*Registry's translation,
the French text alone
being authoritative.*

106th Session **Judgment No. 2778**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr G.J. B., Mr G. D., Mr M. G. and Ms S. M. A. against the European Organization for Nuclear Research (CERN) on 20 August 2007 and corrected on 23 November 2007, the Organization's replies of 11 March 2008, the complainants' rejoinder of 18 June and CERN's surrejoinder of 16 October 2008;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Every five years CERN carries out a general review of the financial and social conditions applicable to the members of its personnel with a view to ensuring that these conditions remain competitive. The principles and procedures governing the five-yearly reviews are set forth in Annex A1 to the Staff Rules. At least six months before the start of a review the Council of CERN decides which financial and social conditions will be covered by the review and draws up a list of employers from which relevant data is to be collected for the purpose of comparing their conditions of employment with those offered by CERN. The data thus collected is

analysed in the light of the Organization's own requirements, after which the Council, using these data and analyses as a guide, may decide to adjust remuneration and, where appropriate, other financial conditions of the Organization.

During the five-yearly review conducted in 2005, financial and social data were gathered from the chosen comparators and several study groups were set up, one of which was instructed to write the Report on Staff Recruitment and Retention. This report indicated inter alia that CERN's main recruitment pool was industry. The Management then presented the findings of a comparative survey of salaries in tabular form. The Standing Concertation Committee[*] and the Tripartite Employment Conditions Forum[**] subsequently held several meetings. After these discussions the Management submitted its proposals to the Finance Committee and the Council for a decision. With regard to the scale of basic salaries it considered that, "in view of the Organization's generally positive situation concerning staff recruitment and retention" and the fact that there would be greater scope for merit-based advancement under the new scheme, it was unnecessary to raise the salary scale at the beginning of career paths. On the other hand, to take account of the salary comparisons, it proposed increases at the top of most career paths, which were subject to merit-based advancement on a selective basis. To this end, it suggested the addition of "increments" to "Exceptional Advancement Zones", which would become "Exceptional Career Extensions". With regard to career structure and the advancement scheme, the Management proposed to change the value of the annual periodic step in order to allow for more merit awards. In addition to these measures, the Management proposed inter alia to increase the family and child allowances, to introduce an infant allowance, to increase paid

[*] The Standing Concertation Committee is a statutory body in which the Management and Staff Association of CERN try to reach a common position on general matters concerning the personnel.

[**] The Tripartite Employment Conditions Forum is an advisory body of the Council of CERN, which comprises representatives of the Member States, the CERN Management and the Staff Association and is responsible for examining matters relating to remuneration and employment conditions at CERN.

maternity leave for single parents and to provide a limited number of crèche places. The Council approved all the proposals on 19 October 2006. The Staff Rules and Regulations were amended accordingly and a revised version of these texts, which came into force on 1 January 2007, was approved by the Council at its session on 14 and 15 December 2006.

The complainants are members of CERN personnel, but each has a different career path. They are current or former members of the Staff Association who took part in the five-yearly review conducted in 2005. They received their payslip for January 2007 in an e-mail of 23 January 2007. On 23 March 2007 they each lodged an internal appeal with the Director-General in which they challenged the decision to pay them the amount shown on their payslip, which, according to them, was considerably lower than the amount to which they were legally entitled. They argued in particular that the legal basis for that decision, namely the Council's decision of 19 October 2006, was itself unlawful. In their opinion the Council had approved "a proposed 0 per cent increase in the level of salaries concealed by completely extraneous components" whereas, depending on career path, the corresponding salaries in the reference sector – Swiss industry – were 10 to 40 per cent higher. They requested authorisation to bring their claim directly before the Tribunal. This authorisation was granted by the Director-General in a letter of 23 May 2007, which constitutes the impugned decision. The complainants explain that they are also incidentally challenging the Council's decision of 19 October 2006.

