

# CONSEIL DE L'EUROPE—— ——COUNCIL OF EUROPE

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

**Appeal No. 247/1998 (Sengdeuane RATTANASAMAY 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 Sengdeuane RATTANASAMAY lodged his appeal on 29 September 1998. The appeal was registered on 12 October 1998 under file No. 247/1998.
2. On 20 November 1998, the appellant's representative, Mr F.-M. WELSCH, lodged a supplementary memorial. On 18 December 1998, the Secretary General submitted his observations on the appeal.
3. The public hearing took place in the Human Rights Building at Strasbourg, on 23 March 1999. The appellant was represented by Mr F.-M. WELSCH; and the Secretary General by Mr R. LAMPONI, Head of the Legal Adviser's Department at the Directorate of Legal Affairs, assisted by Mr Patrick TITIUN, Administrative Officer in the same directorate.

### THE FACTS

4. The appellant was recruited on 1 June 1978 as a temporary member of the staff of the Technical Services Directorate (Distribution) of the Council of Europe. On 1 January 1981, the appellant was taken on as a permanent staff member at grade C2. He was promoted to grade B2 on 1 October 1992 and assigned to the Press Relations Department (Information Distribution

Unit – Accreditation).

5. In a judgment of 24 May 1996, the Strasbourg criminal court found the appellant guilty of complicity in *abus de biens sociaux* (misuse of a company's property or credit for personal advantage), imposed on him a suspended one-year prison sentence and ordered its judgment to be published in the daily newspaper *Les Dernières Nouvelles d'Alsace* (DNA).

6. On 25 May 1996, the Council of Europe became aware of these proceedings when an article was published in the *Les Dernières Nouvelles d'Alsace* newspaper, under the headline "Two sets of accounts at a restaurant". The article opened with a brief summary and then described the Strasbourg criminal court hearing in the following terms:

"Nothing but profits for the couple, and nothing but a loss for the community': these were the words used by the deputy public prosecutor ... to summarise 'a case of *abus de biens sociaux*, involving considerable sums of money', dealt with yesterday by the Strasbourg criminal court. The defendants were a married couple of Laotian origin: [KR] (54), manageress of the Villa Thai restaurant in Strasbourg, and her husband, Sengdeuane (also 54).

The case first came to light in September 1995. When the restaurant was inspected by the departmental labour directorate, the inspecting team discovered that the manageress was employing foreigners who had neither residence nor work permits, and, when the inspectors searched the couple's home, they seized a book which left them little work to do.

'An unofficial book'

The book contained the restaurant's two sets of accounts. These were kept by the manageress' husband (who is an official of the Council of Europe and was not an employee of the restaurant). On one side, he used to record, in black, the actual daily takings, while on the other side, in red, he wrote undervalued figures, namely the figures reached after deduction of all the sums paid in cash by the restaurant's customers. Thus, these sums were not subjected to payment of VAT or of tax. Some of the cash was also used to pay certain employees.

Thanks to the seizure of an 'unofficial book', the inspection team was able to establish, to the last centime, the amount obtained fraudulently: 1 671 321.90 French francs, between July 1992 and September 1995. Because of the time limit for prosecution, however, the prosecution was based on the figure of approximately 1 450 000 French francs.

'The size of the restaurant makes such a figure physically impossible', argued defence counsel Maître Welsch. Found guilty of *abus de biens sociaux* to the tune of 1.45 million French francs, husband and wife each had a one-year suspended prison sentence imposed upon them, the penalty requested by the public prosecutor. The manageress was also fined 50 000 French francs. The court ordered publication of its judgment in the DNA."

7. On 12 June 1996, the appellant was given a hearing by the Head of the Human Resources Division. Consideration of the case was suspended pending the decision of the Colmar court of appeal, to which both the appellant and the public prosecutor had appealed. The

appellant was informed that, were his conviction to be upheld, he would be liable to disciplinary proceedings. The Head of the Human Resources Division drew up a record of the interview which he sent to the appellant. Acknowledging receipt thereof on 4 November 1996, the appellant declared that he had “by no means intended to draw the Council of Europe into this case or to reflect discredit on the Organisation”.

8. In a decision of 4 June 1997 the Colmar court of appeal upheld the judgment referred to it, stating that the appellant and his spouse were guilty of the facts as charged, and set the judgment aside in respect of the penalty. The passage relating to the offence of *abus de biens sociaux* reads as follows:

“The existence of two sets of accounts has been brought to light.

