ADMINISTRATIVE TRIBUNAL
TRIBUNAL ADMINISTRATIF

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Appeals Nos. 746/2024 and 748 to 758/2024

A. S. T. and Others

v.

Secretary General of the Council of Europe

***

JUDGMENT

5 February 2025

The Administrative Tribunal, composed of:

Paul LEMMENS, 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. The Tribunal received 12 appeals, lodged and registered on the dates and under the numbers indicated below, from:

- A. S. T., Appeal No. 746/2024, lodged and registered on 21 March 2024;
- F. G., Appeal No. 748/2024,
- M. B. L., Appeal No. 749/2024,
- G. B., Appeal No. 750/2024,
- C. W.-H., Appeal No. 751/2024,
  lodged and registered on 6 May 2024;
- L. C., Appeal No. 752/2024,
- E. H., Appeal No. 753/2024,
- M.-L. F., Appeal No. 754/2024,
- M. C., Appeal No. 755/2024,
- P. N., Appeal No. 756/2024,
  lodged and registered on 13 May 2024;
- M. H., Appeal No. 757/2024,
  lodged and registered on 16 May 2024;
- F. B., Appeal No. 758/2024,
  lodged and registered on 21 May 2024.

2. The appellants submitted joint further pleadings on 20 May 2024.

3. On 9 July 2024, the then Secretary General forwarded her observations on all of the appeals.

4. On 21 August 2024, the appellants filed submissions in reply.

5. On 7 October 2024, the Secretary General submitted a rejoinder.

6. The public hearing took place in the court room of the Administrative Tribunal in Strasbourg on 18 November 2024. The appellants were represented by Giovanni Palmieri. The Secretary General was represented by Sania Ivedi, head of the Litigation division, assisted by Benno Kilian, head of the Legal advice department, and Nina Grange, legal adviser in the same department.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

7. The appellants are Council of Europe pensioners residing in France. In addition to their Council of Europe pensions, they are all drawing French pensions. The appellants are affiliated to the French social security scheme and insured under the Council of Europe's private medical scheme on a complementary basis, i.e. to cover the portion of their healthcare costs not reimbursed by the national scheme.

8. In the course of 2022 and 2023, the appellants received letters from the French tax authorities asking them to rectify matters in relation to the social security contributions that, until then, they had not been paying on their Council of Europe pensions. According to information received by the Tribunal, the amounts ranged from approximately €1 600 to €16 000. The social security contributions in question are the universal social contribution (CSG), the contribution to repayment of the social debt (CRDS) and the additional solidarity contribution for autonomy (CASA). It is worth pointing out that, according to the documents submitted by the parties, in the past most Council of Europe pensioners affiliated to the French social security scheme did not pay social security contributions on their Council of Europe pensions. This situation has apparently changed in recent years, with the French tax authorities seemingly adopting a new policy and deciding to now levy social security contributions on Council of Europe pensions.

9. On 6 December 2023, the Director General of Administration wrote to all pensioners tax resident in France, inviting them to an information meeting on 15 January 2024.

10. Between 15 December 2023 and 18 April 2024, the appellants lodged administrative complaints with the then Secretary General, seeking reimbursement of the sums demanded by the French tax authorities as retroactive payment for the social security contributions in question.

11. In decisions communicated between 25 January and 17 May 2024, the then Secretary General dismissed the appellants' administrative complaints.

12. Between 21 March and 21 May 2024, the appellants lodged the present appeals against the dismissal of their administrative complaints.

