

CONSEIL DE L'EUROPE— —COUNCIL OF EUROPE

COMMISSION DE RECOURS APPEALS BOARD

Appeals Nos. 101-113/1984 (STEVENS and Others v. Secretary General)

The Appeals Board, composed of:

Mr Walter GANSHOF VAN DER MEERSCH, Chairman,
Mr Raul VENTURA,
Sir Donald TEBBIT, members

assisted by

Mr Michele de SALVIA, Secretary and
Mrs Margaret KILLERBY, Deputy Secretary,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The following appellants have lodged appeals with the Board

- Mr	Trevor STEVENS	Recours	N°	101/1984
- Mr	Klaus FUCHS	“	N°	102/1984
- Mr	Christopher LUCKETT	“	N°	103/1984
- Mr	Peter LEUPRECHT	“	N°	104/1984
- Mr	Henri LELEU	“	N°	105/1984
- Mrs	Agneta DERRIEN	“	N°	106/1984
- Miss	Christine MEUNIER	“	N°	107/1984
- Miss	Maura ROLANDI RICCI	“	N°	108/1984
- Mr	Ulrich BOHNER	“	N°	109/1984
- Mr	Candido CUNHA	“	N°	110/1984
- Mr	Jean SABATTIER	“	N°	111/1984
- Mr	Johannes DE JONGE	“	N°	112/1984
- Mr	Roger MASSIE	“	N°	113/1984

2. The appellants lodged their appeals on 25 July 1984 and 9 August 1984. The appeals were registered respectively on 25 July and 9 August 1984 under file Nos 101/1984 to 113/1984.

3. The supplementary pleadings were communicated on 25 July and 10 August 1984 respectively.

4. On 12 October 1984 the Secretary General's representative submitted his observations.

5. On 8 November 1984 the appellants' representative, Mr David Ruzié, Professor at the University of Paris V, forwarded his reply.

6. The public hearing took place on 6 February 1985. The parties were represented as follows: the appellants by Mr Ruzié, Professor at the University of Paris V, the Secretary General by the Deputy Secretary General, Mr G. Adinolfi, assisted by Mr E. Harremoes, Director of Legal Affairs, Mr G. Nagel, Deputy Director of Administration and Miss G. Podestà, Principal Administrative Officer in the Private Office of the Secretary General.

THE FACTS

7. Mr T. Stevens and the twelve other appellants are permanent officials of category A in the Council of Europe. The appeals relate to the levy on salaries carried out for the first time in March 1984. They are directed against the refusal to annul the decision implementing the levy and reimburse the sums levied.

A. Procedure for determining remuneration

8. Council of Europe officials are entitled to remuneration in conformity with Article 41 of the Staff Regulations and the Regulations governing staff salaries and allowances (Appendix IV of the Staff Regulations). Salary scales are established by the Committee of Ministers and appended to the resolution in which it determines the level of remuneration.

9. In the framework of the triennial review of salaries of Council of Europe officials, with effect from 1 July 1982, the Committee of Ministers at its 357th meeting in March 1983 approved the recommendations contained in paragraphs 32 to 38 of the Co-ordinating Committee of Government Budget Experts' 191st report dated 16 February 1983 and the remuneration scales with effect from 1 July 1982. In that report the Co-ordinating Committee recommended continuing application of the salary adjustment procedure set out in its 159th report dated 16 February 1979.

10. This adjustment procedure is explained in paragraph 8 in the 159th Report in the following terms:

A. In two years out of three, remuneration will be reviewed at 1st July on the basis of the percentage changes in remuneration in national civil services as defined in the Annex hereto, and Article 6 in particular.

B. In every third year a general review will be held, based on the following data:

i. the rise in the cost of living since the previous triennial review;

- ii. the trend of remuneration in national civil services;
- iii. the level and trend of remuneration in the EEC and other international organisations;
- iv. the problems of recruitment in the Co-ordinated Organisations;
- v. the economic and social situation in the member countries of the Co-ordinated Organisations.”

