Decision of the Administrative Tribunal of 27 January 1997

Appeal No. 209/1995 (SMYTH v. Secretary General)

The Administrative Tribunal, composed of:

Mr Carlo RUSSO, Chair,
Mr Kåre HAUGE,
Mr José da CRUZ RODRIGUES, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar, and
Mrs Claudia WESTERDIEK, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. Mr John SMYTH lodged his appeal concerning the tax adjustment of his pension on 8 June 1995. On 20 June 1995 the appeal was registered under file number 209/1995.

2. On 6 October 1995 the Secretary General submitted his observations on the appeal.

3. On 27 November 1995 the appellant's counsels, Ms A CORRIGAN, tax adviser, and Mr G HOGAN, barrister, filed a reply to the Secretary General's observations.

4. In letters dated 8 and 13 March 1996 Ms CORRIGAN requested that two witnesses be heard. She stated that she herself could give evidence on the nature and treatment of levies in Irish law and that Mr M GARROUSTE of the Joint Pensions Administrative Section of the Co-ordinated Organisations could give explanations as to the preparation of tables of equivalence. On 25 March the Secretary General submitted observations on the request.

5. In an order of 29 April 1996 the Tribunal, having regard to Article 9 (5) of its Statute and Article 25 (1) of its Rules of Procedure, rejected the request that Ms CORRIGAN be heard as a witness and decided to have Mr GARROUSTE prepare a written expert opinion on questions put by the parties concerning the procedure for drawing up tables of equivalence.

6. Mr Garrouste submitted his expert report on 26 August 1996.

7. The public hearing was held in the Human Rights Building, Strasbourg, on 25 October 1996. The appellant was represented by Ms A CORRIGAN and Mr G HOGAN; the Secretary General was represented by Mr R LAMPONI, Principal Administrative Officer, Legal Adviser's and Treaty Office Division, Directorate of Legal Affairs.

8. The Secretary General submitted further explanations on 16 December 1996.

THE FACTS

A. The circumstances of the case

9. The appellant, born on 3 August 1931, is an Irish national and a retired Council of Europe staff member. He lives in Ireland.

10. Since 1 November 1991 he has been in receipt of a pension under the Council of Europe Pension Scheme Rules. Under Irish tax law he is liable for tax in Ireland on his retirement pension.

11. He is thus required to pay the appropriate rate of income tax under the Income Tax Act 1967 and subsequent Finance Acts. He likewise has to pay two charges: the Health Contribution and the Employment and Training Levy.

The Health Contribution, which is governed by the Health Contributions Act 1979 and related regulations, amounts to 1.25% of taxable income. It is used to help finance certain medical services provided under the 1979 act and is administered by the Department of Health.

The Employment and Training Levy, which is governed by the Youth Employment Agency Act 1981 and related regulations, amounts to 1% of taxable income. It is administered by the Department of Enterprise and Employment and helps to meet Youth Employment Agency expenditure and other costs relating to the training and employment of young people.

The Irish Revenue Commissioners (the Irish tax authorities) act as collecting agent for the Department of Health and the Department of Enterprise and Employment in respect of the two charges through the pay-as-you-earn system.

12. Under Article 42 of the Pension Scheme Rules the appellant is entitled to an adjustment of pension to compensate for his tax liability.

13. On 8 February 1995, after an exchange of letters and telephone calls in 1994, Mr Garrouste, the Head of the Joint Pensions Administrative Section, informed him that new tables of equivalence for calculation of the tax adjustment had been approved by the Irish tax authorities in respect of tax years 1991-92 to 1994-95, and that the corresponding rectification could accordingly be made. In his letter he stated that the new tables of equivalence did not take into account two deductions totalling 2.25% - the Health Contribution and the Employment and Training Levy - which, according to the Irish tax authorities, were not taxes within the meaning of Article 42 of the Pension Scheme Rules and Instruction 42/1 (2). It was further stated that the Council of Europe

had approved the rectification. A summary table of readjustments was appended to the letter.

