CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeals Nos. 677-711/2022, 713-718/2022 and 724-727/2022
(FROSSARD (II) and others v. Secretary General of the Council of Europe)

This version was rectified on 17 November 2023
under Article 12, paragraph 2 of the Statute of the Administrative Tribunal
in force until 31 December 2022

The Administrative Tribunal, composed of:

András BAKA, Deputy Chair,
Lenia SAMUEL,
Thomas LAKER, Judges**,**

assisted by:

Christina OLSEN, Registrar,
Dmytro TRETYAKOV, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The Tribunal received 45 appeals, lodged and registered on the following dates and under the following numbers, by:

- Stanislas FROSSARD (II), Appeal No. 677/2022, lodged and registered on 19 April 2022,
- David PARROTT (III), Appeal No. 678/2022, lodged and registered on 25 April 2022,
- Olivier KORNMANN, Appeal No. 679/2022,
- Brigitte PHILIZOT, Appeal No. 680/2022,
- François-Gabriel MENDY, Appeal No. 681/2022,
- Lucie MISSEMER (II), Appeal No. 682/2022,
- Yann DE BUYER (III), Appeal No. 683/2022,

- Mikaël POUTIERS (II), Appeal No. 684/2022,
- Betinna SERRE, Appeal No. 685/2022,
- Andrew COWDEROY, Appeal No. 686/2022,
- Marie-Françoise GLATZ, Appeal No. 687/2022,
- Dirk LEUTNER, Appeal No. 688/2022,
- Nathalie VERNEAU (III), Appeal No. 689/2022,
- Stéphanie ZOONENS, Appeal No. 690/2022,
- Fiona GILCHRIST, Appeal No. 691/2022,
- Sylvie STECKMEYER, Appeal No. 692/2022,
- Anne FREYMANN, Appeal No. 693/2022,
  lodged and registered on 28 April 2022,
- Silvia MUÑOZ-BOTELLA (III), Appeal No. 694/2022,
- Gianfranco ALBERELLI (V), Appeal No. 695/2022,
- Claire DUBOIS, Appeal No. 696/2022,
- Morven TRAIN (II), Appeal No. 697/2022,
- Gwenaëlle COZIC, Appeal No. 698/2022,
- Agnès CLAVEL, Appeal No. 699/2022,
- Angélique BARRET, Appeal No. 700/2022,
- Nathalie AUFFRET, Appeal No. 701/2022,
- Nicole CERQUEIRA, Appeal No. 702/2022,
- Nicolas FOURCHER (II), Appeal No. 703/2022,
  lodged and registered on 29 April 2022,
- Izabella POLITIKIN, Appeal No. 704/2022,
  lodged and registered on 2 May 2022,
- Valérie DUJARDIN, Appeal No. 705/2022,
- Aiste RAMANAUSKAITE (II), Appeal No. 706/2022,
- Valérie SCHAEFFER, Appeal No. 707/2022,
- Maria OCHOA-LLIDO (II), Appeal No. 708/2022,
- Michèle VEES, Appeal No. 709/2022,
- Sylvain PIERRE, Appeal No. 710/2022,
- Simona WANTZ, Appeal No. 711/2022,
  lodged and registered on 5 May 2022,
- Audrey TUMULTY, Appeal No. 713/2022,
- Marc BAECHEL (V), Appeal No. 714/2022,
- Valérie CLAMER, Appeal No. 715/2022,
  lodged and registered on 9 May 2022,
- Catherine GHERIBI Appeal No. 716/2022,
- Sébastien DURIEUX Appeal No. 717/2022,
  lodged and registered on 12 May 2022,
- Marie-Rose PREVOST (II) Appeal No. 718/2022,
  lodged and registered on 23 May 2022,
- Tanja KLEINSORGE (II) Appeal No. 724/2022,
- Joanne HUNTING (II) Appeal No. 725/2022,
- Penelope DENU (V) Appeal No. 726/2022,
- Lars NYCTELIUS (III) Appeal No. 727/2022,
  lodged and registered on 19 September 2022.

2. The appellants in Appeals Nos. 677-711, 713-714, 716-718/2022 submitted joint further pleadings on 30 May 2022, while the appellants in Appeals Nos. 724-727/2022 lodged their joint further pleadings on 24 October 2022. The appellant in Appeal No. 715/2022 did not wish to submit further pleadings.

3. The Secretary General submitted her observations in reply to Appeals Nos. 677-711, 713-718/2022 on 4 July 2022, while in the case of Appeals Nos. 724-727/2022, she filed her observations in reply on 24 November 2022.

4. The appellants in Appeals Nos. 677-711, 713-714, 716-718/2022 lodged their memorial in reply on 26 August 2022. The memorial in reply of the appellants in Appeals Nos. 724- 727/2022 was lodged on 2 January 2023. In addition to these memorials, the final supporting documents showing the costs incurred by the appellants for the entire procedure were submitted on 5 April 2023.

5. On 7 December 2022 the Tribunal sent a request to the Secretary General, pursuant to Rule 18.2 of the Tribunal's Rules[1], in which the Tribunal sought "any additional information that might illustrate the extent of the variation in total staff expenditure that applying the Co-ordinating Committee on Remuneration recommendation in full would have caused". On that basis, the Tribunal put two questions to the Secretary General, details of which are given in paragraphs 88 and 89 below.

6. On 20 January 2023 the Secretary General submitted her response to the Tribunal's request of 7 December 2022. On 14 February 2023 the appellants – except for the appellant in Appeal No. 715/2022 – lodged their observations concerning the Secretary General's reply of 20 January 2023.

7. On 24 February 2023 a former staff member of the Organisation applied for authorisation to intervene in support of the appellants' submissions. By order of the Deputy Chair of 8 March 2023 under Article 10 of the Tribunal's Statute[2], the applicant was authorised to lodge written observations. These were lodged on 14 March 2023 and communicated to the parties the same day.

8. On 8 March 2023 the Staff Committee applied for authorisation to intervene in support of the appellants' submissions. By order of the Deputy Chair of 15 March 2023 pursuant to Article 10 of the Tribunal's Statute, the applicant was granted authorisation to lodge written observations. These were lodged on 20 March 2023 and communicated to the parties on 21 March 2023.

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[1] The Rules of Procedure of the Tribunal which apply to the present case are the Rules of Procedure adopted by the Tribunal on 1 September 1982 and amended on 27 October 1994, 30 January 2002 and 1 January 2014. The 1982 Rules of Procedure were replaced by the Rules of Procedure adopted on 26 January 2023. All references in the present decision to the Tribunal's Rules of Procedure are therefore to be understood as references to the 1982 Rules of Procedure.

[2] The Statute of the Tribunal which applies to the present case is set out in Appendix XI to the Staff Regulations adopted by Resolution Res(81)20 of the Committee of Ministers of the Council of Europe on 25 September 1981 and replaced, with effect from 1 January 2023, by the new Staff Regulations adopted by Resolution CM/Res(2021)6 of the Committee of Ministers of the Council of Europe on 22 September 2021. All references in the present decision to the Tribunal's Statute are therefore to be understood as references to Appendix XI of the 1981 Staff Regulations.

