

Appeals Nos. 739/2023, 740/2023 and 741/2023

E.T. and Others

v.

**Secretary General
of the Council of Europe**

JUDGMENT

22 March 2024

The Administrative Tribunal, composed of:

Nina VAJIĆ, Chair,
Lenia SAMUEL,
Thomas LAKER, Judges,

assisted by:

Christina OLSEN, Registrar,
Dmytro TRETYAKOV, Deputy Registrar,

has delivered the following judgment after due deliberation.

PROCEEDINGS

1. E.T. (the first appellant), D.K. (the second appellant) and E.K. (the third appellant) lodged their appeals on 8 September 2023. The appeals were registered on the same day respectively under the numbers 739/2023, 740/2023 and 741/2023.
2. The appellants submitted joint further pleadings on 12 October 2023.
3. On 8 December 2023, the Secretary General forwarded her observations on the appeals.
4. On 20 December 2023, the appellants filed their submissions in reply.
5. On 8 January 2024, the Secretary General submitted her rejoinder.
6. On 31 October 2023, the Staff Committee applied for authorisation to intervene in support of the appellants' submissions. By order of the Chair of 1 December 2023, the applicant was granted authorisation to lodge written observations upon the completion of the written proceedings. The Staff Committee's observations were lodged on 16 January 2024 and communicated to the parties on the same day.
7. On 9 January 2024, the Tribunal requested the Secretary General, pursuant to Rule 13 of the Tribunal's Rules of Procedure, to provide additional information which it deemed expedient for the conduct of the proceedings.
8. On 16 January 2024, the Secretary General submitted her response to the Tribunal's request.
9. The public hearing was held in the Administrative Tribunal's hearing room in Strasbourg on 23 January 2024. The appellants 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 Kilian, Head of the Legal Advice and Litigation Department and Sania Ivedi, Legal Advisor for this department.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

10. The appellants are permanent A-grade staff members who have been employed by the Council of Europe for many years (since 2003 as regards the first appellant, since 1997 as regards the second appellant and since 2004 as regards the third appellant). Following their participation in internal competitions, the appellants had been promoted to A4 jobs: the first appellant as Head of the Legal Advice Division within the Directorate of Legal Advice and Public International Law since June 2014 and as Head of the Legal Support Division within the Directorate General of Administration (DGA) since July 2018; the second appellant as Head of the Division of Political Advice within the Directorate General of Democracy and Political Affairs (DGDPA) since June 2006 and as Head of the Division of Political Advice and Deputy to the Director of Political Affairs and External Relations (DPAER) since February 2012; and the third appellant as Head of the Internal Audit Division within the Directorate of Internal Oversight (DIO) since June 2014. At the time of lodging their appeals, the appellants had been transferred to A1/A2/A3 jobs after having been invited to express their views, while preserving their grade and level of remuneration.

11. The appellants hold dual Russian and French citizenship.

A. The decisions of the Administration concerning staff recruited as citizens of the Russian Federation following the cessation of the Federation's membership to the Council of Europe

12. On 16 March 2022, in view of the invasion of the Russian Federation against Ukraine, the Committee of Ministers adopted Resolution [CM/Res\(2022\)2](#) by which the Russian Federation ceased, as of the same date, to be a member State of the Council of Europe.

13. On 20 April 2022, the Secretary General informed the Committee of Ministers of the consequences of the cessation of the membership of the Russian Federation in the Council of Europe on staff members with Russian citizenship. In her address to the Ministers' Deputies ([SG/Inf\(2022\)16](#)), the Secretary General highlighted that staff of the Council of Europe were independent international civil servants who acted in the sole interest of the Organisation. She emphasised that even though the aggression of the Russian Federation against Ukraine was neither of the making nor of the fault of staff members with Russian citizenship, the careers of many of them would be directly affected.

14. On the same day, by way of an announcement on the Intranet site of the Council of Europe, staff members were informed of the Secretary General's decisions as regards the situation of staff recruited as citizens of the Russian Federation. With respect to staff members on indefinite-term contracts, the announcement read as follows: "*Staff members holding indefinite term contracts may continue their employment within the Organisation*".

15. In its meeting report of 8 June 2022 (CM(2022)110), the Council of Europe Budget Committee, an expert body mandated to advise the Committee of Ministers on financial and administrative matters, "(...) took note of the Secretary General's decisions concerning staff of Russian nationality, in accordance with the Staff Regulations. The Committee encouraged the Secretary General to pay particular attention to sensitive functions within the Secretariat and ensure an appropriate level of risk management towards employment in these areas, including

risks of pressure being exerted upon staff members. It also encouraged the Secretariat to examine what measures could be taken to assist staff who could find themselves in a vulnerable situation” (see paragraph 24 of the report).

16. At its meeting of 7 February 2023, the Rapporteur Group of the Deputies on Programme, Budget and Administration (GR-PBA) discussed the issue of the Russian staff members working for the Council of Europe and a number of questions were raised. These questions notably concerned the *“sensitive nature of some positions, including managerial, and some activities; the procedures to deal with the potential exertion of pressure on individual staff members; the application of a risk management approach, in particular with regard to security”* (point 2.2 of the meeting report, GR-PBA(2023)CB1). The Deputy Secretary General underlined *“that this sensitive issue had been thoroughly examined from the beginning (...), not least in the framework of the legal and financial consequences of the aggression of the Russian Federation against Ukraine (cf. CM(2022)70) (and) recalled that the Secretary General had presented information on Russian staff (...) (cf. SG/Inf(2022)17) and the proposed course of action in full transparency, based on a thorough analysis of the situation, the rules in force, and the legal and financial implications, in line with the Staff Regulations, the Statute and as a rule-of-law-based Organisation”* (point 2.3 of the report). The Deputy Secretary General explained that *“procedures were in place should any pressure be exerted on individual staff members and that risk management was engrained in the Organisation”* and assured the Group *“that the Secretary General and himself took the issues of sensitive posts and risk management very seriously, on which particular attention was paid and appropriate measures taken”* (point 2.4 of the report).

17. By a decision of 15 March 2023 (CM/Del/Dec(2023)1460/2.3), the Committee of Ministers *“invited the Secretary General to ensure an appropriate level of risk management with regard to the vulnerabilities, sensitivities and relevance of positions, in particular managerial functions, based on detailed inputs and recommendations of the Budget Committee, to be taken into account in the context of the employment and staff management within the Secretariat, including risks of external pressure being exerted upon staff members, in particular in light of the Russian Federation’s aggression against Ukraine”*.