II. THE RELEVANT LAW

13. The relevant provisions of the Regulations on the medical and social insurance scheme (Appendix XII to the Staff Regulations in force until 31 December 2022) read as follows:

PART II: Affiliation of pensioners and former staff

CHAPTER I: GENERAL PROVISIONS

Article 16 – Affiliation

1. Subject to the provisions of Article 21, paragraph 3, below, the following persons shall be affiliated to the Organisation's Medical and Social Insurance Scheme:

- former staff in receipt of retirement pensions under the Organisation's Pension Scheme and aged at least 60;
- former staff in receipt of retirement pensions under the Organisation's Pension Scheme and aged at least 60;
- former staff in receipt of early retirement pensions under the Organisation's Pension Scheme, regardless of age;
(…)

CHAPTER II: BENEFITS

Article 21 – Expenses for medical treatment

(…)
3a. Persons entitled to benefits provided for in this chapter, who are personally entitled to social protection under one or more other compulsory social insurance schemes, must always obtain the benefits due under those schemes before applying for benefits under the Organisation's Medical and Social Insurance Scheme, from which the former benefits shall be deducted.

b. Nonetheless, a person entitled to a benefit provided for in this chapter who wishes to waive his/her right to protection under one or more other compulsory social schemes may do so, provided that he/she meets any and all additional costs incurred by the Organisation. (…)

14. Rules Nos. 1364 of 28 January 2014 (Article 16), 1384 of 15 December 2016 (Article 16) and 1397 of 17 December 2019 on contributions towards collective insurance premiums (Article 14) clarified the procedures for implementing the Regulations on the medical and social insurance scheme referred to above.

15. The relevant provisions concerning the tax adjustment are set out in Article 42 of the rules governing the pension scheme of the Co-ordinated Organisations (hereinafter "Co-ordinated Pension Scheme Rules") and read as follows:

1. The recipient of a pension under these Rules shall be entitled to the adjustment applying to the Member Country of the Organisation in which the pension and adjustment relating thereto are chargeable to income tax under the tax legislation in force in that country. (…)

THE LAW

I. JOINDER OF APPEALS

16. Given the connection between the 12 appeals, the Tribunal ordered their joinder pursuant to Rule 6 of its Rules of Procedure.

II. EXAMINATION OF APPEALS

17. In their appeals, the appellants ask the Tribunal:

- to annul the decision by which the Secretary General rejects any liability on the part of the Organisation in connection with the French authorities' decision to levy social security contributions on their Council of Europe pensions;
- to award compensation for the pecuniary and non-pecuniary damage suffered, by ordering the Organisation to reimburse them for the sums which they have had to pay to the French tax authorities by way of arrears for non-payment of social security contributions;

- to award them €10 000 in costs.

18. The Secretary General, for his part, invites the Tribunal to declare the appeals ill-founded and to dismiss them in their entirety. As for the appellants' claims for compensation, the Secretary General maintains that their arguments do not alter the fact that the Organisation has no liability in this matter and that therefore the claims must be dismissed. He contends that, insofar as the Administration has been transparent with the appellants, they cannot claim to have been misled by the behaviour of Council of Europe bodies. Lastly, he submits that there are no exceptional circumstances that might justify awarding costs if the appeals are declared unfounded.

A. Introductory remarks

19. Before examining the grounds relied on in support of the appeals, the Tribunal notes that what is at issue here is whether the Council of Europe can be held non-contractually liable for wrongful conduct attributable to the Organisation. According to the appellants, such conduct arises firstly from the fact that the Administration deprived them of the practical possibility of choosing, on their retirement, between joining the French social security system and being fully insured under the Council of Europe's medical scheme, i.e. from the first euro, and not merely on a complementary basis and, secondly, from the fact that the Administration failed to duly inform them of the financial implications of that choice.

20. The Tribunal points out that, in accordance with the relevant case law, in order for the Council of Europe to incur non-contractual liability, three cumulative conditions must be met: the Organisation's conduct must be unlawful, actual damage must have been suffered and there must be a causal link between the conduct and the damage pleaded (see, *inter alia*, ATCE, Appeals Nos. 666/2020 and 667/2020, *Dalvy and Ochoa-Llido v. Secretary General of the Council of Europe*, decision of 28 June 2021, § 64; Court of Justice of the European Union, judgment of 12 September 2024, D'Agostino and Dafin v. BCE, C-566/23 P, paragraph 23 and the case law cited).