The process of undervaluation of the takings was based on cunning use of the computing system, not taking into account some of the bills corresponding to certain tables in the restaurant.

A comparative study of the two sets of accounts revealed an undervaluation of takings over a four-year period of a total sum of 1 671 321.90 French francs exclusive of tax (namely, an annual average of approximately 400 000 French francs).

The manageress’ husband acknowledged that this system had been devised by himself, and that the sums concealed served to pay ‘at least’ some of the staff and to repay debts.”

The court took the view, in respect of the charge against the appellant of complicity in *abus de biens sociaux*, that:

“The defendant did not dispute that he had played an active part in devising the system of undervaluing the takings, deleting the computer programme relating to certain tables and drawing up a book showing both actual and declared takings.

By acting in this way, he aided and abetted the acts which prepared for, facilitated and completed the offence of *abus de biens sociaux* committed by his wife.

The misdemeanours with which the defendants were charged have thus been perfectly established, and the judgment appealed against is to be upheld as to their guilt.”

9. On 15 September 1997, the appellant sent a copy of the decision to the Human Resources Division. The appellant did not lodge an appeal on points of law against this decision.

10. On 12 November 1997, the Administration informed the appellant that, taking account of the decision of the Colmar court of appeal, a proposal would be put to the Secretary General to impose a reprimand on him because of the discredit reflected on the Organisation. Furthermore, the appellant was asked to attend an interview with the Deputy Secretary General.

11. On 25 November 1997, the Deputy Secretary General gave the appellant a hearing. The Deputy Secretary General explained to the appellant that this was an interview in pursuance of Article 56, paragraph 1, of the Staff Regulations, and that the Secretary General had delegated to him the task of hearing the appellant. The Deputy Secretary General then set out the accusations

against the appellant, summarised as follows in the record of the interview:

“- by his involvement in a criminal case, and his subsequent conviction, he had reflected discredit on the Organisation;

- by denying the charges against him to the Head of the Human Resources Division, and by admitting them to the court of appeal, he had shown lack of loyalty to the Organisation;

- in his declarations made in order to obtain household allowance, Mr Rattanasamay had only indicated his wife's official earned income; he had mentioned neither her share of the profits of the company which owned the restaurant, of which she owned 50%, nor the undeclared part of the restaurant's income which was part of his wife's earned income;

- Mr Rattanasamay had not requested the Secretary General's permission to engage in a secondary occupational activity.”

The appellant claimed that he was innocent, giving his version of the facts. At the end of the interview, the Deputy Secretary General informed the appellant of his intention to recommend that the Secretary General refer the case to the Disciplinary Board.

12. On 6 March 1998, the Secretary General drew up the report referring the case to the Disciplinary Board (the referral report), opening disciplinary proceedings against the appellant. In this report, the Secretary General accused the appellant of disciplinary offences in the following terms:

“a) The discredit reflected on the Organisation, as a result of his criminal conviction; this is aggravated by the publicity given to his conviction by the court of first instance.

b) Lack of loyalty to the Organisation: during his interview with the Head of the Human Resources Division, the appellant claimed that he was innocent, while he admitted the facts to the court of appeal.

c) Omissions from the annual declarations of his spouse's income. In order to obtain an unjustified advantage from the Organisation, the appellant failed to declare a significant part of his wife's earned income, namely:

- the declared profits of the Villa Thai company of which his wife owned half;

- the sums concealed through the keeping of two sets of accounts, namely, according to the decision of the Colmar court of appeal, approximately 400 000 French francs per year.

d) Absence of the Secretary General's permission to engage in a secondary activity.”

13. On 10 March 1998, this report was sent to the Chair of the Disciplinary Board. On 11 March 1998, the Chair of the Disciplinary Board drew lots to determine the names of the members, in the presence of the appellant. The Chair then handed a copy of the case-file to the

appellant and told him what his rights were.

14. On 6 April 1998, the Disciplinary Board, after holding a hearing on 30 March 1998, issued its opinion.

15. The Disciplinary Board took the view that the appellant, in the light of the charges against him, had committed the following disciplinary offences: he had reflected discredit on the Council of Europe, made omissions from his annual declarations of his spouse's income and failed to obtain permission to engage in a secondary activity. It expressed the opinion that the charges against the appellant should entail, by way of a disciplinary penalty, a downgrading (Article 54, paragraph 2, sub-paragraph e, of the Staff Regulations).