18. As a follow-up to the Committee of Ministers’ decision, the Secretary General instructed the Director General of Administration to carry out a risk assessment concerning certain functions within the Secretariat. The risk assessment was carried out by the Director General of Administration based on a set of criteria such as, inter alia, managerial responsibility; visibility (internally or externally); prominence in the organisational charts; financial responsibility; potential repercussions of the decision-making the job entails; the political/controversial/sensitive nature of the sector/subject-matter or access to confidential/sensitive information.

19. On 14 June 2023, the Secretary General informed the Committee of Ministers (SG/Inf(2023)22) of the follow-up she had given to their decision of 15 March 2023 (see paragraph 17 above). She indicated that following a risk assessment of relevant jobs, she had implemented a mobility exercise involving a certain number of internal transfers, in accordance with the Staff Regulations. The risk assessment criteria included the sensitivity of the sector or entity, management responsibilities, financial responsibilities, contacts with external partners, political visibility, access to sensitive information and the importance of decision-making. Since the beginning of the year, 53 internal transfers or secondments had been carried out. The Secretary General expressed her belief that this was in the interests of both the

Organisation and the staff members concerned and specified that this exercise would continue. She pointed out that this risk management exercise did not put into question the integrity and competences of the job holders concerned. The Secretary General also confirmed that she would continue to ensure a coherent risk assessment of sensitive jobs, including all senior and middle management jobs, and others, as appropriate.

20. By a decision of the same date ([CM/Del/Dec\(2023\)1469/1.3](#)) the Ministers' Deputies took note of the Secretary General's communication and invited their Rapporteur Group on Programme, Budget and Administration (GR-PBA) to remain seized of the issue of risk management with regards to the vulnerabilities, sensitivities and relevance of positions in the Secretariat, in particular in the context of the Russian aggression against Ukraine, and to report back to them by the end of September 2023 at the latest, which the GR-PBA did at the 1476th meeting of the Ministers' Deputies, on 27 September 2023 ([CM/Del/Dec\(2023\)1476/2.3](#)).

B. The appellants' situation

21. In March and April 2023, the appellants were informed by the Director General of Administration that within the framework of the above-mentioned risk management exercise, their jobs were among those considered as being sensitive and that it was the Secretary General's intention to transfer them on the basis of Article 590.1 of the Staff Rule on career development. The risk assessment tables in the file show that the appellants' jobs were qualified as sensitive because most of the risk assessment criteria pertaining to their jobs gave rise to high risks. At that time, those tables were not shared with the appellants. However, the appellants were informed of their respective future assignments. It was specified that their transfer would be supernumerary, to a job at grade A3, but that their grade and level of their remuneration would be maintained. The Director General of Administration emphasised that the envisaged risk mitigating measures were in no way related to their performance or competences.

22. In response to the DGA's invitation to express their views on the intended transfers, the appellants conveyed their dissatisfaction with the envisaged measure by emails dated 11 April 2023 (third appellant), 17 April 2023 (first appellant), and 24 April 2023 (second appellant).

23. At the beginning of May 2023 (9 May 2023 for the third appellant, 12 May 2023 for the first and second appellant), the appellants were notified of the decision taken by the Deputy Secretary General, acting by delegation from the Secretary General, to transfer and assign them to an A1/A2/3 job on a supernumerary basis with effect from 15 May 2023. In pursuance to these decisions, the first and the third appellants were moved to the European Directorate for the Quality of Medicines & HealthCare, whereas the second appellant was transferred to the Directorate General of Democracy and Human Dignity, Directorate of Democratic Participation, Division of Culture and Cultural Heritage. The appellants had received an earlier email from the DGA dated 4 May 2023 (for the first and third appellant) and 9 May (for the second appellant) informing them of the decision in question.

24. On 9 June 2023, the appellants submitted separate formal complaints by which they requested that the decisions to assign them to a job of lower grade be repealed and that they be assigned to a job at A4 level corresponding to their skills and professional experience. They claimed that the decisions to transfer them from their previous jobs were arbitrary and discriminatory and contravened the Staff Regulations and Staff Rules as well as general principles of international civil service law.

25. On 10 July 2023, the Secretary General dismissed the appellants' formal complaints on the grounds that they were ill-founded.

26. On 8 September 2023, the appellants lodged the present appeals.

II. THE RELEVANT LAW

27. Paragraphs e) and f) of Article 36 of the Statute of the Council of Europe are worded as follows:

“e Every member of the staff of the Secretariat shall make a solemn declaration affirming that his duty is to the Council of Europe and that he will perform his duties conscientiously, uninfluenced by any national considerations, and that he will not seek or receive instructions in connexion with the performance of his duties from any government or any authority external to the Council and will refrain from any action which might reflect on his position as an international official responsible only to the Council. In the case of the Secretary General and the Deputy Secretary General this declaration shall be made before the Committee, and in the case of all other members of the staff, before the Secretary General.

f Every member shall respect the exclusively international character of the responsibilities of the Secretary General and the staff of the Secretariat and not seek to influence them in the discharge of their responsibilities”.

28. Paragraph b) of Article 37 of the Statute of the Council of Europe provides the following:

“b The Secretary General is responsible to the Committee of Ministers for the work of the Secretariat. Amongst other things, he shall, subject to Article 38.d, provide such secretariat and other assistance as the Consultative Assembly may require”.

29. Article 2 of the Council of Europe Financial Regulations provides the following:

“The Secretary General is responsible to the Committee of Ministers for the sound administrative and financial management of the Organisation. He or she shall ensure the efficient administration of the Organisation and the economic use of the resources entrusted to him or her. To this end, he or she will put in place a governance system, including notably: risk management, internal control, internal audit, performance indicators and evaluation of results”.

30. The provisions of the Staff Regulations read, insofar as relevant, as follows:

ARTICLE I – Duties, Obligations and Privileges

“1.1 Staff members of the Council of Europe are international civil servants. By accepting appointment, staff members of the Council of Europe pledge themselves to discharge their duties and to regulate their conduct with the sole interests of the Council of Europe in mind.

1.2 Each staff member shall subscribe to the declaration below in writing. The declaration shall also be made orally before the Secretary General by staff members of grades A6 and A7:

“I solemnly declare that I shall exercise the duties entrusted to me as an international civil servant of the Council of Europe in all loyalty, discretion and conscience, respecting the confidence placed in me and with the sole interests of the Council of Europe in mind. I will not seek or accept any instructions in regard to the performance of my duties from any government or other party external to the Organisation.”