21. The Tribunal begins by noting that, in the instant case, the parties agree that the 2008 regulatory reform implemented through Committee of Ministers resolution CM/Res(2008)1 of 16 January 2008 had the effect of establishing the right of retired staff members to elect to be fully insured under the Council of Europe's medical scheme rather than affiliated to any compulsory national scheme under which they might be entitled to cover. By adding sub-paragraph *b* to paragraph 3 of Article 21 of Appendix XII to the former Staff Regulations concerning the Regulations on the medical and social insurance scheme applicable at the time, this reform effectively introduced the possibility for such staff to waive their right to cover under one or more compulsory national social protection schemes, provided that they bear any additional cost incurred by the Organisation as a result of this choice.

B. First ground of appeal: violation of the right to choose one's medical scheme on retirement and of the principle of *tu patere legem quam ipse fecisti* and the duty of care

1. The appellants

22. The appellants claim that they are entitled to choose between, on the one hand, affiliation to the French social security scheme and, on the other hand, affiliation to the Council of

Europe's private scheme providing cover "from the first euro", i.e. full cover of medical expenses, and complain that the Administration deprived them of this right.

23. According to the appellants, the right of Council of Europe pensioners to opt for the medical insurance scheme of their choice flows from a change in the regulatory framework that occurred in 2008, when the new sub-paragraph *b* of paragraph 3 of Article 21 of the Regulations on the medical and social insurance scheme gave former staff members the option of waiving their right to any cover to which they might automatically be entitled under the national social security scheme.

24. The appellants contend that the Administration told them they were under an obligation to claim the French national pensions to which they were entitled. On starting to draw French pensions, however, the appellants automatically became affiliated to the French compulsory social security scheme. The appellants consider that, because of the Administration's conduct, they were thus deprived of the possibility of waiving their right to cover under the French compulsory social security scheme, and hence of opting for the medical and social insurance scheme of their choice.

25. In the opinion of the appellants, the Administration's conduct reflects an erroneous interpretation of the applicable rules that fails to take account of the 2008 reform. The Administration, it is alleged, continued to address future pensioners as if they were bound to take the necessary steps to claim their national pensions. The appellants refer here to official Council of Europe documents and practices, which the Administration, they argue, has failed to update in line with the 2008 reform.

26. In their submissions in reply, the appellants stress that following the said reform, it was not sufficient for the Administration to refer, in its written and oral communication with staff, to sub-paragraph *b* of paragraph 3 of Article 21 of the Regulations on the medical and social insurance scheme. In their opinion, the Administration had a responsibility to set out the conditions under which their right to choose their medical insurance scheme could be exercised, not least in the secondary legislation. Instead, the rules implementing the Regulations in question failed to provide any clarification of the text of Article 21 and did not address the question of how the right to choose was to be exercised.

27. Given the uncertainty as to whether opting for the Council of Europe's medical scheme would enable persons receiving a French pension to claim an exemption from social security contributions, the appellants further consider that the Administration should have invited them to make their choice before they began the process of claiming a French pension.

28. The appellants consider that, by depriving them of their right to choose, the Organisation has violated several general principles of law, such as the principle of *tu patere legem quam ipse fecisti* which requires organisations to apply their own rules as long as they have not repealed or amended them, as well as its duty to act in good faith and with due care towards its staff.

2. The Secretary General

29. The Secretary General rejects the appellants' contention that they were denied the opportunity to choose which medical insurance scheme to join, by electing to have their healthcare expenses covered either by the national scheme on a primary basis, and the Council

of Europe scheme on a complementary basis, or entirely by the Council of Europe scheme. He points out that information concerning the possibility of being fully covered under the Council of Europe scheme was set out in clear terms in the relevant regulations, namely Article 21(3)(b) of the Regulations on the medical and social insurance scheme and the implementing rules. The Secretary General also mentions a series of official documents, such as training material and the guide to health insurance published by the Directorate of human resources (hereinafter "DHR") for future retirees, which, according to the Secretary General, show that the information the Administration provided to the appellants was wholly in line with the applicable provisions.