11. In addition in its 191st report, paragraph 34, the Co-ordinating Committee recommended:

“Wage restraint would (shall) be applied in the form of a cumulative 1.5 per cent levy from 1st July, 1983, to 30th June, 1986 (in all, 1.5 per cent at 1st July, 1983, 3 per cent at 1st July, 1984 and 4.5 per cent at 1st July, 1985) on basic salaries as adjusted each year in accordance with the results of the procedure set out in the 159th Report. The Committee may, at the end of this period, consider the advisability of proposing to councils that the levy be incorporated in the salary scales in the light of the following considerations:

- a. the economic, social and budgetary situation in member countries,
- b. the results that might emerge from the comparative study,
- c. trends in salary policy in other international organisations.

The levy would not affect allowances expressed in percentages or pensions.”

12. At its 368th meeting in March 1984, the Committee of Ministers of the Council of Europe firstly approved the remuneration scales contained in the Appendix to the Co-ordinating Committee’s 196th Report with effect from 1 July 1983.

The Committee of Ministers secondly approved the recommendations made by the Co-ordinating Committee in its 195th report and decided that the method to be used for making the temporary levy on basic salaries of category A and L staff from 1 July 1983 to 30 June 1986 and the means of application of the relevant guarantee concerning nominal basic salaries would be as set out in paragraphs 10 and 11 of the 195th Report.

The recommendations of the 195th Report were as follows:

“10.

- i. the guarantee of nominal basic salary is an individual guarantee;
- ii. the guarantee of nominal basic salary relates solely to the effects of the levy;
- iii. paragraph 34 of the 191st Report states explicitly that “the levy would not affect allowances expressed in percentages or pensions”;

- iv. the calculation of pension and provident fund contributions as well as the calculation of social insurance or of any other contributions which are expressed as a percentage of basic salary is also unaffected by the levy.”

“11.

- i. nominal basic salary is to be guaranteed on 30th June 1983, 1984 and 1985 respectively;
- ii. on 30th June 1983 the nominal basic salary to be guaranteed is the individual basic salary of the staff member concerned according to the scales approved by Councils and in force at that time; on 30th June 1984 and 1985 the nominal basic salary which is guaranteed is the individual basic salary of the staff member according to the scales approved by Councils less the actual amount that he pays at that time as levy;
- iii. the levy is calculated as a percentage of the individual basic salary of a staff member on 1st July, 1983, 1984 and 1985 respectively, the monthly amount so calculated will remain unchanged during each 12-month period considered; however, when an adjustment is granted on 1st January, 1984 1985 and 1986 respectively the levy calculated on the preceding 1st July will be increased by the same percentage as the 1st January adjustment;
- iv. if a staff member who has not been in a position to pay all or part of the levy on 1st July 1983, 1984 and 1985 or on 1st January 1984, 1985 and 1986 respectively because of the guarantee of nominal salaries receives a step increase or a promotion, he will, from the effective date of such an increase, pay the monthly levy calculated in iii. above to the extent that his nominal basic salary as defined in ii. above is not reduced below that which he received on 30th June 1983, 1984 and 1985 respectively;
- v. a staff member will not be required to pay retroactively any portion of the levy which he has not been in a position to pay as a result of the guarantee of nominal salaries;
- vi. as a transitional measure, a staff member who received a step increase or a promotion on or after 1st July 1983 but before the 1983 annual salary adjustment has become effective, will not be required to use, for the payment of the levy, any salary increase granted prior to the first day of the month following Council decisions on the 1983 annual salary adjustment. If such step increase or promotion has become effective as of 1st July 1983 the nominal basic salary to be guaranteed on 30th June 1983 shall be that salary with the new step or grade;
- vii. as a transitional measure, staff appointed on or after 1st July 1983 but before the first day of the month following Council decisions on the 1983 annual salary adjustment, are considered to have a guaranteed nominal basic salary of the grade and step on which they were recruited in accordance with the scales approved by councils and in force on 30th June 1983. After the first day of the month following Council decisions on the 1983 annual salary adjustment their situation will be that described in sub-paragraphs i. to v. above;
- viii. staff appointed to the Co-ordinated Organisations after the first days of the month following Council decisions on the 1983 annual salary adjustment will pay the levy

calculated on the basis of the salary on which they have been recruited until 30th June 1984; thereafter their situation will be that described in paragraphs i. to v. above. The same principle will” apply to staff appointed on or after 1st July 1984 in respect of the levies due from that date. Staff appointed to the Co-ordinated Organisations on or after 1st July 1985 will pay the levy until 30th June 1986.”