1.3 Staff members are subject to the authority of the Secretary General and to assignment by the Secretary General to any of the activities or duty stations of the Council of Europe. They are accountable to the Secretary General in the exercise of their functions.

(...)

1.7 In the performance of their duties, staff members shall neither seek nor accept instructions from any government, authority, non-governmental organisation or other third party. (...)”

ARTICLE II – Rights

“2.1 The Council of Europe shall at all times act with fairness and due care in its relations with staff members. In particular, the Organisation shall guarantee staff members’ rights to:

(...)

2.1.2 equal treatment without discrimination; (...).”

ARTICLE IV – Entry into service

“(…)

4.2 (...) Only citizens of member States shall be eligible for appointment as staff members.(...)”

ARTICLE V – Career development

“(…)

5.6 The Secretary General may transfer a staff member to another job, including in a different duty station, classified in the same category and grade, having first invited the staff member concerned to express their views.

(...)”

31. The relevant provisions of the Staff Rule on career development provide as follows:

570. Transfer without competition

“570.1 The Secretary General may transfer a staff member to another job, including in a different duty station, having first invited them to express their views.

(...)”

590. Supernumerary transfer

“590.1 Where a staff member is to be transferred and there is no vacant job at the grade held, the Secretary General may, as an exception and for a limited time, transfer the staff member to a job in a lower grade, having first invited the staff member concerned to express their views. The staff member so transferred shall continue to hold the same grade and receive the same remuneration.

590.2 The staff member so transferred shall be transferred to a job corresponding to their grade and for which they are qualified as soon as such a vacancy arises.

(...)”

THE LAW

I. JOINDER OF APPEALS

32. Given the similarity of the factual circumstances and legal framework of the appeals, the Administrative Tribunal ordered their joinder pursuant to Rule 6 of its Rules of Procedure.

II. EXAMINATION OF APPEALS

33. In their appeals, the appellants ask the Tribunal to annul the decisions taken by the Deputy Secretary General, acting by delegation from the Secretary General, and notified on 9 and 12 May 2023 respectively, to transfer and assign them to an A1/A2/A3 job on a supernumerary basis with effect from 15 May 2023, and if need be, to annul the Secretary General’s decisions dated 10 July 2023 rejecting their formal complaints.

34. The first and third appellants ask that the Secretary General be ordered to reassign them to A4 jobs corresponding to their grade, competences and functions. During the hearing, the

second appellant withdrew his request that the Tribunal order the Secretary General to reassign him to an A4 job corresponding to his grade, competence and function, having been in the meantime assigned to such a job.

35. The three appellants also ask that the Tribunal order the Secretary General to pay each appellant the sum of EUR 5 000 as compensation for the prejudice they suffered and to award them the total sum of EUR 8 707,83 in costs.

36. For her part, the Secretary General asks the Tribunal to declare the appeals unfounded and to dismiss them. She also asks the Tribunal to dismiss the appellants' claim for compensation for moral damages on the ground that they provide no justification in support of their claim and that in any event, such damage cannot be attributed to the Organisation. The Secretary General asks further that the Tribunal dismiss the appellants' claim for reimbursement of costs in the event of dismissal of the appeals, on the ground that they 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 18.4 of the Tribunal's Statute.

III. THE PARTIES' SUBMISSIONS

A. The appellants

37. The appellants consider that their appeals are admissible. On the merits, they submit a number of pleas: lack of legal basis and breach of the principle of legal certainty, as well as of Articles 570.1 and 590.1 of the Staff rule on career development; manifestly erroneous conclusions drawn from the risk assessment and excess of powers; breach of the legal principles governing the international civil service such as the principles of equal treatment and non-discrimination, proportionality, sound administration and duty of care towards staff.

1. The legal basis of the contested decisions

38. While recognizing the Secretary General's discretionary powers in matters of personnel management, the appellants recall that such powers must always be lawfully exercised. They contend that the two provisions referred to in the challenged decisions, namely Articles 570.1 and 590.1 of the Staff Rules, cannot justify the contested transfers and therefore, do not constitute a legal basis. The appellants consider that the Organisation's interpretation of these two legal provisions is erroneous in that they should not be read together.

39. As regards Article 570.1 of the Staff Rules, the appellants claim that this provision allows the transfer of a staff member only if the new job to which he or she is assigned corresponds to the official's grade, level of responsibilities and competencies, in accordance with the principle of the equivalence of jobs. They note that the contested decisions were taken in disregard of this requirement, since they no longer occupy jobs at the same level as the ones they previously held. They claim further that this is the consequence of the Administration's decision to bar officials with Russian citizenship from managerial functions within the risk assessment exercise. The appellants add that their reassignment did not serve the actual needs of the Organisation, which is in contradiction with the settled case-law requiring that any transfer and reassignment of an official be made in the interests of the service.

40. The appellants further submit that the Organisation did not properly apply Article 590.1 of the Staff Rules, under the terms of which the supernumerary transfer is an exceptional

measure foreseen when staff members find themselves without assignment, for instance due to a suppression of posts or following unpaid leave, and where there are no jobs corresponding to their grade. That was, however, not their case since their jobs were not suppressed and it was only because the Organisation decided that they could not occupy A4 jobs due to their Russian citizenship that they had to be assigned to A1/2/3 jobs. Nevertheless, the appellants note in this respect that the Organisation does not provide evidence to support its allegations that none of the vacant A4 jobs to which they could have been assigned stood the test of the risk assessment.

41. Moreover, the appellants complain that the Administration failed to provide details as to the duration of their supernumerary assignments and made no attempt to reassign them to A4 posts which became vacant in the meantime, thus ignoring the requirement made under Article 590.1 of the Staff Rule that supernumerary assignments should be limited in time. As to the requirement imposed under this rule that the concerned staff member should be able to express their views, the appellants allege that in their cases, this was a mere formality rather than a genuine effort to consider their views or seek an agreeable resolution.

2. The conclusions drawn from the risk assessment

42. Under this ground, the appellants criticize the broad approach taken by the Secretary General towards risk assessment. Whereas in their decisions, the Budget Committee and the Committee of Ministers referred to the need to avert the actual risk of external pressure being exerted upon staff members occupying sensitive functions, the Secretary General grounded the contested decisions on the mere perception of a potential risk of external pressure. The appellants question whether the Secretary General was competent to act beyond the scope of the Ministers' Deputies' requests. In reply to the observations submitted by the Secretary General, the appellants note that it is only before the Tribunal that the Organisation mentions for the first time that it faced a "real risk that the work of many key sectors [...] would be increasingly called into question", and not merely the perception of such a risk.