30. The Secretary General points out that, because of the high cost of being fully insured under the Council of Europe scheme, uptake of this option is low. The contribution rate currently stands at 6.066% of the pension, compared with just 1.635% for complementary cover. The Secretary General finds it surprising, therefore, that the appellants should complain about the Administration not having encouraged them more to join the Organisation's medical scheme through personal choice. He also notes that most of the appellants had, for several years, enjoyed a highly advantageous position, in that they were insured under the French social security system free of charge, i.e. without paying social security contributions, before the French authorities started levying them.

31. As for the tax implications of electing to be affiliated to one medical insurance scheme rather than another, the Secretary General denies all responsibility on the part of the Organisation in this matter. He states that it was incumbent on the appellants, as taxpayers subject to French tax legislation, to inform themselves about the applicable tax regulations and to make their decisions accordingly, and that the Organisation cannot be expected to act as a tax adviser. That being so, the appellants can hardly criticise the Council of Europe for failing to inform them that, in exercising their right to a French pension, they would become liable to pay social security contributions, especially since the majority of Council of Europe pensioners at the time did not pay these contributions.

32. *A fortiori*, the Secretary General considers that it was not within his remit to anticipate the fact that the French tax authorities would demand payment of these contributions from pensioners several years after they retired, whatever the reason for this new policy. The steps taken by the Administration to ascertain from the French tax authorities whether, once affiliated to the French social security scheme, pensioners could make themselves exempt from French social security contributions by opting for full medical cover under the Council of Europe scheme, in no way render it liable. The Secretary General cites a letter from France's national health insurance fund dated 31 May 2024, which has since clarified the situation, indicating that no such exemption is possible.

3. The Tribunal's assessment

33. In their first ground of appeal, the appellants, who are all affected by the 2008 reform, acknowledge that they were aware of the right to choose which medical insurance scheme to join, but claim that they were prevented from making such a choice because of the lack of detail in the Staff Regulations and implementing rules as to how to exercise the right. According to the appellants, for them to do that, the secondary legislation would have needed to specify the framework within which they could have made their choice and the procedures for its implementation.

34. The Tribunal notes that in this case it is not disputed that the relevant provision, namely paragraph 3(*b*) of Article 21 of Appendix XII to the former Staff Regulations, created the right for staff members to choose their medical scheme on retirement and that the appellants could have availed themselves of this right without there being any need to expand on this provision in the secondary legislation. In the opinion of the Tribunal, there is no doubt that the provision in question is self-executing.

35. The argument raised by appellants here actually relates more to the fact that they blame the Administration for not providing them with adequate and sufficient information as to how they could have exercised their right to choose. The Tribunal notes in this regard that it does not appear from the evidence in the file that the Administration took a proactive approach, providing detailed information about the procedures to be followed in order to be fully insured under the Council of Europe's medical scheme. The Administration's attitude was not such as to deprive the appellants of the possibility of exercising their right to choose, however.

36. The appellants further claim that they were deprived of the practical possibility of choosing their medical scheme because the Organisation asked them to claim their national pensions, a step which in France, once taken, leads to automatic affiliation to the French social security system. According to the appellants, by giving the impression that claiming the French pension was unavoidable, the Organisation prevented them from making an informed choice, when in fact this was something to which they were entitled.

37. Having examined the documentation produced by the appellants in support of this argument, the Tribunal finds that, while it is true that in its correspondence with future pensioners, the Administration referred to an obligation to exercise the right to health insurance under a third scheme, this was with a view to explaining that they must obtain the benefits due under the third scheme before applying for benefits under the Council of Europe's complementary medical scheme. The Administration never mentioned an obligation to claim the national pension as such, however.