13. On 19 March 1984 the Committee of Ministers adopted Resolution (84) 2 on revision of the regulations governing staff salaries and allowances. This revision entailed the establishment of new tables of salary scales with effect from 1 July 1983. The tables were accompanied by a memorandum in which the temporary levy was expressly indicated.

B. The circumstances of the case

14. On receipt of the pay slips- the first two concerning back pay dated 19 March 1984 and received on 27 March 1984, the third concerning salary for the month of April dated 1 April and received on 30 March 1984 – each of the appellants became aware of a levy applied to his or her salary from 1 July 1983 to 30 April 1984.

15. Furthermore, category A and L officials were informed in office circular No. 666 of 11 April 1984 that “as a result of salary restraint measures decided by the Committee of Ministers at the 357th meeting (March 1983) of the Ministers’ Deputies’ on the recommendation of the Co-ordinating Committee of Government Budget Experts (191st Report) the basic salaries of A and L category officials as established by the salaries review with effect from 1 July 1983 (196th Report of the Co-ordinating Committee approved by the Deputies at their 368th meeting in March 1984) are subject to a temporary levy of 1.5% until the salaries review with effect from 1 July 1984.”

16. The appellants made a complaint to the Secretary General in May 1984 asking that the Administration should reverse the decision introducing the levy and pay back the sums already levied.

17. The Secretary General rejected the complaint on 27 June 1984 in the following terms: “I regret to inform you that the Secretary General cannot on his own authority give effect to your complaint as the measures which you invite him to withdraw are the result of a decision taken by the Committee of Ministers”.

SUBMISSIONS OF THE PARTIES

The appellants’ submissions may be summed up as follows:

A. As to the violation of essential elements in the legal system provided for Council of Europe officials (including conditions of employment)

18. The appellants maintain that the decision which was taken violates “essential rights” in the meaning given to the term by World Bank administrative tribunal (Decision No. 1 of 5 June 1981, de Mérode and others). In the light of this concept of essential rights the decision is said to have violated, firstly, the principle of non-taxation of the salaries of Council of Europe officials and, secondly, the principle of respect for the basic criteria of the salary review method.

a. As to the non-taxability of the salaries of Council of Europe officials

19. The appellants refer to Article 18.6 of the General Agreement on privileges and immunities which states that “officials of the Council of Europe shall ... be exempt from taxation on the salaries and emoluments paid to them by the Council of Europe”.

20. The Co-ordinating Committee’s 191st Report makes it clear that the levy in question is of a “parafiscal nature” (paragraph 46.c).

21. Consequently the appellants maintain that a levy of that nature constitutes the violation of an essential element in their conditions of employment, which do not include any levy.

b: As to the right to observance of the basic criteria of salary review procedure

i. The decision violates the principle of parallelism between the adjustment of the remuneration of Council of Europe officials and the evolution of salaries in the national civil services.

22. The appellants consider that the contested decision overlooks this essential right which is upheld in the Co-ordinating Committee’s 159th Report.

ii. The decision violates the principle of parallelism of the remuneration of Council of Europe officials with the evolution of salaries in the European Communities.

23. In the appellants’ opinion the levy adopted by the Council of Europe is applied at a higher percentage than in the Communities thereby only aggravating existing disparities between salaries in the two organisations.

iii. The levy causes excessive harm to the appellants.