9. The public hearing was held in the Administrative Tribunal's hearing room at the Council of Europe headquarters in Strasbourg on 27 March 2023. The appellants – except for the appellant in Appeal No. 715/2022 who did not wish to take part in the hearing – were represented by Laure Levi and Pauline Baudoux, of the Brussels Bar. The Secretary General was represented by Jörg Polakiewicz, Director of Legal Advice and Public International Law (Jurisconsult), assisted by Benno Killian, Head of the Legal Advice Department, and Sania Ivedi, a legal adviser in the same department.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

10. The appellants are all staff members of the Organisation, or were at the time their appeals were lodged, working at the Organisation's headquarters. They are employed in various departments of the Organisation either on fixed-term contracts (CDDs) or on indefinite-term contracts (CDIs).

11. The 45 appellants contest the decisions, reflected in their salary slips in January 2022, to award them only part of the annual salary adjustment recommended by the Co-ordinating Committee on Remuneration (CCR), pursuant to the relevant decision of the Committee of Ministers.

12. The facts can be summarised as follows.

13. On 23 November 2021 at its 1418th meeting (Budget), the Committee of Ministers of the Council of Europe adopted the salary adjustment method for the period from 1 January 2022 to 31 December 2025, as set out in Appendix 1 and the appendices to the 280th report of the CCR contained in document CM(2021)106 (decision CM/Del/Dec(2021)1418/11.2a).

14. With regard to the salary adjustment for 2022, the Committee of Ministers decided at the same time to follow the Secretary General's proposal of 26 October 2021 (CM(2021)155) and to award only part of the annual adjustment recommended by the CCR, amounting to 1.2% for staff based in France from 1 January 2022, and a further 0.7% on 1 December 2022 applied to the scales in effect on 1 January 2021 (decision CM/Del/Dec(2021)1418/11.2bc). It will be recalled that, for the year 2022, the CCR had recommended a salary adjustment of 3.7% for staff based in France and 2.7% for staff in Belgium (document CM(2021)141). The relevant sections of the Committee of Ministers decision read as follows:

> "The Deputies,
>
> Having regard to the Co-ordinating Committee on Remuneration's (CCR) recommendations with regard to the 2022 adjustment of salaries for staff of the Council of Europe and the corresponding monthly basic salary scales, as they appear in document CM(2021)141,
>
> Reiterating the particular role the Organisation has to play in its areas of expertise in effectively responding to challenges and crises, such as those arising from the Covid-19 pandemic, as recognised at the 131st Ministerial Session of the Committee of Ministers (Hamburg, 21 May 2021) and as reflected in its Programme for 2022-2025;

> Considering, as recalled by the Budget Committee, that despite forecast increase in GDP, member States are faced with economic uncertainties resulting from the fact that the Covid-19 pandemic is still not under control;
>
> Considering that the application of the recommendations in full would cause a variation in total staff expenditure of such magnitude that it would jeopardise the functioning and mission of the Organisation in 2022;
>
> Considering the need to preserve the interests of both the Organisation and its staff;
>
> 1. decided, in application of Article 7 – Affordability of the Rules on the salary adjustment method, to award the annual salary adjustment recommended by the CCR only partially, amounting to for staff in France 1.2% as of 1 January 2022 and a further 0.7% on 1 December 2022 (applied to the scales in effect on 1 January 2021) (…)
>
> 2. decided that the non-awarded amount would offset future negative salary adjustments derived from the current adjustment method (cf. CM(2021)106, Annex 1, Article 1); (…)."

15. At the end of January 2022, the appellants received their pay slips for the month of January 2022. These documents reflected the above-mentioned decision of the Committee of Ministers to apply the affordability clause and not to follow the CCR's recommendation on salary adjustment for the year 2022.

16. On dates ranging from 26 January to 23 February 2022, the appellants lodged administrative complaints seeking the annulment of the decision reflected in their pay slips for January 2022 to apply only part of the annual salary adjustment for 2022. The appellants in Appeals Nos. 724-727/2022 requested in their administrative complaint that the latter be submitted to the Advisory Committee on Disputes (ACD).

17. Between 25 February and 24 March 2022, the Secretary General held that the complaints lodged by the appellants in Appeals Nos. 677-711, 713-718/2022 were unfounded and dismissed them.

18. On 22 June 2022 the Advisory Committee on Disputes issued its opinion. With regard to the reference made in the impugned decision to the context of economic crisis, the committee concluded as follows:

> "It is not in dispute that the affordability clause forms part of the salary adjustment method. Nevertheless, the principle is that the adjustment resulting from the application of the coordinated salary method be implemented; its non-implementation or partial implementation is an exceptional measure, which may only occur "if specific budgetary and/or economic circumstances so warrant", such circumstances having to be defined by objective conditions. As both parties have pointed out in their submissions, these objective conditions include:
>
> - following an international economic crisis, and
> - where the financial impact of a CCR recommendation would cause a variation in the total staff expenditure of such magnitude that it would jeopardise the function or mission of the Organisation.
>
> Regarding the first of these instances, the Committee agrees that there was a public health crisis in the form of the Covid-19 pandemic, which undoubtedly had economic consequences. It notes however that, as the Complainants point out, the OECD Economic Outlook report had forecast world GDP growth of up

> to 3% in 2022. It also notes that, although the Secretary General contends that there was a situation of economic uncertainty in all countries in which the virus was not under control, she nevertheless appears to accept that the relevant time was one of global economic recovery, however precarious that recovery might have been. Therefore, although the Committee recognises that the recovery followed a period of deep crisis and depended on uncertain factors, it is not satisfied by the arguments put forward by the Secretary General to support her claim that at the end of 2021 the Covid-19 pandemic had given rise to what could be called an "international economic crisis", nor that its economic consequences were such that the ability of the member States and the Council of Europe to apply the recommended salary adjustment for 2022 was affected".

19. As to the reference made in the impugned decision to the impact that applying the CCR's recommendation in full would have had on the functioning and mission of the Organisation, opinions in the Advisory Committee on Disputes were divided. Two members, while noting that:

> "(..) the Secretary General did not provide a sufficiently articulated response to the Complainants' question of why the full implementation of the CCR recommendation would necessarily result in savings on posts, and on the availability of other avenues, which could have been potentially a very relevant approach, notably in the light of what is indicated above about the cumulated impact of staff cuts over the years".

concluded that:

> "given the significant changes still ongoing in the budgetary context, and while being well aware of the fact that the contested decision primarily has to be examined in the light of the context as it was when it was taken, (…) the enforceability of granting a salary adjustment of 3.7% in such a budgetary context would seem unrealistic".