14. Payment in respect of the rectified tax adjustment was made to the appellant on 1 March 1995.

15. In a letter dated 7 March 1995 the appellant made a complaint to the Secretary General under Article 59 (1) of the Staff Regulations, asking the Secretary General to reconsider his decision concerning the method of calculation of his tax adjustment. In particular he complained that the calculation had not taken the above two deductions into account.

16. The complaint was dismissed by letter of 12 April 1995. The Director of Administration, on the Secretary General's behalf, stated that, under Article 42 (1) of the Pension Scheme Rules, the tax adjustment applied only to sums paid in income tax. On the basis of the information supplied by the Irish authorities, the deductions in question were in the nature of social contributions, regardless of the collection method. Consequently there were no grounds for reconsidering the decision which the appellant had challenged.

B. Tax adjustment of pensions

17. Permanent Council of Europe staff have a pension scheme set up under Pension Scheme Rules common to all the Co-ordinated Organisations and approved by the Committee of Ministers in 1977 (Resolution (77) 11).

18. Article 42 of the Pension Scheme Rules and Instructions 42/1 to 42/8 deal with tax adjustment of pensions. They provide as follows:

> "Article 42 - Pensions which are subject to national tax legislation
>
> 1. The recipient of a pension under these Rules shall be entitled to the adjustment applying to the member country of the Organisation in which the pension and adjustment relating thereto are chargeable to income tax under the tax legislation in force in that country.
>
> 2. The adjustment shall equal 50% of the amount by which the recipient's pension would theoretically need to be increased, were the balance remaining after deduction of the amount of national income tax or taxes on the total to correspond to the amount of the pension calculated in accordance with these Rules.
>
> For such purpose, there shall be drawn up, for each member country, in accordance with the implementing instructions referred to in paragraph 6, tables of equivalence specifying, for each amount of pension, the amount of the adjustment to be added thereto. The said tables shall determine the rights of the recipients.
>
> 3. In calculating the theoretical amount of income tax or taxes referred to in paragraph 2 of this article, account shall be taken only of the provisions of tax legislation and

regulations affecting the basis of liability and the amount of income tax or taxes for all pensioner-tax payers in the country concerned.

Pensioners without spouse or dependants shall be deemed to be in the position of a pensioner without entitlement to any tax reliefs or allowances for family responsibilities, all other recipient being deemed to be pensioners enjoying the tax reliefs and allowances of a person who is married without children.

No account shall be taken:

- of individual factors related to the personal circumstances or private means of a particular pensioner;
- of income other than that arising under these Rules;
- of the income of the spouse or dependants of the pensioner.

On the other hand, account shall, in particular, be taken of circumstances arising in the course of the year as a result of:

- a change in civil status or settlement in another place of residence with a different taxation system;
- commencement or cessation of payment of the pension.

4. The Organisation shall supply the member countries with the names, forenames and full address of pensioners and the total amount of the pension and adjustment.

5. The recipient of an adjustment as specified in this article shall be required to inform the Organisation of his full address and of any subsequent change therein.

Such recipient shall produce evidence of his pension and the relative adjustment having being declared or taxed; should he fail to comply with this obligation, he shall be deprived of the right to this adjustment and shall refund any amounts unduly received in this respect.

6. The other procedures for calculating the adjustment and, in particular, those necessitated by the special features of certain national tax laws, and the procedure for payment of the adjustment shall be laid down in the implementing instructions established in accordance with the tax legislation of member countries.

Notwithstanding Article 52, the implementing provisions referred to in this paragraph shall require approval by the Councils of the Organisations listed in Article 1.1.

Instructions

42/1: Scope and calculation of the adjustment

1. Article 42 of the Pension Rules shall apply only if the pension and the adjustment relating to it are subject to taxes on income levied in a member country of the Organisation. The family allowances provided for in Article 28 of the Pension Rules shall be assimilated to pensions in determining the tax adjustment insofar as similar allowances are taxable under the national tax legislation of the member country.

