ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

ORGANISATION DE COOPÉRATION ET DE DÉVELOPPEMENT ÉCONOMIQUES

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 30 June 2021

JUDGEMENT IN CASE No. 96

Ms AA, Mr BB, Mr CC, Ms DD, Mr EE, Ms FF, Ms GG, Mr HH
v.

Secretary-General

Translation (the French version constitutes the authentic text).

JUDGMENT IN CASE No. 96 OF THE ADMINISTRATIVE TRIBUNAL

Hearing held by videoconference on 22 June 2021

In Château de la Muette,

2 rue André-Pascal à Paris

The Administrative Tribunal consisted of **:**

Mrs. Louise OTIS, Chair

Mr. Pierre-François RACINE

And Mrs. Alice GUIMARAES-PUROKOSKI

with Mr. Nicolas FERRE providing Registry services.

The Tribunal heard

Mr. Giovanni Michele PALMIERI and Me Laure LEVI, counsels of the Applicants ;

Mr. Auguste NGANGA-MALONGA, Senior Legal Advisor of the Organisation's Directorate for Legal Affairs, on behalf of the Secretary-General ;

Monsieur Jeremy MADDISON, Président de l'Association du personnel

INTRODUCTION

1. In their application for annulment and compensation lodged with the Registry on 2 October 2020, Ms AA, Mr BB, Mr CC, Ms DD, Mr EE, Ms FF, Ms GG, Mr HH, (hereinafter the Applicants), request that their January 2020 payslips be cancelled and that the Tribunal order new payslips to be issued that do not reflect the decision of the Council of the Organisation of 14 November 2019 to apply to retired officials the amendment to Article 36 of the Co-ordinated Pension Scheme Rules (CPSR). In the alternative, the

Applicants ask that the Organisation be ordered to pay a lump sum corresponding to the financial damage incurred, and issue revised payslips. Finally, the Applicants seek compensation for the moral damages incurred and a cost award.

2. An application for an extension of the time limit for the Secretary-General to present his comments in response was made on 2 December 2020. This application was granted by the Chair of the Administrative Tribunal, who extended the time limit to 22 December 2020.

3. The Secretary-General submitted his comments on 22 December 2020.

4. The Chair of the Administrative Tribunal issued her decision on the procedure and timetable for the examination of the case.

5. An application for an extension of the time limit for the Secretary-General to present his comments by way of rejoinder was made on 22 December 2020. This application was granted by the Chair of the Administrative Tribunal, who extended the time limit to 20 March 2021.

6. The Applicants submitted a rejoinder on 19 March 2021.

7. The Organisation submitted a surrejoinder on 19 April 2021.

8. The Staff Association submitted written comments.

9. All the documents cited and produced by the Applicants bear the reference letter **A**, whereas those cited and produced in defence by the Organisation bear the reference letter **O**.

HEARING

10. Due to the public health situation, the hearing was held by videoconference on 22 June 2021.

11. Documentary evidence was presented to the Tribunal. No witnesses were heard during the hearing.

BACKGROUND TO THE CASE

12. After analysing the documentary evidence, the Tribunal singles out the following facts as relevant:

13. The Tribunal had eight (8) individual applications referred to it containing the same allegations and seeking the same findings. With the authorisation of the parties, it has therefore joined the appeals.

14. Seven (7) of the Applicants are serving officials of the Organisation while the eighth, Mr CC, has been a retired official since 30 June 2020.

15. The Applicants have chosen to challenge the amendment to Article 36 of the Co-ordinated Pension Scheme Rules (hereinafter 'CPSR'), alleging that their January 2020 payslip reflects the decision to apply to retired officials, from 1 January 2020, the adjustment of pensions on the basis of the price index of country of residence rather than on the basis of salaries as previously.

16. The Co-ordinated Pension Scheme (CPS) is applicable to officials who took up their duties before 1 January 2002 in the following six organisations: NATO, the European Space Agency, the Council of Europe, the OECD, the European Organisation for the Exploitation of Meteorological Satellites and the European Centre for Medium-Range Weather Forecasts.

17. The Co-ordinating bodies include three committees: the Co-ordinating Committee on Remuneration (CCR) which submits reports, recommendations and advisory opinions, the Committee of Representatives of Secretaries/Directors-General (CRSG) and the Committee of Staff Representatives (CRP), which is consulted on the draft reports and recommendations.

18. Decision-making powers lie with the governing body of each organisation, in this instance with the Council of the OECD.

