes that the problem at the heart of the present case is the change, as from 1 January 2020, in the method of the automatic adjustment of pensions on the basis of the annual change in the consumer price index, namely the rate of inflation, and no longer on the basis of the annual adjustment of salaries.

48. In these circumstances, it is necessary to examine the date from which the staff members and pensioners concerned may lodge their complaints and, if necessary, bring their cases before the Tribunal.

49. With regard to serving staff, the Tribunal notes that the announcement published on the Intranet on 10 December 2019 informed them of the implementation, with effect from 1 January 2020, of the change in the method of adjusting pensions paid under the CPS and of the fact that these pensions would henceforth be adjusted in accordance with the annual change in the consumer price index for the country of the scale used to calculate each pension (see paragraph 11 above).

50. In the case of retired staff, the Tribunal observes that they were informed of the measure in question by means of the information note enclosed with their December 2019 payslips (see paragraph 12 above). The Tribunal notes, in that regard, that none of the appellants has claimed that the content of that announcement and/or information note was in any way ambiguous.

51. The Tribunal finds, with reference to its case law on the subject (see the decisions of 21 September 1989 of the Appeals Board in appeals No. 154/1988 and No. 155/1989, Canales and Andrei v. Secretary General, and the decision of this Tribunal of 25 November 1994, appeal No. 191/1994, Eissen v. Secretary General), that the Committee of Ministers' decision, which was issued in November 2019 (see paragraph 10 above) and announced via the Intranet (see paragraph 11 above) and the information notes (see paragraph 12 above), came into effect only in January 2020, by means of the appellants' payslips or pension statements.

52. Consequently, the Tribunal considers that the dates of notification of the payslips, in this case the payslips of January 2020, are the appropriate dates for the start of the 30-day period for lodging administrative complaints.

53. The Tribunal further notes that the appellant in appeal No. 654/2020 (which is part of the Verneau case), who had left the Organisation on 31 December 2019 on early retirement, did not receive any payslip for January 2020, only the February 2020 payslip as a retiree. It is therefore from the date of that pay slip that one must examine whether the appellant lodged her complaint and then her appeal before the Tribunal within the required time limits.

54. Since the appellants in both the Verneau and Parsons cases lodged their administrative complaints within the requisite period from that date, i.e. between 27 January and 21 February 2020 with regard to the appellants in the Verneau case and between 3 and 21 February 2020 with regard to the appellants in the Parsons case, and subsequently lodged their appeals within the statutory time-limit, it follows that their appeals were lodged within the time-limit required by the Staff Regulations following the receipt by the staff members concerned of their respective payslips. The first complaint of inadmissibility must therefore be rejected, as the appeals in question cannot be regarded as having been lodged out of time.

55. Second, the Secretary General submits that the appellants' appeals in the Verneau case are inadmissible because the change introduced by Article 36 of the CPSR was not an individual decision taken in respect of them in January 2020. Their salaries were adjusted in accordance with the salary adjustment method, and any increase in the contribution rate of staff members affiliated to the CPS which is reflected in their January 2020 payslip does not constitute an administrative act which would at this stage directly and currently adversely affect them within the meaning of Article 59(2) of the Staff Regulations. On the contrary, the salary adjustment made it possible to limit the increase in the rate of their contribution.

56. As stated in paragraph 11 above, the announcement published on the Intranet on 10 December 2019 informed the appellants serving in the Organisation of the implementation, as from 1 January 2020, of the change in the CPS pension adjustment method. Under this method, pensions would now be automatically adjusted in line with consumer price indices.

57. However, unlike the payslips of the retired appellants, the payslips of the serving appellants indicate the applicable contribution rate, but do not reflect the adjustment method decided under Article 36 of the CPSR. In point of fact, based on the January 2020 payslips, the serving appellants are not affected by the amendment made to Article 36 of the CPSR. Accordingly, unlike the pensioners' payslips, these payslips do not constitute an application of the article in question in this case.

58. The Tribunal can rule only on the legality of a provision of the CPSR when it has been applied in a particular way in a specific decision concerning a particular appellant. This is the case of the pensioners' payslips. On the other hand, the Tribunal cannot deal with potential and hypothetical cases relating to situations that may arise in the future. This is

exactly the situation in the case of the payslips of serving staff, which do not in any way implement the change in the adjustment method provided for in Article 36 of the CPSR.

59. As to the argument that the amendment to Article 36 of the CPSR undermines the solidarity between serving and retired staff and that the payslips of the staff members concerned apply Article 36 of the CPSR, the Tribunal finds that, assuming that such an argument is relevant for the purposes of examining the admissibility of the appeals submitted, there is in the instant case no interruption of solidarity between serving and retired staff as a result of the amendment to Article 36 of the CPSR which could justify the admissibility of the appeals on that basis. It must be noted that a staff member's payslip does not in fact contain any calculation of the future pension of the staff member concerned as a result of the amendment to Article 36 of the CPSR, unlike the payslip of a former staff member who is now retired.

60. The Tribunal therefore considers that, on the basis of their payslips, the serving appellants cannot be regarded as having an interest in challenging the amendment to the method of adjusting pensions under Article 36 of the CPSR. The adjustment method will be applied and calculated at the time they receive their respective pensions. As a result, with the exception of the appellant in Appeal No. 654/2020, they do not have a definite and direct interest in being able to bring the contested measure before the Tribunal. Insofar as this appellant left the Organisation on 31 December 2019 on early retirement, she did not receive any payslip for January 2020, only the payslip for February 2020 as a retiree. Her situation is therefore equivalent to that of the retired appellants.

61. In these circumstances, the objection to admissibility raised by the Secretary General, alleging that the appellants in the Verneau case, with the exception of the appellant in appeal No. 654, have no interest in bringing proceedings, should be upheld and the appeals in question declared inadmissible.

62. Lastly, the Tribunal notes that the Secretary General also raises an objection as to the lack of any disadvantage suffered by all the appellants. In her submissions, the Secretary General in fact takes the view that the implementation of the amendment introduced by Article 36 of the CPSR would not affect the material situation of the appellants in the short, medium or long term, which consequently would render their appeals inadmissible.

63. It should be noted that, even if the change in question did not result - as from January 2020 - in a change in the amount of a staff member's pension, the application of the new rule is likely to be prejudicial to the appellants, which would enable them to challenge the application of this new method of adjusting the amount of their pension.

64. That being said, the Tribunal considers that, in the particular circumstances of the instant case, this objection is closely linked to the substance of the appellants' complaints and should be joined to the merits.

B. On the merits

1. *The appellants in the Verneau case*

65. The appellants consider that the contested decision is unlawful on several grounds.

a. Unlawfulness of the reduction in benefits

66. The appellants argue that the contested decision infringes Article 41 of the CPSR, which provides for the possibility of rebalancing the system, in the event of an increase in costs, only by means of an increase in staff contributions, but does not allow for benefits to be reduced. The institution of an actuarial method having regulatory value and designed to calculate the increase in contributions represents, in the appellants' view, a reassertion that an increase in contributions is the sole means of balancing the system in the event of an excessive increase in costs. Given that the decision to index pensions to inflation is intended to generate savings by limiting the revaluation of pensions, the appellants argue that it constitutes an unlawful reduction in benefits.

67. In response to the Secretary General's submission that the wording of Article 41 of the CPSR does not limit the Committee of Ministers' regulatory power in relation to all the other provisions of the Rules, the appellants state that the issue is not whether or not the Committee of Ministers can amend the CPSR, but whether it can amend Article 36 of the Rules when the other provisions of the Rules – in particular Article 41 – remain unchanged.

b. Violation of the principles of non-retroactivity, legal certainty and legitimate expectations

68. The appellants maintain that the fact that this amendment was imposed on them when they had been contributing for many years to a scheme which they believed to be closed, in order to receive a pension calculated in accordance with arrangements which they believed to be firmly established, constitutes a violation of the principles of non-retroactivity, legal certainty and legitimate expectations.

69. Relying on the wording of Article 41 of the CPSR, the appellants consider that in a budgetised scheme with defined benefits such as the CPS, each member of staff, by paying the prescribed contributions, acquires the rights provided for by the scheme at the time the contributions are paid. In this regard, the appellants refer to the fact that the actuarial method establishes a synallagmatic relationship between the payment of the contribution and the right to receive the benefits on the basis of which the contribution was calculated. They point out that in accordance with the parallelism method, the relevant criteria include salary trends.

70. The appellants add that the direct consequence of the change in the adjustment of benefits is the spoliation of the rights of pensioners and, as a consequence, the unjust enrichment of the Organisation.

71. By depriving the appellants of all the benefits for which they have paid contributions, the contested decisions therefore violate the general principles of law which are legal certainty,

non-retroactivity and legitimate expectations.