2. The adjustment referred to in Article 42 of the Pension Rules shall be determined on the basis of the legal provisions relating to taxes on income in force in the member country in which the pensioner is legally subject to such taxation. It shall be established in respect of pensions paid during the tax period as determined in that country.

3. Where the pension of a person entitled to the adjustment is paid in a currency other than that of the country in which such person is subject to taxes on income, the adjustment shall be determined on the basis of the pension converted into the currency of that country. Such conversion shall be effected at the rate obtaining on the official exchange market.

4. Where the amounts paid during any tax period include arrears of pension relating to any previous period, the adjustment shall be determined or recalculated, as the case may be, with due regard to the tax treatment applicable to such arrears.

42/2: Establishment of tables of equivalence for payment of the adjustment

1. Tables of equivalence for payment of the adjustment shall be established for each tax year by the Inter-Organisations Section, hereinafter referred to as "the Section".

2. The tax authorities of member countries shall provide the Section, at its request, with the details of legislation and regulations necessary for establishing the tables. The tables shall be checked and confirmed by the tax authorities of the member country concerned. In the event of disagreement between such authorities and the Section on the content of the tables, the Secretaries General and the Co-ordinating Committee shall consider the matter on the basis of Article 42 of the Pension Rules and of these Implementing Instructions.

3. Provisional tables of equivalence shall be drawn up prior to the commencement of the period to which they refer. They shall show, for rounded pension figures and in respect of each member country, an amount equivalent to 90% of the monthly adjustment calculated according to the distinctions contained in Article 42.3 of the Pension Rules and on the basis of the tax legislation in force at the time of drawing up the tables.

4. The provisional table shall be revised whenever amendments to tax legislation involve a change in the amount of the adjustment. The Secretaries General and the

Co-ordinating Committee may, however, decide by mutual agreement to dispense with the up-dating of tables in cases where the balance of gain or loss is minimal.

5. As soon as the authorities in member countries have finally adopted the tax legislation applicable to income for the period covered by the provisional tables, these latter shall be replaced by final tables establishing the rights of recipients in accordance with Article 42.2 of the Pension Rules. These final tables shall show the amount of the adjustment for the whole of the period which they cover, as well as the monthly amount of the adjustment.

6. The provisional and final tables of equivalence shall be accompanied by all such information as is necessary for their use ...

42/3: Method of payment of the adjustment

...

42/4: Information to be supplied to member countries by the Organisation

...

42/5: Evidence of payment of tax

...

42/6: Financing the adjustment

1. The cost of the adjustment provided for in Article 42 of the Pension Rules shall be borne by the country in which the recipient thereof is subject to taxes on income for the period considered.

2. Expenditure arising under paragraph 1 of this Instruction shall be the subject of a separate Budget which shall be drawn up at the same time as the other Budgets of the Organisation. Final settlement of the contributions to this separate Budget shall be made at the end of the period to which it relates."

Instruction 42/7 deals with transitional measures and Instruction 42/8 with the date on which the implementing instructions take effect.

C. Mr Garrouste's expert report

19. Mr Garrouste's expert report explains the background to the introduction of tax adjustment of pensions paid to retired staff of the Co-ordinated Organisations.

At the preparatory stage one of the key questions had been the tax status which pensions should have. Having considered the matter, the Co-ordinating Committee of Government Budget Experts had rejected the proposal that pensions have the same tax exemption as serving staff enjoyed, and had decided that pensions should be subject to the ordinary system of national

taxation. As, however, pensions were calculated on the basis of salaries net of tax, it had been thought necessary to increase them by an amount varying according to the level of taxation in the particular country. The 50% adjustment is accounted for by the view that, on retirement, staff of the Co-ordinated Organisations would be part of a national community and would benefit from the economic and social advancement made possible by that community's efforts, to which they should contribute.