43. The appellants observe on the other hand that the Secretary General failed to carry out a thorough and objective analysis of the situation, based on an individualised assessment of their situation and the specificities of the positions they held prior to their transfer. They consider that in so doing, the Secretary General disregarded sound risk management principles, as well as the policy and guidelines which applied at the time to risk management at the Council of Europe. The appellants also complain that it was never explained to them, neither proven, that the criteria on which the risk management was based were appropriate and necessary in the given circumstances, nor that their situation was thoroughly examined against those criteria which included the sensitivity of the sector or entity, management responsibilities, contacts with external partners, political visibility, access to sensitive information and the importance of decision-making. They claim that this is also visible from the unclear scoring system applied during the risk assessment exercise.

44. The appellants submit that the Secretary General drew erroneous conclusions from the risk management exercise: had she made a careful analysis of their individual situations, the only possible conclusion would have been that there was no risk, let alone the possibility of a risk of them being influenced or pressured by the Russian government. In fact, in the appellants' view, there is nothing in the Secretary General's contentions that would suggest that they were in any way vulnerable to such a risk. They point to the obscure and vague character of the Secretary General's references to alleged concerns that had been voiced and that would have exposed them to unjustified criticism. They also complain that no indication was given to them

whether other less severe risk management measures were considered prior to the decision to transfer them.

3. *The legal principles governing the international civil service*

45. Under this ground, the appellants contend firstly that the Organisation violated the principles of equal treatment and non-discrimination because they were treated less favourably than other officials in a similar situation, on account solely of their Russian citizenship, and that this difference of treatment cannot be objectively and reasonably justified. The appellants emphasize that they are international civil servants subject to the same obligation of loyalty as any other staff member and underline the fact that they also hold French citizenship. In the appellants' view, not only are the contested decisions devoid of any legal basis, but in the absence of an individualised assessment, they cannot be deemed necessary nor adequate in relation to the stated aim of averting the risk of undue pressure or influence by the Russian government. The appellants refute the Secretary General's argument that the contested decisions were justified by the nature of the A4 posts they occupied, and not their Russian citizenship. Had this been the case then other staff members, and not only those with Russian citizenship, would have been transferred from their jobs, as well. Even assuming that the contested measures pursued a legitimate aim, the appellants contend that they were not proportionate, as demonstrated by the fact that other staff members with Russian citizenship occupying managerial functions in other parts of the Organisation were kept assigned to their jobs.

46. Secondly, the appellants contend that the Administration failed to act in a transparent manner and to give coherent and unequivocal reasons for the challenged decisions, in breach of the principle of sound administration. They complain that they were not provided with any explanation allowing them to understand on which criteria the decisions were based and how they were applied to their case. The appellants note that before lodging their appeals, they had no knowledge of the existence of the risk assessment tables concerning their jobs which the Secretary General transmitted to the Tribunal. They question the validity of these documents. The appellants further allege that the decisions in question failed to give consideration to their views and are flawed by an inherent contradiction: on the one hand, it was excluded that the appellants personally posed any risk for the Organisation or that there were issues with respect to their competencies, performance or their loyalty, yet, on the other hand, it was found that there was a "perceived potential risk of undue influence which posed a risk to the Organisation's reputation". Moreover, the appellants fail to understand the relevance to their situation of the requests by certain member States to terminate the appointment of staff members with Russian citizenship.

47. Thirdly, the appellants invoke a breach of the duty of care. They complain that the Administration failed to take into consideration their views before adopting the contested decisions and thus overlooked their professional and personal circumstances. The first and the second appellants reproach the Administration for having consulted them while they were on sick leave. The appellants put forward the undue emotional distress and damage to their reputation inflicted upon them by the contested decisions.

B. The Secretary General

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

1. The legal basis of the contested decisions

49. The Secretary General maintains that the challenged decisions are based on Articles 570.1 and 590.1 of the Staff Rule on career development, which should be read together and are both applicable in the case of the appellants. Article 570.1 establishes the principle that the Secretary General has the power to transfer any staff member to another job and is the reflection of the discretion she enjoys in deciding such transfers in the interests of the Organisation, while Article 590.1 addresses the specific case where the staff member is transferred to a job of lower grade than their current one.

50. The Secretary General stresses that there is no requirement under the applicable rules that the responsibilities of the staff members in the new posts following a transfer must correspond to their grade, nor is it a requirement that the staff members consent to the transfer. The only requirement is to first invite the staff member to express his or her views, which was the case for the appellants. There is nothing in the wording of Article 590.1 of the Staff Rule on career development to support the appellants' restrictive interpretation limiting supernumerary transfers to situations where staff members find themselves without assignment.

51. Thus, in the Secretary General's view, the applicable rules make it clear that there is no right nor legitimate expectation on the part of staff members to remain in a specific job throughout their career. It is the Secretary General who is the competent authority to assess the needs of the Organisation and the interests of the service and to transfer staff members accordingly. The Secretary General specifies that as a rule, staff members to be transferred are assigned to a job classified in the same category and grade; however, under the exception provided for under Article 590.1 of the Staff Rules, a staff member may be temporarily transferred to a job in a lower grade.

52. As to the basis for adopting the impugned decisions, the Secretary General stresses that the transfer decisions must be seen in the context of the exceptional and unprecedented situation, marked by the Russian Federation's brutal war of aggression against Ukraine and by its ongoing attempts at undermining democracy and the rule of law within countries and international organisations. The Secretary General recalls that the aim of the contested transfers was to ensure an appropriate level of risk management for the identified sensitive positions by mitigating the risks of pressure being exerted upon job holders and to protect them. The decisions were not based on the assumption that the appellants would personally pose a risk to the Organisation or that they were – or had been in the past – subject to undue pressure by national authorities, as the Secretary General publicly acknowledged. It was however considered that given the sensitivity and visibility of their respective A4 jobs, the mere perception of a potential risk of undue influence impacted negatively on the Organisation and exposed the appellants in a manner that called for mitigating measures. Consequently, the litigious transfers were necessary to mitigate potential and already emerging risks for the Organisation's reputation and proper functioning as well as to protect the appellants' own interests in a situation of vulnerability. The Secretary General provides details regarding the specific features of the jobs previously held by the appellants which led to such a conclusion. She also mentions concrete, yet unsubstantiated, concerns which had been brought to the attention of the Administration by Council of Europe stakeholders regarding the appellants which could have potentially exposed them to unjustified criticism.