B. The complainants contend, firstly, that CERN breached the general legal principles identified by the Tribunal regarding salary adjustments. In this connection they denounce a lack of transparency. Referring to the Tribunal's case law, in particular Judgment 1821, they criticise the methodology underlying the five-yearly review conducted in 2005, arguing inter alia that the way in which data were combined and used was unclear. They deplore the fact that no overall figure was quoted to illustrate the disparity between salary levels at CERN and at reference employers, although it worked

out at 20 per cent on average. Since, notwithstanding this disparity, the Organization did not give its personnel a pay rise, the complainants consider that the data and analyses were not used "as a guide". They allege that CERN simply wished to achieve savings. Yet Judgment 1821 establishes that the mere desire to save money at the staff's expense is not a valid reason for departing from methodology. According to the methodology adopted in this case, the five-yearly review had to cover remuneration; whilst it could also encompass other spheres, this was merely optional. The calculations were distorted because data on the advancement system and career structure were included in those related to remuneration, yet these two categories of figures relate to different reference employers.

Secondly, the complainants submit that blatantly wrong conclusions were drawn from the facts. They contend that the Management, in considering that it was unnecessary to raise the salary scale at the beginning of career paths, failed to recognise the difficulties of recruiting and retaining staff and lost sight of the prime objective of the five-yearly review, which is to ensure financial conditions allowing CERN to recruit and retain persons of the highest competence and integrity and who are physically fit. Moreover, the personnel was duped because the inclusion of data on the advancement system and career structure in that relating to remuneration was presented to it as a beneficial measure, whereas the new advancement system considerably increases the discretionary nature of advancement and reduces the chances of promotion.

Lastly, citing the Tribunal's case law, the complainants assert that CERN breached the general legal principles concerning the reciprocal duty of fairness and mutual trust.

The complainants ask the Tribunal to quash the decisions of 23 May 2007 and to draw all legal consequences from that quashing, in other words to cancel the salary scale resulting from the last five-yearly review and to refer the case back to the Organization for it to adopt a new decision based on a new lawful scale. They also claim costs.

C. In its replies CERN first comments that the complaints were filed under the aegis of the Staff Association and form part of the latter's "legal defence strategy" against the Administration. It submits that the complainants' tardy criticism of its methodology calls into question the good faith of the Staff Association which, throughout the review process, disputed not the methodology as such, but the way in which it was applied.

The Organization asserts that the disputed decision is consonant with the Staff Rules and Regulations, in particular the provisions of Annex A1 containing the rules governing the five-yearly review, the purpose of which is to preserve the Organization's ability to recruit and retain highly qualified staff from all the Member States, not to protect the purchasing power secured by the remuneration it pays to its officials. It explains that, since CERN's main recruitment pool was industry, any analysis of the findings of the salary comparison had to focus on the salary levels obtaining in that sector, especially in Swiss industry, which offers the highest salaries. Annex A1 does not, however, provide for any automatic translation of those findings into CERN's salary scale.

In response to the complainants' first plea the Organization contends that the Council established a clear and foreseeable method for using the data that were gathered. As for the alleged lack of transparency, it points out that tables showing a detailed comparison of CERN salaries with the most competitive salaries in Swiss industry were supplied and it explains why the results of the comparative survey could not be expressed by means of an overall figure. If CERN had intended to use the five-yearly review to achieve savings, the Council would not have decided to review numerous other financial and social conditions in addition to salary levels. In this connection it adds that the facts of the case that led to Judgment 1821 are different to those of the instant case. Moreover, it considers that it was perfectly logical to take Swiss industry as a comparator for salary levels, as well as for advancement and career structure, since employees' total earnings throughout their working life depend on both their salary and their advancement. The Organization states that, having seen the

results of the salary survey, the Council correlated them with the Management's analysis of the data on staff recruitment and retention. As the Organization's situation in that respect was satisfactory on the whole, it concluded that a general raising of the scale was unjustified and it decided to address the specific problems identified in the Report on Staff Recruitment and Retention by improving the Organization's competitiveness through targeted measures impacting directly on the level of salaries and supplemented by a wide range of social measures, all of which had greatly enhanced CERN's attractiveness as an employer. Thus, the data and analyses had in fact been used as a guide.