38. Whether in the circular of 15 May 2023 sent to all pensioners, or in its exchanges with individual pensioners, the Administration did in fact systematically state that the staff members concerned could opt, depending on what they preferred, for full medical cover (with reimbursement from the first euro) under the Council of Europe scheme, in return for an additional premium. For example, in the email sent to the appellant E. H. on 12 November 2020, the Administration first mentioned not the obligation to claim the national pension, but rather the obligation "to take steps (...) to rejoin the French social security system" where the staff member in question was "in receipt of a national pension". The same letter went on to state that it was possible "to elect not to switch to the mixed scheme and to remain [insured] with [the Organisation's medical insurer] from the first euro" and indicated the contribution that would be deducted from the staff member's pension in that case. The e-mail sent to Mr J. R. on 27 October 2015 was similarly worded. Likewise, in the e-mail sent out to all pensioners on 15 May 2023, the Administration referred to the obligation for pensioners covered by the Organisation on a complementary basis to exercise their right to any medical cover to which they might be entitled under a third scheme by virtue of another pension, while at the same time pointing out that they could, if they so wished, continue to be insured from the first euro in return for an additional premium.

39. The Tribunal observes that, in so doing, the Administration followed the approach taken in the relevant regulations, which is to mention first the obligation to exercise the right to

primary cover under the national social protection scheme before availing oneself of the Council of Europe's complementary medical insurance (Article 21(3)(a) of the Regulations on the medical and social insurance scheme), and then the possibility of opting for full cover under the Council of Europe's medical scheme, and waiving the right to any protection to which the persons concerned might be entitled under the (national) scheme (Article 21(3)(b) of the Regulations on the medical and social insurance scheme).

40. While this information mentions the obligation to claim the medical benefits due under the third scheme before applying for benefits under the Council of Europe's complementary insurance scheme, it does not mention any obligation to claim the national pension. At the same time, the information thus provided clearly sets out the possibility of waiving the right to cover under the third health insurance scheme and of opting for full cover under the Council of Europe scheme instead. It also makes it clear that, while it is possible to opt out of the national medical cover, such an arrangement requires the staff members concerned to express a wish to do so; should they fail to take such steps, they will continue to be insured under the relevant national scheme.

41. The Tribunal observes in this regard that, in the present case, the appellants do not claim and have adduced no evidence that, at the time of their retirement, they informed the Administration or the French authorities of their wish to waive their right to a national pension and/or their right to cover under the French social security system, and that they were prevented from doing so through the actions of the Organisation.

42. In view of the above, the Tribunal concludes that the appellants' first ground of appeal is unfounded.

C. Second ground of appeal: failure to comply with the duty to inform

1. The appellants

43. For them to be able to exercise their right to choose their medical and social insurance scheme in an informed manner, the appellants consider that the Organisation would have had to make them aware of the consequences of this choice, something it failed to do. Having omitted to inform the appellants that they would be liable to pay social security contributions on their Council of Europe pensions if they joined the French social security system, the Administration, they argue, prevented them from discovering what the real cost to them would be for each of the two options and from making an informed decision accordingly.

44. The appellants also allege that the Organisation failed in its duty to inform them of the differences in cover offered by the two medical insurance schemes. They point here to information provided in the decision of the then Secretary General, dismissing their administrative complaint, according to which only emergency medical expenses are reimbursed by the French social security system in the case of treatment outside France, unlike in the case of the Council of Europe's medical scheme. The appellants take the view that this is important information which the Administration should have given them, as Council of Europe pensioners retain extensive ties with various member countries of the Organisation.

45. In the view of the appellants, their right to be informed about their liability to social security contributions is based on the obligation to be vigilant imposed on the Organisation by the provisions in force. This obligation entails a duty to be familiar with the tax regime applicable to income in each of its member states. To this end, the appellants cite the provisions of the Co-ordinated Pension Scheme Rules on the tax adjustment, as interpreted by this Tribunal in the case of Smyth v. Secretary General (ATCE, Appeal No. 209/1995, decision of 27 January 1997, § 38).

46. In their submissions in reply, the appellants also state that all staff members, including the appellants, were automatically registered with the French social security system when they were recruited as temporary staff members. Insofar as affiliation to the social security system for at least three months confers entitlement to an old-age pension, the appellants infer from this that the Organisation has a special duty to keep abreast of the implications of such affiliation.