72. With particular reference to the principle of non-retroactivity, the appellants point out that, in accordance with international case law, compliance with the principle of non-retroactivity precludes any calling into question of the legal situation established at the beginning of the contractual relationship, which forms an integral part of the status of staff member. Such a breach of the principle of non-retroactivity, it is claimed, entails a violation of legal certainty, which, according to the same case law, cannot be relinquished as a result of contingent or opportunistic decisions.

c. Violation of acquired rights and fundamental change to the structure of the employment contract, violation of the prohibition of unjust enrichment

73. The appellants argue that the amendments to Article 36 of the CPSR violate fundamental provisions of the scheme and therefore fundamentally change the structure of the employment contract, in breach of their acquired rights. The violation of their acquired rights also results from the fact that the contested rule came into force without a transitional period or arrangement.

74. The appellants point out that the application of the principle of acquired rights to the field of pensions is an established feature of international administrative case law. Referring in particular to the three criteria used by the International Labour Organisation Administrative Tribunal (ILOAT) in its judgment No. 986, the Ayoub (No. 2), Von Knorring, Perret-Nguyen (No. 2) and Santarelli (1989) cases, to determine whether a staff member's acquired rights have been violated, the appellants put forward a number of arguments to show that the application of these criteria to the case in point leads to the conclusion that their acquired rights have been flouted. They first reiterate that a right can be considered acquired even when it arises from a regulatory provision, and then observe that the right to receive a pension adjusted in accordance with the method set out in Article 36 of the CPSR is an essential part of the contract and must therefore be considered an acquired right. Second, with regard to the causes for the changes made, the appellants argue that the amendment of Article 36 was not preceded by any impact study and that the authors did not refer to any objective and quantifiable requirement. Third, as regards the impact of the amendment on pensions, the appellants allege that they are affected both in the short term, as there were no transitional measures, and in the long term, as the inflation-based method is likely to continue to result in a reduction in pensions, and therefore in greater harm, especially as the CPS is a closed scheme to which affiliated members have been contributing for many years.

75. The appellants also note that the contested reform ignores a whole series of factors which had led to the authors' original decision to link pensions to trends in the salaries of serving staff, with no justification for discontinuing that link. These include the equal treatment between pensions – regardless of when the pension began; solidarity between the interests of serving and retired staff; the parallelism between salary increases for staff in the Co-ordinated Organisations and those of civil servants in the eight "reference" public services, a principle which the appellants regard as a customary rule; and, finally, the principle of spatial adjustment or purchasing power parities, which, in the appellants' view, is essential in order to ensure

equality of treatment for all pensioners irrespective of their country of residence, and which if discontinued would mean that the new adjustment method, based on national inflation, would no longer have the essential characteristics of "stability and predictability" required by international case law, quite apart from the fact that it would give rise to a breach of the principle of equality of treatment.

76. Before concluding on this ground, the appellants contest the applicability to the present appeal of the case law of the Administrative Tribunal of the International Labour Organisation (ILOAT) cited as a counter-argument by the Secretary General (Judgment No. 2089 of 2002, in the Berthet (no. 3), Delius, Glöckner (no. 6), Robrahn and Stegmüller (no. 2) case). To this end, they underline the substantial differences between their situation and that of the appellants in the above-mentioned case. In this connection, they emphasise the fact that in the defendant organisation concerned (the European Molecular Biology Laboratory – EMBL), the application of an identical adjustment method to serving and retired staff was a *contra legem* administrative practice, whereas the staff of the Co-ordinated Organisations can argue that the unanimous decisions of the boards of their organisations have remained unchanged for over 40 years; moreover, the regulatory changes in the EMBL were as a result of the introduction of a funded pension scheme, and therefore of a significant increase in the pensions budget, whereas in the Co-ordinated Organisations, such a need to make savings is not an issue.

d. Failure to provide sufficient reasons and the arbitrary nature of the measure adopted

77. The appellants submit that the contested amendment to the CPSR can also be challenged on the ground that it is not supported by sufficient reasoning and is based on manifestly incorrect considerations which make it arbitrary.

78. In support of that ground of appeal, the appellants allege that the explanations contained in the 263rd Report of the CCR, and in the minutes of the Co-ordination meetings prior to the adoption of this Report, are statements lacking in any argumentation or demonstration. They point to something of a contradiction between the CCR's statement that on the one hand, the reform is capable of "protecting pensioners' incomes from the effects of increases in the cost of living" (page 5, section 3.1.5 of the 263rd Report mentioned above) and on the other, "[s]avings will likely accrue to the Co-ordinated Organisations by this change" (*ibid*).

79. The appellants also point to the lack of any prior studies with figures showing (a) the possible specific budgetary difficulties of each Co-ordinated Organisation in relation to pensions and (b) the expected savings resulting from the amendment to Article 36. In the absence of any such studies, the purported objectives of avoiding a significant deterioration of the CPS, achieving likely savings or protecting pensioners' incomes from cost-of-living increases would be manifestly inaccurate and anomalous. Furthermore, in the absence of such studies, the appellants note that there was no finding of necessity justifying the contested reform and that the Secretary General could not provide any grounds for the Committee of Ministers' act other than by reference to the reasoning provided by the CCR in its 263rd Report.

80. The appellants further point out that, according to international case law (International Labour Organisation Administrative Tribunal (ILOAT), Judgment No. 1821, Allaert and Warmels Case (No. 3), 1999), "the mere desire to save money at the staff's expense is not by itself a valid reason for departing from an established standard of reference".

2. *The appellants in the Parsons case*

81. The appellants argue that the contested decision violates the "Noordwijk Agreement" and several general principles of law.

a. Violation of the "Noordwijk Agreement", the principle of *pacta sunt servanda* and legitimate expectations

82. The appellants submit, first of all, that the contested decision violates the "Noordwijk Agreement", i.e. the "compromise" reached by the three bodies which make up Co-ordination - namely, the Co-ordinating Committee on Remuneration (the CCR), composed of the representatives of the member states of the Co-ordinated Organisations, the Committee of Representatives of Secretaries/Directors General (the CRSG) and the Committee of Staff Representatives (the CRP) - agreed at the April 1994 Co-ordination meetings in Noordwijk (Netherlands) (CCR/CRSG/CRP/M(94)2, Paris, 17 June 1994). They point out that this is the agreement which put an end to the dispute arising from the recommendation made in 1992 by the CCR: to decide on an increase in the contribution rate pending the results of actuarial studies. Under this agreement, the CRSG and the CRP accepted the CCR's proposal to increase the staff contribution rate by 1% (from 7% to 8% as of 1 June 1994) and the CCR agreed to supplement the CPSR with an actuarial method to be applied every 5 years to update the staff contribution rate. The appellants point to the major concession made by the CRP to the CCR in reaching this compromise.

83. In the appellants view, the inviolability of benefits is taken as a basic assumption of the agreement and is seen as an essential precondition of the staff's agreement. The appellants support this argument by citing the words of the then Chairman of the CRP and the theories set out in the academic literature on this subject.

84. The appellants add that this guarantee reflects a fundamental aspect of the CPSR, as enshrined in the wording of Articles 36 and 41, which is the exclusion of the possibility of balancing the system through a reduction in benefits. In the appellants' view, this is evident from Co-ordination's preparatory work both at the time the CPSR were put in place and when the actuarial method was introduced, and from the terminology and concepts used in that method. In their memorial in reply, the appellants make it clear that none of the changes to the CPSR cited by the Secretary General to refute this point was designed to reduce benefits in order to reduce the cost of the scheme.

85. The appellants are of the opinion that the substantive nature of the "Noordwijk Agreement" is corroborated by the terms of the minutes of the 19th joint Co-ordination meeting, and by those of the 34th CCR Report, which sets out the positions of the three bodies. They add that by endorsing this report, the Councils of the Co-ordinated Organisations had

implicitly given it their support and they regard the agreement in question as an "agreement concluded under the internal law of the Organisation following negotiation with the staff representatives". In support of their complaint, the appellants cite international case law, which recognises the legal value of agreements signed at the end of such negotiations, in connection with the general legal principle of *pacta sunt servanda*, legitimate expectations, the obligation of honesty and good faith between the Organisations and the staff.

86. In their memorial in reply, the appellants respond to the Secretary General's claim that the agreement could not be considered legally binding on the grounds that the procedure did not provide for negotiation with staff representatives but merely for consultation, noting that in international civil service law there are agreements concluded by the Organisation with staff members or their representatives even in areas where the Administration enjoys discretionary power. The appellants cite in this connection the case law of this Tribunal (decision of 11 April 2013, appeal No. 525/2012, Staff Committee (XI) v. Secretary General).