The Organization replies to the second plea by stating that its assessment of the situation with regard to staff recruitment and retention was correct. Although the report on the matter recorded the fact that CERN was experiencing difficulties in recruiting some categories of staff, it did not indicate that the financial conditions were generally inadequate. The steps taken by CERN – which never lost sight of the purpose of the five-yearly review – were a fitting response to the difficulties noted and did not constitute arbitrary exercise of its discretionary power. The Organization states that the salary scale introduced after the five-yearly review conducted in 2005 offers high performers considerably better prospects of advancement. It takes the complainants to task for ignoring the other favourable measures that were also adopted at that time.

Lastly, the Organization considers that since the second plea is unfounded, that relating to an alleged breach of the principles relating to the duty of fairness and mutual trust is also unfounded.

D. In their rejoinder the complainants, noting the parties' inability to agree on virtually anything, not even the facts, request an oral hearing.

They also enlarge upon their pleas. They explain that, while they criticise the methodology used to carry out the five-yearly review, they do not seek to call its legitimacy into question but merely challenge the way it was applied. They assert that CERN is trying to justify a Management "ploy", which consists in focusing solely on staff recruitment and retention, in producing a questionable analysis of the

situation bar any methodological rigour and in making much of a few measures which supposedly correct the problems that have been identified, in order to refuse any pay rise, whereas the measures in question did nothing to solve the problems. They draw attention to the fact that the five-yearly review had two purposes, the second being to ensure that employment conditions at CERN remained in line with the situation in the Member States.

E. In its surrejoinder CERN denounces the complainants' determination to challenge each and every element of its description of the process followed during the five-yearly review, which was aimed at maintaining CERN's ability to recruit and retain highly qualified staff from all its Member States. It asserts that the decisions taken in the wake of the five-yearly review generated substantial financial advantages for the staff. By giving greater recognition to merit in the advancement scheme, the Organization made a big stride towards a system better suited to its needs in highly qualified human resources.

CONSIDERATIONS

1. By a decision of 19 October 2006 the Council of CERN unanimously approved a package of measures proposed by the Management to give effect to the findings of the five-yearly review of the financial and social conditions applicable to members of the Organization's personnel conducted in 2005.

Annex A1 to the Staff Rules lays down that these financial and social conditions, especially remuneration, must be reviewed every five years so that they can be revised in the light of the findings of a comprehensive survey of the conditions offered by certain other employers which have been chosen as comparators. The scale of basic salaries set at that juncture is itself reviewed annually so that their level can be regularly adjusted between two five-yearly reviews using a "salary index" calculated for that purpose.

2. In accordance with the Organization's procedure, the Council's decision of 19 October 2006 was preceded by numerous

meetings of the Standing Concertation Committee and the Tripartite Employment Conditions Forum, during which the Staff Association displayed deep hostility to the Management's proposals regarding the evolution of remuneration. While it emphasised that it did not intend to oppose plans to introduce numerous measures concerning the other conditions of employment covered by the five-yearly review, which brought various new advantages for staff of the Organization, the Staff Association took the Management to task for not making provision for an across-the-board increase in the scale of basic salaries.

Indeed, although the above-mentioned comparative survey had disclosed that – at least in some categories of jobs – members of CERN personnel were experiencing a considerable negative wage disparity, the Management chose to tackle that issue by ruling out any general increase in favour of individual, more selective improvements in the scale, and the Council endorsed that approach. Thus, the decision of 19 October 2006 merely extended the scale at the top of most career paths so as to enhance the remuneration received by staff reaching this level of their career path through merit-based advancement. In the Management's opinion, the wage disparity revealed by the comparative survey mainly concerned the upper part of career paths. Since a report on staff recruitment and retention during the period January 2000 to December 2004 indicated that, on the whole, CERN was in a positive situation in that respect, it appeared unnecessary to provide for any broader increase in the scale of basic salaries.