47. With regard to the tax regime applicable in France, the appellants consider that the fact that in 2000 the Council of Europe concluded an agreement with France on the social protection of Council of Europe staff makes it all the more incumbent on the Organisation to exercise vigilance. Given this obligation, the appellants reject as implausible the Administration's claims to have been unaware until recently of the requirement to pay social security contributions. In their opinion, the Organisation cannot shirk its responsibility by blaming unclear legislation and changing practices on the part of the French authorities, especially since, in the appellants' view, the French legislation has always been clear. If the Administration was aware of the limitations of the information it was providing to pensioners, it should in any case have alerted the appellants to this.

48. Insofar as pensioners have to contend with a variety of issues, both practical and psychological, the appellants further maintain that they are "a vulnerable group", making it all the more important that the Organisation comply with its duty of vigilance and care towards them.

2. The Secretary General

49. The Secretary General points out that Council of Europe pensioners are not entitled to any tax exemption on the pensions paid to them by the Council of Europe and that they therefore have a responsibility to familiarise themselves with the tax legislation applicable in their country of residence and to comply with it. By virtue of its status as an international organisation, the Council of Europe is not involved in the process of determining and levying the taxes and contributions that apply to pensioners, as this area falls entirely within the competence of the national authorities. Consequently, the Secretary General asserts that the Organisation has no obligation to provide information and/or assistance in relation to pensioners' tax obligations.

50. As regards more specifically the question of the appellants' liability to social security contributions, the Secretary General states that if the Organisation decided to seek clarification from the French authorities about their change of policy (see paragraph 32), it did so solely out of a concern to help pensioners residing in France. The Secretary General reiterates that, given previous practice, the Organisation could not know that pensioners receiving pensions from a French source, who were tax resident in France and affiliated to the French social security system, were liable to pay social security contributions, including on their Council of Europe

pensions. The Administration could not therefore provide information that it did not have, quite apart from the fact that it was under no obligation to do so.

51. As for the appellants' allegation that the Organisation had an obligation to be vigilant (paragraph 45), the Secretary General maintains that, as long as the pensioners were not subject to social security contributions and did not pay them, the issue of the application of the tax adjustment did not arise and the Organisation could not be considered duty-bound to be vigilant in this area on a purely preventive basis. The Secretary General notes here that, in accordance with the applicable provisions, the tax adjustment applies only if the pension is subject to income tax in a member state of the Organisation, which was not the case for the appellants as long as they were not actually subject to the social security contributions in question.

52. The Secretary General also rejects the appellants' argument based on the conclusion of the agreement concerning social protection of staff employed by the Council of Europe on French territory (paragraph 47), insofar as this agreement deals only with serving Council of Europe staff and not with pensioners.

53. At the hearing, the Secretary General's representative also challenged the appellants' argument concerning the differences in cover between being fully insured under the Council of Europe's medical scheme and being insured on a complementary basis (paragraph 44), observing that the appeal is concerned with the appellants' liability to social security contributions and not with differences in cover.

3. The Tribunal's assessment

54. In their second ground of appeal, the appellants allege that the Council of Europe failed in its duty to inform and in its duty of care. According to the appellants, the Organisation should have informed them that French social security contributions would be payable on their Council of Europe pensions, and hence of the cost to them of joining the French social security system. In the view of the appellants, the Organisation was under an obligation to provide them with this information insofar as it concerns a right to choose one's medical insurance scheme that is expressly provided for in the Council of Europe's statutory provisions.

55. The Tribunal considers it important to point out, firstly, that the statutory obligation which the Organisation assumed following the 2008 reform consists of allowing retired staff who so wish to be fully insured under the Council of Europe's medical scheme rather than joining the so-called mixed scheme, under which the person's primary insurer is the national social security system, with the Organisation's scheme providing complementary cover. As a result of this obligation, since 2008, the Administration has been informing future retirees of the costs involved in being fully insured under the Council of Europe medical scheme, and specifically of the higher contribution rate associated with such an arrangement.