19. Article 36 of the CPSR, adopted in 1976, defined the rules for the annual adjustment of pensions paid to retired officials. Article 36 of the CPSR was supplemented in 1978 by a rule of interpretation placed under an asterisk, stating that pension adjustments should conform to salary adjustments. Article 36 then read as follows:

> 'Should the Council of the Organisation responsible for the payment of benefits decide on an adjustment of salaries in relation to the cost of living, it shall grant at the same time an identical adjustment of the pensions currently being paid, and of pensions whose payment is deferred.
>
> Should salary adjustments be made in relation to the standard of living, the Council shall consider whether an appropriate adjustment of pensions should be made.*
>
> _____
>
> *Whenever the salaries of staff serving in the Co-ordinated Organisations are adjusted - whatever the basis for adjustment - an identical proportional adjustment will, as of the same date, be applied to both current and deferred pensions, by reference to the grades and steps and salary scales taken into consideration in the calculation of these pensions.'

20. Over the years, the changing costs of the pension scheme have been the subject of discussions within the CCR and actuarial analyses have been produced on a regular basis in this context.

21. In 1994, during the sessions held in Noordwijk (The Netherlands), the three Co-ordinated bodies agreed to increase the officials' contribution rate by 1%, bringing it to 8%, in

return for the dropping of and repayment to officials of a 0.5% contribution that had been charged on a provisional basis since 2013 and the dropping of appeals against this contribution, and to introduce an actuarial measure into the CPS with a view to updating this contribution rate on the basis of actuarial studies every five (5) years.[1]

22. On 14 November 2019, the Council of the Organisation amended Article 36 of the CPSR[2] on the basis of the recommendations set out in the 263rd report of the CCR. Thus, since 1 January 2020, *'Pensions shall be adjusted annually in accordance with the revaluation coefficients based on the consumer price index for the country of the scale used to calculate each pension.'* [3]

23. Consequently, the adjustment of pensions is now based on the consumer price index of countries of residence of the pensioners and no longer on the serving officials' remuneration index.

24. The Applicants allege that the reform of the pension adjustment system, which is now based solely on the inflation index and no longer on the staff salaries:
    i) was adopted in violation of the CRP's duty to consult;
    ii) disregarded the promises and undertakings of the OECD;
    iii) constitutes a violation of vested rights guaranteed by the general principles of international civil service law and breaches the principle of equal treatment.

25. Each of these pleas has been contested by the Organisation, which considers that the amendment to Article 36 of the CPSR was made at the end of a standard procedure. It further argues that it has not violated any undertaking of the Organisation, having never given any assurance that Article 36 as adopted in 1978 would remain in place permanently. It also adds that the amendment to Article 36 does not violate either vested

[1] Annex A-15 to the Application, 34th report of the CCR adopted by all the Councils of the co-ordinated organisations.
[2] C(2019)149 and C/M/s (2019)15.
[3] *Idem.*

rights or the principle of equal treatment. The amendment was adopted for legitimate reasons based on the studies, analyses and recommendations of the experts consulted. That being so, it claims, the implementation of the amendment to Article 36 is not arbitrary in character.

ANALYSIS

On the admissibility of the application

26. The Organisation challenges the admissibility of the applications on the grounds that the Applicants do not have a genuine and current cause of action before the Tribunal.

27. According to the Organisation, the contested payslip of 1 January 2020 does not apply the change to the method of adjusting CPS pensions.

28. The 20 January 2020 payslip, it claims, simply shows a change to the CPS contribution rate without implementing the amendment to Article 36 of the CPSR. Further, no damage was suffered by the Applicants, whose payslips showed a saving of 0.3% with regard to their contribution rate.

29. Article 22 of the Staff Regulations gives the Tribunal jurisdiction over: 'individual disputes arising from a decision of the Secretary-General, which he/she has taken on his/her own authority or in application of a decision of the Council...'

30. The Applicants contest their January 2020 payslip which, according to them, reflects the decision of the Council of the Organisation taken on 14 November 2019 to apply to retired officials, from 1 January 2020, the adjustment of their pensions on the basis of the price index of country of residence rather than on the basis of salaries as previously.

31. It is true that according to the jurisprudence of the international tribunals, the current nature of the cause of action does not depend on the actual occurrence of damage and there may be a time lag between an act and its harmful consequences. And for the cause to be genuine and current, it is necessary and sufficient for the alleged harm to be the consequence of the identified act.[4]

32. However, the Applicants seek, through the annulment of the Organisation's decision of 9 June 2020 rejecting their prior appeal, the cancellation of their payslip for the month of January 2020, and consequently ask the Organisation to issue them payslips for the future that do not apply the new method of pension indexation.