On this point, the conclusions of the two other members of the ACD differ and read as follows:

> "We accept that the loss of 40 posts would have an effect on the proper functioning of the organisation, given that this loss would have been in addition to the suppression of 264 posts on the ordinary budget between 2010 and 2021. Although, seen separately, 40 posts represent less than 1,5% of current posts, the cumulated loss of posts would have an impact on the organisation's activities, and has a strong potential to compromise its activities in certain sectors. However, the question to answer is whether it would jeopardise the organisation's mission and functioning. That is a much higher threshold, and the Secretary General has provided no evidence capable of demonstrating that it was met.
>
> Moreover, the Secretary General has not provided a convincing response to the Complainants' question of why the full implementation of the CCR recommendation would necessarily result in savings on posts when there were other avenues available, such as reducing other expenditure and adapting the activities to the available funding and staffing."

20. On 20 July 2022 the Secretary General held that the complaints lodged by the appellants who had consulted the ACD, namely the appellants in Appeals Nos. 724-727/2022, were unfounded and dismissed them.

21. On the dates indicated in paragraph 1 above, the 45 claimants lodged their appeals in accordance with Article 60 of the Staff Regulations.

II. RELEVANT LAW

22. The lodging of administrative complaints is governed by Article 59, paragraph 2, of the Staff Regulations[3] which reads as follows:

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

23. Referrals to the Advisory Committee on Disputes are governed by Article 59, paragraph 5, of the Staff Regulations, which reads as follows:

> "5. Either on the initiative of the Secretary General or if the staff member so requests in his or her complaint, the complaint shall be referred to the Advisory Committee on Disputes. The Advisory Committee on Disputes shall formulate its opinion within one year of the date of such referral. In that event, the Secretary General shall have thirty days from the date of receipt of the opinion of the Advisory Committee on Disputes to give a decision on the complaint."

24. The possibility of lodging an appeal with the Administrative Tribunal is provided for in Article 60, paragraph 1, of the Staff Regulations, which reads as follows:

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

25. The reimbursement of costs incurred in proceedings before the Tribunal is governed by Article 11 of the Tribunal's Statute (Appendix XI to the Staff Regulations). Paragraphs 2 and 3 of this article read as follows:

> "2. In cases where it has allowed an appeal, the Tribunal may decide that the Council shall reimburse at a reasonable rate properly vouched expenses incurred by the appellant, taking the nature and importance of the dispute into account.
>
> 3. In cases where it has rejected an appeal, the Tribunal may, if it considers there are exceptional circumstances justifying such an order, decide that the Council shall reimburse in whole or in part properly vouched expenses incurred by the appellant. The Tribunal shall indicate the exception circumstances on which the decision is based."

26. The Council of Europe is one of the Co-ordinated 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).

27. Under these regulations, the purpose of the co-ordination system is to make recommendations to the governing bodies of the Co-ordinated Organisations concerning basic salary scales, and the

[3] The Staff Regulations which applied at the time of the facts in the present case are those which were adopted by Resolution Res(81)20 of the Committee of Ministers of the Council of Europe on 25 September 1981. The 1981 Staff Regulations, amended subsequently on several occasions, were replaced, with effect from 1 January 2023, by the new Staff Regulations adopted by Resolution CM/Res(2021)6 of the Committee of Ministers of the Council of Europe on 22 September 2021. All references in this decision to the Staff Regulations are therefore to be understood as references to the 1981 Staff Regulations.

method of their adjustment, for all categories of staff and for all countries where there are active staff or recipients of a pension.

28. It falls to the Co-ordinating Committee on Remuneration (CCR) to make relevant recommendations to the Co-ordinated Organisations, in accordance with the salary adjustment method in force. It then falls to the governing bodies of the Co-ordinated Organisations – the Committee of Ministers in the case of the Council of Europe – acting as sovereign bodies to take decisions on the recommendations made by the CCR.

29. Article 7 – or the affordability clause – of the salary adjustment method applicable to the facts at issue reads as follows:

> "7.1 The Committee of Ministers reserves the sovereign right to take special measures concerning the implementation of the adjustment resulting from the application of this salary method, if specific budgetary and/or economic circumstances so warrant, in particular:
>
> - to decide that the annual adjustment recommended by the CCR be awarded in part or not at all, and to decide also on the timing for the payment of any adjustment.
>
> 7.2 The objective conditions which could define those specific budgetary and/or economic circumstances allowing for action under Article 6.1 to be taken include, but are not limited to, the withdrawal of, or default of payment by, one or more member countries of the Organisation, producing a significant reduction in its budget; or an unforeseen event entailing exceptional financial damage, among others, following an international economic crisis; or a prolonged incapacity to function for the Organisation; or where the financial impact of a CCR recommendation would cause a variation in the total staff expenditure of such magnitude that it would jeopardise the function or mission of the Organisation.
>
> 7.3 The Committee of Ministers also reserves the right to determine whether, in the context of the annual adjustment, any other measures should be taken.
>
> 7.4 Action under this article shall be taken in accordance with the applicable general legal principles."

30. Under the terms of Article 41, paragraph 1, of the Staff Regulations on staff remuneration, "Staff salaries and allowances and the methods of paying them shall be laid down in regulations made by the Committee of Ministers as set out in Appendix IV to these Regulations."

31. The principle of equal treatment and non-discrimination in relation to Council of Europe staff is dealt with in Article 3 of the Staff Regulations, which reads as follows:

> "1. Staff members shall be entitled to equal treatment under the Staff Regulations without direct or indirect discrimination, in particular on grounds of racial, ethnic or social origin, colour, nationality, disability, age, marital or parental status, sex or sexual orientation, and political, philosophical or religious opinions.
>
> 2. The principle of equal treatment and non-discrimination shall not prevent the Secretary General from maintaining or adopting, in the context of a predetermined policy, measures conferring specific advantages in order to promote full and effective equality and equal opportunities for everyone, provided that there is an objective and reasonable justification for those measures."

THE LAW

I. JOINDER OF APPEALS

32. As the 45 appeals are closely interconnected, the Tribunal orders their joinder under Rule 14

of its Rules of Procedure.

II. EXAMINATION OF THE APPEALS

33. The appellants are asking the Tribunal to annul the decisions, as reflected in the pay slips since January 2022, to apply in their case the Committee of Ministers decision of 23 November 2021 (CM/Del/Dec(2021)1418/11.2bc) on the annual salary adjustment to the effect that the adjustment recommended by the CCR was to be awarded only partially (for staff in France 1.2% as of 1 January 2022 and a further 0.7% on 1 December 2022).

34. The appellants are also asking the Tribunal:

a) where necessary, to annul the Secretary General's decision dismissing the appellants' complaints,
b) to award compensation for the financial loss suffered, consisting in the difference between the remuneration paid (and derived financial benefits) and the remuneration to which the full adjustment has been applied since 1 January 2022 (and derived financial benefits),
c) to award costs, even if the appeals are dismissed.