87. In the aforementioned memorial, the appellants also respond to the Secretary General's submission that a violation of the agreement would in any event have no impact on the Committee of Ministers' regulatory power nor any consequences for the lawfulness of the contested amendment. In this respect, they maintain that in the instant case, the unlawfulness of the amendment stems from the fact that the Committee of Ministers' decision is based on a preparatory act, the 263rd report of the CCR, which is itself flawed by a violation of the *pacta sunt servanda* principle.

b. Violation of acquired rights

88. Under this ground of appeal, the appellants allege infringement of their acquired rights in that the application to pensioners of the adjustment method applicable to serving staff is, in their view, an essential component of the pension scheme as it existed at the time they were recruited by the Organisation.

89. In support of this ground of appeal, the appellants advance a series of arguments similar to those put forward by the appellants in the Verneau case (see paragraphs 73-76 above) in order to reach the conclusion that the contested decision affects an aspect which can be described as "essential" or "fundamental" to their decision to join the Organisation. They regard as without foundation the Secretary General's claim that the existence of a customary norm in the field of remuneration is incompatible with the regulatory power of the Organisation, and cite the Noblemaire principle to refute it. They also dismiss as irrelevant the Secretary General's assertion that equality of purchasing power is preserved by the possibility of opting for salary scales other than the scale of the country of last assignment.

c. Violation of legal certainty, non-retroactivity and the prohibition of unjust enrichment

90. Under this ground of appeal, the appellants state that they have a legitimate expectation of receiving the benefits provided for by the scheme and that these benefits

can be regarded as "already acquired" by virtue of the payment of the contribution required by the scheme. They point out that the commitment of the Co-ordinated Organisations to deliver the benefits provided for is reinforced by the commitment made by the member states themselves to collectively ensure the payment of pensions, even in the event of default by one of those states (Article 40 of the CPSR).

91. In support of this ground of appeal, the appellants advance a series of arguments similar to those put forward by the appellants in the Verneau case (see paragraphs 68-72 above).

d. Failure to state sufficient reasons and arbitrary nature of the measure adopted

92. Under this ground of appeal, which they base on a whole series of arguments similar to those put forward by the appellants in the Verneau case (see paragraphs 77-80 above), the appellants maintain that the contested amendment to the Rules is insufficiently reasoned and is arbitrary.

3. *The Secretary General*

a. On the unlawfulness of the amendment to the CPSR and the violation of the "Noordwijk Agreement", and the principles of *pacta sunt servanda* and legitimate expectations

93. The Secretary General considers that the claim made by the appellants in the Parsons case to the effect that an "agreement" had been concluded in April 1994 between the CCR, the CRSG and the CRP committing the latter never again to modify the benefits of the CPs is not substantiated and is indeed contradicted by the facts.

94. The Secretary General accepts that on that occasion a "compromise" was reached between the three Co-ordination bodies, which resulted in the recommendation by the CCR that there be an actuarial method for calculating the cost of the scheme in exchange for the reimbursement of the special contribution which had been levied since 1992 to fund the scheme. However, she believes that the appellants extend the scope of the compromise such that the only parameter for adjusting the cost of the scheme was the contribution rate, to the exclusion of any change in benefits.

95. The Secretary General argues that this view is contradicted by the minutes of the tripartite meeting of 23 and 24 June 1994, at which the CRP stated that it had "accepted the recommendation contained in the 34th report only because it took it for granted that the benefit system could not be changed during the five-year period preceding the next review of the level of staff contributions to the pension scheme" (CCR/CRSG/CRP(94)3, section 10.3.1.1). This passage from the minutes would suggest that even in the mind of the CRP at the time, the non-modifiable nature of the benefits as a result of this compromise was only for a limited period of five years. The Secretary General adds that the position thus expressed by the CRP was not

approved by the CCR or the CRSG, and the fact that the President of the CCR did not explicitly reject it in his letter of 9 May 1994 cannot be interpreted as an implicit acceptance.

96. The Secretary General further points out that the appellants' claim that the conclusion of an "agreement" runs counter to the Regulations concerning the co-ordinated system, in particular Article 6a, which does not provide for negotiation with the staff representatives but merely for consultation on the draft reports of the CCR. Consequently, the "Noordwijk compromise" or "agreement" cannot be considered as a legally binding agreement.

97. In the Secretary General's view, the appellants' position also fails to take into account the legal distinction between, on the one hand, the deliberations and recommendations of the CCR and, and on the other, the decision to adopt these recommendations, which is a matter for the Committee of Ministers. The latter retains full regulatory power to amend the CPSR, as the author of the provisions of the Staff Regulations governing the matter, and it has never relinquished this power, contrary to the appellants' claim. In support of this, she cites the numerous changes that have been made to the CPS, particularly in order to make savings on the cost of benefits.

98. The Secretary General also notes that a political compromise made 25 years ago cannot justify limiting the measures that can be taken to combat the constant increase in the cost of the CPS. In this regard, she points out that the cost of the CPS increased by 32.6% between 2005 and 2020, and that this was not foreseeable.

99. The Secretary General also relies on this argument to refute the claim raised by the appellants in the Verneau case that the contested measure is unlawful because it violates Article 41 of the CPSR. In the Secretary General's view, the principle laid down in Article 41 of the CPSR of fixing the contribution at a level representing the long-term cost of one third of the cost of the scheme does not justify any limitation of the regulatory authority of the Committee of Ministers in regard to all the other provisions of the Rules. More specifically, it cannot be inferred, as the appellants do, that the only possible way of dealing with an increase in the cost of the CPS is to increase the contribution paid by staff members.

100. The Secretary General concludes on this point by stating that even when the adjustment of CPS pensions was linked to salary trends, it was indirectly subject to modification as a result of regular revisions of the salary adjustment method.

b. On the violation of the principles of non-retroactivity, legal certainty and legitimate expectations

101. With regard to the claim that the principles of non-retroactivity, legal certainty and legitimate expectations have been violated, the Secretary General first points out that both the 263rd CCR report and Article 36 of the CPSR provide for measures to avoid any retroactive effect of the reform.

102. The Secretary General then puts forward a number of considerations to reject the appellants' claim underlying this complaint, namely that the contributions paid should correspond to an exact equivalent return in terms of pension rights.

103. In this connection, the Secretary General observes that the CPS contributions paid do not entitle the appellants to the application of the adjustment method in force when they took up employment; the appellants are deprived neither of the right to benefits nor of their past contributions; it is inherent in the operation of any social insurance scheme that the pension benefits received do not always correspond exactly to the contributions paid, and this is confirmed by international case law.

104. The principle of solidarity can be seen in Articles 4 to 8 and 10 of the CPSR, which establish the principle that pension rights are defined on the basis of years of service and annuities thus acquired, and not on the basis of the contributions actually paid to the Co-ordinated Pension Scheme by each individual staff member. In this respect, the Secretary General also refers to paragraphs 3 and 6 of Article 41 of the CPSR.

105. It follows that staff members' contributions to the CPS, which have been determined since 1994 on the basis of a number of parameters and long-term actuarial assumptions so as to correspond to one third of the cost of the scheme, are not directly intended to finance an individual pension. Moreover, since the successive contribution rates that have been applied have been in line with the applicable rules, the contributions to the CPS have been duly withheld and any past contribution rate mismatch does not give rise to a right of reimbursement for those affiliated to the scheme.

106. The Secretary General states that since 1994 and the 34th CCR report, contribution rates have been based on actuarial calculations. Actuarial projections are based on a whole series of assumptions which are determined by the actuaries and combined in the models to establish what constitutes the best estimate of the cost of the scheme at the time the calculations are made. In no case can this set of assumptions be predictive, let alone create rights.

107. The Secretary General concludes that the appellants have no grounds for claiming that the amendment to Article 36 deprives them of the benefits for which they have paid contributions and for seeking, in the alternative, *"compensation for the loss of their pension rights"*. In the Secretary General's view, this claim is in practice impossible to implement and, in any case, contrary to Article 41(3) of the CPSR.

c. On the violation of acquired rights

108. The Secretary General first refers to the definition of acquired rights adopted by the Tribunal (decision of 26 September 2012, Appeals No. 492-497/2011, No. 504-508/2011, No. 510/2011, No. 512/2011, No. 515-520/2011 and No. 527/2011, Baron and Others v Secretary General), and then refutes the appellants' submission that certain aspects of the pension adjustment method have acquired a fundamental character and are therefore protected from any change by virtue of the principle of acquired rights. These aspects are those relating to the identical adjustment of pensions and salaries, the parallelism between salary trends in the eight

reference civil services and trends in staff salaries and pensions, economic parity and equal treatment.

109. On the first of these aspects, the Secretary General states that at the time it was adopted, the decision to adjust pensions in line with salary adjustments was not seen as a favourable measure. In this regard, she quotes Co-ordination document CCG/M(78)3 which reflects the fear of the representatives of the Secretaries/Directors General, shared by the staff representatives, that a direct link between pensions and the salaries of serving staff would be detrimental to pensioners in the event that restrictive salary policies were applied. The Secretary General also cites the 150th report of the then Co-ordination Committee, the CCG, and the reasons given in that report for recommending the identical adjustment of pensions and salaries, namely: conformity with the spirit of the CPSR, respect for the interests of the staff and compatibility with the national policy of the member states. The Secretary General considers that, if these reasons are placed in context, it is clear that this adjustment method was considered less favourable at the time it was adopted, and therefore, if transposed to the present context, these reasons would instead argue in favour of adjusting pensions in line with inflation, contrary to what the appellants claim.