33. All the pleas raised by the Applicants relate to the illegality of the decision of 19 November 2019, in so far as it provides that from 1 January 2020 pensions will be adjusted on the basis of the price index of the country of residence rather than on the basis of salaries as previously.

34. Even if these pleas were well founded, they would not entail the annulment of the January 2020 payslip, which in no way reflects the change to the pension indexation method.

35. The link between the increase in officials' rate of contribution to the CPS and the change in the pension indexation method is not a legal link that would allow the success of the pleas concerning the illegality of the change of pension indexation method, directed against a payslip that is unrelated to this change.

36. The Tribunal therefore takes the view that the applications cannot succeed on the basis of the pleas that have been put forward. This also applies to Mr CC, although he retired

[4] ILOAT, Judgment 1712, 29 January 1998, consideration 10; Judgment 1330, 31 January 2014, consideration 4.

on 30 June 2020. This situation would have enabled him to contest his first pension slip by the pleas raised in his application, but not his January 2020 payslip.

37. The Tribunal thus agrees with the approach set out below in the rejection decision (on the grounds of lack of cause of action on the part of serving officials) reached by the Administrative Tribunal of the Council of Europe (ATCE) in a context almost identical to that of the present applications. The Tribunal writes:

> *'57. However, unlike the payslips of the retired appellants, the payslips of the serving appellants indicate the applicable contribution rate, but do not reflect the adjustment method decided under Article 36 of the CPSR. In point of fact, based on the January 2020 payslips, the serving appellants are not affected by the amendment made to Article 36 of the CPSR. Accordingly, unlike the pensioners' payslips, these payslips do not constitute an application of the article in question in this case.*
>
> *58. The Tribunal can rule only on the legality of a provision of the CPSR when it has been applied in a particular way in a specific decision concerning a particular appellant. This is the case of the pensioners' payslips. On the other hand, the Tribunal cannot deal with potential and hypothetical cases relating to situations that may arise in the future. This is exactly the situation in the case of the payslips of serving staff, which do not in any way implement the change in the adjustment method provided for in Article 36 of the CPSR.'*[5]

38. As a result of the foregoing, the Tribunal declares the applications inadmissible.

39. The context of this dispute is unique: one appeal has already been presented to the Tribunal seeking the annulment of the amendment to Article 36 of the CPSR. Appeals putting forward the same claim have been presented to the administrative tribunals of

[5] ATCE, judgment of 15 April 2021, appeals 649/2020, 652/2020, 653/2020, 655 to 660/2020 and 664/2020.

all the co-ordinated organisations affected by this amendment. Judgments on the merits have already been given on the annulment of this amendment by the administrative tribunals of NATO and of the Council of Europe. The Tribunal therefore considers that it is in the general interest, despite the appeal's procedural inadmissibility, to proceed to the analysis of the merits, in order to study all the pleas raised by the Applicants including that concerning the duty to inform, which was not used in the other appeals. This examination will be for theoretical purposes, but is also a mark of respect for retired officials who have served the Organisation throughout their careers.

On the merits

1. The duty to consult on the CCR's recommendations

40. It should be recalled here that one of the three co-ordinating bodies is the Committee of Staff Representatives (CRP), which must be consulted on the draft reports.

41. The Applicants claim that the CRP was not duly consulted, as is clear from the statements of the chair of the CRP during the 135th joint co-ordination meeting of 26 September 2019 to the effect that 'the CRP's position has not been taken into consideration'.

42. Articles 1 b) and 6 a) of the regulations on the functioning of the co-ordination system state that the CRP must be consulted on the CCR's draft recommendations and reports.

43. It is clear from the evidence that it was decided in 2017 to start examining all questions relating to the CPS the following year.

44. It is in this context that in February 2019, the CRSG, by a majority of five of the six co-ordinated organisations, proposed two amendments concerning the future indexation of pensions to the cost of living and the restriction of the conditions for granting the education allowance. However, it was not until September 2019 that the CCR adopted its 263rd report endorsing these two measures.