As far as the financial cost of introducing an adjustment was concerned, the Co-ordinating Committee had realised that applying the new arrangement would increase some countries' tax revenue, and to avoid any discrimination resulting from the compensation system adopted it had been decided that the additional expense would be met entirely by the beneficiary countries.

20. Mr Garrouste goes on to describe how the tables of equivalence are drawn up and the method of calculating the tax adjustments in practice.

Referring to Article 42 of the Pension Scheme Rules, he states that it is the responsibility of the Inter-Organisations Study Section on Salaries and Prices (IOS) to draw up, in close consultation with and under the supervision of the tax authorities of the member states concerned, the tables of equivalence for calculating the amounts of tax adjustment to be paid to retired staff of the Co-ordinated Organisations.

Each year, and for each country in which retired staff are resident, the IOS sends a questionnaire to the tax authorities in order to obtain the basic legal and regulatory data needed for drawing up the tables of equivalence. The questionnaires enable the IOS to draw up tables showing the amount of the tax adjustment for the year in which the pension is paid. The tables are verified and confirmed by the tax authorities of the member state concerned before being forwarded by the IOS to the various user departments, in particular the Joint Pensions Administrative Section (JPAS).

The JPAS then calculates and pays the tax adjustment for each pensioner on the basis of the tables and in the light of each individual's situation. The individual adjustments are paid, at the same time as the pension, in the form of an advance of 90% of the monthly adjustment calculated on the basis of the latest tables of equivalence for the country in which tax is to be paid (provisional tables of equivalence). Once the JPAS has received the final tables of equivalence from the IOS, it brings the adjustment up to 100%.

21. Lastly, Mr Garrouste deals with the specific case of Ireland.

Firstly he mentions a problem about drawing up the tables of equivalence for 1991-92 and 1992-93 (the tax year straddles the two calendar years). A change in the tax system - tax assessment on the basis of income in the current tax year instead of the previous tax year - was not discovered until 1994, whereafter the necessary corrections were made.

After describing how the tables of equivalence for 1993-94 and 1994-95 were drawn up and the methods used to correct the 1990-91, 1991-92 and 1992-93 tables, Mr Garrouste considers the matter of the deductions. Until 1992-93 the Irish authorities had reported only the one 1%

deduction (the Youth Employment Levy), and then from 1993-94 on they had referred to a 1% "Income Levy" on gross income. A confusion had arisen, it being assumed that the, in fact, two levies were one and the same: the Youth Employment Levy had continued to be used in the tables of equivalence drawn up by the IOS and approved by the Irish tax authorities. The error had eventually been noticed following an exchange of information between the IOS and the tax authorities in 1996. In a letter dated 21 August 1996 the Irish tax authorities had confirmed that the Youth Employment Levy had been incorrectly applied up to 1992-193. As a corrective, they had authorised the application up to 1992-93 and in 1993-94 of the Income Levy (applicable to that one year). Since 1994-95 no deduction has been taken into account in calculating the tax adjustment.

THE LAW

22. The appeal challenged the Secretary General's decision dated 12 April 1995 to dismiss the administrative complaint concerning the calculation of the appellant's tax adjustment.

23. The appellant argued that Article 42 of the Pension Scheme Rules, entitled "Pensions which are subject to national tax legislation", covered all direct national taxation on income, including the Health Contribution and the Employment and Training Levy.

24. He contended that the words "tax" or "taxes" used in that provision and in the implementing instructions to it must be given an autonomous interpretation within the Co-ordinated Organisations. The two deductions were charges on the totality of income. The distinction, he alleged, between "income tax" and "contributions of a social character" was a purely formalistic one and had no relevance for the purposes of Article 42 of the Pension Scheme Rules. Furthermore, if that distinction were accepted as a valid one, it would undermine the *effet utile* of Article 42 in as much as it would be open to member countries to classify as "levies" measures which in substance were a form of direct taxation.