35. The Secretary General invites the Tribunal to declare the appeals unfounded and to dismiss them. She also asks that the Tribunal dismiss the appellants' claim for reimbursement of costs in the event of dismissal of the appeals, on the ground that the appellants have not provided evidence of the costs incurred and have not demonstrated the existence of exceptional circumstances justifying such award under the terms of Article 11, paragraph 3, of the Tribunal's Statute.

III. SUBMISSIONS OF THE PARTIES

1. The appellants

36. The appellants consider that their appeals are admissible. On the merits, they submit a number of pleas: violation of Article 7 (affordability clause) of the salary adjustment method; manifest error of assessment due to the inapplicability of the affordability clause to the 2022 salary adjustment; disregard of the obligation to give reasons; breach of the general legal principles of objectivity, stability, predictability, transparency, legal certainty, legitimate expectations and good faith because of the disregard for their acquired rights; breach of the principle of equal treatment of staff of the Co-ordinated Organisations and failure to respect the duty of care towards staff, the principle of dignity and the principle of proportionality.

a) Lawfulness of the application of the affordability clause

37. The appellants consider that the application of the affordability clause to the 2022 salary adjustment was not justified, as it did not meet the requirements for its implementation, as set out in Article 7 of the adjustment method (see paragraph 29). They underline that the affordability clause is an exception to the rule and accordingly must be interpreted and applied in a restrictive manner.

38. They maintain that the conditions at the time when the decision was taken did not reflect specific budgetary and economic circumstances which would have justified application of the affordability clause and that the Secretary General has not provided any evidence to the contrary. In their view, the uncertainty surrounding the Covid-19 pandemic was not such as to jeopardise the Organisation's mission or functioning, as the public health crisis had been under control since March 2021 and was no longer an unexpected event. They state that this was demonstrated by the much improved overall economic situation, marked by substantial growth rates and high inflation in the member States.

39. In support of their position, the appellants cite the passage from the opinion issued by the ACD, in which it stated that it was "not satisfied by the arguments put forward by the Secretary General to support her claim that, at the end of 2021, the Covid-19 pandemic had given rise to what could be called an "international economic crisis", nor that its economic consequences were such that the ability of the member States and the Council of Europe to apply the recommended salary adjustment for 2022 was affected."

40. With regard to the negative consequences which application in full of the CCR's recommendation would have had on the Organisation's functioning and mission, the appellants observe that these are mere allegations, in support of which the Secretary General has not provided any concrete evidence. More generally, they maintain that the Secretary General's argument concerning the abolition of posts is neither legally founded, proven nor relevant and reflects a choice – namely that of linking the cost of the annual adjustment to the abolition of posts – for which she provides no explanation. In the appellants' view, the Secretary General is wrong to quote the concerns expressed by the Budget Committee to justify this choice (see paragraph 57 below), as the latter merely asked the Committee of Ministers and the Secretary General to explore possible avenues in the event of a negative impact of the adjustment on the Organisation's programme and budget being confirmed.

41. In support of the arguments put forward in the paragraph above, the appellants also cite the opinion of two members of the ACD, who, while recognising that "the cumulated loss of posts (…) has a strong potential to compromise [the Organisation's] activities in certain sectors," said that "the question to answer is whether it would jeopardise the Organisation's mission and functioning. That is a much higher threshold, and the Secretary General has provided no evidence capable of demonstrating that it was met". They point out that all ACD members were in agreement that the Secretary General had not responded satisfactorily to their question as to why "the full implementation of the CCR recommendation would necessarily result in savings on posts."

42. The applicants maintain that the economic reasons that might justify the applicability of the affordability clause must be objective and must not depend on the "goodwill" of a member State because, otherwise, the stability, predictability and transparency of the salary adjustment method would be compromised. They point out that the member States should act like prudent householders, taking due care of the interests of the Organisation and its staff, and should honour their commitments in good faith, as required by the principle of *pacta sunt servanda*. In the appellants' view, however, the Committee of Ministers' regular use of the affordability clause is actually tantamount to requiring staff members to contribute to the Organisation's budget by giving up part

of the salary adjustment to which they are entitled and thereby make up for the member States' refusal to provide the Organisation with sufficient funding to maintain or, indeed, expand the tasks which they have assigned it. In the instant case, the appellants consider that the additional cost of implementing the CCR's recommendation, i.e. €4.8 million or 1% of the Council of Europe's budget, could have been funded by seeking alternative solutions without jeopardising the Organisation's functioning or missions: they infer from this that the member States' real intention in applying the affordability clause was to make savings.

43. The appellants add that although the affordability clause may be applied solely on a temporary basis in the event of exceptional or unexpected circumstances, it has been applied frequently between 2018 and 2022. In any case, they note that the situation of the Organisation at the time of the decision to apply the affordability clause was far from those which the Council of Europe has experienced in the past.

44. The appellants conclude that the application of the affordability clause in the instant case fails to comply with the regulations and is based on manifestly erroneous grounds.

b) The reasons given for the impugned decision

45. The appellants challenge the failure to give reasons for the impugned decision of the Committee of Ministers in that it confines itself to asserting that the implementation in full of the CCR's recommendations would cause a variation in staff expenditure of such magnitude that it would jeopardise the functioning and mission of the Organisation, without explaining why. Sufficient, even detailed, reasons of the kind which the appellants were entitled to receive are not given in the Secretary General's decisions rejecting their administrative complaints either, which do not explain how implementation of the salary adjustment would have led to the consequences stated. The appellants furthermore note that the discussions at the CCR are not relevant for the purposes of the obligation to give reasons, as they say nothing about the conditions for the applicability of the affordability clause at the Council of Europe.

c) The principles of legal certainty, legitimate expectations and good faith and protection of acquired rights

46. The appellants further maintain that the impugned decision disregards the principle of legal certainty because it fails to ensure the stability of their legal positions and denies them their right to a salary and pension adjustment method that produces objective, predictable and transparent results. In this connection, they point out that given the requirement for the financial stability of the Organisation, the final nature of the annual budget should not be called into question solely on account of a non-specific change in circumstances. Accordingly, the decision is unlawful because the appellants were hoping to receive a salary adjustment for 2022.

47. The appellants in Appeals Nos. 724-727 further maintain that the impugned decision breaches their legitimate expectations that their salaries be adjusted, at the very least, in line with inflation, whereas the Organisation's budget is officially adjusted in line with inflation.

48. In the appellants' view, the impugned decision also infringes the principle that the

Organisation's internal rules must be interpreted in good faith. More specifically, they maintain that, in applying the affordability clause in the absence of the conditions that would have justified its application, the Committee of Ministers failed to interpret in good faith the CCR's recommendation to grant the 2022 salary adjustment in the light of the affordability clause.