45. In the seven-month interval between these two dates, the CRSG's proposals were discussed at three joint meetings of the three co-ordinating bodies, namely the 133rd, 134th and 135th meetings on 13-14 March, 3-4 July and 26 September 2019 respectively[6], as well as at the 172nd, 173rd, 174th and 175th bilateral meetings between the CRSG and the CRP on 7 February, 12-14 March, 21 May and 2-4 July 2019 respectively.[7] The applicants Mr CC, then chair of the CRP, and Ms DD were present at these joint meetings and Mr CC spoke on several occasions to express the CRP's point of view.[8]

46. Finally, the Organisation has put forward the uncontested argument that an exceptional meeting between the CCR and the CRP took place on 2 and 4 July 2019 which mainly focused on the revision of the CPS.[9] These various meetings enabled the CRP to express its point of view on the reform of the CPS, as is clear from point 3.3.1 of the 263rd CCR report: '*As it has done throughout the discussions on the revision of the co-ordinated pension scheme (CPS), the CRP reaffirmed its unanimous opposition to any reform of the CPS.'* (Tribunal's underlining)

47. The duty to consult is a regulatory requirement. It includes the duty to adequately inform the CRP of planned regulations that are likely to have a legal effect on retired staff and the duty to ensure that its representations are heard in the appropriate bodies. However, the right to be consulted does not imply any obligation to accept the opinion expressed by the CRP.

2. The principle of equal treatment

[6] Documents CCR/CRSG/CRP/M (2019)1, CCR/CRSG/CRP/M (2019)2, CCR/CRSG/CRP/M (2019)2.
[7] Documents CRSG/CRP/M (2019)1, CRSG/CRP/M(2019)2, CRSG/CRP/M(2019)3, CRSG/CRP/M(2019)4.
[8] Annexes O-2 and O-9 to the Rejoinder.
[9] Rejoinder, paragraph 19.

48. The applicants allege that the amendment to Article 36 of the CPSR has resulted in a breach of equality (1) between serving officials and pensioners, (2) among CPS pensioners and (3) between CPS and NPS pensioners.

49. Concerning the first category, bringing the annual pension adjustment into line with that of salaries did not give rise to a guarantee of equal treatment, especially as salaries are determined on the basis of coefficients very different from those used to determine pensions. Serving and retired officials do not operate in a situation that is identical or even similar, either *de facto* or legally, and equal treatment is not a principle applicable to them.

50. In addition, retired officials have the option of establishing their residence at a location of their choice, whereas serving officials cannot choose their place of employment.

51. In addition, in accordance with established principles, the Organisation has the right to amend its own rules on the method of adjusting pensions.

52. The plea based on the breach of equality between serving and retired officials is unfounded. As the Administrative Tribunal of the International Labour Organization (ILOAT) points out: *'However these two classes of individuals are not in the same position in fact or in law (see, for example, Judgment 4029, consideration 20). The former are not members of staff, the latter are. Moreover a salary, at base, is to reward specified work. A pension, at base, is to provide an income stream to a pensioner to maintain a particular standard of living during retirement. This argument is unfounded and is rejected. While these types of payments may be interrelated, they are sufficiently different for the purposes of the application of the "equal treatment" principle.'*[10]

53. In addition, the Tribunal sees no reason why only serving officials, whose rate of contribution to the CPS has risen very sharply since 1 January 2020, from 9.5% to 11.8%,

[10] ILOAT, Judgment 4057, consideration 7. See also ILOAT, Judgment 2089, consideration 9.

i.e. an increase of 24%, should be the only ones to support the efforts necessary to ensure the balance of the CPS.

54. The Applicants also allege a breach of equality between pensioners.

55. It is true that under Annex I to the Staff Regulations and its Article 5.2, officials' salaries are adjusted according to the product of two indices, one of which reflects the average weighted percentage change in net remuneration in reference public-sector jobs while the other reflects the relevant consumer price index, corrected for purchasing power parity where applicable; these reference jobs are the statistical tool that is used to ensure that officials have equivalent purchasing power, regardless of their country of employment.

56. In this regard, the Tribunal adds to the point just made about the breach of a principle of equality between officials and retirees that serving staff do not have any choice in their place of employment, whereas pensioners are free to settle in the country of their choice and, if they do not wish to remain in the country where they were assigned, still have the possibility of benefiting from the scale of another country that is more favourable if they meet the conditions set out in Article 33 of the CPSR (Annex X to the Staff Regulations). As a result, the differences that could arise between pensioners derive mainly from their choice of country in which to reside after retirement.

57. Finally, the Applicants allege a breach of equal treatment between CPS pensioners and NPS pensioners. This claim is also unfounded. The Applicants have presented no evidence to show how the difference in circumstances requires the use of two different valuation methods. The only difference between the two groups lies in the date when they joined the Organisation, and the new scheme is generally less favourable than the previous one.