16. The Disciplinary Board particularly took the view that the now final conviction by the French criminal courts for complicity in *abus de biens sociaux* had, in itself, reflected discredit on the Council of Europe. In this context, the Disciplinary Board, taking note of the appellant's explanations, found that "the two versions in its possession, namely the existence of a concealed set of accounts (the argument accepted by the French criminal courts) or the creation of completely fictitious monthly turnover figures, systematically overvalued (although completely imaginary and, according to the appellant, chosen at random) intended to "attract" potential buyers, are undeniably evidence of dishonest behaviour". Furthermore, the Disciplinary Board held the appellant responsible for the "risk of publicity to which he exposed the Organisation through his misdemeanours".

17. In respect of the omissions from the annual declarations of his spouse's income, the Disciplinary Board firstly noted that it was impossible to establish the "declared profits" omitted from his declarations by the appellant. It then noted that the report referring the case also covered the concealed sums which, according to the decision convicting the appellant, amounted to 1 671 321.90 French francs, exclusive of tax. As it had no power to review such a decision, which constituted *res judicata*, the Disciplinary Board took for granted the existence of a profit of 1 671 321.90 French francs directly received by the appellant and his wife.

18. Furthermore, the Disciplinary Board took the view that the appellant was sufficiently involved in the activities of the Villa Thai restaurant to be required to request the permission for which Article 32 of the Staff Regulations provides. Firstly, the Disciplinary Board, taking account of the appellant's statements that his participation was limited to paying cheques into the bank and receiving customers, considered that the way in which the appellant spoke of the restaurant, its activities and the relevant procedures revealed his feeling of involvement. Secondly, the Disciplinary Board noted that the appellant had participated in the restaurant's activities by drawing up the disputed figures relating directly to the operation of the restaurant. In the view of the Disciplinary Board, "bearing in mind the importance, complexity and confidentiality of a firm's budgetary information, involvement in this kind of work is very much part of the main activity of the operation".

19. On the subject of the allegation that he had claimed his innocence to the Head of Human Resources before admitting the facts to the Colmar court of appeal, the Disciplinary Board found no disciplinary offence. In this context, the Disciplinary Board took the view that the appellant "remained free to choose his defence strategy before the French courts" and that the explanations that he had provided to the Administration "could in no circumstances be binding on the person concerned before the French courts". The Disciplinary Board also considered

“that the person concerned was under no obligation whatsoever to ‘confess’, as he also had to enjoy respect for the rights of the defence, particularly the right not to incriminate himself, within the Organisation”.

20. In Decision A.P. No. 2212, of 30 April 1998, the Secretary General imposed on the appellant, after giving him a hearing, the penalty of downgrading, with effect from 1<sup>st</sup> May 1998, for having failed to comply with the obligations incumbent upon him under Articles 25 and 32 of the Staff Regulations. After referring to the documents in the case-file, the Secretary General gave the following reasons for his decision:

“Whereas several disciplinary offences may be found to have been committed by the staff member:

Whereas, firstly, the staff member’s conviction of complicity in *abus de biens sociaux* adversely affects the image of the Council of Europe and is morally prejudicial to the Organisation, and, by laying himself open to this conviction, the staff member failed to comply with the commitments into which he had entered in pursuance of Article 25 of the Staff Regulations when he took up his duties;

Whereas also, in the light of the facts established by the Colmar court of appeal, the staff member did not declare his wife’s full earned income for the period from the beginning of 1993 to September 1995 in the annual declaration of the earned income of his spouse made for the purpose of the allocation of household allowance, and that he consequently failed to comply with the obligation to show integrity for which Article 25 of the Staff Regulations provides;

Whereas, lastly, in engaging in a secondary activity without requesting the permission for which the Staff Regulations provide, the person concerned contravened the provisions of Article 36 of the Staff Regulations; ...”

21. On 13 May 1998, the appellant was informed that he had been downgraded from grade B2 (step 9) to grade B1 (step 9). Payment of his household allowance was suspended pending the decision of the administrative court which was responsible for deciding the appeal lodged by the appellant against the revised assessment to which he had been subjected in respect of his income for 1993 and 1994.