3. The four complainants, who are or were members of the Staff Association but who have filed their complaints in their personal capacity, are now pursuing this debate before the Tribunal by challenging the amount of remuneration set as from the beginning of 2007, as shown in their respective payslips for January. They consider that if the Organization had drawn valid conclusions from the five-yearly review, the salaries they received should have been much higher.

In their complaints they request the quashing of the decisions of 23 May 2007 by which the Director-General dismissed the internal

appeals which they had lodged in this matter and authorised them to refer their claim directly to the Tribunal under Article S VI 1.07 of the Staff Rules.

4. The four complaints raise identical issues of fact and of law and seek the same redress. They shall therefore be joined to form the subject of a single judgment.

5. In their rejoinder the complainants have requested the convening of a hearing. In view of the abundance and clarity of the written submissions and items of evidence produced by the parties, the Tribunal considers that it has been fully informed about the case and does not therefore consider it necessary to accede to this request.

6. In support of their complaints, which are entirely geared towards challenging the lawfulness of the general decision of 19 October 2006 insofar as it constitutes the legal basis of the individual decisions that they impugn, the complainants first submit that the said general decision violated the principles by which international organisations must abide when adjusting their staff's salaries.

7. The principles established by the case law for defining the limits of an organisation's discretion in this domain were summarised in Judgment 1821, under 7, and recapitulated in Judgments 1912 and 1913 in the following terms, which are still completely relevant today:

> "(a) An international organisation is free to choose a methodology, system or standard of reference for determining salary adjustments for its staff provided that it meets all other principles of international civil service law: Judgment 1682 […] in 6.
>
> (b) The chosen methodology must ensure that the results are 'stable, foreseeable and clearly understood': Judgments 1265 […] in 27 and 1419 [...] in 30.
>
> (c) Where the methodology refers to an external standard but grants discretion to the governing body to depart from that standard, the organisation has a duty to state proper reasons for such departure: Judgment 1682, again in 6.

(d) While the necessity of saving money may be one valid factor to be considered in adjusting salaries provided the method adopted is objective, stable and foreseeable (Judgment 1329 […] in 21), the mere desire to save money at the staff's expense is not by itself a valid reason for departing from an established standard of reference: Judgments 1682 in 7 and 990 [...] in 6."

8. In the instant case, the complainants, in their initial submissions, make several critical remarks about the methodology for the 2005 five-yearly review, as defined in Annex A1 to the Staff Rules. They stress that it is excessively cumbersome and ill suited to the purposes of this review. This criticism echoes that expressed by the Management itself, which has since resulted in the streamlining of arrangements for future five-yearly reviews through the Council's adoption of a revised Annex A1 in June 2007.

Nevertheless, as the complainants expressly emphasised in their rejoinder, they did not intend to question the lawfulness of the earlier methodology, but only the way it was applied during the five-yearly review conducted in 2005. The Tribunal does not therefore need to determine whether this methodology complies with the first two principles set forth in Judgments 1821, 1912 and 1913.

9. On the other hand, compliance with the third of the above-mentioned principles, which concerns the conditions on which an organisation may exercise its discretion to depart from a standard, is central to the complainants' arguments. They submit that since the comparative survey of salaries, for which the terms of reference had been previously approved by the Council in June 2004, had revealed a definite negative disparity in CERN personnel's remuneration, the Organization was obliged to institute at least some upward revision of its scale of basic salaries.

10. The Tribunal will not accept the complainants' criticism of the way in which the comparative survey was carried out. As was said earlier, the procedure laid down in Annex A1 to the Staff Rules had some defects, but the arguments that this survey was flawed by the figures' lack of transparency, and by the fact that heterogeneous

data were combined, are unfounded. In particular, the fact that the salary disparity was not expressed in overall figures is not surprising, since the multiplicity and huge diversity of types of job, career levels and reference employers covered hardly facilitate the calculation of such overall data. Contrary to the complainants' allegations, the comparative documentation prepared in the course of this survey was, with a few exceptions, easy to use.