24. The appellants argue that the combined effects of the levy and the government’s salary restraint policy cause them excessive harm, to quote the term used by the World Bank administrative tribunal (see paragraph 18 above). Thus the lowering of their standard of living, they submit, is proportionately greater than in the case of national civil servants.

iv. The decision violates the legitimate confidence which the staff of the Council of Europe were entitled to place in the governing bodies of the Organisation.

25. The appellants maintain furthermore that the contested decision violates the legitimate confidence as defined by the Court of Justice of the European Communities (CJEC, 5 June 1973, Commission/ Council, 81-72, ECR p. 575, para. 10) though the uncertainty of the adjustment machinery and the secrecy surrounding its definition.

B. As to irregular modification of the statutory provisions applicable to the Council of Europe staff

26. The appellants point to formal defects, a procedural defect and misuse of powers.

a. As to the grounds based on formal defects

27. The appellants submit that there is a general principle of international civil service law establishing an order of precedence of legal rules; this is a principle upheld in international case-law, whereby an international administrative authority is bound by any rule that it has itself issued for as long as it has not modified or repealed it.

i. The decision modifies the General Agreement on Privileges and Immunities.

28. The introduction of the levy violates the General “Agreement on Privileges and Immunities of the Council of Europe. As this is an International Agreement the Ministers’ Deputies cannot proceed to make such a modification without first having raised the principle of modification of the Agreement and without received authority to act accordingly.

ii. The introduction of the levy constitutes a modification in the staff regulations according to an irregular procedure.

29. The appellants submit in this respect that neither Article 41 of the Staff Regulations nor Appendix IV containing regulations governing staff salaries and allowances provide for the possibility of such a levy.

iii. Failure to state reasons.

30. On the basis of international case-law and Resolution (77) 31 adopted by the Committee of Ministers of the Council of Europe on the protection of the individual in relation to the acts of administrative authorities the appellants maintain that the Organisation should have stated reasons for the contested decision thus enabling them to dispute the basis of the decision.

iv. Lack of publicity.

31. The appellants submit that the contested decision is illegal also by reason of the lack of publicity, contrary to the principle of healthy management of international organisations.

b. As to the grounds based on a procedural defect

32. The appellants consider that the Committee of Ministers, by using its power to review salary scales in order indirectly, by introducing a levy, to reduce the increase in salaries, has misused the procedure.

c. As to the misuse of powers

33. The appellants maintain furthermore that, in taking the contested decision, the Committee of Ministers misused its powers in so far as the levy benefits not the Council of Europe but member states whose contributions to the Organisation would, in this way, be reduced.

C. As to the violation of general principles of law

34. In the appellants' view the salary adjustment procedure adopted by the co-ordinated organisations reflects the trend in salaries in the national civil services in reference countries and thus takes account of the wage restraint policies pursued by the governments. By combining the effects of the levy with those of the governments' wage restraint policy the Council of Europe officials are being twice penalised and their remunerations is thereby deprived of the character of fairness laid down in the Social Charter (Article 4).

35. Referring to the principles set forth in Articles 4 and 6 of the Social Charter the appellants maintain that their right to collective bargaining was not respected in the process leading to establishment of the levy.

36. Furthermore the contested decision overlooks the principle of due proportion between means employed and aim in view. They refer particularly in this respect to the case-law of the European Court of Human Rights.

37. They argue that introduction of the levy has the effect of increasing the gap between the remuneration of the officials of the European Communities and that of the staff of the co-ordinated organisations and therefore constitutes discrimination towards the latter.

38. The appellants lastly maintain, with reference to the case-law of the World Bank administrative tribunal that an international official cannot by means of unilateral retroactive modification of conditions of employment be deprived of rights due for services already rendered.

They observe that the decision to introduce the levy was taken on 24 March 1984" by the Committee of Ministers which gave it retroactive effect from 1 July 1983 with no exceptional circumstances to justify so doing.

The Secretary General's submissions as set out in the written memorandum:

39. The decision of the Committee of Ministers of the Council of Europe dated 24 March 1984 constitutes implementation by the Council of Europe of the Co-ordinating Committee's recommendations. The decision is founded both on Article 16 of the Statute of the Organisation and on the provisions of Article 41 of the Staff Regulations. Exercise of such power by the Committee of Ministers excludes any intervention by the Secretary General; he is bound to execute the decisions taken by the Committee of Ministers without putting them in question on his own initiative.