110. As to the second aspect of the CPSR relied on by the appellants in support of their complaint that there had been a violation of the principle of acquired rights, namely the parallelism between salary trends in the eight reference civil services and trends in staff salaries and pensions, the Secretary General refutes the view that this parallelism has the force of a customary practice or rule, inasmuch as it results from a written provision in the Staff Regulations, namely Article 36 of the CPSR, which the Committee of Ministers is fully entitled to amend.

111. As to the third aspect of the CPSR relied on by the appellants in support of their complaint that there had been a violation of the principle of acquired rights, the Secretary General considers that the contested measure has no impact on the guarantee of purchasing power parity, since under the applicable norm (Article 33 of the CPSR) a pension is paid on a particular basis - that of the staff member's last salary - which reflects purchasing power parity between the different scales and that, at the time of retirement, pensioners retain the possibility of moving their residence to a country other than that of their last assignment, without any negative consequences for their purchasing power.

112. The Secretary General then points out the similarity between the case in question and the one examined by the International Labour Organisation Administrative Tribunal (ILOAT) in its judgment no. 2089, which concluded that there were no acquired rights in respect of the three criteria used by that Tribunal to establish an acquired right, namely (1) the nature of the provisions amended, (2) the reasons for the amendments and (3) the consequences of recognising or refusing to recognise an acquired right. With regard to this last criterion, the Secretary General outlines the positive aspects that the new method could have in certain cases, particularly in terms of more stable and predictable results. She also cites the case law of the International Labour Organisation Administrative Tribunal (ILOAT), according to which the annual adjustment of pensions on the basis of inflation fully meets the requirements of the

ILOAT regarding the need for a method of adjustment to produce stable, predictable and transparent results (Judgements No. 4057 and No. 2793).

113. In conclusion, the Secretary General states that the appellants do not have an acquired right to a particular adjustment method. In the light of international case law, she considers that only the right to an adjustment to compensate for the erosion of the purchasing power of the pension paid at the time of retirement could constitute an acquired right, which is not the case for the precise terms of the adjustment method.

d. On the failure to give sufficient reasons and the arbitrary nature of the measure adopted

114. The Secretary General rejects the appellants' claim of failure to provide reasons and is of the opinion that the contested measure is a reasonable and balanced means of achieving the objective of ensuring the long-term viability of the CPS, while defending as far as possible the interests of staff and pensioners and limiting the financial impact on them of the reform. She points out that the reform was carried out in a general context marked by a continuous and significant increase in pension costs and that it was preceded by several measures to contain them, such as the introduction of the New Pension Scheme in 2003 and the Third Pension Scheme in 2013.

115. The Secretary General supports her position by referring to the in-depth review by the Secretaries General/Executive Directors of the Co-ordinated Organisations (apart from the OECD) of the different measures being considered by the CCR in the light of the risks identified, as can be seen from a series of documents setting out the reasons put forward by the CRSG and analysing the budgetary impact of the various options being considered.

116. The Secretary General also makes the point that the change to the pension adjustment method has already had a positive impact on the long-term cost of the scheme, and more particularly on staff contributions, since it has made it possible to limit the rate increase to 11.8% (instead of 12.1%).

4. *The Tribunal's assessment*

117. By way of introduction, the Tribunal considers it necessary to make a few remarks on the pension scheme applicable to the Council of Europe.

118. In the Council of Europe, there are currently three pension schemes to which staff members are affiliated depending on the date of their entry into service: the CPS for staff members recruited before 1 January 2003, the New Pension Scheme for staff members recruited between 1 January 2003 and 31 March 2013 (Appendix V bis to the Staff Regulations) and the Third Pension Scheme for staff members recruited with effect from 1 April 2013 (Appendix V ter to the Staff Regulations).

119. The CPS was introduced in 1974 and replaced the various schemes existing in the Co-ordinated Organisations at that time. In the Council of Europe, it replaced a funded pension

scheme, which was financed by a Pension Fund. In point of fact, the Council of Europe is, alongside the Organisation for Economic Co-operation and Development (OECD), the North Atlantic Treaty Organisation (NATO), the European Space Agency (ESA), the European Centre for Medium-Range Weather Forecasts (ECMWF) and the European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT), one of six Co-ordinated Organisations, which share a co-ordinated remuneration and allowances system.

120. The Co-ordination system enables the Organisations concerned to deal efficiently with complex issues and calculations in three committees: the CCR, the CRSG and the CRP.

121. The CCR drafts reports, which are sent to the Secretaries/Directors General of the Co-ordinated Organisations who forward them to the governing bodies of those Organisations. It is then up to the governing bodies of the Co-ordinated Organisations - the Committee of Ministers in the case of the Council of Europe - to take decisions on the recommendations made by the CCR that are binding on the organisation concerned.

122. It is in this context that, on the basis of the 263rd report of the CCR, the Committee of Ministers, by resolution CM/Res(2019)30, amended Article 36 of the CPSR relating to the method of annual adjustment of pensions under the CPS, which are now adjusted in relation to the consumer price index. It is this decision, reflected in the appellants' payslips, which is the subject of the present appeals.

123. That said, it is important to note that, in support of their claims for annulment, the appellants in the Parsons case and the appellant in appeal No 654 put forward four grounds of appeal. The first alleges a breach of the obligation to state reasons. The second ground of appeal alleges infringement of the combined provisions of Articles 36 and 41 of the CPSR and the "Noordwijk Agreement", and of the principle of legitimate expectations. The third ground of appeal is that the contested decisions are a violation of acquired rights and that they fundamentally change the structure of the employment contract. The fourth and final ground of appeal relates to the violation of the principle of legal certainty, non-retroactivity and the prohibition of unjust enrichment of the Organisation.

a. The first ground of appeal, alleging a breach of the obligation to state reasons

124. Under this ground of appeal, the appellants argue, in substance, that the amendment to Article 36 of the CPSR is insufficiently reasoned, given the context in which the Committee of Ministers adopted its resolution (CM/Res(2019)30) and the significance of the amendment contained in that resolution. The appellants observe that this is the first time that a new inflation-based adjustment has been introduced under Article 36 of the CPSR without any valid justification, without any prior study, or without any substantive reasoning put forward to support this change. In this context, this amendment is clearly of an arbitrary nature which vitiates the adoption process and, consequently, the individual decisions that are reflected in the appellants' payslips.

125. The Tribunal states that it is possible to compensate for an insufficient statement of reasons even in the course of proceedings where, before the appeal was lodged, the staff member concerned already had at his or her disposal information constituting a basis for a statement of reasons. It may also be considered that a decision is sufficiently reasoned if it was taken in a context known to the staff member concerned, enabling him or her to appreciate its scope.

126. In the instant case, the appellants argue that the reasoning behind the adjustment method set out in Article 36 of the CPSR, as supplemented by the decisions rejecting their complaints, is insufficient on the grounds that there is no plausible justification in the acts and documents relating to those decisions as to the need to apply the method in question.

127. In this regard, the Tribunal reiterates that the statement of reasons for a decision of a technical nature, such as the adjustment of the calculation method in line with the consumer price indices, does not require all the details to be explicitly set out in the contested decision. Indeed, an analytical description of the specific technical considerations relating to the adoption of an act, however useful and desirable it may be, is not in itself indispensable in order to consider that the obligation to state reasons has been met. It is sufficient that the persons concerned are able to understand the reasons for the adoption of the act which concerns them, the objective which it pursues and the method applied to establish the amounts to which they are entitled.

128. This is precisely the case here. The Tribunal observes that the 263rd report of the CCR, on which the rejections of the appellants' complaints are based, contains elements of reasoning within the meaning of the preceding paragraph.

129. In particular, it was clearly mentioned in the said report (part 3 of the conclusions) that since 2017 a decision had been taken to review the entire arrangements for this aspect of the CPS, in order to bring it more into line with best practice in other pension systems and to improve the financial stability of a system whose costs were rising substantially. The report even mentions that several reforms had been examined, based on the reports requested by the CCR, and that two of the proposed reforms had been presented at the co-ordination meeting. In the same section, the 263rd report explains the reasons why it was now necessary to use a different method for adjusting pensions, one based on inflation, since this was deemed to be a more appropriate way of protecting pensioners' incomes from the effects of increases in the cost of living.