22. On 29 June 1998, the appellant lodged an administrative complaint against the decision to downgrade him. He argued that it was impossible for his conviction for complicity in *abus de biens sociaux* to have reflected discredit on the Council of Europe, in so far as the allegations against him had had no connection with his duties as a Council of Europe staff member. He further argued that the concealment from the tax authorities of the sum of 1 671 321 French francs had not been proven, as the case had not yet been decided by the French courts. Finally, he also argued that it had not been proven that he was sufficiently involved in the activities of the restaurant to need to request the permission for which Article 32 of the Staff Regulations provides.

23. In a letter of 31 July 1998, the Director of Administration, acting on behalf of the Secretary General, informed the appellant that his administrative complaint, which he deemed to be without foundation, had been rejected. He pointed out that “members of the Council of

Europe staff have to be of the highest integrity (Article 12 of the Staff Regulations) and that, when they take up their duties, they make a solemn commitment to refrain from any action which might reflect upon their position as a member of the staff of the Council or which might be prejudicial morally or materially to the Council of Europe". In the present case, "the appellant's criminal conviction casts doubt on [his] integrity, and the facts for which he was sentenced, covered by the press, constitute conduct incompatible with the status of a member of the Council of Europe staff". As for the other complaints, the Director of Administration emphasised that the appellant's omissions from the annual declarations of his spouse's income and the fact that he had played a part in his spouse's activities were clear from the judgment of the Colmar court of appeal, which was now *res judicata*.

## THE LAW

24. The appellant challenges the Secretary General's decision rejecting his administrative complaint. He asked the Tribunal to set aside the decision of 13 July 1998 and to state that there were no grounds for a penalty against him or, alternatively, to state that the penalty of a reprimand was sufficient.

25. In the appellant's opinion, the allegation of reflecting discredit on the Organisation could not really be regarded as proven, as there was no connection whatsoever between the allegations regarded as proven by the French criminal authorities and those regarded as proven by the Council of Europe. He pointed out that the alleged facts, whether or not they were real, could not be declared admissible as they had not been committed on the occasion of, or during, the appellant's working hours at the Council of Europe. Furthermore, there was, in his opinion, no "established interference" with the smooth functioning of the department in which the appellant was working or of the Council of Europe as a whole.

26. The appellant denies having failed, in his annual declarations, to inform the Council of Europe of some of his wife's resources. According to him, there are grounds for taking account of the fact that the administrative court is still dealing with the dispute with the tax authorities.

27. Where the third allegation is concerned, the appellant affirms that he exercised no secondary activity whatsoever in any way, merely being present, outside his Council of Europe working hours, at the establishment run by his wife. In his view, the disputed accounts should be regarded as external to the business. He claims not to have been sufficiently involved in the activities of the restaurant to be under an obligation to request the permission for which Article 32 of the Staff Regulations provides. He could not be compelled to remain completely disinterested in his wife's occupational activity, but did not take part in it.

28. Furthermore, the appellant complains that the penalty imposed on him is a particularly substantial pecuniary penalty. He affirms that it means a net reduction of 3 259.03 French francs each month and will lead to his retirement pension being calculated on the basis of "remuneration cut by almost 21%".

29. The Secretary General argues that, in applying the penalty of downgrading, he took account both of the nature of the allegations against the appellant and of his conduct. By doing so, he had not exceeded his discretionary power.

30. In the Secretary General's view, it was clear from Article 25 of the Staff Regulations that members of the Council of Europe staff were under a general obligation to show integrity which included complying with the legislation in force in the host country. He considered that this provision covered both acts committed inside and those committed outside the Organisation. He emphasised the essential nature of the obligation to show integrity and the importance of preserving the Council of Europe's public image.

31. Pointing to the essential elements of the appellant's case, the Secretary General takes the view that the criminal conviction – upheld on appeal, now constituting *res judicata* and brought to the attention of the public – of a member of the Council of Europe staff was a fact likely to be prejudicial morally to the Council of Europe within the meaning of Article 25 of the Staff Regulations.

32. The Secretary General further points out that, in any case, the facts which gave rise to this conviction constitute a failure to comply with the obligation of integrity for which Article 25 of the Staff Regulations provides. In this context, he refers to the appellant's explanations at the hearing before the Disciplinary Board. In this instance, the appellant had argued that he was keeping the book up to date, writing deliberately "inflated" figures alongside the official figures for monthly takings, in order to attract the attention of a possible buyer, and especially of Asian buyers "just arrived" in France.

33. On the subject of the secondary activity, the Secretary General points out that, during their working hours, members of staff are supposed to be present at their place of work, and that requests for permission to engage in a secondary activity, within the meaning of Article 32 of the Staff Regulations, therefore relate to activities carried out outside working time.