A. As to violation of essential elements in the legal system provided for the Council of Europe staff

40. The Secretary General maintains that the contested levy does not have the character of taxation. It was introduced for the purpose of salary restraint taking account of the economic crisis.

As regards violation of the principle of non-taxation of staff salaries guaranteed by the General Agreement on Privileges and Immunities the Secretary General observes that neither the purpose nor the effect of that Agreement is to govern internal relations between staff and

Organisation but to provide the former with independence in the exercise of their functions in respect of the States.

41. The submission whereby introduction of the levy violates the staff's right to respect of the basic criteria in the salaries review method is without foundation. In fact, the Statute of the Council of Europe, the Staff Regulations and the 159th Report of the Co-ordinating Committee of Government Budget Experts confer on the Committee of Ministers the power to cancel rules for the definition of salaries.

42. Furthermore the levy does not have the effect of reducing the amount of salaries paid to officials but makes a reduction in the rates of increase of salaries resulting from application of the scales laid down in the 159th Report.

43. Neither the fact that the levy exposes officials more severely to the effects of the rising cost of living, nor variations that may occur in relation to the evolution of salaries in national civil services or in the European Communities are of such magnitude that the essential guarantees provided for staff would appear to be threatened.

44. The Secretary General further observes that staff have the advantage of remuneration superior to that provided, for similar responsibilities, in the national civil services. In addition Council of Europe officials have the advantage of the same guarantees as national civil servants as regards precariousness of employment.

B. As to irregular modification of the statutory provisions applicable to Council of Europe staff

45. The submission that the decision to introduce the levy is tainted with a formal defect lacks foundation. In effect Article 16 of the Council of Europe Statute confers wide powers on the Committee of Ministers as regards the internal organisation of the Council of Europe.

46. As for the failure to give reasons the Secretary General points out that this was because of the general and impersonal nature of the decision taken, which had moreover been the subject of a wideranging debate prior to adoption; that would also dispense with the submission regarding lack of publicity.

47. The Secretary General also maintains that the claim concerning a procedural defect cannot be upheld.

By virtue of the powers invested in it under Article 14 of its Rules of Procedure the Committee of Ministers was justified in taking such a decision.

48. As for the alleged misuse of powers, the Secretary General observes that the decision introducing the levy has the twofold purpose of reducing the budgetary contributions of Council of Europe member states, such contributions constituting the Council of Europe's resources, and of lightening the Organisation's running costs, in the economic crisis.

The Secretary General further points out that the contested decision is not such as to compromise recruitment of high-quality staff as the Organisation's staff have, after all, the advantage of remunerations superior to those recognised in the national civil services.

C. As to the violation of general principles of law

49. The Secretary General maintains that general principles of law can only be invoked by the appellants in order to limit the Organisation's discretionary powers in the event of manifest absence of fairness.

He concludes that in this case neither the right to a fair remuneration, nor the principle of proportionality, nor the principle of non-discrimination as regards the officials of the European Communities have been placed in question though the levy.

50. As regards the right to collective bargaining, the Secretary General observes that this does not imply participation of staff representatives in decision-taking. He emphasises in this regard that the staff representatives were able to make known their position via the Standing Committee of Staff Associations of the Co-ordinated Organisations.

51. The submission according to which the decision introducing the levy is tainted with illegality owing to its retroactive nature is without foundation. The Secretary General recalls in this respect that the salaries review procedure takes effect on 1 July every year. The contested decision occurred within the framework of that procedure and therefore does not violate the principle of non-retroactivity.

Furthermore, the delay in application of the decision is bound up with the delay in the implementation of the annual salary adjustments.

THE LAW

52. The appellants have brought their appeals against the decision of the Secretary General, taken in March 1984, which imposed a levy on their salaries from 1 July 1983.

They requested the annulment of this decision as well as the reimbursement of the levies already made.