130. The fact that, in the appellants' view, the possible savings targeted by the amendment are "likely" or "probable" or that there are no grounds justifying the need for the amendment is a matter of the internal lawfulness of the contested measures and not of the reasoning behind them. Indeed, it is precisely in these circumstances and because of an understanding of the context in which the amendment was made to Article 36 of the CPSR that the appellants were able to put forward a number of other grounds of appeal and arguments in the instant case to challenge the merits of the contested decisions.

131. In advancing the argument that the proposed amendment was arbitrary, the appellants are once again challenging the merits of the contested decisions by alleging that the Organisation made amendments to Article 36 of the CPSR in a totally arbitrary manner. This allegation does not, therefore, fall within the scope of the ground of appeal relating to the failure to state sufficient reasons.

132. In any event, the Tribunal points out, as already stated, that the proposed reform had been decided in 2017 and was one of several possible reforms for which opinions had been sought; the amendment that was eventually chosen was the only one corresponding to the objectives pursued, i.e. to bring the CPS more into line with best practice in the field of pensions and to improve the financial stability of a system whose costs were rising substantially. Accordingly, in the light of the foregoing, the appellants cannot claim that the failure to provide sufficient reasons in the contested decisions prevented them from understanding the context of the amendment made.

133. In addition, and with reference to the 263rd CCR report, the Secretary General states in the decisions rejecting the appellants' complaints that the reform of the pension adjustment made it possible to maintain the increased rate at 11.8% instead of 12.1%, thereby pursuing the objective of making the scheme more sustainable and viable over the long term. These considerations give the appellants a better understanding of the reasons why the disputed adjustment method was implemented and was reflected in their payslips.

134. Lastly, as regards the argument that there were no specific and technical studies to justify and explain the change made, the Tribunal notes that there is evidence in the present case file which clearly shows that certain studies were indeed carried out. Even if the appellants dispute the validity of the studies in question and argue that the Organisation needed to carry out other studies, all of this leads to the logical conclusion that the appellants were aware of the context in which the amendment was made and their grounds of appeal specifically challenge that amendment.

135. It follows from the foregoing that the arguments put forward by the appellants to establish the existence of a breach of the obligation to provide reasons on account of the lack of specific and detailed or technical information justifying the pension adjustment method adopted must be rejected, as must the first ground of appeal in its entirety.

136. It is therefore necessary to examine the other grounds of appeal raised by the appellants.

b. The second ground of appeal, alleging a violation of the combined provisions of Articles 36 and 41 of the CPSR and the "Noordwijk Agreement", and the principle of legitimate expectations

137. Under this ground of appeal, the appellants raise allegations, grouped into two parts, against the amendment to Article 36 of the CPSR, as reflected in their payslips.

138. The first part concerns the direct violation by Article 36 of the CPSR, insofar as such an amendment must not be made to the detriment of the provisions of Article 41 of the CPSR. In these circumstances, the appellants argue, in substance, that the unilateral amendment of Article 36 of the CPSR was made in breach of the Committee of Ministers' discretionary power in this matter. The second part concerns the violation by the amendment in question of the "Noordwijk Agreement", and the principle of legitimate expectations.

b.1. The first part of the ground of appeal

139. In this part of the ground of appeal, it is necessary to examine whether the Committee of Ministers made proper use of its discretionary power by unilaterally amending Article 36 of the CPSR.

140. In this connection, the appellants argue, first of all, that the amendment to Article 36 of the CPSR violated Article 41 of those same Rules. In the appellants' view, a combined reading of the articles in question leads to the conclusion that only staff members' contributions may be amended and not their pension benefits. Second, the appellants argue that this amendment was made without ensuring compliance with a number of safeguards, with the result that the amendment in question is, in reality, an arbitrary amendment in clear breach of the Committee of Ministers' discretionary power in this matter.

141. First, the Tribunal observes that the Committee of Ministers has the power and authority, as the author of the provisions of the Staff Regulations and, in this case, of the above-mentioned articles, to make any relevant amendment.

142. With particular regard to the power of the Committee of Ministers to amend Article 36 of the CPSR, it should be noted at the outset that there is no express provision in the CPSR from which it can be legitimately inferred that the Committee's action is conditional upon a simultaneous amendment of Article 41 of the CPSR. The Committee of Ministers takes action under Article 36 of the CPSR to determine the annual pension adjustment method, whereas Article 41 governs the conditions for staff contributions to the pension scheme.

143. That being said, the appellants maintain that the correlation between the two provisions (Article 36 and Article 41 of the CPSR) is clearly evident, since Article 41 provides for mechanisms to rebalance the pension scheme in the event of an increase in costs, solely by increasing staff contributions. However, implementation of the Committee of Ministers' amendment to Article 36 of the CPSR actually entails a cost to the pension scheme. In the appellants' view, the indexation of pensions to inflation, which is supposed to generate savings, would limit the value of pensions, which is in contradiction to Article 41. The latter, in order to exclude any reduction in benefits, envisages only an increase in staff contributions to offset any increase in costs.

144. The above analysis is based on an erroneous premise. If the rate of pensioners' contributions is set so as to correspond to the cost of one third of the benefits provided, this does not mean that the annual method of adjusting pensions - based on changes in consumer

prices - necessarily leads to a reduction in benefits or, as the appellants maintain, to "a limitation on the value of pensions" contrary to Article 41.

145. It should be pointed out, first, that the assessment of the cost of benefits, as expressly stated in Article 41, paragraph 3, of the CPSR, is a process which is carried out "in the long term" and on the basis of a five-year actuarial study. Second, the contribution rate set to correspond to this cost of benefits is one third of the cost of the benefits in question. Consequently, the financial assessment underlying Article 41, paragraphs 3 and 5, of the CPSR on the long-term costs of benefits based on a five-year technical study and for only one third of the costs of the benefits in question cannot mean, as the appellants claim, an automatic and overall reduction in pension benefits resulting from the mere fact that the annual pension adjustment was made by reference to inflation. There is no express indication in the CPSR that such a situation, merely because of its possible negative impact on benefits, would be contrary to Article 41 of the CPSR.

146. In the light of the above considerations, the Tribunal concludes that the amendment to Article 36 of the CPSR cannot be seen as a violation of the operative part of Article 41 of the CPSR, as claimed by the appellants.

147. Second, the appellants argue that, in the procedure for amending Article 36 of the CPSR, the Committee of Ministers took its decision in the absence of any relevant studies and without putting forward any appropriate grounds to justify the amendment. In this respect, the appellants state that the 263rd report of the CCR, pursuant to which this amendment was in fact adopted, is based on generalities and broad-brush syllogisms. The appellants maintain that this amendment, which was made in the absence of any relevant studies, is in reality an arbitrary outcome in breach of the Organisation's discretionary power to adopt the amendment in question.

148. Contrary to the appellants' contentions, it is clear from the report in question that the amendment was made in a specific context, in the course of the discussions undertaken since 2017, in accordance with an overall approach, and on the basis of specific studies and opinions which had been requested (point 3.1 of the report). It cannot therefore be argued that the amendment to Article 36 of the CPSR was made out of context, as an arbitrary act and without any justification, in clear violation of the Committee of Ministers' discretionary power in this matter.

149. In this connection, the appellants believe that the report in question, despite the good intentions of its authors, proves its limitations and contradictions when it states that as a result of the change to the salary adjustment method "savings are likely to accrue". Such a statement, which is not the only one in this regard, would tend to prove that there was no compelling substantive justification for the proposed amendment to Article 36 of the CPSR.

150. The Tribunal considers that, with these arguments, the appellants are in fact attempting to call into question the plausibility of the analyses carried out, the existence of which they do not dispute, but rather the relevance of the conclusions reached. They also argue that the amendment should be accompanied by technical impact studies, which are clearly lacking.

However, except where there has been a manifest error of assessment, it is not for the Tribunal to rule on the technical considerations underlying the adoption of an act such as that introduced by the amendment to Article 36 of the CPSR.

151. Furthermore, even if specific studies are needed to assess the impact of the amendment, here too, the Tribunal has no jurisdiction to determine which type of study is most appropriate to the particular circumstances of the case. The Tribunal considers that it is apparent from the case file in the present proceedings that the amendment was made following lengthy negotiations since 2017 and on the basis of opinions and studies sought in the context of Co-ordination.

152. The Tribunal also considers that the reference in the 263rd report to "improving the financial stability" of a system whose costs have been rising significantly is a major consideration that must be taken into account. Improving or guaranteeing financial stability means that the main sources of risk must be identified, on the basis of multidimensional economic considerations on which the Tribunal cannot take a position in the context of its review. In these circumstances, the Tribunal further considers that the fact that the appellants are challenging in isolation the concepts and terms of the report at issue in order to call into question the basis for the amendment cannot justifiably call into doubt the aim pursued, that is to say, improving "the financial stability of a system whose costs have been rising significantly."