34. In the Secretary General's view, the appellant's participation in his wife's activities, namely the paying into the bank of the cheques received by the restaurant, the reception of customers and the keeping of two sets of accounts, admitted to the Colmar court of appeal, are evidence of his involvement in the life of the restaurant. Its regularity is proof of its occupational nature, and thus of the fact that the permission for which Article 32 provides ought to have been requested.

35. On the subject of the omissions from the declarations of income, the Secretary General argues that the disciplinary penalty imposed on the appellant is not based on the facts which are the subject of proceedings before the French courts in respect of disputes between the appellant and the tax authorities. The fact that the appellant had concealed certain of his wife's income has been established by the Colmar court of appeal.

36. Finally, the Secretary General points out that the decrease in pay is a consequence of the downgrading and not a separate penalty. Furthermore, where pension is concerned, he points out that, through the effects of the minima guaranteed by the Pension Scheme Rules, the amount of the appellant's pension will not be decreased at all as a result of his downgrading.

37. The Tribunal recalls that the provisions relating to disciplinary measures and disciplinary proceedings appear in Articles 54 to 58 of the Staff Regulations. Disciplinary proceedings are regulated in detail by the Regulations on Disciplinary Proceedings (Appendix X to the Staff Regulations), drawn up in application of Article 56 of the Staff Regulations.



38. In pursuance of Article 54 of the Staff Regulations,

“1. Any failure by staff members to comply with their obligations under the Staff Regulations, and other regulations, whether intentionally or through negligence on their part, may lead to the institution of disciplinary proceedings and possibly disciplinary action.

2. Disciplinary measures shall take one of the following forms:

- a. written warning;
  - b. reprimand;
  - c. deferment of advancement to a higher step;
  - d. relegation in step;
  - e. downgrading;
  - f. removal from post.
- ...”.

39. The Tribunal points out that, in such cases, the Secretary General has discretionary power, subject to cases of manifest abuse of authority or of improper exercise of authority, and on condition that the rights of the defence are respected. It points out in particular that the Secretary General is not bound by the opinions of the Disciplinary Board (ATCE, Nos. 190/1994, 196/1994, 197/1994 and 201/1995, decisions on Lelegard I, II, III and IV v. Governor of the Council of Europe Social Development Fund, of 25 September 1995, paragraphs 132 and 133; No. 208/1995, decision on Maréchal v. Governor of the Council of Europe Social Development Fund, of 29 March 1996, paragraphs 62 and 63; and No. 248/1998, decision on X v. Secretary General, of 20 May 1999, paragraph 36).

40. In the present case, the Secretary General, in disciplinary decision A.P. No. 2212 of 30 April 1998, alleged that the appellant had committed several failures to comply with his obligations under Articles 25 and 32 of the Staff Regulations. Where the first disciplinary offence is concerned, the appellant's conviction of complicity in *abus de biens sociaux*, the Secretary General took the view that this conviction harmed the Council of Europe's image and was morally prejudicial to the Organisation. In addition, the appellant had allegedly failed to comply with his obligation to demonstrate integrity by failing to declare his wife's full earned income in his annual declarations with a view to allocation of the household allowance. Finally, the Secretary General considered that the appellant had engaged in a secondary activity without requesting the permission for which the Staff Regulations provide.

41. Article 25 of the Staff Regulations is worded as follows:

“1. On taking up their duties, staff members shall sign the following declaration in the presence of the Secretary General:

‘I solemnly declare that I will carry out the duties entrusted to me as a member of the staff of the Council of Europe loyally and conscientiously, respecting the confidence placed in me. In discharging these duties and in my official conduct, I will have regard exclusively to the interests of the Council of Europe. I will not seek or receive any instructions in connection with the exercise of my functions from any government,

authority, organisation or person outside the Council. I will refrain from any action which might reflect upon my position as a member of the staff of the Council or which might be prejudicial morally or materially to the Council.’

2. Staff members may not, without the permission of the Secretary General, accept either directly or indirectly any material or other advantage offered in relation to the performance of their duties. This prohibition shall continue after the staff member’s employment has terminated.”

42. Article 32 of the Staff Regulations provides that:

“A staff member intending to engage in an occupational activity outside the Organisation, whether paid or unpaid, shall seek the permission of the Secretary General. Permission shall be granted only if the activity in question does not interfere with the performance of the staff member’s professional obligations and is not incompatible either with the interests of the Council or with his or her being a staff member of the Council. The Secretary General shall answer the request within thirty days, failing which permission shall be deemed to have been given. Permission may be cancelled if it ceases to meet the above condition.”