Neither the fact – to which the Tribunal will return later – that the salary comparison was a mandatory element of the five-yearly review, whereas the comparison of other financial conditions was only optional, nor the fact that these distinct exercises encompassed different reference employers, precluded the combining of figures concerning these two sets of data, provided that the requisite methodological precautions were taken.

11. From a legal point of view, in order to reply to the complainants' arguments, it is first necessary to examine various questions regarding the interpretation of the provisions of Annex A1 to the Staff Rules which, at least in the version in force in 2005, contained many regrettable ambiguities.

12. The first and by no means least important of these questions is that of determining the actual purpose of the five-yearly review of the financial and social conditions applicable to the personnel.

According to the Organization, the sole purpose of the review is to ensure that these conditions allow it to recruit and retain highly qualified staff from all the Member States. In this connection the Tribunal shares the complainants' view that such an analysis is consistent with the wording of the revised version of Annex A1 of June 2007, but not with the version in force at the material time, which stated in Section I, Part A, paragraph 1, that the purpose of the five-yearly review was also to "ensure that these [financial and social] conditions remain in line with the situation in Member States". At first sight this would tend to give credence to the argument that an adjustment becomes imperative when these conditions deteriorate in comparison with those offered by the various reference employers.

However, the ultimate purpose of the five-yearly review, and indeed of the similar systems used for regularly reviewing financial and social conditions in various other international organisations, is to enable CERN to have high-quality staff. In reality, the maintenance of a degree of equivalence with the conditions offered by other employers is therefore to be seen as a means to achieve that goal rather than as a goal in itself. Moreover, the consensus on the revised version of Annex A1 of June 2007, which was welcomed by the Staff Association even though it actually removed the reference to this equivalence of employment conditions, shows that the need to ensure that the Organization is able to recruit high-quality staff was seen from the outset as the main objective of the five-yearly review.

It should also be emphasised that, in any case, the equivalence which was the formal goal of the old version of the text was not specifically that of remuneration, but more generally that of all the "financial and social conditions" applicable to the members of the Organization's personnel.

13. This raises a second question, namely that of whether, as the complainants submit, the rules governing the five-yearly review oblige the Organization to raise the salary scale if it is found that salaries have undergone a marked comparative deterioration or whether, when taking a decision on the matter, the Organization can factor in developments concerning other financial or social conditions.

14. At the material time, Annex A1 to the Staff Rules provided, in Section I, Part A, paragraph 3, that for the purposes of the review "[t]he financial conditions of the Organization must cover remuneration and may cover" various other conditions of employment, including "allowances", "indemnities", "grants" or "premiums" as well as "social contributions associated with remuneration conditions" and "social benefits as far as this is feasible in practice".

Annex A1 then listed the points on which decisions had to be taken at least six months before the start of the review, namely "the nature of the financial conditions to be reviewed", "the organizations for which the relevant data shall be collected", "the nature of the

comparative information to be collected and analysed" and the "arrangements for the collection and analysis of the components of the review", before stating in Section I, Part A, paragraph 6, that:

> "The analysis of the collected data shall show how the Organization is situated with regard to the level and evolution of remuneration. These elements shall be brought into relation with the data concerning the Organization's particular requirements, especially its personnel recruitment and retention needs."

Lastly, Section I, Part A, paragraph 7, of Annex A1 provided that:

> "Using these data and analyses as a guide, the Council shall decide on possible adjustment of remuneration and, where appropriate, of the other financial conditions of the Organization, in accordance with the applicable procedures."