153. It follows that the appellants' allegations of the arbitrary nature of the amendment to Article 36 of the CPSR, in conjunction with the violation of the Committee of Ministers' discretionary power in this matter, must also be rejected.

b.2. The second part of the ground of appeal

154. The appellants allege that the contested decisions violate the "Noordwijk Agreement".

155. In this ground of appeal, the appellants put forward, in essence, two sets of allegations. Firstly, they maintain that there has been an agreement since 1994 between the three Co-ordination bodies, the CCR, the CRSG and the CRP, which limits the exercise of the Committee of Ministers' discretionary power to amend Article 36 of the CPSR. Under this agreement, benefits are guaranteed and any reduction in benefits as a result of increased costs is ruled out. This agreement is documented in the 34th Report of the CCR and has been in force since then, without ever being challenged. The appellants argue that the adoption in these circumstances of a new method of adjusting pensions under Article 36 of the amended CPSR would violate this agreement which, in essence, delimits the exercise of the Committee of Ministers' discretionary power in this matter. Second, and arguing in a similar way, they consider, with reference to the case law of international courts in the field of international civil service, that this agreement was adopted in accordance with the internal rules of the Organisation, in this case the Council of Europe, in order to circumscribe the exercise of the discretionary power of the decision-making body, namely the Committee of Ministers.

156. First, and irrespective of the form that this agreement may take, the Tribunal considers that there is nothing in the case file to suggest that an agreement has been reached between the parties involved in Co-ordination whereby the Committee of Ministers would be obliged to limit the exercise of its discretionary power as to the pension adjustment method to be applied. Such an approach would, in fact, mean that the staff representatives would be given the same decision-making power as the Committee of Ministers. The texts, however, make no provision for such to be the case.

157. Assuming, moreover, that an agreement or compromise had been reached within the three Co-ordination bodies in 1994, in the instant case it is the Committee of Ministers' decision itself on the content of Article 36 of the CPSR that remains decisive, insofar as it was taken following the consultation carried out in the Co-ordination context (Article 6a. of the Regulations concerning the Co-ordination system).

158. Since 1994, the Committee of Ministers has taken into account the recommendations made in the 34th CCR report concerning the adjustment method based on the agreement of the three Co-ordination bodies and has made no changes to the pension adjustment method agreed upon at that time. This report recommended an increase in the contribution rate and a review mechanism every 5 years. It was on the basis of this report that the contribution rate was increased from 7% to 8%. Under the same conditions, the contribution rate increased from 8% to 8.3% (106th CCR report in 1999), from 8.3% to 8.9% (158th CCR report in 2004), from 8.9% to 9% (197th CCR report in 2009) and from 9% to 9.5% (230th CCR report in 2014). The Tribunal further notes that in the 197th CCR report it was clearly stated that it was necessary to revise the methodology agreed upon in the 34th report. This issue was also addressed in the 230th report.

159. It follows that the Committee of Ministers has always considered independently whether the adjustment method should be changed, without being bound by any agreement or political compromise reached in 1994, as the appellants claim. It was precisely on the basis of the new recommendations made in 2019 in the context of a global discussion that had been under way since 2017 that, in exercising its discretionary power, the Committee of Ministers took action in line with the 263rd CCR report, by amending the pension adjustment method set out in Article 36 of the CPSR.

160. The fact that the pension adjustment method has remained unchanged since 1994 is not the result of any alleged agreement on the matter between the parties but of the fact that, every five years since 1994, the Committee of Ministers has independently examined and accepted the recommendations of the CCR in this respect.

161. Lastly, as regards the term "agreement" used by the appellants, this alleged agreement was reached in the course of the consultation of the parties, whose reports and recommendations are drawn up on the basis of a consensus. The Tribunal therefore notes that the recommendation or report in question, which is drawn up by consensus, and therefore by agreement of the parties concerned, is examined by the Committee of Ministers, which takes its decision in accordance with the discretionary power it enjoys in this respect. In these

circumstances, the appellants cannot claim that there is an agreement binding the Committee of Ministers and limiting the exercise of its decision-making power.

162. It therefore follows that the appellants' allegations that there was an agreement in 1994 not to change the pension adjustment method as from that date, which was violated by the amendment to Article 36 of the CPSR, must be rejected.

163. Second, the Tribunal points out that there is nothing in principle to prevent the Committee of Ministers from setting out, by means of a general internal decision, rules for the exercise of the discretionary power conferred on it by the texts. Such a decision must be regarded as an indicative rule of conduct which the Committee of Ministers imposes on itself and from which it may depart, where necessary, only by clearly stating the reasons which led it to do so in order to guarantee legal certainty and the legitimate expectations of those concerned.

164. It must therefore be examined whether the agreement in question constitutes a decision which would limit the exercise of its discretionary power in relation to Article 36 of the CPSR.

165. The Tribunal finds that there is no evidence in the present case file to suggest that the Committee of Ministers has, in the circumstances referred to in paragraph 163, endorsed a decision by which it would limit its discretionary power in respect of the pension adjustment method and, consequently, its action in respect of Article 36 of the CPSR.

166. In point of fact, it appears from the present case file that, more generally, the Committee of Ministers has never relinquished the possibility of fully exercising its discretionary power.

167. The fact that, in certain cases, ad hoc agreements may be reached on specific issues between the administration of an international organisation and the Staff Committee has no bearing on the adoption of a decision in a sensitive area by which the Committee of Ministers would limit the exercise of its discretionary power.

168. Even if, as the appellants claim, the Committee of Ministers had adopted a decision limiting the exercise of its decision-making power, that decision constitutes an indicative rule which the Committee of Ministers admittedly imposes on itself, but from which it may depart by clearly setting out the reasons for doing so.

169. Insofar as the appellants' contention is correct, it is precisely in the context referred to in the preceding paragraph that the amendment to Article 36 of the CPSR was made. While the appellants dispute the validity of the reasons given in the 263rd Report for the introduction of the new adjustment method, there is no doubt that the reasons for introducing the new adjustment method by amending Article 36 of the CPSR were set out to the requisite legal standard in that report.

170. As to the alleged breach of legitimate expectations linked to the violation of the "Noordwijk Agreement", the Tribunal observes that the right to rely on legitimate expectations

presupposes the fulfilment of three conditions. First, precise, unconditional and concordant assurances, from authorised and reliable sources, must have been given to the person concerned by the Administration. Second, these assurances must be such as to give rise to a legitimate expectation in the mind of the person to whom they are addressed. Third, the assurances given must comply with the applicable regulations.

171. In the instant case, the appellants argue that, as a result of the adoption of the "Noordwijk Agreement", they benefit from the principle of legitimate expectation; however, the Tribunal notes that at no time have the appellants submitted any evidence to confirm that they have received precise, unconditional and concordant assurances concerning the maintenance of the pension adjustment method and the non-amendment of Article 36 of the CPSR.

172. In this connection, the Tribunal notes that the maintenance of the previous pension adjustment method was always the subject of recommendations within Co-ordination. The Committee of Ministers has always followed these recommendations, but since 2009 there has been a debate on the method applied. Therefore, contrary to the appellants' allegations, not only has there been no assurance that there is a single pension adjustment method that complies with the CPSR, but, as indicated since 2009 and formally since 2017, there have been ongoing discussions on the need to revise the current adjustment method. The change in 2019 is clearly part of this very specific context.

173. It should also be noted that the appellants have merely argued that there is an agreement limiting the exercise of the Committee of Ministers' decision-making power, which they claim is confirmed by the fact that the initial pension adjustment method has remained in force for a long period. However, as stated above, since 1994 the Committee of Ministers has not modified the adjustment method in accordance with the recommendations it received, made under the Co-ordination system, using its discretionary powers in this respect and not on account of a rule limiting its discretionary power. In these circumstances, the time that has elapsed since the 1994 Co-ordination recommendation has not given rise to any legitimate expectations for the appellants. Consequently, when recommendations were made to modify the adjustment method, the Committee of Ministers made use of its full powers in this respect, acting pursuant to those powers to amend Article 36 of the CPSR.

174. In the light of the foregoing considerations, the second set of allegations submitted by the appellants in their second ground of appeal and, consequently, the second ground of appeal as a whole, must be rejected.

c. The third ground of appeal alleging a fundamental change to the structure of the employment contract and a violation of acquired rights

175. In this ground of appeal, the appellants argue that the amendment to Article 36 of the CPSR violates the fundamental provisions of the Organisation's pension scheme and represents a radical change to the general structure of the employment contract.

176. The appellants maintain that, in order to ascertain whether a pensioner's acquired rights have been violated, three conditions, now well established by case law, must be met. First, it

must be ascertained whether the change in the conditions of employment of the pensioner concerned was introduced by an act of a regulatory or contractual nature. This is clearly the case, in the view of the appellants, of the amendment introduced by Article 36 of the CPSR. Next, it must be examined whether the amendment made is objectively justified. The appellants argue that this is not the case, as no study has been carried out to justify the amendment. Lastly, the impact of the amendment on pensions must be examined. There is a negative impact both in the short term (no transitional measures) and in the long term (the adjustment method applied would lead to a reduction in pensions). Furthermore, the impact is even more significant as this is a closed pension scheme, as the CPS no longer accepts new members and therefore the amendment will apply in full only to those currently affiliated to the scheme.