3. The OECD undertakings and promises to its officials

58. The Applicants allege that the inviolability of the CPS was enshrined in the Noordwijk agreement and confirmed by the Scheme's closure in 2002. These undertakings gave rise to the legitimate hope on the part of affiliated officials that the pension scheme would undergo no further changes. The amendment to Article 36 approved on 14 November 2019 violates the principle of legitimate expectations and the undertakings given by the Organisation.

59. The 34th report of the CCR[11] establishes that an explicit compromise was made regarding the 1% increase on 1 June 1994 in the officials' contribution rate, involving the dropping of the temporary increase of 0.5% charged since 1993, the repayment to officials of the surplus contributions thus paid and the dropping of appeals against this latest increase; this compromise proposed by the chair of the CCR was explicitly approved by the representatives of the CRSG and the CRP (point 4 of the 34th report).[12]

60. In particular, the position of the CRP is described as follows: *'4.3.1 The CRP agrees with the recommendation of the CCR, appearing in the chair's report (para 5 b), to repeal the interim measure. This measure and the others which accompany it with regard to the application of Article 41 of the Pension Scheme Rules - due to enter into force on 1 June 1994 - have been the subject of in-depth consultation between the three parties. The CRP believes that the report as a whole represents an acceptable compromise among the possible options.'*[13]

61. It was also accepted that the CCR would add to the pension scheme rules an actuarial measure to be implemented every five years in order to adjust the officials' contribution rate if necessary.

62. This was as far as the compromise went.

[11] Commonly known as the 'Noordwijk Compromise', Annex A-15 to the Application.
[12] Applications, Annex A-15.
[13] *Idem.*

63. The 34th report of 29 April does not contain any reference to the method of indexing pensions. This is hardly surprising, as the Tribunal notes that in 1994 the wording of Article 36 resulting from the 1978 amendment was still in force: the indexation rule set out there thus remained applicable with the same force to the co-ordinated organisations, without any time limit.

64. At no point was the issue of benefits raised, let alone discussed. Only two points are indirectly related to these benefits, one of which – a practice specific to the OECD – was generally regarded as lying outside the competence of the co-ordinating bodies, while the other concerned the leaving allowance of officials in post in Turkey.

65. In the minutes of the tripartite meeting of the CCG, CRSG and CRP of 23 and 24 June 1994, which are of an official nature, it is simply stated that:

> '10.3.1.1 The Joint Meeting:
> -Noted that the CRP found it necessary to point out in a letter to the chair that it had accepted the recommendation contained in the 34th report only because it took it for granted that the benefit system could not be modified during the period of five (5) years preceding the next review of the level of the staff contribution to the pension scheme; and that, as requested by the CCR, the CRP would in due course prepare a document setting out its concerns about the inadequacy of the legal guarantees given by the Member States with regard to the payment of pensions.'[14]
> (Tribunal's underlining)

66. Finally, even if it is accepted the CRP intended to obtain the CCR's commitment regarding the inviolability of the benefits scheme without any time limit, it is difficult to imagine,

[14] Annex O-3 to the Response.

concerning the financial equilibrium of a pension scheme that was supposed to last for decades, that the authorities responsible for organising and running the scheme would give an undertaking for ever not to seek to modify any of its elements, given that in 1994 the CPS was a scheme still open to new members, and remained so until 2002.

67. The principle that *pacta sunt servanda* likewise cannot cover such undertakings. As stated by the ILOAT:

> *'To accept that pensions must always be adjusted to keep in line with post-retirement salary increases would be to expose pension funds to an uncertain and unmeasurable future liability which might well in the end wipe out the funds themselves.'* [15]

68. In law, neither the CCG nor its successor, the CCR, had the power to amend the Co-ordinated Pension Scheme Rules. Their recommendations are not binding on the decision-making bodies of the co-ordinated organisations. In the present case, it does not follow from any decision after 1994 by the Council of the OECD that the latter undertook never to modify the benefit system. On the contrary, Article 1.1 of the Rules on the Remuneration Adjustment Procedure of the Co-ordinated Organisations states: *'Should any amendments subsequently be made to these rules, no provision which ceases to apply shall give rise to vested rights.'*

69. The principle of legitimate expectations is reflected in three criteria, all of which apply: (1) the recipients must have received precise, unconditional and consistent assurances from authorised and reliable sources (2) which are likely to give rise to a legitimate expectation (3) and which are consistent with the applicable norms.

[15] ILOAT, 30 January 2002, Judgment 2089.