43. The Tribunal points out, as regards whether the alleged offences occurred, that “it is for the Tribunal to judge, in the light of the evidence submitted by the two parties, whether proof of the charges emerges from the documents in the dossier” (see ATCE, aforementioned Maréchal decision, paragraph 77).

44. In this case, the Tribunal notes that the appellant’s disciplinary penalty is based on facts proven in a lower French criminal court and a court of appeal, as well as on the appellant’s explanations during the disciplinary proceedings. The appellant’s criminal conviction has become final.

45. The Strasbourg criminal court and, following an appeal, the Colmar court of appeal have found the appellant guilty of complicity in *abus de biens sociaux*. So, the appellant’s guilt has been proven in accordance with the law. The Tribunal also notes that, before the court of appeal, the appellant had admitted that it was he who had devised the computer system for holding two sets of accounts which had enabled the takings of the restaurant managed by his wife to be considerably undervalued.

46. It is appropriate to point out that, under Article 12 (1) of the Staff Regulations, the Secretary General is to aim to ensure the employment of staff of the highest ability, efficiency and integrity. The Tribunal takes the view that the solemn commitment entered into under Article 25, paragraph 1, of the Staff Regulations, signed when he or she takes up his or her duties, is binding on the Council of Europe staff member in every sphere of life, covering both occupational and private activities. Thus an international civil servant besides carrying out his allotted tasks, has a duty to show such dignity of behaviour as not to harm the good name that the organisation must enjoy if it is to do its job properly. He must in particular abide by the law and respect the public order of the host state or of any other country it may assign him to (see ATILO, No. 1584, Souilah case, of 30 January 1997, paragraph 9). The all-encompassing nature of this commitment is illustrated by the more specific duties and obligations set down in Article 25, paragraph 2, and in Articles 26 and those following, some of which specify that the

obligations continue after employment has terminated or refer explicitly to activities outside the Council of Europe.

47. The Tribunal takes the view that the Secretary General was lawfully able to consider that the appellant's conviction for complicity in *abus de biens sociaux*, an offence committed in the management of the restaurant run by his wife, had harmed the Council of Europe's image and had been morally prejudicial to the Organisation. In laying himself open to such a conviction at the end of criminal proceedings which had inevitably been the subject of a certain amount of publicity, the appellant had not conducted himself like an international civil servant demonstrating the honesty and integrity which the Council of Europe may demand of its staff members. His failure to comply with the obligations entered into in application of Article 25, paragraph 1, of the Staff Regulations, particularly the obligation to refrain from any act incompatible with the status of member of the Council's staff or likely to be prejudicial to the Council, is thus proven.

48. Where the second offence is concerned, the failure to declare his wife's full earned income, the alleged offence has also been proven. The appellant cannot make a general challenge before the Tribunal to the findings established by the French criminal courts. Yet, it is clear from these that the sums concealed were, at least in part, received by the appellant's wife from the operation of the restaurant concerned.

49. Finally, the Tribunal notes that Article 32 of the Staff Regulations covers all occupational activity, paid or unpaid, outside the Council of Europe. It therefore takes the view that the alleged failure to comply with the obligation to request permission for a secondary activity is certainly based on sufficient and relevant evidence. In the present case, one item of evidence of the appellant's involvement in the management of the restaurant concerned is clear from his very conviction: the devising of a system for undervaluing the takings. Other regular and not negligible task, namely the reception of customers and the paying of cheques into the bank, were mentioned by the appellant himself.

50. Where the alleged lack of proportion between the alleged facts and the penalty imposed is concerned, the Tribunal notes that the Secretary General adopted the penalty proposed by the Disciplinary Board and, in the light of all the evidence in the case-file (see paragraph 39 above), considers that there was no manifest lack of proportion.

51. The Tribunal accordingly cannot find any illegality.

For these reasons, the Administrative Tribunal:

Declares the appeal admissible;

Declares the appeal unfounded;

Dismisses it; and

Orders that each party bear its own costs.

Delivered at Strasbourg, on 9 June 1999, the French text being authentic.

The Registrar of the  
Administrative Tribunal

S. SANSOTTA

The Chair of the  
Administrative Tribunal

C. RUSSO