They also requested the Board:

- to allow a sum of 1,000 FF as reimbursement of the costs of this appeal.

53. The Secretary General maintains that no illegality can be established in this matter.

As to the jurisdiction of the Appeals Board

54. In his pleadings of 12 October 1984, the Secretary General pointed out that:

“The decision of the Committee of Ministers of the Council of Europe, dated 24 March 1984, constitutes implementation by the Council of Europe of the Co-ordinating Committee's recommendations. The decision is founded both on Article 16 of the Statute of the Organisation (“the Committee of Ministers shall ... decide with binding effect all matters relating to the internal organisation and arrangements of the Council of Europe”) and on the provisions of Article 41 of the Staff Regulations. The exercise of this power by the Committee of Ministers obviously excludes any intervention by the Secretary General who is

bound to pursue execution of the decisions taken with no possibility of placing them in question on his own initiative.”

At the hearing of 6 February 1985, the Deputy Secretary General, in the name of the Secretary General made the following declaration:

“I must make it clear that the Secretary General’s presence in these proceedings is due to the fact that the disputes system as laid down in Chapter VII of the Staff Regulations provides only for appeals against the Secretary General. In reality, as far as the substance of the question which forms the subject of these proceedings is concerned, the Secretary General has never made a secret of his point of view. Quite the contrary he has always stated it to all the bodies and groups concerned, the statutory organs of the Council of Europe, the Secretaries General of the Co-ordinated Organisations and the staff itself of this Organisation. In applying the decision concerning the levy taken by the Committee of Ministers, which is the decision-taking organ of our Organisation, the Secretary General merely fulfilled his statutory obligations, whatever opinion he may have as regards the wisdom of this measure and its repercussions on the working climate of our Organisation. Furthermore, the Secretary General is well aware of the fact that he is required to provide secretarial services for the Organisation and the legal assistance required for its functioning. That is why written conclusions have been submitted to the Board by a lawyer from outside the Organisation. The Secretary General considers that these conclusions are sufficient to guarantee the participation and the legal defence of the Organisation. Consequently he does not intend to present them orally but asks the Board to refer to them.” (See Record p. 16-17).

Having regard to these matters the Board, in the exercise of its statutory jurisdiction, has to deal with the objections raised against the individual measures taken by the Secretary General, in application of the decision of the Committee of Ministers, relating to the levy on the staff salaries.

As to the merits of the appeals

55. In the framework of the triennial review of the remuneration of the staff of the Council of Europe, which took effect on 1 July 1982, the Committee of Ministers approved at its 357th meeting in March 1983, the recommendations contained in paragraphs 32 to 38 of the 191st Report of 16 February 1983 of the Co-ordinating Committee of Government Budget experts as well as the salary scales with effect from 1 July 1982.

56. The Co-ordinating Committee recommended in this report the continuation of the procedure for salary adjustment which it had indicated on 16 February 1979 in its 159th Report (see above para. 10).

57. In addition, the Co-ordinating Committee having taken into account, in its 191st Report, the possibility of a restraint/abatement of salary, recommended a levy of 1.5% from 1 July 1983 until 30 June 1986 (see above para. 11).

58. In March 1984, at its 368th meeting, the Committee of Ministers of the Council of Europe took decisions on the way to carry out the temporary levy on the basic salaries of staff in categories A and L from 1 July 1983 to 30 June 1986 (see above para. 12).

59. By Resolution (84) 2 on revision of the regulations governing staff salaries and allowances, adopted on 19 March 1984, the Committee of Ministers, decided that Tables I and II, appended to the Regulations governing staff salaries and allowances setting out the basic salary scales and other elements of remuneration, should be replaced, by Tables I and II appended to the Resolution, with effect from 1 July 1983.

The temporary levy is mentioned in a footnote at the bottom of the table of salary scales and reads as follows:

“Basic salaries of staff of categories A and L are subject to a temporary levy of 1.5% with effect from 1 July 1983 (decisions taken by the Committee of Ministers at the 357th (March 1983) and 368th (March 1984) meetings of the Ministers’ Deputies)”.