70. The Tribunal emphasises that the Organisation alone has the power to establish the pension schemes applicable to its former officials and to set their conditions. It is the only source authorised to give assurances to its officials.

71. The Applicants have not produced any assurances or promises given by the Council of the Organisation that meet the above criteria.

72. None of the discussions leading to the 263rd CCR report can provide such assurances.

73. Furthermore, none of the information on the pension certificate issued to officials on their retirement concerns the adjustment of pensions.

74. It follows that legitimate expectations cannot have arisen in the absence of precise, consistent and authorised assurances. The fact that pensions were indexed to salaries for several decades does not establish the existence of formal and unconditional assurances.

75. In any case, even if it is accepted that such assurances were given in 1994, they would not have complied with OECD rules in the absence of a Council decision restricting the exercise of its regulatory power to set the rules of the pension scheme and undertaking not to amend the pension indexation method in the future.

4. The violation of vested rights

76. Article 24(b) of the Staff Regulations recognises vested rights.

77. The amendment of a provision of the Staff Regulations violates a vested right when it disrupts the balance of contractual obligations or alters fundamental terms of

employment in consideration of which the official accepted an appointment. In the present case, the question is whether the indexation of pensions in accordance with salaries was a decisive term of employment.

78. Before establishing the criteria used by case law for the recognition of a vested right, it is necessary to clarify the extent of the rights that the Applicants could have acquired by paying their contributions to the CPS.

79. It is correct that these contributions were calculated in such a way as to cover the costs of a scheme in which, until 2019, pensions were adjusted like salaries.

80. However, this point, of a purely actuarial nature, did not confer on officials the right to receive a pension that was necessarily adjusted to salaries when they retired.

81. The CPS is a scheme with mixed financing: it relies on staff contributions to cover one-third of its costs, and on the Organisation's budget to cover the other two-thirds. While it is open to question whether the CPS can be fully or partially categorised as a pay-as-you-go scheme, it is absolutely certain that it is not a funded scheme.

82. It is therefore incorrect to argue that the payment of contributions calculated to cover the costs of a salary-adjusted pension scheme created the right from a legal viewpoint to receive pensions adjusted on the same basis in perpetuity.

83. While it is accepted that a vested right results, in general, from a contractual stipulation, the same does not necessarily apply to a statutory provision: this therefore applies both to the pension adjustment method, now provided for in Article 36 of the CPSR, and to the salary adjustment rules provided for in Annex I to the OECD Staff Regulations which, following the new wording of Article 36 of the CPSR, are no longer applicable to retired officials. These latter rules are of a statutory nature and not of a customary nature.

Consequently, the right to adherence to the terms of employment 'cannot be unreservedly accepted'.[16]

84. Even though the OECD's particular situation, taken in isolation, did not require the amendment of Article 36, the fact remains that the Organisation was justified in following the rules of the co-ordinated CPS scheme to which it belonged. This certainly constitutes a legitimate motivation.[17]

85. As for the consequences of the disputed measure regarding the situation of the persons concerned, it has been shown that the application of the new pension adjustment rule on 1 January 2020, and then on 1 January 2021, led to a smaller revaluation than with the old rule.

86. We also wish to emphasise that the COs are able to establish a budgetary feasibility clause, which in the case of the OECD appears in Article 6 of Annex I of the Staff Regulations.[18] Thus, on five occasions, the adjustment of staff salaries decided on by the Council was – temporarily at least – lower than that recommended by the CCR.

87. In addition, the COs apply a salary moderation clause 'the smoothing effect of which is regarded as effective' according to the opinion expressed by the CRSG at the 135th joint meeting of the three co-ordinating bodies.

88. The new pension adjustment method in fact protects officials against the adverse effects on them of salary stagnation, even of a temporary nature.[19]

[16] ILOAT, Judgment 61, Lindsey; 832, Ayoub; 4195 of 3 July 2019.
[17] Annex A-11 to the application.
[18] Rules on the Remuneration Adjustment Procedure of the Co-ordinated Organisations.
[19] ILOAT, Judgment 2089 of 30 January 2002, consideration 16.

89. The calculations relating to the cumulative damage that the application of the new pension indexation method supposedly represents for pensioners only reflect simple assumptions, the validity of which cannot be guaranteed in the long term.

90. In light of the documentary evidence presented, the Tribunal considers that the pension indexation method does not in itself constitute a decisive condition for accepting a job offer, for remaining in the Organisation or for transferring to the CPS pension rights acquired in another scheme.

FOR THESE REASONS, THE TRIBUNAL

DECLARES the applications inadmissible.