49. The appellants underline the additional losses suffered on a long-term basis by those appellants who retired before 1 December 2022 insofar as the impugned decision prevents the 0.7% pension adjustment deferred to that date from being taken into account in the final salaries serving as the basis for calculating their pension entitlements.

d) The principle of equal treatment

50. With the plea alleging breach of the principle of equality, the appellants maintain that they as Council of Europe staff members were treated differently compared to staff members of other Co-ordinated Organisations. The Council of Europe is one of the two Co-ordinated Organisations out of the six which decided to apply the affordability clause for the 2022 salary adjustment, whereas the financial and budgetary position of the Co-ordinated Organisations is similar. And although the Organisation for Economic Co-operation and Development (OECD) did trigger the clause, it did so in order to stagger the full 2022 adjustment in four stages. Moreover, only the Council of Europe relied on the economic crisis linked to the pandemic as the ground for triggering the affordability clause.

51. The appellants maintain that even though each Co-ordinated Organisation has its own affordability clause, these clauses must meet similar requirements and must form part of a co-ordinated method that aims at convergence of principles, if not outcomes. In this connection, they cite a passage from a note by the Chair of the CCR on the 280th report that took effect on 1 January 2022, which stated that "the CCR has felt that the operation of these clauses has been patchy among the [Co-ordinated Organisations]. Some have deployed their affordability clauses effectively while others have not (…)."

e) The duty of care, the principle of dignity and the principle of proportionality

52. The appellants maintain that, before applying the affordability clause, the respondent should have taken greater account of their interests, in particular regarding the impact of its application on their economic situation and their wellbeing and health at work. In this connection, they refer to their loss of purchasing power and an excessive workload caused by inadequate funding for the Organisation. They therefore conclude that the respondent has failed in its duty of care towards them and breached the principle of dignity.

53. The appellants disagree with the reasons given for the impugned decision, namely that granting the recommended salary adjustment would necessarily have led to the abolition of posts. In any case, in their view, the abolition of some forty posts out of a total of 3 000 would not have had any impact on the Organisation's mission or functioning – and the respondent did not provide any evidence to the contrary.

54. According to the appellants, therefore, the respondent decided to employ the most harmful

and least appropriate measure, whereas other options with less impact on the appellants, of which they give some examples (increased revenues, cuts in other expenditure, review of job classifications, etc.) could have been explored. In proceeding in this way, the appellants maintain that the impugned decision breaches the principle of proportionality.

2. The Secretary General

55. The Secretary General does not make any submissions regarding the admissibility of the appeals. She nevertheless considers the appellants' pleas unfounded.

a) Lawfulness of the application of the affordability clause

56. After stressing the Committee of Ministers' obligation to comply with the salary adjustment method it set itself and the scope of its margin of appreciation regarding the adjustment of salaries, the Secretary General maintains that the impugned decision meets the conditions set out in the affordability clause, as it was taken against the background of an "international economic crisis" so as to avoid "a variation in the total staff expenditure of such magnitude that it would [have] jeopardise[d] the functioning or mission of the Organisation."

57. Regarding the former of these conditions, namely the "international economic crisis", the Secretary General states that the circumstances to be taken into account are those which prevailed in October/November 2021 at the time when the decision was taken. The background of economic uncertainty facing the member States at that time, in particular because of the Covid-19 pandemic, was clear, as demonstrated by the figures for new infections at the time and the new restrictive measures being imposed by European governments to rein them in. These circumstances were described specifically in the budget proposal submitted by the Secretary General to the Committee of Ministers in October 2021 and had previously led the Budget Committee, at its meeting in September 2021 (see document CM(2021)135), to voice its concern regarding the possible impact which the application in full of the salary adjustment might have on the implementation of the Organisation's programme and budget. This background of economic uncertainty continued, with further waves of infection recorded in the following months. The ACD itself acknowledged in its opinion that the positive forecasts for economic growth made by the OECD were set against a backdrop of great economic uncertainty. Moreover, according to the Secretary General, the economic indicators cited by the appellants are not convincing because although they did not reflect a recession but indicated the possibility of economic recovery, this was mainly due to a very sharp rise in government borrowing.

58. Regarding the second condition which justified application of the affordability clause in the instant case, namely the financial impact of the CCR's recommendation, the Secretary General notes that the funding in full of the salary adjustment recommended by the CCR would have entailed the abolition of some forty posts in the case of zero real growth in the budget (more in the case of zero nominal growth). According to the Secretary General, such a variation in total staff expenditure would have deprived the Organisation of the resources for implementing its activities and would have jeopardised its functioning and mission. The Secretary General supports her position by underlining the Organisation's wide-ranging mandate and the many priorities set in its programme and budget, as confirmed by the Committee of Ministers at its ministerial session in Hamburg in May 2021. As the Council of Europe's mission was defined by its full range of activities, discontinuing one or other of them would reduce the scope of its mission and role.

59. The Secretary General rejects the applicants' claim that the additional cost of applying the CCR's recommendation in full could have been funded in another way, either by increasing revenues or by curbing expenditure. She points out that there is no additional revenue apart from member States' contributions that could be used to fund salary increases and that it is up to the member States to set the budget and the level of their contributions, in accordance with the Statute of the Council of Europe. She goes on to cite the various measures, including structural reforms and abolition of posts, which the Organisation has already taken over the past several years so as to rein in the increase in its expenditure. Among these measures, the Secretary General also refers to the fact that the second part of the adjustment (0.7% in December 2022) will be funded with the abolition of 10 posts, under the 2022 departure scheme, the implementation of which had been agreed under the People Strategy, although originally for the purpose of achieving other objectives.

60. The Secretary General points out that nothing rules out the possibility of applying the affordability clause in the event of successive crises if the circumstances so justify, as had been the case in 2018 because of the Russian Federation's failure to pay its obligatory contributions to the budget and, in 2021, because of the Covid-19 pandemic.

61. The Secretary General concludes from the above that applying the affordability clause to the 2022 salary adjustment was entirely lawful and that the Committee of Ministers cannot be accused of making any error of assessment in doing so.

b) The reasons given for the impugned decision

62. The Secretary General maintains that the reasons given to justify the application of the affordability clause, as reflected both in the budget proposal submitted by the Secretary General to the Committee of Ministers on 26 October 2021 and in her message to staff the same day, are entirely sufficient and appropriate.

c) The principles of legal certainty, legitimate expectations and good faith and protection of acquired rights

63. After stating that there is no reason in the instant case to refer to the adjustment of pensions following the reform of the Co-ordinated Pensions Scheme on 1 January 2020, under which they are adjusted solely in line with inflation, the Secretary General emphasises that the affordability clause is an integral part of the salary adjustment method. In applying it in good faith in compliance with its terms, in the light of its object and purpose, the Committee of Ministers adhered to the method and accordingly complied with the principles of legal certainty, legitimate expectations, good faith and the protection of acquired rights.