177. In the light of the foregoing, the appellants maintain that three fundamental aspects of the pension scheme have been modified by the new provisions of Article 36 of the CPS, which affect their acquired rights and radically change the general structure of their employment contracts.

178. The first is the breach of the principle of solidarity between serving and retired staff in terms of the adjustment of their remunerations. This was the fundamental principle justifying the application of the previous adjustment method.

179. Second, the new version of Article 36 of the CPSR brings an end to the parallelism between salary trends in the eight so-called "reference" public services and salary and pension trends in the Co-ordinated Organisations. There was a customary rule not to affect this parallelism whenever an amendment was proposed. It is claimed that the new version of Article 36 violates this customary principle.

180. Third, the amendment to Article 36 of the CPSR undermines the principle of purchasing power parity. The new amendment calls into question the so-called "spatial adjustment" which ensured that a pensioner could move his or her residence to another country without suffering negative repercussions on purchasing power. Indeed, from now on, an adjustment which has no bearing on changes in purchasing power in other countries means that pensions are at risk of instability. Discontinuing this adjustment is also, it is claimed, incompatible with the equality of treatment that should exist between all pensioners, irrespective of their country of residence. The change made affects an essential component of the appellants' contracts, thereby representing a fundamental modification of the general structure of those contracts, especially as there are no transitional arrangements in this case. In conclusion, two factors make it clear that the amendment to Article 36 of the CPSR is in no way justified: first, the long period during which this spatial adjustment has been in place and, second, the fact that the amendment is not based primarily on the need to make savings. This is explicitly recognised by the 263rd CCR report.

181. The Tribunal observes that the conditions of appointment of international civil servants are in most cases laid down both by a contract containing certain strictly individual clauses and by the Staff Regulations to which that contract refers. In reality, the latter contains two sets of provisions which are different in nature: on the one hand, provisions relating to the

organisation of the international civil service and to non-personal and variable benefits and, on the other, provisions setting out the individual status of the staff member, which were such as to motivate the staff member to enter into employment.

182. Provisions relating to non-personal and variable benefits are of a regulatory nature and may be amended at any time in the interests of the service, subject to compliance with the principle of non-retroactivity and any limitations which the competent authority may itself have placed on this power of amendment. However, where this would result in a fundamental modification of the structure of the contract concluded with the staff member, such changes may confer on him or her a right to compensation.

183. It is therefore necessary to examine whether the amendment introduced by the new provisions of Article 36 of the CPSR represents a fundamental change to the structure of the appellants' contracts. In particular, it is necessary to examine whether the change in the pension adjustment method by reference to inflation constitutes a fundamental change to the general structure of the contracts of which the pension is an inseparable component.

184. The Tribunal notes, first of all, 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.

185. That being so, it is necessary to examine, first, whether the new change in the pension adjustment method entails, as the appellants maintain, a breach of the principle of solidarity between serving and retired staff with regard to the adjustment of their remunerations and a fundamental change to the general structure of their contracts.

186. The Tribunal observes that while the CPSR provides, as a general rule, for the possibility of using a pension adjustment method, it does not refer to any one specific method. The choice of method is a matter for the discretion of the Committee of Ministers and depends on complex and technical economic considerations, which are by their very nature ever changing, and which the Committee of Ministers takes into account on the basis of recommendations made in this respect by the Co-ordination parties.

187. The method initially chosen for the adjustment of pensions was based on such economic considerations, by aligning the adjustment of pensions with the adjustment of the salaries of serving staff. In these circumstances, the fact that this alignment can be interpreted as an expression of solidarity between serving and retired staff, or as a specific expression of the principle of equality, is a consequence of the chosen adjustment method and not justification for that method itself. Moreover, there is no doubt that there is an objective difference between the situation of pensioners and that of serving staff.

188. The Tribunal therefore finds that the change in the pension adjustment method does not, as a result, entail an alleged breach of the solidarity between serving and retired staff which it was claimed was at the origin of the adjustment method initially chosen by the Committee of Ministers. It is also undisputed that for several years there has been an obvious

question mark over whether the method of pension revaluation used in the past can continue to be applied, given the constant increase in the number of pensioners in relation to the number of serving staff and the rise in the cost of pensions paid.

189. The same applies, secondly, to the argument that the parallelism between salary trends in the eight so-called "reference" public services and salary and pension trends in the Co-ordinated Organisations has been brought to an end. In point of fact, this parallelism, assuming it is relevant in this case, was one of the reasons behind the Committee of Ministers' choice of the pension adjustment method linked to the adjustment of the salaries of serving staff, on the basis of the economic considerations supported at the time by the CCR's recommendations. This parallelism, assuming it is confirmed to exist, is also one of the consequences of the implementation of the previous pension adjustment method and not the raison d'être of the chosen method.

190. In this context, the complaint alleging a fundamental change to the structure of the appellants' contract and the violation of their acquired rights in this respect cannot be sustained.

191. Third, as regards the argument that the pension adjustment method has a negative impact in the medium and long term on the rights of pensioners per se, the Tribunal finds as follows.

192. The adjustment method chosen ensures that pensioners do not lose their purchasing power. The indexation of pensions in the event of adjustment in line with consumer price indices is precisely intended to guarantee that there will be no financial loss.

193. The Tribunal notes that, in reality, through their arguments, the appellants are attempting to demonstrate that there is a risk that the new adjustment rule will penalise them in relation to serving staff whose salaries are revalued in a more advantageous manner. Quite apart from the fact that such an argument remains unsubstantiated at this stage, the Tribunal considers that the indexation of pensions in line with consumer price indices ensures that there is no loss in terms of purchasing power. Moreover, no longer adjusting pensions in relation to salaries but revaluing them in relation to inflation is favourable to pensioners, in the event that there is no revaluation of salaries.

194. The complaint that the financial impact is certain to be felt by pensioners, who are in fact the only ones to suffer the effects of the new adjustment method since the pension scheme is closed to new entrants, must also be rejected. In point of fact, the adjustment of pensions by reference to inflation guarantees that pensioners will not lose purchasing power and does not entail any additional burden.

195. The same applies to the alleged violation of an acquired right based on the application over a long period of time of the former method of adjusting pensions. On this point, the appellants also underline the fact that there have been no specific studies justifying and quantifying the actual savings which the new adjustment method is intended to bring about;

consequently, in their view, the amendment fundamentally alters the general structure of the existing contracts.

196. The Tribunal observes that the application over a long period of time of a particular pension adjustment method does not confer any acquired right on the persons concerned preventing the Committee of Ministers from introducing a new method if the circumstances so require. Indeed, as can be seen in the present case file, in the past the adjustment of pensions was in effect aligned with that of the salaries of serving staff on the basis of studies and taking into account the fact that the majority of states had the same method of adjustment.

197. However, this situation has changed, because of the constant increase in the cost of pensions paid out and the structural imbalance between retired and serving staff. In order to ensure the financial stability of the pension scheme and to guarantee that there is no decrease in pensioners' purchasing power, it was proposed that pensions should be indexed to inflation. Irrespective, therefore, of the quantitative financial aspect of the reform, on which the appellants insist in their submissions, the Tribunal finds that the amendment at issue does not call into question either the pension paid to former staff or the assumption that that pension will be revalued, and that this is done with a view to guaranteeing the purchasing power of pensioners.

198. As regards the specific studies justifying the change in the adjustment method, as stated above, it is not for the Tribunal to rule on the appropriateness of the choice of method in relation to the relevant studies carried out in the Co-ordination context. In the instant case, the Tribunal considers that there are grounds for concluding that the Committee of Ministers acted on the basis of the studies and opinions examined by the parties in the Co-ordination process. In these circumstances, the appellants' complaint in this connection must be dismissed.

199. Fourth, the appellants claim that the amendment made by Article 36 of the CPSR violates the rights that pensioners derive from Article 33 of those Rules.

200. This argument is based on an erroneous premise. The amendment to Article 36 of the CPSR is not intended to affect the spatial adjustment that pensioners receive under Article 33 of the CPSR. The change in the method of adjusting pensions in line with inflation ensures that the purchasing power of the pensioners concerned is safeguarded and does not compromise their right to receive a pension on the basis of the contributions paid or to exercise their rights under Article 33.

201. Insofar as the appellants are by means of their complaints seeking recognition that, under the previous pension adjustment method, pensioners benefited from a substantial adjustment linked to the fact that pensions were constantly revalued through their indexation to salaries, the Tribunal notes that this is not always the case, in particular in the event that salaries are not revalued. The fact is, however, that the amendment made is intended to ensure that even where salaries are not revalued, pensioners do not lose their purchasing power, since the pension adjustment is indexed to inflation. The Tribunal concludes on this point that the amendment to Article 36 of the CPSR does not jeopardise the adjustment of pensions which, as such, is an acquired right of pensioners.