56. In giving details of the variation in the premiums charged under the Council of Europe's medical scheme, depending on whether the cover is full or complementary, the Organisation has been providing the information that falls within its purview and that is part of the contract signed with its chosen health insurer, that is to say relevant information in relation to the medical insurance option that the Organisation offers and for which it has sole responsibility.

57. It was this information that was provided in the Organisation's exchanges with the appellants. The Organisation did not, however, provide the appellants with information about

the costs that the French authorities could impose on them if they joined the so-called mixed scheme.

58. The Tribunal observes that the appellants are wrong to claim that, in quoting the contribution rate that would apply if they joined the so-called mixed scheme, the Organisation gave them the impression that this was an overall cost for both schemes, representing "the total financial outlay required of pensioners". As stated above, the rates communicated were those provided for in the contract between the Council of Europe and its medical insurer, and there is nothing in the case file to suggest that the Council of Europe ever presented this rate as including any costs that the French authorities might seek to impose on the appellants.

59. The document that the appellants cite in support of this argument (namely the document on social cover on retirement, prepared by the Medical and Social Insurance Unit of DHR in 2011 and 2014 for future pensioners) did not deal solely with the case of pensioners living in France and receiving a French pension, so the single contribution rate quoted for the mixed scheme could not reasonably be construed as including the variable part of the contributions levied by the various national authorities for all the countries potentially concerned.

60. Having clarified this point, the question that the Tribunal must now consider is whether the Organisation had an obligation to inform the appellants about that part of the costs of membership of the so-called mixed scheme which fell within the domain of the French national system.

61. The Tribunal considers firstly that no such duty to inform can be held to devolve upon the Administration from the introduction, in 2008, of the right to opt for full medical cover under the Council of Europe scheme, the only duty to inform that the Tribunal considers to be incumbent on the Organisation as a result of this reform being the duty to inform the staff concerned of the higher contribution rate associated with such cover, as compared with the rate charged for cover under the Council of Europe's complementary scheme (see paragraph 55).

62. The appellants maintain that the Organisation's duty to inform them of the costs they might have to pay to the French tax authorities stems from the tax adjustment mechanism provided for in the Co-ordinated Pension Scheme Rules. In their view, this mechanism, as interpreted by the Tribunal, imposes on the Organisation a duty of vigilance concerning the national income taxes applicable in each member state (see ATCE, Appeal No. 209/1995, *Smyth v. Secretary General of the Council of Europe*, decision of 29 April 1996, § 38). The appellants therefore consider that the principle established by international administrative case law, according to which international organisations are not required to inform staff of their tax obligations, does not apply to the Council of Europe.

63. The Tribunal notes that international administrative tribunals have repeatedly reiterated that an international organisation cannot be held liable to its staff, whether serving or retired, for matters that fall exclusively within the sovereignty of the national authorities in tax matters. The tribunals have also made it clear that it is the responsibility of staff to comply with their tax obligations, and that no obligation to provide advice or assistance regarding officials' tax responsibilities can be imputed to the employing organisation (see ILOAT, Judgment No. 3878 of 28 June 2017, under 16; ILOAT, Judgment No. 1491 of 1 February 1996, under 6).

64. The appellants' argument that this case law is not transposable to international organisations with a pension co-ordination system, and to the Council of Europe in particular,

is unconvincing. The fact is that international administrative tribunals within the co-ordination system, such as the Administrative Tribunal of the North Atlantic Treaty Organization, have taken a similar position in recent years. In Case No. 2021/1327, the appellant complained that the NATO administration gave wrong information regarding his liability to German tax on the lump sum he would receive on retirement. The NATO Administrative Tribunal ruled that it was the responsibility of each individual to inform themselves about the tax legislation applicable in their country of residence, and that this responsibility could not be shifted to their employer (NATO Administrative Tribunal, judgment of 24 May 2022, No. 2021/1327, UK v. NATO International Staff, §§ 59 and 60). The NATO Administrative Tribunal took a similar view in a judgment handed down on 14 June 2022 (No. 2021/1329, AB v. NATO International Staff).