64. The Secretary General refutes the argument raised by the appellants in Appeals Nos. 724-727, based on the violation of their legitimate expectations that their salaries be adjusted, at the very least, in line with the inflation rate applied to the Organisation's budget (see paragraph 47 above): apart from the fact that the adjustment of the Organisation's budget and the annual salary adjustment employ different methods, for 2022, the salaries of staff members serving in France were adjusted at a rate (1.9% as at 31 December 2022) that was 1.5 percentage points above the rate (0.4%) by which the Organisation's budget for the same year was adjusted.

d) The principle of equal treatment

65. The Secretary General believes that it is not relevant in the instant case to rely on the principle of equal treatment between staff of the Co-ordinated Organisations because each of the organisations is independent and differs in terms of its legal and actual situation, including its budget. She stresses that the affordability clauses are not co-ordinated, with the decisions on salary adjustments and application of the affordability clauses being left to the discretion of each organisation's governing body. The Secretary General maintains that the Chair of the CCR's comments regarding the patchy use of the affordability clause among the Co-ordinated Organisations are wrongly cited by the appellants (see paragraph 51), as they were intended to explain the reasons for the introduction in the co-ordinated system of the new "exception clause" that can be applied by the CCR to deal with major economic crises.

e) The duty of care and the principle of proportionality

66. The Secretary General maintains that the impugned decision is based on a fair and appropriate assessment and on proper weighing of all the interests at stake. She sets out several arguments seeking to show that staff members' rights were taken into account as far as was possible without compromising the achievement of the desired objective, namely preservation of the Council of Europe's mission and functioning.

67. In this connection, the Secretary General states that the salary adjustment granted is substantial and preserves staff members' purchasing power; the unallocated portion of the adjustment can be used to offset future negative salary adjustments, thereby lessening the negative impact on attractiveness and staff in the long term; an appropriate staffing level to prevent an increase in workloads in the various teams is ensured; and contractual certainty is maintained.

68. The Secretary General then refers to the substantial savings made in recent years through a series of structural reforms in order to refute the appellants' claim that the Committee of Ministers triggered the affordability clause without first seeking alternatives. In her view, it is these reforms that make the payment of annual salary adjustments possible when economic and budgetary circumstances so permit.

69. The Secretary General concludes that the Committee of Ministers' decision to implement the 2022 salary adjustment in part was perfectly justified and that it was taken in strict compliance with the salary adjustment method in force and in accordance with the discretion it enjoys in budgetary matters. The appellants' appeals are therefore unfounded and must be dismissed in their entirety.

3. Third parties

70. In support of the appellants, the third party points out in particular that the Secretary General's decision to propose a reduced salary adjustment under the affordability clause was incompatible with the position of the representatives of the Secretaries General of the Co-ordinated Organisations, who unanimously recommended the revised method in the 280th CCR Report and recognised the result of its application to the 2022 salary adjustment in the 281st CCR report. In granting their staff members salary adjustments according to the results of the method in question, the Secretaries General of the Co-ordinated Organisations observed both the letter and spirit of the co-ordination mechanism designed to strengthen the international civil service, unlike the Secretary General of the Council of Europe. The third party also points out that by presenting job cuts as the inevitable

result of the application of the co-ordinated method, the Secretary General ignores the Committee of Ministers' sovereign authority in budgetary matters and its power to adjust the budget and the staff/activities ratio, in accordance with the priorities set. The failure to consider other options such as increasing revenues or making savings shows a lack of diligence on the Secretary General's part.

71. The Staff Committee for its part explains that its aim in supporting the appellants' submissions is to correct the tendency to make inappropriate use of the affordability clause. It considers that the Organisation's decisions on the salary adjustment currently no longer stem from objective criteria but from the subjective ideas of the member States' Permanent Representatives, in breach of the general legal principles which apply to the international civil service. This trend has led to a lasting uncoupling of the salary scales applied in the Council of Europe compared to those of the other Co-ordinated Organisations. Salary scale erosion and wage moderation measures have resulted in growing disparities in the Council of Europe's capacity to appeal as an employer. This has led to disregard for the Organisation, its staff, which is its major asset, and its activities.

IV. THE TRIBUNAL'S ASSESSMENT

72. The Tribunal notes that the appeals in this case are directed against individual decisions taken by the Secretary General pursuant to the Committee of Ministers' decision on the adjustment of remuneration for staff of the Council of Europe for 2022. The appellants allege that there were illegalities in the Committee of Ministers' decision of 23 November 2021 and submit that these illegalities also vitiate the individual implementing decisions taken by the Secretary General.

73. The Tribunal points out firstly that its jurisdiction to rule on a decision or measure taken by the Secretary General where, as here, she was bound to pursue execution of a decision of the Committee of Ministers has been accepted "due to the fact that our organisation's dispute system provides only for appeals against the Secretary General" (ATCE, Appeals Nos. 231-238/1997, decision of 29 January 1998, in the case of *Klaus FUCHS and Others v. Secretary General*, paragraph 43 and case law cited). This jurisdiction, which is not disputed in this case, reflects the established case law of international administrative courts (see, for example, ILOAT, judgment No. 4277 of 24 July 2020, consideration 5; NATO Appeals Board, Appeals Nos. 893 and 894, judgment of 31 May 2013).

74. Under the first ground of appeal, the appellants argue that by applying the affordability clause to the 2022 salary adjustment, the Committee of Ministers failed to comply with the conditions for the implementation of this clause and hence made a manifest error of assessment. The Secretary General, for her part, considers that the Committee of Ministers' decision to apply the salary adjustment recommended by the CCR for 2022 only partially was entirely lawful, complying with the salary adjustment method in force.

75. The Tribunal points out that under established case law, "an international organisation is free to choose a methodology, system or standard of reference for determining salary adjustments for its staff provided that it meets all other principles of international civil service law" (ILOAT, judgment No. 1821 of 28 January 1999, consideration 7 and case law cited). The case law also specifies that once the method is adopted, the organisation is bound by the salary adjustment method in force and may not act arbitrarily, outside the legal framework set up by it (*ibid*, consideration 8). The organisation may only deviate from the results of the method when this is provided for by the method but, in such cases the criteria used to justify such deviations must be "objective, adequate and known to the staff" (ILOAT, judgment No. 1912 of 3 February 2003, consideration 15).

76. When it is asked to rule on questions relating to the application of a remuneration adjustment method, it is the Tribunal's duty to ascertain not only whether the rules have been correctly applied, but also whether the general principles of law, to which the legal systems of international organisations are subject, have been complied with (ATCE, Appeals Nos. 231-238/1997, decision of 29 January 1998 cited above, in the case of Klaus FUCHS and Others v. Secretary General, paragraph 46 and case law cited). When the Committee of Ministers acts pursuant to the authority conferred on it by the Staff Regulations and equips the Organisation with an adjustment method, it enters into obligations which it is bound to respect for the period defined by it (Appeals Board of the Council of Europe (ABCE), Appeals Nos. 133 to 145/1986, decision of 3 August 1987 in the case of *Ausems and others v. Secretary General*, paragraph 77). This is a consequence of the general principle of *tu patere legem quam ipse fecisti*, or the principle of legality, under which "an international organisation has a duty to comply with its own internal rules and to conduct its affairs in a way that allows its employees to rely on the fact that these will be followed" (ILOAT, judgment No. 2170 of 3 February 2003, consideration 14).