53. As to the proportionality of the challenged measures, the Secretary General recalls that since the cessation of the Russian Federation's membership in the Organisation in 2022, representatives of several member States have repeatedly asked her to terminate the appointments of all staff members with Russian citizenship, to which she has replied by stressing the trust she places in all Secretariat members in their capacity as independent international civil servants, including those of Russian citizenship.

54. Further, the appellants' contention that the transfer decisions were tainted by misuse of power are unsubstantiated. The Secretary General refutes the appellants' allegations that the Council of Europe decided to bar officials with Russian citizenship from managerial functions. She states that the reason why the appellants could not be transferred to jobs corresponding to their grades was that at the time, there were no A4 vacancies that stood the test of the risk assessment to which the appellants could have been assigned. While recognising repeatedly her obligation to transfer them to a job corresponding to their grade and qualifications as soon as possible subject to a positive risk assessment of the job concerned, the Secretary General believes that every effort was made to transfer the appellants to jobs matching their qualifications. In her rejoinder, the Secretary General informed the Tribunal that the second appellant had in the meantime been assigned to an A4 job, thus ending his supernumerary assignment as of 1 January 2024.

2. The conclusions drawn from the risk assessment

55. The Secretary General recalls that it was not for the Budget Committee nor the Committee of Ministers to establish the exact scope and precise criteria for the risk management exercise since under the relevant rules she is the authority competent to ensure an appropriate level of risk management within the Organisation. The Secretary General objects to the appellants' argument that the risk assessment should have involved a concrete and individualized assessment. She notes that this would have contradicted the assumption that their loyalty was not in question and would have led to an unjustified interference with their private life through an investigation. Moreover, it would not have served the purpose of addressing the perception by stakeholders and external partners of a risk of undue influence and the exposure and vulnerability of staff members concerned.

56. The Secretary General thus defends the approach followed which consisted in determining which jobs were to be considered as sensitive. She offers two examples illustrating how the mere perception of a risk of undue influence had the potential of disrupting the Organisation's functioning and exposing the staff members concerned to unjustified criticism. In conclusion she repeats that the contested transfers were both in the interests of the staff members concerned and of the Organisation: on the one hand, they allowed the staff members concerned to continue their employment with the Organisation in an environment where they were not exposed to unfounded allegations or mistrust; on the other, the transfers were necessary to preserve the proper functioning of their respective former entities. The Secretary General emphasizes in this respect the fact that the existence and functioning of an intergovernmental organisation depends to a large extent on the trust its member States and their delegations place in the Secretariat.

3. The legal principles governing the international civil service

57. The Secretary General rejects the appellants' claim that the risk assessment was inherently discriminatory and based exclusively on their Russian citizenship. In the context of

the unprecedented crisis caused by the cessation of the Russian Federations' membership, she upholds that it was justified to address the concerns expressed by the Budget Committee and the Committee of Ministers in terms of security risks. The classification of sensitive jobs was unrelated to the identity and characteristics of the jobholders, and solely based on objective criteria pertaining to the function and responsibilities attached to such jobs. She explains the broad scope of the risk management exercise, which entailed the mobility of staff members with a broad range of nationalities, and which will continue, without being limited to staff members holding Russian citizenship.

58. Concerning the appellants' claim that the impugned decision ran counter to the principle of sound administration, the Secretary General notes that not only were the appellants perfectly aware of the context in which the decisions were taken, but they had the opportunity to ask for and obtain clarifications before the transfer decisions were taken. The Secretary General submits further that in the replies to their formal complaints, the appellants were provided with additional explanations on the reasons underlying the decisions to transfer them. The fact that the appellants were not provided with the risk assessment tables concerning their jobs did not hinder their ability to comment on their envisaged transfers in an informed manner.

59. The Secretary General adduces several considerations to counter the appellants' argument of an alleged breach of the duty of care: the appellants' grade and level of remuneration have been maintained and their professional status has been preserved to the extent possible; their transfers are limited in time and every effort is being made to assign them to jobs corresponding to their grades; their integrity and competence was never put into question; if two appellants had to be contacted while on sick leave with respect to the envisaged transfers, this was due to the urgency of the risk management exercise and the imperative for the Administration to respect its obligation to invite them to express their views.

60. The Secretary General thus concludes that the challenged decisions are entirely justified and were made in full conformity with the applicable regulations and general principles of law.

C. The third party

61. In its intervention in support of the appeals, the Staff Committee expresses its opinion that the appellants were affected because of their citizenship, in disregard of the principles applicable to the international civil service, such as the principles of equal treatment and non-discrimination, and that of the independence of international civil servants. The Committee is critical of the methods used by the Administration to assess the risks. It points the finger at the lack of communication on the risks identified, the choice not to analyse the risks involving staff with the nationality of other States and the fact that other managers with Russian citizenship were able to avoid a transfer. The Staff Committee insists on the disproportionate nature of the measures taken against the appellants when their individual responsibility was not in question. It considers that the mobility imposed on them was not in fact intended to manage risks but to reach a compromise with those member States which were demanding more radical measures against staff with Russian citizenship.

IV. THE TRIBUNAL'S ASSESSMENT

62. The Tribunal notes from the outset that in the matters of employment, including transfer following the risk assessment exercise like in the present case, the Secretary General enjoys wide discretionary powers which are subject only to limited review by the Tribunal. Exercise

of those powers, however, shall not result in decisions which are arbitrary or irrational (see Administrative Tribunal of the Council of Europe (ATCE), Appeal No. 723/2022, *Zaytseva v Secretary General*, [decision of 12 June 2023](#), paragraphs 41 and 42 with further references). Accordingly, the Tribunal will annul an employment-related decision only if it: was not taken by a competent authority, is vitiated by a formal or procedural defect, is based on an error of fact or law, fails to take account of essential facts, is vitiated by an abuse of power or relies on conclusions wrongly drawn from the evidence in the file (ATCE, Appeal No. 226/1996, *Zimmermann v. Secretary General*, [decision of 24 April 1997](#), paragraph 37). Keeping this in mind, the Tribunal will now proceed to the examination of the parties' arguments.

A. The legal basis of the contested decisions

63. Insofar as the appellants challenge the legality of the decisions in question, the Tribunal considers that, for the purposes of verifying whether the contested transfers were legally founded, it must determine the relation between the two legal provisions referred to in the challenged decisions to justify the appellants' transfers, namely Articles 570.1 and 590.1 of the Staff Rule on career development. Whereas the appellants tend to read these provisions in isolation from each other and argue that neither offers a proper legal ground for their transfers, the Secretary General submits that both rules offer the required legal basis for the challenged decisions and that their meaning becomes clear only when they are interpreted together.