25. Furthermore, the two deductions could not be compared to pay-related social insurance, which provided pension and other benefits to the tax-paying contributor, whereas the revenue raised by the deductions became part of general state revenue without any corresponding benefit to the taxpayer. For the purposes of Article 42 of the Pension Scheme Rules it was immaterial whether the national revenue thus collected was managed by any particular ministry or ministries: it was purely on account of special features of the Irish Constitution relating to financial legislation that the deductions in question had not been introduced in Finance Acts as such but in two acts also dealing with other matters.

26. The Secretary General - and, on appeal, the Tribunal - could not disregard the effects of particular domestic tax laws on the operation of the pension scheme since such effects had a direct bearing on calculation of the tax adjustment "necessitated by the special features of certain national tax laws" under Article 42 (6).

27. The Secretary General maintained that the Tribunal was not competent to hear complaints against violations of the laws of Council of Europe member states. Neither the Tribunal nor the Secretary General was competent to offer an authoritative interpretation of domestic laws and

regulations. In the particular context of interpreting Article 42 of the Pension Scheme Rules, it had been held by the Appeals Board of OECD (Pierre case, Decision No. 125, 11 April 1991) that whereas the Tribunal was competent to determine the proper interpretation of Article 42 and the implementing instructions, it could not pronounce on the effects of domestic tax laws on the application of Article 42.

28. It was clear from the regulatory scheme governing the calculation of the tax adjustment, as set out in the relevant parts of Article 42 and the implementing instructions, that it was for the domestic tax authorities to furnish details of their tax laws and regulations and confirm the accuracy of the tables of equivalence established on the basis of such information. The calculation could therefore validly be referred to domestic law.

29. In the present case, in accordance with the regulatory scheme established by Article 42 of the Pension Scheme Rules, the Irish tax authorities had informed the JPAS that the two deductions did not form part of Irish tax legislation or regulations.

He stated the reasons which the Irish tax authorities had given for their position. The deductions, for instance, were not governed by Finance Acts or any other tax legislation or regulations but by legislation specific to the two government departments involved. In addition, the authorities saw an analogy with pay-related social insurance, collected by the tax authorities on the Department of Social Welfare's behalf. They also drew attention to double taxation agreements entered into for the avoidance of double taxation in respect of income tax or taxes of a similar nature and which did not apply to the two deductions.

In this connection the Secretary General observed that, in a decision sent to the appellant on 4 October 1995, the Irish tax authorities had dismissed his objection to the classification of the two deductions and that the appellant had not appealed against that decision.

30. In the Secretary General's view the Irish tax authorities' decision not to take the two deductions into account for calculation of the tax adjustment was the right interpretation of Article 42 of the Pension Scheme Rules.

31. He had therefore not based his decision on any erroneous conclusion or otherwise acted arbitrarily in accepting the Irish tax authorities' position.

32. The present dispute concerns the calculation of the tax adjustment of the appellant's pension under Article 42 of the Pension Scheme Rules and the implementing instructions to them. Specifically, the appellant, who lives in Ireland and is liable for tax there on his retirement pension, complained of the Secretary General's refusal to take two deductions into account for calculating the adjustment -the Health Contribution and the Employment and Training Levy.

33. The Tribunal has therefore to determine an appeal concerning the interpretation and application of Article 42 of the Pension Scheme Rules and the implementing instructions. It holds that these matters come within its jurisdiction (see, *mutatis mutandis*, ABOECD, Decision No. 125 of 11 April 1991).

34. Article 42 (1) of the Pension Scheme Rules provides that the recipient of a pension under the rules is entitled to the adjustment applying to the member country of the organisation in which the pension and adjustment relating thereto are chargeable to income tax under the tax legislation in force in that country. The adjustment is paid for by the country concerned.

35. As explained by Mr Garrouste in his expert report (see paragraph 19 above), the entitlement originates in the discussions as to the tax status which pensions were to have. The decision was that pensions should be subject to the ordinary system of national taxation and that, as pensions were calculated on the basis of salaries net of tax, they should be increased by a compensatory amount varying according to the level of taxation in the particular country.