77. The adjustment method in question in this dispute, of which the affordability clause is an integral part, was adopted by the Committee of Ministers at its 1418th meeting, in November 2021 (see paragraphs 13 and 14 above). The method provides a non-exhaustive list of "specific budgetary and/or economic circumstances" in which the affordability clause may be used. These circumstances are described as "objective conditions". The examples cited show that the decision on whether such circumstances exist does not depend on an entirely subjective assessment but on verifiable, objective criteria which are obviously present.

78. Two types of circumstances cited in the affordability clause are relevant to this dispute. They are "an unforeseen event entailing exceptional financial damage, among others, following an international economic crisis" and "the financial impact of a CCR recommendation" where the implementation of such a recommendation "would cause a variation in the total staff expenditure of such magnitude that it would jeopardise the functioning or mission of the Organisation".

79. These two circumstances are referred to in the contested decision of the Committee of Ministers, which talks firstly of the "economic uncertainties" faced by member States "resulting from the fact that the Covid-19 pandemic is still not under control" and then of the consideration that "the application of the [CCR's] recommendations in full would cause a variation in total staff expenditure of such magnitude that it would jeopardise the functioning and mission of the Organisation in 2022".

80. With regard to the first circumstance on which the contested decision relies, the Tribunal notes that the Secretary General neither claims nor shows that the economic uncertainties connected with the Covid-19 pandemic were "an unforeseen event entailing exceptional financial damage" as provided for in the affordability clause. Regardless as to whether at the time of the contested decision in autumn 2021, the health crisis was under control or not, there is no doubt that the member States had been faced with it since March 2020 and that they had already taken large-scale measures to deal with it, meaning that the crisis could not/no longer be regarded as an unforeseen event for the international community. It should be recalled in this respect that "the severe international economic crisis arising from the COVID-19 pandemic" and the ensuing "significant financial damage all over Europe" had been referred to one year previously by the Committee of Ministers in its previous decision not to award the salary adjustment for 2021 (CM/Del/Dec(2020)1391/11.2ab).

81. From this viewpoint, the Secretary General does not attempt either to show that when the contested decision was taken, there was a clear economic crisis "entailing exceptional financial damage" within the meaning of the affordability clause. In fact, she acknowledges that the indicators at that time signalled a global economic recovery but insists instead on the precarious and uncertain nature of this recovery. In this connection, she cites the economic prospects described by the OECD in its interim report of September 2021. The relevant passages of the report which the Secretary General reproduces in her 2022-2025 budget proposal refer to a theoretical scenario based on the continuation of the pandemic and the risk that new variants of Covid-19 will emerge.

82. The Tribunal notes therefore that the Secretary General does not provide any proof that the first circumstance referred to in support of the contested decision amounted to "an unforeseen event entailing exceptional financial damage, among others, following an international economic crisis". It takes note in this respect of the unanimous conclusion of the ACD. The latter found that the Secretary General failed to substantiate the claim that at the end of 2021, the Covid-19 pandemic had given rise to an international economic crisis or that the economic consequences of the health crisis had undermined the capacity of the member states and the Council of Europe to fully apply the salary adjustment recommended for 2022.

83. The Tribunal also notes that economic uncertainties do not figure among the examples of budgetary/economic circumstances given in the affordability clause as reasons for it to be deployed. It also notes that unlike these circumstances, economic uncertainties cannot be entirely objectively substantiated through the observation of existing data but rely on an assessment of possible or probable future developments.

84. On this matter, the Tribunal concludes that economic uncertainties, though undeniably present at the time when the contested decision was adopted, were not enough in themselves to constitute an objective circumstance warranting the deployment in this case of the affordability clause.

85. With regard to the second circumstance on which the contested decision relies, the Secretary General quantified the excess cost that the full funding of the salary adjustment recommended by the CCR would have represented at EUR 3.9 million, or the equivalent of 40 posts in a context of zero real growth. She stated that in view of the fact that 264 posts had already been cut from the ordinary budget between 2010 and 2021, and ten posts still had to be cut through a voluntary departure scheme to finance the additional adjustment of December 2022, this would have had an inevitable impact on the functioning and mission of the Organisation as it would no longer have had the means of implementing all its activities. The reduction or suspension of activities with the sole aim of financing a wage increase would have undermined the Council of Europe's mission and its functioning.

86. The Tribunal notes that the requirement of the affordability clause which was referred to to justify the contested decision did not just call for the financial impact of the implementation of the CCR's recommendation to be assessed. It also required it to be ascertained that the "variation in the total staff expenditure [would be] of such magnitude that it would jeopardise the functioning or mission of the Organisation". In other words, in order to check that the objective conditions to which the affordability clause is subject actually exist, it is not enough to be able to put a figure on the number of posts which would be affected by this measure. It is also necessary to be able to prove that this shortage would actually undermine the Organisation's ability to carry out its mission.

87. In this connection, in her message to staff of 26 October 2021, the Secretary General simply

said that a salary increase of the percentage recommended by the CCR "would lead to significant job suppressions, increasing workload on remaining staff to cover for these losses, and [curtailment of] important activities". The contested decision reiterates that "the application of the recommendations in full would cause a variation in total staff expenditure of such magnitude that it would jeopardise the functioning and mission of the Organisation in 2022". Subsequently in her submissions to the Tribunal, the Secretary General focused mainly on the Organisation's wide-ranging mandate and its many priority and key activities, as confirmed at the ministerial session in Hamburg in May 2021, then in the programme and budget for 2022-2025.

88. In reply to the first question put in the Tribunal's request of 7 December 2022 concerning the type and distribution of posts which would have been affected by cuts in the event of the full application of the salary adjustment, the Secretary General replied that "the process of identifying posts to be abolished would have begun only if circumstances had so required, if the full salary adjustment had been awarded. This situation did not arise, and there was no detailed list of posts identified, at the time of the facts, as having to be abolished if the salary adjustment was awarded in full. This process would have involved dozens of staff members, requiring a major effort within the Secretariat, many hours of work, an in-depth analysis of all the Organisation's activities, difficult decisions and arbitration and the establishment of a strategy, in co-operation with all the entities but above all with the Committee of Ministers, to make the necessary amendments to the Organisation's Programme and Budget".

89. In reply to the second question put in the Tribunal's request concerning the activities that would have had to have been curtailed or suspended to finance the salary increase, and the impact of such a curtailment and/or suspension on the Organisation's functioning and mission, the Secretary General began by stating that "the abolition of posts across the board in all the Organisation's entities would not have been a conceivable scenario in view of the impact on all the Organisation's activities, particularly its priority ones, which would have directly affected the Organisation's mission and functioning". The Secretary General illustrated this point by giving examples of sectors of activity of the Organisation (such as the European Court of Human Rights, the Department for the Execution of the Judgments of the Court, the intergovernmental committees and the monitoring mechanisms), which showed "the strong link between the activities and the functioning and mission of the Council of Europe". As to the alternative of curtailing or suppressing activities, the Secretary General replied secondly that "this is also a scenario which would not have been conceivable as all the activities implemented by the Council of Europe contribute to the performance of its mandate and hence of its mission". She then gives, as an example, a list of activities in various sectors and their respective budgetary costs to illustrate "the scale of the savings required to reach the necessary EUR 3.9 million".