64. According to the Tribunal's case law, "it is a basic rule of interpretation that words which are clear and unambiguous are to be given their ordinary and natural meaning and that words must be construed objectively in their context and in keeping with their purport and purpose" (ATCE, Appeals Nos. 722/2022, 731/2022, 732/2022 and 733/2022, *Orekhova and Others v. Secretary General*, [decision of 4 April 2023](#), paragraph 58 with further references). The Tribunal further held that "the provisions relevant to a particular case are often interconnected and must therefore be interpreted as a logical whole" (ATCE, Appeal No. 546/2014, *Devaux v. Secretary General*, [decision of 30 January 2015](#), paragraph 35).

65. Turning to the provisions concerned, the Tribunal notes that the second provision mentioned above, i.e. Article 590. 1 of the Staff Rule on career development on supernumerary transfer is expressly construed as an "exception". Hence, it can only be understood and interpreted in relation to the standard, principle or rule from which it derogates. In the present case, it is apparent that the rule from which Article 590.1 derogates is the earlier provision on transfer without competition laid down in Article 570.1 of the Staff Rule on career development. Although Article 570.1 does not explicitly mention the requirement of the equivalence of post/grade in case of a transfer, this provision derives its authority from the corresponding provision of the Staff Regulations, i.e. Article 5.6., which clearly establishes the Secretary General's power to transfer staff members to other jobs "classified in the same category and grade". Thus, as acknowledged by the Secretary General in the written pleadings, a decision to transfer a staff member to another job will imply, as a general rule, his or her transfer to a job classified in the same category and grade. As an exception to this rule and subject to certain conditions, Article 590.1 of the Staff Rule on career development on supernumerary transfer allows however departing from the requirement of the equivalence of jobs/grades and transferring a staff member to a job in a lower grade.

66. Regarding the conditions which apply to a supernumerary transfer, Article 590.1 of the Staff Rule on career development specifies that such a transfer may be envisaged "where a staff member is to be transferred and there is no vacant job at the grade held". The Tribunal notes in

this respect that as an expression of the general power to transfer staff members founded in Article 570.1 of the Staff Rule on career development, the supernumerary transfer foreseen in Article 590.1 remains discretionary in nature. Thus, the words “where a staff member is to be transferred” should not be construed as limiting the Secretary General’s discretion. In the Tribunal’s opinion, there is nothing in the legal wording of the relevant provisions which would support the appellants’ restrictive interpretation as applying only to cases where the staff members’ posts are abolished or when a staff member returns from unpaid leave. On the contrary, the Tribunal notes that there are specific provisions in the Staff Regulations and rules for regulating the situation where a staff member’s post is abolished (Articles 660.7, 660.8 and 670 of the Staff Rule on termination of service) or where a staff member returns from unpaid leave (Article 890 of the Staff Rule on working hours and leave).

67. As to the condition set in Article 590.1 of the Staff Rule on career development that the supernumerary transfer should occur only “for a limited time”, it cannot be inferred from this condition that the Secretary General should have provided the appellants with an indication of the precise duration of their transfers. The Tribunal observes in this regard that under the terms of Article 590.2, the supernumerary transfer is to be terminated and the staff members concerned returned to a job corresponding to their grade “as soon as a vacancy [for which they are qualified] arises”. Considering that the precise moment in which such a vacancy arises cannot be determined in advance, the Tribunal infers from this provision that the duration of the supernumerary transfer will depend on the occurrence of this circumstance.

68. The Tribunal observes further that the Secretary General respected the procedural requirement set forth in Article 590.1 of the Staff Rule on career development, by inviting the appellants to share their views on the envisaged transfers.

69. In view of the above, the Tribunal considers that in having based the contested decisions on both Articles 570.1 and 590.1 of the Staff Rule on career development, the Secretary General acted foreseeably in respect of the appellants’ transfers and complied with the conditions under which a supernumerary transfer may be decided. The Secretary General did not disregard the principle of equivalence of jobs/grades which applies to transfers of staff members, as claimed by the appellants. Rather, she relied on the exception allowing her to temporarily assign them to jobs carrying a lower grade. Most importantly, she gave reasons for doing so, whilst preserving their grade and the equivalent level of remuneration.

B. The principle of equal treatment and non-discrimination

70. The Tribunal will next examine the appellants’ complaint that the contested decision unfairly discriminated them on account of their nationality.

71. The Tribunal’s established case-law is that the rule of non-discrimination is one of the general principles of law which prevails in the legal system of the Council of Europe where it is enshrined in Article 14 of the European Convention on Human Rights. This rule protects individuals, placed in analogous situations, from discrimination and prohibits different treatment for which there is no objective and reasonable justification (ATCE, Appeal No. 719/2022, *Gurin v. Secretary General*, [decision of 31 January 2023](#), paragraph 59; ATCE, Appeal No. 557/2014, *Hedman v. Secretary General*, [decision of 10 December 2015](#), paragraph 64). The Tribunal has specified in this respect that “a breach of the principle of equal treatment is deemed to have occurred when two categories of persons whose situations in fact and in law display no essential differences are treated differently and there is no objective justification for

such difference in treatment”. In this respect, differences in treatment, which are justified by an objective and reasonable criterion, and remain proportionate to the aim sought, do not constitute a breach of the principle of equal treatment. (ATCE, Appeals Nos. 661/2020 and 662/2020, *Bohner (VII) and Cagnolati v. Secretary General*, [decision of 27 April 2021](#), paragraph 90). As regards specifically the condition of citizenship, the Tribunal held that “[e]xcluding a staff member from a post on the ground of his or her nationality, when no particular nationality is required for the post and no such requirement has been indicated”, would amount to a breach of the Staff Regulations which prohibits discrimination (ATCE, Appeal No. 590/2018, *Korljan v. Secretary General*, [decision of 30 January 2019](#), paragraph 95).

72. It is not in dispute between the parties that the Russian citizenship of the appellants had a fundamental bearing on their contested transfers. The Tribunal does not see any reason to reach a different conclusion. It is now for the Tribunal to determine whether, in the circumstances, that differential treatment was objectively justified by the pursuit of a legitimate aim and in the case of the affirmative, whether the measures taken remained proportionate to that aim.

73. As to the aim of the contested decisions, the Tribunal notes that the transfers were presented as mitigating measures aimed at ensuring an appropriate level of risk management for the identified sensitive jobs. In the light of this aim, the transfers were considered as necessary for the proper functioning of the Organisation and the protection of its reputation.