36. Under Article 42 (2) and Instruction 42/1, the adjustment is calculated on the basis of national income tax or taxes.

37. The provisions thus refer to the domestic law of the member state in which the pension recipient is liable to pay income tax. In the nature of things, the national authorities are best qualified to decide any question concerning the interpretation and application of national law. Under the arrangements for calculating the tax adjustment provided for in Article 42, they thus co-operate closely with the competent services of the Co-ordinated Organisations (see paragraph 20 above).

38. The Secretary General nonetheless has a duty to verify that the calculation of the pension recipient's tax adjustment is correct. In so verifying, he is required to satisfy himself that the adjustment laid down in the table of equivalence for the member state concerned (Article 42 (2) of the Pension Scheme Rules and Instruction 42/2) takes all national income tax into account.

39. The Tribunal, for its part, must satisfy itself that the Organisation's rules have been correctly applied.

40. The appellant maintained that the calculation of his tax adjustment was legally defective in that two deductions, under the Health Contributions Act 1979 and the Youth Employment Agency Act 1981, were not taken into account.

41. The Secretary General maintained that the two deductions were not taxes.

42. The dispute thus turns on the interpretation of the term "income tax" as used in Article 42 of the Pension Scheme Rules and the implementing instructions to them.

43. The Tribunal holds that, in the Council of Europe, the term cannot be construed solely with reference to the tax legislation of any one state (see *mutatis mutandis*, ATCE, No. 188/1994, decision of 5 April 1995).

To arrive at an autonomous interpretation, the Tribunal, regard being had to the many historical, operational and regulatory variations in state-imposed payments, bases itself on two essential factors, namely the compulsoriness and gratuitousness of taxes, which differentiate them from other payments.

It nonetheless does not believe it is required to provide an abstract definition of the concept of income tax. Rather it must consider whether the two deductions at issue possess attributes which would characterise them as income tax or as other types of payment with which Article 42 is not concerned.

44. The parties' arguments drew attention to various considerations. The appellant pointed out that, even though the two levies were of a social nature, they were not comparable to social-insurance contributions, in return for which the contributor received pension or other benefits. The Secretary General, on the basis of the information provided by the Irish tax authorities, relied on the non-fiscal nature of the legislation concerning the two deductions and on similarities between them and pay-related social insurance.

45. Firstly the Tribunal observes that the Health Contribution and the Employment and Training Levy are not governed by Finance Acts or other tax laws or regulations for purposes of Irish law but are provided for in special statutes dealing respectively with medical services and training and employment of young people. The national view that these deductions are not to be classed as income tax is also apparent in the terminology: the Irish legislation refers to a "contribution" or "levy" rather than "tax". Only the manner in which the amounts due are collected, which is the same as for income tax, seems inconsistent with the approach adopted by Irish law, but is accounted for by practical considerations which likewise apply to social-insurance contributions.

46. However, primarily for the reasons set out above (see paragraph 43), only relative significance can be attached to these considerations.

47. The compulsoriness of the two levies makes them akin to taxes, though the Tribunal notes that in Ireland there are other contributions of a compulsory nature such as the social-insurance contributions to which the parties referred.

48. A final factor remains to be taken into account: the use to which the Health Contribution and the Employment and Training Levy are put.

49. The Tribunal notes that, under the Health Contributions Act and the Youth Employment Agency Act, the sums collected go to the Department of Health and the Department of Enterprise and Employment to meet expenditure on public health services and Youth Employment Agency expenditure on youth training and employment.

50. The sums are in fact revenue used to finance public services in the health and employment fields from which, unlike social-insurance contributions, the taxpayer derives no direct entitlement or benefit.

51. In the Tribunal's view neither the social nature of the two deductions nor the stipulations in the aforementioned legislation concerning their use in themselves alter this characteristic of gratuitousness.