15. Although the wording of these provisions is again rather ambiguous, the Tribunal finds that they do not require that the decision on a possible raising of salaries be based solely on a comparison of these salaries themselves, to the exclusion of data concerning other financial conditions. Section I, Part A, paragraph 3, certainly makes it plain that remuneration must be included among the financial conditions covered in the comparative survey, whereas the inclusion of the other financial conditions in this exercise is only optional and at the discretion of the Council. It may also be deduced from all the relevant provisions taken together that, at the end of the five-yearly review, the Organization is obliged to examine whether an adjustment of salaries might be necessary. But these considerations do not in any way imply that the conclusions to be drawn from the comparative survey of salaries are to be determined without taking into account information on the other financial conditions analysed during the review.

Moreover, given that the ultimate goal of the exercise in question, as stated above, is to enable the Organization to have staff of the highest calibre, it seems natural that it should be entitled to offer the members of its personnel other advantageous employment conditions in preference to higher salaries, if such a choice appears better suited to that goal.

Since for the five-yearly review in 2005 the Council had decided to extend the comparative survey to numerous financial or social

conditions, at the end of the review there was nothing to prevent it from opting for a package of measures concerning all these various conditions, as it did in this instance at its meeting on 19 October 2006, rather than for a general increase in salaries.

Furthermore, the Tribunal finds that, even if the provisions cited above were to be interpreted as excluding such joint consideration of data on salaries and on other employment conditions, they certainly do not mean that the "possible adjustment of remuneration" to which they refer must necessarily take the form of a general increase in the salary scale. Despite their obviously more modest impact, the measures concerning the salary scale of certain career paths and the advancement scheme which were decided by the Council in this case and which affected the level of the salaries paid to the members of personnel concerned, were indeed aimed at bringing about some adjustment of salaries.

16. Lastly, a perusal of the above-mentioned provisions raises the question of the exact scope of the "guide" to which the Council is invited to refer when adopting its decisions at the end of the five-yearly review.

According to the case law, the use of such a reference standard as a guide or guideline is indeed a legal obligation (see for example Judgments 1419, 1821 and 1912). Hence even if the decision-making body is entitled to depart from it, it must still endeavour to take this standard as its starting point.

However, according to the aforementioned provisions, the "guide" mentioned in Annex A1 was not confined to the results of the comparative salary survey, but more generally encompassed all the "data and analyses" used in preparations for the five-yearly review,

which expressly included "data concerning the Organization's particular requirements, especially its personnel recruitment and retention needs". The decision of 19 October 2006 rested on these various data and analyses, especially on those concerning the said needs. In these circumstances, it cannot therefore be found that the Council departed from that guide.

Even if this had been the case, it is clear from Judgments 1682, 1821, 1912 and 1913 that the Organization was entitled to depart from the reference standard, provided that it stated the reasons for not following it. The proposal approved by the Council set out the precise reasons for the decision that the latter adopted, these being the recruitment and retention of highly qualified staff and the desire to promote a merit-based advancement system permitting more rapid career progression. In Judgments 1912 and 1996 the Tribunal also specified that the criteria relied on to justify deviating from a reference standard or guide must be objective, adequate and known to the staff; in this case all three conditions were met.

17. In this connection, the complainants' argument that the Council's decision violated the fourth principle embodied in Judgments 1821, 1912 and 1913 in order to achieve savings at the personnel's expense is unfounded. Budgetary concerns were probably not entirely unconnected with the choice not to increase the salary scale across the board; but it must be remembered that, at the same time, through its decision of 19 October 2006, the Council approved a package of measures concerning various other financial or social employment conditions which had been examined in the five-yearly review. It must be noted that the total cost of these measures – quite apart from the budgetary implications of those related to salaries – amounted to 7.5 million Swiss francs, which had to be financed by supplementary contributions from the Member States. In the circumstances, the Tribunal cannot agree with the complainants' submission that the sole aim behind the choices made by the Organization at the end of the five-yearly review was to curb expenditure on personnel.

18. In the final analysis, and having regard to the very imprecise nature of the above-mentioned provisions of Annex A1 to the Staff Rules, which in fact made them rather lax, the Tribunal must find that the Organization was entitled to refuse the general increase in the salary scale demanded by the complainants.