90. From all the foregoing, the Tribunal infers that the Secretary General did not envisage specific scenarios enabling her to assess the impact that the full application of the CCR recommendation would have had on the Organisation's mission and functioning. The arguments she submitted to the Tribunal are no more than theories, which have not been examined in terms of the criterion of endangering the existence of the Organisation, while the figure of 40 posts to be abolished is not enough on its own to demonstrate that this criterion was satisfied. Even if we put this figure into perspective and relate it to the 264 posts cut from the regular budget between 2010 and 2021, it is hard to understand how, with the loss of 40 posts, the critical threshold of endangering the Organisation could have been reached. In view of the material submitted to the Tribunal, this is an abstract and unsubstantiated allegation.

91. The Tribunal also takes note of the divided view of the ACD on the matter. Whereas two of

its members consider that the Secretary General provided no evidence to demonstrate that the abolition of 40 posts would jeopardise the mission or functioning of the Organisation, the two other members, who have no doubt about its potential for harm, consider nonetheless that the Secretary General could have given a more detailed answer as to why the full implementation of the CCR's recommendation would necessarily result in savings on posts (see paragraph 19 above).

92. The Tribunal points out that where the exercise of a discretionary power is subject, as in this case, to objective conditions, it is the Organisation's duty to check that these conditions exist, deploying the appropriate means which such diligent verification calls for. This preliminary process is a prerequisite to guaranteeing that the power is applied legitimately, in compliance with the conditions by which it is defined and circumscribed. Consequently, the Organisation must be in a position to show that its conclusion on whether the conditions in question exist is the result of a thorough and scrupulous assessment of the relevant circumstances.

93. The case law is clear on this point. It is not for the Tribunal to substitute its assessment for that of the Committee of Ministers and the Secretary General for the purposes of the application of the affordability clause. However, it does have the authority to review the legal interpretation of the data and facts underlying the contested decision. The effectiveness of the judicial review requires the Tribunal to conduct a full assessment of the accuracy of the facts. In that regard, it must both verify the material accuracy of the evidence relied on, along with its reliability and its consistency, and check if this evidence constitutes all the relevant data that needs to be taken into consideration to assess a complex situation and is capable of substantiating the findings drawn from it (General Court of the European Union, judgment of 7 September 2022, Case T-470/20, DD v. European Union Agency for Fundamental Rights (FRA), paragraph 211 and case law cited).

94. With regard to the current case, it has to be said that in the light of the foregoing, the Secretary General has failed to prove to the requisite legal standard that material circumstances existed which could warrant the use of the affordability clause, meaning that the facts she relied on before the Tribunal were an insufficiently legitimate basis for the contested decision.

95. The Tribunal is aware of the difficult budgetary context in which the Organisation found itself when it was required to approve the 2022-2025 budget. It refers in this respect to the concern which the Budget Committee had expressed concerning the potential impact of the recommended salary adjustment on the programme and budget, and the constraints which could arise from the position of the Committee of Ministers' delegations. The Tribunal would emphasise however that the difficulty of the choices that had to be made could not exempt the Organisation from carrying out the preliminary checks required and making the necessary efforts for this purpose.

96. In the light of these considerations, the Tribunal considers that the first ground of the appeals relating to the violation of Article 7 of the salary adjustment method is well-founded. The contested decision of the Ministers' Deputies and the Secretary General's individual decisions based on this are therefore unlawful in that they failed to comply with the regulatory provisions governing the use of the affordability clause.

V. CONCLUSION

97. In the light of all the foregoing, the Tribunal concludes that the appeals are well-founded and that the impugned acts of the Secretary General must be annulled.

98. Having reached this conclusion, the Tribunal has no need to rule on the appellants' other grounds of appeal.

VI. CLAIMS FOR DAMAGES AND COSTS

99. With regard to the request by appellants Nos. 677-711/2022, 713-714, 716-718/2022 and 724-727/2022 asking the Tribunal to make good their financial loss (see paragraph 34, point b), the Tribunal considers that this is tantamount to asking the Tribunal to dictate to the Secretary General how its decision should be executed and that this request must therefore be dismissed.

100. The Tribunal refers to the international administrative case law on this subject, under which the principle of *res judicata* requires the Organisation "not merely to refrain from acting in disregard of a judgment, but first and foremost to take whatever action the judgment may require" (ILOAT, judgment No. 553 of 30 March 1983, consideration 1). Under this case law, "in order to comply with the judgment annulling the measure and to implement it fully, the institution responsible for the annulled measure is required to have regard not only to the operative part of the judgment but also to the grounds which led to the judgment and constitute its essential basis, in so far as they are necessary to determine the exact meaning of what is stated in the operative part. It is those grounds which, on the one hand, identify the provision held to be illegal and, on the other, indicate the reasons which underlie the finding of illegality contained in the operative part and which the institution concerned must take into account when replacing the annulled measure" (Civil Service Tribunal, Judgment of 12 April 2016 in the case F-98/15).

101. Lastly, appellants Nos. 677-711/2022, 713-714, 716-718/2022 and 724-727/2022 seek the reimbursement of costs and expenses of EUR 14 865.49[4], providing detailed documentation in support of their claim. Bearing in mind the nature and importance of the dispute, the Tribunal awards this sum.

For these reasons,

The Administrative Tribunal:

Orders the joinder of Appeals Nos. 677-711/2022, 713-718/2022 and 724-727/2022;

Declares the appeals well-founded;

Annuls the individual decisions through which the Secretary General applied the decision of the Committee of Ministers of 23 November 2021 to grant only partially the annual adjustment recommended by the CCR for 2022 pursuant to Article 7 – Affordability – of the Rules on the salary adjustment method;

Dismisses the request by appellants Nos. 677-711/2022, 713-714/2022, 716-718/2022 and 724-727/2022 for their financial loss to be made good;

[4] "Rectified on 17 November 2023: The number "11 890,67" has been replaced with the number "14.865,49".

Decides that the Council of Europe will award a total amount of EUR 14 865.49[5] to appellants Nos. 677-711/2022, 713- 714/2022, 716-718/2022 and 724-727/2022 for the costs and expenses they have incurred.

Adopted by the Tribunal in Strasbourg, on 5 June 2023, and delivered in writing pursuant to Rule 35, paragraph 1, of the Tribunal's Rules of Procedure, on 6 June 2023, the French text being authentic.

Registrar	Deputy Chair
Christina OLSEN	András BAKA

[5] See footnote No. 4