The Tribunal notes, too, that in other Council of Europe member states a proportion at least of expenditure on youth training and employment and the medical services is met from the state's tax-funded budget.

52. Having weighed these various aspects of the question, in particular that of gratuitousness, the Tribunal holds that the two deductions must be classed as income tax within the meaning of Article 42 of the Pension Scheme Rules.

53. Consequently the Secretary General's refusal not to take into account the Health Contribution and the Employment and Training Levy in calculating the appellant's tax adjustment was unlawful.

54. In his letter dated 8 June 1995 lodging the appeal, the appellant claimed compensation with interest for loss sustained but did not itemise the claim. Consequently the Tribunal does not have sufficient information to make an award under that head.

55. Having employed the services of a tax adviser and a barrister, the appellant lastly claimed the costs of his appeal without specifying a figure. Regard being had to the nature and value of the dispute, the Tribunal, on the basis of equitable principles, awards the sum of 20,000 French francs.

For these reasons,

The Administrative Tribunal:

Declares the appeal founded;

Sets aside the Secretary General's decision of 1 March 1995 not to take into account the Health Contribution and the Employment and Training Levy in calculating the appellant's tax adjustment;

Orders the Secretary General to calculate and pay to the appellant the appropriate revised tax adjustment;

Refuses the claim for compensation with interest;

Directs that the Council of Europe pay the appellant 20,000 French francs in costs.

Delivered at Strasbourg on 27 January 1997, the French text being authentic.

The Registrar of the Administrative Tribunal	The Chairman of the Administrative Tribunal
S. SANSOTTA	C RUSSO

Appendix
Chairman's Order

ORDER OF 29 APRIL 1996
Appeal no. 209/95 - SMYTH v. Secretary General

1. The Tribunal recalls that the above-cited appeal is directed against the decision of the Secretary General not to take account, in the calculation of the appellant's tax adjustment for his basic pension, which is taxable in Ireland, of two levies, the Health Contribution Levy and the Employment and Training Levy.

2. In her letter dated 13 March 1996, Mrs A. Corrigan, counsel for the appellant, requests the hearing of two witnesses. She says that she herself could be called as a witness on the nature and application of the levies under Irish law, and that Mr Garrouste of the Joint Pensions Administrative Section of the Coordinated Organisations could explain how the tables of equivalence are drawn up and present all the relevant documents.

3. The Secretary General, in his observations dated 25 March 1996, expresses doubts as to the usefulness of calling a witness on the interpretation of Irish law. Moreover, he contends that any submission on Irish law should be part of the appellant's pleadings. With regard to the request to hear Mr Garrouste, the Secretary General points out that it would not be useful to call him as a witness. However, he says that he would have no objection if the Tribunal heard Mr Garrouste as an expert capable of assisting the Tribunal and the parties in better understanding the procedures followed by the Joint Pensions Administrative Section of the Coordinated Organisations for drawing up the tables of equivalence. This expertise should be provided in writing. The Secretary General proposes that the appellant submit to the Tribunal a list of questions, which the Secretary General reserves the right to comment on or add to.

4. The Tribunal, having regard to Article 9 paragraph 5 of the Statute of the Administrative Tribunal, rejects the application to hear Mrs Corrigan as a witness because her submissions on Irish tax law can be included in the appellant's pleadings at the hearing. The Tribunal decides to accept the appellant's request to obtain Mr Garrouste's explanations on the procedures followed for drawing up the tables of equivalence. These being matters of a technical nature, the Tribunal considers it useful for Mr Garrouste to provide his expertise in writing.

5. The Tribunal asks the parties to indicate the points to be dealt with in the expert's report. The Tribunal instructs Mr Garrouste then to prepare his report.

6. The Deputy Registrar of the Administrative Tribunal is instructed to inform the parties of the foregoing.

Savona, 29 April 1996

The Deputy Registrar of the Administrative Tribunal	The President of the Administrative Tribunal
C. WESTERDIEK	C RUSSO