202. As to the argument that there has been a breach of equal treatment, the appellants have not shown how the amendment to the pension adjustment method constitutes discrimination under the terms of Article 33 of the CPSR, in particular where its purpose is to guarantee their purchasing power in a neutral manner.

203. Lastly, the appellants argue that the new provision of Article 36 of the CPSR was introduced without any transitional measures, which they claim is a clear breach of their acquired rights.

204. The Tribunal notes that in the instant case the absence of transitional measures depends on the nature of the amendment made. The provision of a transitional period in the instant case cannot compensate for any specific negative effect of the new rules, since the change in the method of annual valuation of pensions in relation to inflation is intended to guarantee the pensioners' purchasing power. Insofar as the new pension adjustment method is to the pensioners' advantage, it is intended precisely to protect them from any financial uncertainties and, above all, from the assumption that their pensions will not be revalued in the event that salaries are not revalued. Such an assumption would be likely to arise if the previous adjustment method were to be maintained.

205. Nonetheless, the appellants claim that, in the absence of transitional measures, their rights as at 31 December 2019 cannot be preserved. The Tribunal observes, however, that for the annual adjustment of pensions from 1 January 2020, the revaluation of pensions will be carried out in line with inflation, which does not, contrary to the appellants' allegations, in any way affect their rights acquired before that date.

206. The Tribunal notes that the Committee of Ministers has not provided for any transitional measures, which nevertheless seems appropriate in view of the substance and purpose of the rules in question.

207. It follows from the foregoing that the change to the pension adjustment method introduced by the new Article 36 of the CPSR does not fundamentally alter the structure of the appellants' contracts as their acquired rights have not been infringed.

208. Accordingly, the third ground of appeal must be rejected in its entirety as unfounded.

d. The fourth ground of appeal, alleging breach of the principle of legal certainty, non-retroactivity and the prohibition of unjust enrichment

209. First, the Tribunal points out that the principle of legal certainty requires the rules of law to be clear and precise and is intended to guarantee the foreseeability of the situations and legal relationships of the persons concerned.

210. In the instant case, the appellants argue that the amendment to Article 36 of the CPSR deprives them of all the benefits for which they have contributed, in violation of the principle of legal certainty. In the appellants' view, the payment of the staff members' contribution and

the acquisition of the right to the expected benefit follow directly from Article 41 of the CPSR with the result that the amendment to Article 36 of the CPSR infringes their rights in violation of the principles referred to.

211. The Tribunal considers it necessary to reiterate that, in the instant case, the change in the pension adjustment method under Article 36 of the CPSR does not in any way correspond to a reduction in the amount of the pension acquired as a result of contributions paid. Furthermore, it should be pointed out that the pension rights acquired by pensioners, based on their paid contributions, are not affected by the fact that the pension is adjusted in line with inflation in order to safeguard pensioners' purchasing power.

212. In fact, by their arguments, the appellants are seeking to demonstrate that they have an acquired right to the adjustment method linked to the adjustment of the salaries of serving staff and, in this respect, the cost incurred is the staff members' contribution on the sole basis of Article 41 of the CPSR. In this context, they maintain that the principle of legal certainty is undermined, as the amendment is intended to reduce the costs in question which are already covered by Article 41.

213. However, as stated above, this is not the case, as the appellants' acquired rights are not affected by the amendment to Article 36 of the CPSR.

214. Furthermore, the Tribunal considers it useful to point out that the appellants place on the same level in their submissions (a) their acquired pension rights, which are in no way affected by the amendment to Article 36 of the CPSR, and (b) the adjustment of the amount of pensions pursuant to Article 36 of the CPSR.

215. In this respect, the Tribunal considers that, in any event, the introduction of the new adjustment method in Article 36 of the CPSR is intended only to provide them with a guarantee in relation to their purchasing power and, consequently, no complaint in this case of a breach of the principle of legal certainty can be sustained.

216. Second, the Tribunal observes that the non-retroactivity of a regulatory provision constitutes a general principle of law, whereby a regulatory provision applies only to the future. This principle is a corollary of the concept of legal certainty, which aims to protect the rights acquired under the older norm. In other words, non-retroactivity is the principle whereby a new legal norm does not jeopardise legal situations prior to that new norm.

217. In the instant case, the appellants argue that the amendment made by Article 36 of the CPSR adversely affects their acquired pension rights because it produces effects that predate its entry into force.

218. This argument must be dismissed. The change in the pension adjustment method effective as of 1 January 2020 does not in any way call into question the acquired rights that pensioners derive from the CPS before that date. The new adjustment method is for the future and does not change or correct the previous method by which adjustments were made that were beneficial to pensioners.

219. On this point, the appellants submit that the amendment to Article 36 of the CPSR in reality has a retroactive impact on staff who have already retired, since the valuation of pensions is now indexed to inflation, which is a clear departure from the adjustment method which was already applicable to them and on which their pensions were calculated. Accordingly, overall, the new adjustment method would, in their view, have a negative effect on the pensions of pensioners which had already been adjusted in the past in accordance with the previous method.

220. The Tribunal cannot accept such an interpretation and application of the principle of retroactivity. Indeed, if this were the case, no modification of the pension adjustment method, and more generally no modification of the CPSR, would be possible.

221. As to the possibility of applying the new adjustment method only to staff members who retire on or after 1 January 2020 in order to avoid the retroactive effects of the new rules, the Tribunal considers that, in any event, there is no applicable retroactive effect from the new amendment to Article 36 of the CPSR. Furthermore, the above-mentioned possibility would risk creating a de facto situation of differential treatment between pensioners, whereas Article 36 of the CPSR gives the Committee of Ministers the opportunity to introduce a pension adjustment method that is applicable to all pensioners. The Tribunal notes that this method is not intended to remain unchanged for all time. In addition, the scope of this method depends, as has been demonstrated in the instant case, on the studies, opinions, reports and recommendations drawn up in the Co-ordination context.

222. The Tribunal further observes that the appellants have structured their arguments in a more general way, stating that the Committee of Ministers has no discretionary power to determine and modify this method, such that any change in this method would be contrary to the legal order and in this case the CPSR. The Tribunal finds this line of reasoning to be unfounded.

223. Third, the Tribunal reiterates that the CPS is governed by the principle of solidarity, whereby pension rights are not defined on the basis of the contributions actually paid by each member of staff, but by the specific rules laid down by the CPSR. It is not, therefore, a scheme that provides for an exact quid pro quo in terms of pension rights, equivalent to the amount of the contributions paid for this purpose.

224. The appellants argue that the amendment to Article 36 of the CPSR would result in an unjust enrichment of the Organisation. Staff had paid more contributions on the basis of an actuarial study which took into account the adjustment of pensions in relation to the salaries of serving staff. In this context, under the new method, they claim that the Organisation would keep the surplus paid and would be unjustly enriched.

225. Such an allegation cannot be sustained. In the instant case, no argument can be put forward to show that the appellants would be deprived of their contributions, which are constantly increasing pursuant to Article 41 of the CPSR, since pensions are now indexed to inflation as part of the revaluation process. Such a method seeks to guarantee stability in

pensioners' purchasing power and is being introduced in order to preserve the financial stability of a scheme whose cost is constantly rising and in which there is a clear structural imbalance between serving and retired staff.

226. It follows that the fourth ground of appeal must be rejected in its entirety, as must the claims for annulment *in toto*.

227. In such circumstances, and inasmuch as no unlawfulness has been committed, the objection as to admissibility raised by the Secretary General on the ground that the appellants suffered no damage as a result of the adoption of the contested decisions must also be rejected.

228. Finally, as regards the claims for damages submitted by the appellants, the Tribunal observes that where the damage relied on by an appellant originates in the adoption of a decision which is the subject of claims for annulment, as is the case here, the rejection of those claims for annulment entails, in principle, the rejection of the claims for damages, since the latter are closely connected.

229. In the instant case, since the appellants' claims for annulment were rejected as a whole, the claims for compensation and the appeals must be rejected in their entirety.

III. CONCLUSION

For these reasons, the Administrative Tribunal:

- Dismisses the appeals in the Verneau case as inadmissible with the exception of appeal No. 654/2020;

- Declares the appeals in the Parsons case and appeal No. 654 unfounded and dismisses them.

- Orders that each party shall bear its own costs.

Adopted by the Tribunal by videoconference on 15 April 2021, delivered in writing pursuant to Rule 35, paragraph 1, of the Tribunal's Rules of Procedure, on 20 April 2021, the French text being authentic.

The Registrar of the Administrative Tribunal	The Deputy Chair of the Administrative Tribunal
Christina OLSEN	András BAKA