74. The Secretary General has also provided the Tribunal with extensive general background information illustrating to what extent her decision to keep in employment staff members with Russian citizenship holding indefinite term contracts – including staff members holding the citizenship of a member State alongside the Russian one – is repeatedly put into question at the highest political level in the Organisation. In this connection, the Secretary General puts forth that the risk management exercise and the transfers were meant to respond to member States’ concerns and to generate acceptance for her decision to continue the employment of staff members with Russian nationality within the Council of Europe.

75. Having regard to the foregoing, the Tribunal finds that there were objective reasons for the Secretary General to treat the appellants differently within the risk management exercise, as staff members holding Russian citizenship and occupying sensitive jobs. The Tribunal observes that although, in theory, this exercise was not conceived to target exclusively staff members holding Russian citizenship, in practice, the mitigating measures that were decided on this basis were by and at large limited to staff members in this situation, including the appellants. The Tribunal considers, however, that in view of the situation within the Organisation and considering the concerns that had been voiced by the Ministers’ Deputies, it was not unreasonable for the first measures taken in the context of the risk management to focus, as a matter of priority, on this category of staff. In this respect, the Tribunal takes note of the Secretary General’s statement that the risk assessment exercise will continue without being limited to staff members holding Russian citizenship and will include all senior and middle management jobs, as appropriate.

76. As to the legitimate aim pursued through the contested measures, the Tribunal finds that the Secretary General relied on the powers she is vested with under the applicable rules, namely Article 37, paragraph b) of the Statute of the Council of Europe and Article 2 of the Council of Europe Financial Regulations. Under the terms of these provisions, the Secretary General is responsible before the Ministers’ Deputies for the sound management of the Organisation,

including of its human and financial resources, the risk management being part of the governance system that she is expected to implement to this end. As for the legal basis for the contested transfers, the Tribunal has already found above (paragraphs 63 to 69) that the measures in question were correctly based on the applicable provisions on transfers and supernumerary transfers. Consequently, the Tribunal considers that the challenged measures did meet a legitimate aim.

77. Regarding the question of whether such measures remained proportionate to the legitimate aim, the Tribunal notes that the transfers marked an unexpected event in the appellants' career, which changed its course, through no fault of their own. At the same time, the Tribunal also notes that there is no right, and thus no legitimate expectation, on the part of staff members to remain in a specific job throughout their career, since it is for the Secretary General to assess the needs of the Organisation and decide accordingly to which jobs staff members should be assigned in the interests of the service. In the Tribunal's view, once the appellants' former jobs were classified sensitive, it was understandably difficult, if not impossible, to keep the appellants in their jobs, since any other alternative risk management measure might not have been sufficient to avert the risks in question. As regards the fact that the jobs to which the appellants were moved did not carry the same level of responsibility, the Tribunal concedes that a supernumerary transfer may be viewed as detrimental to a staff member's future career prospects, even if the staff member concerned continues to hold the same grade and same level of remuneration. The Tribunal notes however that a supernumerary transfer is, by definition, a temporary measure: since lodging these appeals, one of the appellants, D.K., has been transferred to a job corresponding to his grade and as regards the two other appellants, the Secretary General has confirmed her duty to identify a suitable job to which they could be transferred, in accordance with Article 590.2 of the Staff Rule on career development. If at any time the appellants should consider that the Secretary General is in breach of this obligation, they may bring the matter before the Tribunal. Having weighed all these factors, the Tribunal concludes that the contested measures, although undoubtedly severe, did not exceed the limits of proportionality in relation to the objective pursued.

78. Consequently, following a rigorous review to verify that there were objective reasons justifying the differential treatment of the appellants, the Tribunal considers that the contested transfers pursued a legitimate aim and remained proportionate to the aim pursued. It follows that the transfers in question may not be regarded as amounting to a breach of the principle of equal treatment and non-discrimination.

C. The risk assessment

79. As a preliminary point, the Tribunal considers that the set-up of the risk assessment exercise which gave rise to the present case was a matter entirely for the discretion of the Secretary General. It was for her to identify the risks to be avoided, to define the criteria for assessing their seriousness and to choose the most appropriate measures to respond to them, without being bound or otherwise restricted in that exercise by the statements of principle expressed by the Ministers' Deputies. That having been said, the Tribunal retains the power to review the manner in which this exercise was carried out, in order to verify that the consequences drawn for the appellants were not the result of an arbitrary assessment and respected the guarantees imposed by international civil service law for the staff members concerned.

80. Firstly, the Tribunal notes that the criteria used for classifying the appellants' former jobs as being sensitive in terms of risk appear to be appropriate to the aim pursued. The criteria were objective and encompassed a series of significant features inherent to the jobs. The Administration can be reproached for not providing further guidance to those concerned about the classification and the weight of each individual criterion to a job of particular profile. Nevertheless, in the unprecedented context in which the risk management exercise took place, the Tribunal considers its result acceptable. Therefore, it finds that the conclusion reached, that the posts of Head of the Legal Support Division within the DGA, Head of the Division of Political Advice and Head of the Internal Audit Division within DIO were sensitive, is not arbitrary.

81. Regarding the assessment of the risks involved in keeping the appellants in their former jobs, the Tribunal notes that the risks advanced by the Secretary General included potential risks for the Organisation's reputation, its proper functioning and security, as well as the appellants' potential exposure to unjustified criticism. In this respect it considers that it was not inconsistent for the Secretary General to take into account the concerns reported to her by various Council of Europe stakeholders, while admitting that those concerns were unfounded. This circumstance alone could, in the Tribunal's view, provide evidence that the appellants were exposed to unfounded criticism and were in a situation of vulnerability. The Tribunal accepts that this was a risk that could have a disruptive effect on the functioning of the Organisation. As regards the appellants' argument that the Administration was not always consistent in indicating which were the risks in question (paragraph 42), the Tribunal takes the view that it would have been appropriate to define the risks involved before the risk assessment exercise was carried out and to refer to these definitions throughout the exercise. However, considering that the determination of the risks in question was a matter for the discretion of the Secretary General, it is not for the Tribunal to substitute its own judgment for that of the Administration in determining the threshold at which a risk could be considered to exist. It nevertheless has the duty to determine whether the discretionary decision was taken in accordance with the law, such as must be observed in the legal systems of international organisations (Council of Europe Appeals Board (ABCE), Appeal No. 77/1981, *Vangeenberghe v. Secretary General*, [decision of 11 June 1982](#), paragraph 31). In deciding that the mere perception of a potential risk of undue influence upon a staff member constituted a threat to the Organisation's reputation, the Tribunal finds that the Secretary General did not exceed the limits imposed on the exercise of her discretionary powers.