60. The staff of categories A and L were informed of all these decisions by office circular No. 666 dated 11 April 1984 (see above para. 15).

61. The appellants put forward the grounds of appeal indicated in paragraphs 18 to 38 above concerning the decision in dispute, which according to them adversely affects their remuneration.

62. As the remuneration is an element in the conditions of service of members of staff, it is for the Board to decide whether the appellants have a right to the remuneration which has been taken from them.

63. The amount of the remuneration of staff of the Council of Europe (Article 41, paragraph 1 of the Staff regulations) set out in the scales is arrived at by an adjustment procedure drawn up in advance in the report of the Co-ordinating Committee, approved by the Committee of Ministers.

64. In the present case, it is on the basis of criteria which the Committee of Ministers itself adopted at its 357th meeting, that the scales, with effect from 1 July 1983, were fixed at the 368th meeting.

65. The scales thus fixed give the appellants an individual right to the amounts as shown in these scales, set out in the tables appended to the Regulations governing staff salaries and allowances. This legal situation means that the Council of Europe is under an obligation to pay the remuneration set out in the scales for the period under consideration (see Appeals Board of NATO, Decision No. 80 of 16.11.77, Salacon and others, p. 6), increased where applicable, by the allowances provided under the Staff Regulations and the Regulations, this remuneration being subject only to the contributions provided by the Staff Regulations (contributions for social cover and the pension scheme).

66. This is not to call into question the right of the Committee of Ministers, who drew up the criteria for fixing the scales, to vary these criteria. On the other hand consideration must be given as to how and when this could be carried out. In this case, the Committee of Ministers created a levy and reduced, by means of an abatement for the period under consideration, the salaries arrived at by the method of calculation indicated in the recommendations prepared by the Co-ordinating Committee in its 195th Report.

The fact that the scales continue to be used to determine the percentage of staff allowances and contributions although there was an abatement shows that this is a reduction. It is this act of the Committee of Ministers which has adversely affected the individual right of the appellants to the maintenance of the remuneration as fixed for the period in question.

67. The alteration which was decided unilaterally had, as a result, reduced the remuneration to which the staff were entitled. Now, in this case, the legal position of the appellants as members of the staff of the Council of Europe, could not be unilaterally altered by the Administration.

Such an alteration reducing the remuneration of the staff adversely affects their individual rights. In the conditions in which it was carried out, it could only be decided after and in agreement with the staff of the Organisation. This does not affect the power of the Committee of Ministers to impose wage restraint, even during the period covered by the fixed scales, if they should be justified by exceptionally serious and urgent circumstances, which is not the case here.

68. In this case, although the staff of the Organisation was able to put forward its point of view through its representatives, there was no concerted action which resulted in an agreement on the levy as decided by the Committee of Ministers, a levy which retroactive to 1 July 1983, was even applied to a period before the appellants were notified.

69. As a result of all these reasons the levy introduced by the Resolution (84) 2 disregarded the right of the appellants to the payment of the remuneration provided for in the scales for the period under consideration and that consequently the levy is illegal.

70. Thus the appellants are entitled to the reimbursement of the sums wrongly levied on their remuneration by the decision of the Committee of Ministers which was applied by the Secretary General.

71. As a result of the above matters it is unnecessary for the Board to examine other grounds raised by the appellants concerning the decision in dispute.

For these reasons,

the Appeals Board:

Declares the appeals founded;

Annuls the individual decisions by which the Secretary General has applied the decision of the Committee of Ministers relating to the levy on the remuneration of the staff of the Council of Europe;

Orders the reimbursement of the sums wrongfully levied;

Decides that the Council of Europe should reimburse the costs of the appellants up to the sum of 500 FF for each appellant.

The Secretary
of the Appeals Board

The Chairman
of the Appeals Board

M. DE SALVIA

W.J. GANSHOF VAN DER MEERSCH

Delivered at the public hearing in Strasbourg on this 15th day of May 1985, the French text of the decision being authentic.