65. As for its decision of 29 April 1996, in Smyth v. Secretary General of the Council of Europe, the Tribunal observes that this concerned a dispute over the methods of calculating the tax adjustment provided for in the Co-ordinated Pension Scheme Rules. It will be recalled that the tax adjustment mechanism aims to mitigate the effects of Council of Europe pensions being subject to national taxes, by arranging for pensioners to be paid an amount equal to "50% of the amount by which the recipient's pension would theoretically need to be increased, were the balance remaining after deduction of the amount of national income tax or taxes on the total to correspond to the amount of the pension calculated" in accordance with the said Pension Scheme Rules. In this decision, the Tribunal ruled that the Secretary General had a duty of vigilance to "verify that the calculation of the pension recipient's tax adjustment is correct".

66. The Tribunal notes that what is at issue in the present appeals has no bearing on the application of the tax adjustment and no connection with the co-ordination system on which the tax adjustment depends. Although the co-ordination system requires a degree of collaboration between the international organisations represented in the system and national tax offices, no such arrangement applies here. Determining the costs and/or tax implications of affiliation to a national medical insurance scheme is exclusively a matter for the states, the Council of Europe having no role to play in this area. Consequently, the Tribunal considers that the obligation to be vigilant referred to in the Smyth case is not applicable in the present case.

67. In any event, any debate that the appellants might wish to instigate regarding the impact of their liability to French social security contributions on the tax adjustment and the related issue of whether or not such contributions qualify as a tax is beyond the scope of the present dispute. The Tribunal has no need to consider these issues, therefore.

68. In view of the above, the Tribunal concludes that the Organisation was under no obligation to provide the appellants with information regarding the liability of their Council of Europe pensions to the social security contributions in question. In the absence of such an obligation, the Administration cannot be held responsible for the fact that it was unaware, until recently, that pensioners domiciled in France and affiliated to the French social security system were required to pay social security contributions on their Council of Europe pensions. Likewise, no fault can be attributed to the Organisation for not having been able to enlighten the pensioners as to whether they would cease to be subject to social security contributions if they left the French health insurance scheme in favour of full private cover under the Council of Europe scheme.

69. The Tribunal further considers that, even supposing that the Organisation did have such a duty to inform, the Administration could hardly be blamed for not having provided information that was not available to it at the time of the events in question, since it was not

until 2022 or even 2023 that the appellants were contacted by the French tax authorities, asking them to rectify matters in relation to social security contributions on their Council of Europe pensions, which they had not paid up until then.

70. The appellants also seem to blame the Organisation for not having anticipated the change in the French authorities' tax treatment of them. The Tribunal considers that, as long as the French authorities were not asking the Council of Europe pensioners concerned to pay social security contributions, it was not for the Organisation to give an interpretation of French rules, and the potential implications thereof, different from the one followed by the French authorities themselves. In this regard, the Tribunal echoes the position of the NATO Administrative Tribunal, which in its aforementioned judgment of 24 May 2022 (§§ 59 and 62) held that, by informing its staff as best it could about their tax obligations according to the information available to it at the time, the Organisation had acted with due care, and a change in approach by a particular tax administration did not retroactively alter this.

71. As for the complaint that the Organisation failed to inform the appellants of the differences between the medical cover offered by the Council of Europe scheme and that offered by the French social security system, the Tribunal notes that this complaint is unsubstantiated and therefore unfounded.

72. In the light of the above, the Tribunal considers that the Organisation has not failed in its duty to inform the appellants or in its duty of care towards them. The appellants' second ground of appeal is therefore unfounded.

For these reasons, the Administrative Tribunal:

Decides to join the appeals;

Declares the appeals unfounded;

Decides that each party shall bear its own costs.

Delivered by the Tribunal on 5 February 2025, the French text being authentic.

The Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
Christina Olsen	Paul Lemmens