82. As regards the choice made in favour of the transfers as the most appropriate measure to address the risks identified, the Tribunal recalls once again that the decision to transfer a staff member is discretionary in nature and subject to limited judicial review (ILOAT, [Judgment No. 115](#), consideration 7), particularly as regards its compatibility with the interest of the service or of the Organisation (ILOAT, [Judgment No. 100](#), consideration 2). Having regard to the considerations developed above (paragraphs 62 and 79 to 81), the Tribunal finds that the Secretary General's assessment that the transfers in question were necessary to protect the interests of the Organisation was the consequence of an objective examination of the various issues at stake. The fact that other members of staff of Russian citizenship occupying jobs of A4 level or higher in the Organisation were able to remain in their posts further supports this finding. The evidence in the file shows that contrary to the appellants' claim, a blanket ban from performing managerial functions was not imposed on all staff members with Russian citizenship. The decision to either keep them on, or remove them from, their posts was taken following a careful case-by-case analysis of each individual situation.

83. In view of the foregoing, the Tribunal finds that although the risk assessment exercise conducted by the Administration might be open to criticism, it does not transpire from the file that the Secretary General made any improper use of her wide discretionary powers during this exercise.

D. The duty to provide reasons - The right to be heard

84. Regarding the appellants' allegation that the Administration infringed its duty to provide reasons for its decisions, the Tribunal notes, as already mentioned, that in the present case, decisive factors for the decision to transfer the appellants had nothing to do with them personally, in terms of their performance, skills or loyalty at work, apart from the fact that they were Russian nationals. The decisive factor in this process was the question of avoiding any risk of political interference in the institutional mission of the Organisation and any questioning of the integrity of its staff. The Tribunal observes, moreover, that the political debates surrounding the question of the measures following the cessation of the Russian Federation's membership were known to everyone within the Organisation, including the appellants. Thus, the reasons communicated pertaining to the classification of the appellants' jobs and the generic reference to the allegations of which they had been the target were sufficient, albeit succinct, to enable them to fully understand the grounds underpinning the decisions to transfer them.

85. Likewise, the Tribunal finds that the information to which the appellants had access was sufficient for them to express their views and it cannot be said that they were deprived of their right to be heard. The Tribunal reiterates in this regard that it is not always necessary for a decision of transfer to contain an exhaustive statement of reasons (see Court of Justice of the European Union (CJEC), *Kley v. Commission*, 1973, [35/72](#), paragraphs 7 to 21), nor is it always necessary for the reasons to be stated explicitly in the notice of transfer if it is possible for the staff member to clearly gather them from documentation communicated to him or her or from other relevant surrounding circumstances (ABCE, Appeal No. 77/1981, *Vangeenberghe v. Secretary General*, [decision of 11 June 1982](#), paragraphs 37 and 38). Equally, as regards the fact that the first and the second appellants were invited to express their views while being on sick leave, the Tribunal is of the opinion that it cannot be inferred from the mere fact that an appellant was on sick leave, which at most permitted the inference that he or she was unable to work, "that this was indicative of an inability to defend himself or herself and to exercise his or her right to be heard" (T-648/21, [YD v FRA](#), 20.09.2023, EU:T:2023:575, paragraph 42).

E. The duty of care

86. As to the appellants' claim that the contested decisions breached the duty of care, the Tribunal stresses that according to the relevant case-law, a transfer may take place in the interest of the Organisation to the detriment of other interests, including the interests of the individuals affected (ILOAT, [Judgment No. 325](#)). In the present case, the Tribunal finds that the Secretary General did not overlook the appellants' interest to keep their former jobs but found that there were overriding interests pertaining to the Organisation's reputation, functioning and security which prevailed. Within her wide scope of discretion, the Secretary General decided that the interests of the Organisation carried greater weight than those of the individual staff members to remain in their jobs (ILOAT, [Judgment No. 883](#), consideration 3). Moreover, the Tribunal notes that the Secretary General has adduced sufficient evidence to prove her efforts to re-assign the appellants to posts corresponding to their grades and she has been successful in re-assigning the second appellant to such a job as of 1st January 2024.

V. CONCLUSION

87. In view of the foregoing, the Tribunal concludes that the contested decisions were taken in conformity with the applicable rules and general principles of international civil service law, are sufficiently motivated and not based on an error of fact, and that the Secretary General has not exceeded or otherwise misused her wide discretionary powers in this matter.

88. Therefore, the present appeals are unfounded and must be dismissed. Consequently, the appellants should not be awarded any sum in compensation for damage.

VI. COSTS AND EXPENSES

89. Under Article 18.4 of the Statute of the Tribunal, in the event of an unsuccessful appeal, the Tribunal may, if exceptional circumstances so justify, decide that the Council of Europe shall reimburse all or part of the costs incurred by the appellant, in which case the Tribunal shall indicate the exceptional circumstances in its decision.

90. In the cases at stake, the Tribunal takes note that the Secretary General stresses that the impugned decisions must be seen in the context of the situation they were taken in (see above paragraph 52). However, from the file it transpires that the appellants became aware of the criteria used for the risk assessment and its respective outcome only during the proceedings before the Tribunal. Even though the details of these assessments, which the impugned decisions are mainly based upon (see above paragraph 21) were not essential for resorting to the Tribunal, it cannot be excluded that the appellants would have been in a better position to prepare their appeal, or that they might even have decided not to bring an action if they had received this information at the pre-litigation level (see *mutatis mutandis* EU Civil Service Tribunal, Judgment of 18 September 2012, *Cuallado Martorell v. Commision*, paragraph 112). Therefore, in view of the above exceptional circumstances, the Tribunal holds that the Council of Europe shall reimburse half of the costs incurred by the appellants.

For these reasons, the Administrative Tribunal:

Decides to join the appeals Nos. 739/2023, 740/2023 and 741/2023;

Declares the appeals unfounded and dismisses them;

Decides that the appellants be reimbursed half of the costs they have incurred.

Adopted by the Tribunal in Strasbourg on 20 March 2024 and delivered in writing in accordance with Rule 22, paragraph 1, of the Tribunal's Rules of Procedure on 22 March 2024, the English text being authentic.

The Registrar of the
Administrative Tribunal

Christina OLSEN

The Chair of the
Administrative Tribunal

Nina VAJIĆ