19. In keeping with a principle identified in Judgment 1912 in addition to those mentioned under 7 above, the position would be different only if the disputed decision had breached the recognised right of the staff of international organisations to receive – in the interest of the international civil service itself – a level of remuneration equal to that in countries where, for comparable qualifications, the salaries are the highest.

Whilst the wage disparity at issue in this case cannot be calculated precisely, it certainly cannot be as large as the figures quoted by the complainants, since their estimates are mainly based on salary levels in Swiss industry alone. Although this constitutes the Organization's main recruitment pool, and although it had been decided, in the context of the five-yearly review, to focus the salary comparison on this pool, salaries in Swiss industry cannot be the only benchmark for evaluating the level of remuneration in the countries to which the principle thus defined refers. Moreover, it should be noted that the figures quoted by the complainants ignore the impact on the salaries paid by the Organization of the above-mentioned measures concerning the salary scale for various career paths and certain criteria for advancement. In view of the aforementioned reasons underpinning the Council's decision, it is not certain that its effect would be to keep the complainants' salaries, without proper motivation, at a level that would be manifestly inadequate, this being one of the criteria required in Judgment 1912 in order to justify censure on this basis.

20. The complainants further submit that, in adopting the decision of 19 October 2006, the Council drew blatantly wrong conclusions from the data submitted to it.

In particular, they challenge the validity of the Council's finding that the Organization was in a generally positive situation concerning

staff recruitment and retention and they hold that CERN did not have sufficient regard to the need to hire staff of the highest calibre.

They also strongly criticise the Organization's favourable portrayal of the new provisions on salary progression as being inconsistent with what they regard as the very small advantages which members of the personnel actually derive from them. As far as this last point is concerned, the Tribunal notes that their argument is weakened by the fact that they wrongly fail to take account of some of the measures in question, such as the introduction of "Exceptional Advancement Zones" or the elimination of the old "orange zone" corresponding to periods in which the possibilities for advancing to the next step were limited.

In any case, all these contentions which lead the parties to wonder whether, for example, some obstacles to recruitment would be more easily overcome by a general salary increase than by selective remuneration measures, or whether providing more scope for merit-based advancement would be a better way of retaining personnel than a pay rise, in reality belong to the realms of purely managerial choices. A firm line of precedent has it that the Tribunal may not censure such discretionary choices made by the management of an organisation unless the management has plainly misused its authority. In view of the nature of the questions raised and their particular sensitivity, it is clear that no such finding can be made in the present case.

21. Lastly, the complainants submit that during the procedure paving the way to the decision of 19 October 2006 the Management of CERN breached its duty of fairness and failed to foster the mutual trust which must govern relations between international organisations and their staff.

In this connection, the complainants claim first that the Organization had decided as a matter of principle to rule out any

increase in the salary scale even before the five-yearly review was held. The only evidence they provide in support of this assertion is a statement made by the Chairman of the Standing Concertation Committee, during the Committee's consideration of the medium-term plan in June 2005, that this plan could not make provision for the budgetary implications of the findings of the five-yearly review, since they were not yet known, and that "the advantages obtained on the one hand [in the wake of this review] w[ould] have to be offset by concessions on the other in order to obtain a balanced package of measures". This statement cannot, however, be interpreted as an indication that a decision to rule out any raising of salaries had already been taken.

In their remaining submissions the complainants merely reiterate their criticism of the way in which the impact on salaries of measures related to career structure and advancement was used as a reason for refusing a general increase in salaries. The Tribunal, which dismissed this criticism earlier, will not of course concur with the complainants' assertion that the Organization's choice in this matter was calculated to deceive.

22. Since none of the complainants' pleas challenging the lawfulness of the Council's decision of 19 October 2006 can be allowed, their complaints must be dismissed as ill-founded.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 5 November 2008, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2009.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet