CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeals Nos. 187/1994 and 193/1994 (ROOSE I and II
v. Governor of the Council of Europe Social Development Fund)

The Administrative Tribunal, composed of:

Mr Carlo RUSSO, Chair,
Mr Kåre HAUGE,
Mr Hans G. KNITEL, Judges,

assisted by:

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

has delivered the following decision, after due deliberation.

PROCEEDINGS

1. Mr Roose lodged his first appeal on 27 June 1994 and his second on 21 October 1994. They were registered on 1 July 1994 and 25 October 1994 respectively, under file numbers 187/1994 and 193/1994.

2. The appellant lodged supplementary memorials on 30 August and 7 November 1994.

3. The Governor of the Council of Europe Social Development Fund submitted his observations in reply on 4 October 1994 and 12 December 1994.

4. The appellant lodged observations in reply to these on 4 November 1994 and 16 February 1995.

5. At the request of the Governor of the Fund the Tribunal asked the Chair of the Disciplinary Board to forward copies of all documents which had been provided to the parties during the disciplinary proceedings against the appellant. The documents were duly filed with the Tribunal, which acknowledged receipt of it on 9 March 1995.

6. During the proceedings the parties requested that a number of witnesses be called. On 23 May 1995 the Tribunal decided provisionally that it was unnecessary to take evidence from the witnesses at that stage but said it might order certain investigative measures after the hearings.

7. On 28 June 1995, at the Governor's request, the Tribunal asked the Chair of the Brussels Banking and Financial Committee for information about management of the Brussels branch of the French bank, Crédit du Nord, the circumstances in which it had been opened and the circumstances in and reasons for which it had been closed. Information was likewise requested concerning the appellant's use of the Council of Europe Social Development Fund account and of other accounts, including his own.

The Chair of the Brussels Banking and Financial Committee replied in a letter dated 14 July 1995. Pointing out the confidentiality rules by which the Banking and Financial Committee and its staff were bound, he expressed misgivings about the general nature of the information requested and suggested seeking the information from Crédit du Nord's headquarters in Lille.

The Governor responded on 7 August 1995, suggesting five questions for the Tribunal to put simultaneously to the Belgian Banking and Financial Committee and Crédit du Nord in Lille.

By fax dated 16 August 1995 the appellant informed the Tribunal that he had no observations concerning the Chair of the Brussels Banking and Financial Committee's reply of 14 July 1995.

After deliberating on 29 August 1995 the Tribunal decided that it was unnecessary to take further investigative measures.

8. After deliberating on 26 June 1995 it decided, under Rule 14 of its Rules of Procedure, to join Appeals Nos. 187/1994 and 193/1994 as being closely interconnected.

9. The public hearing took place on 27 June 1995. The appellant was represented by Mr J-D Sicault, who practises as an avocat in the Paris Court of Appeal; the Governor of the Council of Europe Social Development Fund was represented by Mr J-M De Forges, who likewise practises as an avocat in the Paris Court of Appeal.

10. At the hearing the Tribunal noted that the parties withdrew their written requests for the hearing of witnesses. It decided it was unnecessary for it to call witnesses of its own motion.

THE FACTS

11. On an initial fixed-term contract the appellant began work with the Council of Europe Social Development Fund on 1 September 1986 as grade A4 Head of Treasury responsible to the Director of Finance and Treasury. At the time of the matters at issue he was on grade A5, step 11, and his new fixed-term contract, dated 31 July 1992 and with effect from 1 September 1992, was for a period of four years.

As Head of Treasury and head of the Front Office he was more particularly responsible to the Governor for management of day-to-day cash needs and surpluses and for management of and cover against interest-rate and exchange risk arising from operations decided by the Governor and the supervisory bodies, more particularly in connection with the financing of Fund projects. He had authority, within set limits, to engage in market transactions not directly having to do with cash flow or project risk. He managed the investment portfolio, an area in which he alone had authority to conduct purchases and sales. In addition he advised the Governor on interest-rate and exchange risk in connection with the Fund's current and future operations.

Disciplinary proceedings were instituted against him and it was decided to suspend him. In taking this decision the Governor likewise informed banks with which the appellant conducted Fund business that he was no longer empowered to sign for the Fund or to engage in transactions or issue any instructions on the Fund's behalf. After the proceedings the appellant was dismissed.

He has lodged two appeals. The first challenges the decision to institute disciplinary proceedings, suspend him and notify banks that he was no longer empowered for the Fund. The second is against his dismissal after the disciplinary proceedings.

The Social Development Fund ("the Fund")

12. The Social Development Fund - formerly the Council of Europe Resettlement Fund - was set up in 1956 under a Council of Europe partial agreement. It is also open to non-member states.

The Fund is an intergovernmental financial institution with headquarters in Paris. Its capital is made up of financial contributions which its member states make by subscription of participating certificates offered to them in accordance with the percentage apportionment laid down in the Articles of Agreement. The Fund's priorities are aid to refugees, aid to migrants, and aid to populations stricken by natural or ecological disaster.

The Articles of Agreement were revised in 1993 but the revised version has not yet come into force since not all the member states have completed the ratification procedure.

13. The Fund comprises the Governing Board, which is its supreme organ and, among other things, lays down management policy; the Administrative Council, which has all the powers necessary to manage the Fund and issues general or specific instructions to the Governor; the Governor, who is responsible to the Administrative Council for day-to-day management of the

Fund; and the Auditing Board, which audits the accounts and the balance sheet.

Secretarial services to the Governing Board, the Administrative Council and the Auditing Board are provided by the Council of Europe. The Governor and his secretariat are located in Paris.

In 1993 the Fund had 62 staff, on fixed term or indefinite contracts.

14. On 18 July 1956 the Administrative Council adopted Resolution 4 (1956), which provides that regulations of the Council of Europe - including the Staff Regulations - apply to staff of the Fund. It also provides: "In relation to officials of the Fund, the Governor shall exercise the powers assigned to the Secretary General of the Council of Europe under the above provisions".

In Resolution 247 (1993) the Governing Board of the Fund adopted the new Articles of Agreement (not yet in force), Article XI section 1.d of which provides: "The Council of Europe Staff Regulations shall be applicable to the staff of the Fund in any matter not covered by a specific decision of the Administrative Council".

15. An agreement between the Governor of the Fund and the Secretary General of the Council of Europe which came into force on 16 February 1994 extended the Administrative Tribunal's jurisdiction to cover appeals lodged in the manner prescribed in Article 60 of the Staff Regulations against administrative acts of the Governor (as defined in Article 59 para.1 of the Staff Regulations).

The facts in this particular case

16. The Fund's management bodies decided to have an internal audit carried out because it was suspected that Fund loans (which are made to projects of a social nature, more particularly for reception of refugees and building low-cost housing) were being misused.

17. At the Administrative Council's request Ernst & Young International produced three reports under an internal audit. The reports were dated 27 August, 12 October and 22 October 1992 and dealt respectively with the granting and monitoring of Fund loans, general Fund expenditure, and financial management of the Fund. They brought to light malfunctioning and irregularities within the Fund.

The report of 27 August 1992 on the granting and monitoring of loans, for instance, concluded that there was deliberate underprovision for identification, assessment and monitoring of projects and that as a result the Fund was unmethodical - careless, indeed - about monitoring the use of loans, a task which was wholly left to the beneficiary states.

It is evident from the report of 12 October 1992 on general expenditure that rules and procedures were neither laid down in detail nor applied, and that on the one hand this produced individual conduct and cases of discrimination which were contrary to professional ethics in an international organisation while on the other it gave the Governor greater power.

With regard to financial management, the finding of the report of 22 October 1992 was that the system did not provide the information essential for assessing the Fund's overall exposure to interest-rate and exchange risk or its sensitivity to market movement and volatility, thus making it difficult to pursue an active policy in the markets.

18. They dealt with general Fund matters, not with individuals, and made a number of recommendations.

19. An inspector (Mr Violette) subsequently reported on implementation of the recommendations.

His report, dated 16 September 1993, was likewise concerned with general matters, not with individuals.

It confirmed the irregularities that the previous reports had found.

20. In a communiqué dated 10 November 1993 the Committee of Ministers of the Council of Europe deplored the malfunctioning and irregularities within the Fund. It declared its support for all the measures taken to remedy them and in particular for the Fund member states' decision to revise the Articles of Agreement. Lastly it recommended that the Fund's organs "clarify the responsibilities of the [Fund's] personnel and "suspend urgently the persons called into question by the audit".

21. On 15 November 1993 the Governor of the Fund, Mr Roger Vanden Branden, resigned.

22. In December 1993 the Governing Board ordered an administrative enquiry into the possible responsibilities of certain staff. The Council of Europe's Deputy Director of Administration, Mr Sharpe, submitted a report on 13 December 1993. The report was concerned with 5 members of staff but not the appellant.

23. The new Governor, Mr Raphaël Alomar, took up his duties on 20 December 1993. He ordered a further enquiry, which gave rise to another report by Mr Sharpe, submitted on 18 March 1994. This report was concerned with 6 of the staff, but again not with the appellant.

24. On 4 and 28 February 1984, of his own accord, a Mr M. B. contacted the Chair of the Governing Board and gave her a number of documents. Mr M. B, who is currently a financial consultant and authorised expert to the Belgian courts as well as an adviser to the Brussels Chamber of Commerce and Industry, was, at the time of the matters at issue, the Head of Liabilities Management at the Brussels branch of Crédit du Nord and had wide powers for lending.

The Chair of the Governing Board gave the documents to the new Chair of the Governing Board. The latter, the new Chair of the Administrative Council and the Governor formed the view that the documents brought to light very serious offences by the appellant and must be handed to the French judicial authorities. This was done on 9 March 1994.

25. The Governor decided to institute disciplinary proceedings against the appellant on 11 March 1994, under Articles 54 to 58 of the Council of Europe Staff Regulations, and at the same time to suspend him under Article 57 of the Staff Regulations and notify banks that he was no longer empowered to sign for the Fund.

26. The appellant lodged a complaint, and thereafter an appeal (No.187/1994), against the decision. Following the disciplinary proceedings the Governor decided to dismiss the appellant, a decision against which the appellant lodged a further appeal (No.193/1994).

27. On 11 March 1994 the Secretary General of the Council of Europe lifted the appellant's diplomatic immunity.

28. The French authorities began an investigation in October 1994 and this is still in progress.

First appeal (No.187/1994)

29. The Governor, contemplating disciplinary proceedings against the appellant, consulted the Chair of the Disciplinary Board on 9 March 1994 about suspending him. On 11 March 1994 he gave the appellant a hearing. On the same day he drew up the report referring the case to the Council of Europe Disciplinary Board and instituting disciplinary proceedings (the referral report) and decided to suspend the appellant. During the suspension the appellant's salary was reduced by one third. The Governor also sent faxes to banks with which the appellant had done business on the Fund's behalf, informing them that the appellant was no longer empowered to "engage in transactions or issue instructions of whatever nature for the Fund". The Chair of the Disciplinary Board received the referral report on 21 March 1994 and forwarded it to the appellant's lawyer on 22 March 1994.

30. In the referral report of 11 March 1994 the Governor charged the appellant with having an account in the same bank as handled the Fund's business and with furthering his own interests at the Fund's expense by misusing facilities afforded him by his position and appropriating sums of money made on the exchange market which should have been paid into the Fund's account.

The Governor based the charges on the documents handed over by Mr M. B. These revealed that the appellant held an account at Crédit du Nord's Brussels branch, through which, it is charged, "he engaged in currency transactions for himself, his wife and other managerial staff at the Fund". According to the documents the appellant had simultaneously conducted his own and the Fund's currency transactions, the exchange risk being wholly borne by the Fund but any profit being shared between the Fund, the appellant and his friends.

The device used was said to be as follows: in the morning the appellant would telephone the bank in Brussels to carry out forward exchange deals involving very large sums of money. The transactions would be entered to a transit account (contrary to banking practice). At the end of the day the transit account statement would be cancelled: either exchange rate movement had been

favourable, in which case the transaction was apportioned between the Fund and the appellant and his friends, or movement had been adverse, in which case the transaction was entered to the Fund's account. Repeated use of this device allegedly generated considerable profit, any exchange loss being entirely borne by the Fund.

31. In a complaint of 16 March 1984 the appellant challenged the decision of 11 March 1994 to bring disciplinary proceedings, suspend him and inform banks that his authority to sign for the Fund had been withdrawn. Disputing that the Council of Europe Disciplinary Board had jurisdiction in respect of staff of the Fund, he likewise alleged that the proceedings which had led to his suspension had been unlawful. He also drew attention to the "exceptionally serious" harm done him by the measures complained of, in particular the notification to banks.

32. On 25 April 1994 the Governor dismissed the complaint on the grounds that the Disciplinary Board had jurisdiction and that the proceedings had been lawful.

33. Checking of the accounts in connection with drawing up the Fund's balance sheet at 31 March 1994 revealed inconsistencies between the results of the investment portfolio and those of the covering swaps. The Governor queried this with Coopers and Lybrand, the firm which had certified the accuracy of the balance sheet at 31 December 1993.

In a letter of 27 April 1994 Coopers and Lybrand replied that it was evident from additional investigation and from further conversations with the head of the Back Office that there had been serious irregularities consisting in fabrication of swap contracts.

34. On 4 May 1994 the Governor sent the Disciplinary Board a report supplementing his previous reports. It stated that although the swaps were purportedly cover for the investment portfolio there were no external counterparts to them and they were therefore fictitious. The swaps, it said, had been entered in the balance sheet and had caused non-existent profit of ECU 66 million to be reported at 31 December 1993. The Governor accused the appellant of deliberately concealing them from the Fund management, supervisory bodies and auditors.

35. In its report, dated 25 May 1994, on the 1993 balance sheet and accounts the Fund's Auditing Board expressed the view, in particular, that "registering swaps without any external counterpart in the way in which and for the purposes for which this had been done was unacceptable and contrary to international rules and misrepresented the state of the Fund's finances".

36. On 3 and 8 June 1994 the appellant filed supplementary observations with the Disciplinary Board, more particularly concerning these further charges.

37. On 9 June 1994 the Disciplinary Board heard the appellant, the Governor and their lawyers. On the same day it heard evidence from Mr M. B.

38. On 21 June 1994 it delivered an opinion finding firstly that it was competent to do so and

that it was not appropriate for it to express a view on the suspension decision, since a complaint against which was still possible under Article 59 of the Staff Regulations. It further expressed the view that the decision to institute disciplinary proceedings had been taken after lawful procedure.

39. On the substantive issues it held firstly that responsibility for the internal swaps lay with the former Governor and secondly that the evidence concerning the currency transactions which the appellant had allegedly conducted at the Fund's expense was inconclusive. In particular it said that it was not clear from the documentary evidence that loss-making transactions had been entered to the Fund's account after cancellation of the transit account. It did find, however, that, although having an account with the same bank branch as dealt with the Fund's transactions did not in itself amount to a disciplinary offence, the appellant had committed a disciplinary offence by using his position at the Fund to carry out currency deals for himself, his wife, the former Governor, the wife and daughter of the former Governor and two other Fund staff (see opinion, para.78). It accordingly recommended that the appellant be downgraded.

40. On 1 July 1994 the appellant lodged an appeal against the Governor's decision of 11 March 1994 to take disciplinary proceedings against him, suspend him and notify banks that he was no longer authorised to sign for the Fund.

Second appeal (No.193/1994)

41. In a decision dated 6 July 1994 the Governor, after giving the appellant a hearing, dismissed him with effect from 10 July 1994.

42. The Governor agreed with the Disciplinary Board that the appellant had used his position to carry out currency deals on his own behalf as well as on behalf of his wife, the former Governor, the latter's wife and daughter and two other Fund staff. He likewise took the view that holding a private account through which Fund transactions were processed and falsifying the accounts by fabricating the internal swaps were contrary to the rules of international banking. The decision also referred to the French judicial authorities' decision to investigate the matter.

43. In a complaint dated 27 July 1994 the appellant challenged the legality of the decision of 21 July 1994. He alleged that the Disciplinary Board lacked jurisdiction and that there had been procedural irregularities. The Governor, he said, had based his decision on charges which he denied and which the Disciplinary Board had rejected. Further, the judicial investigation begun on the basis of the charges (but which was not an investigation of him personally) was irrelevant, as there was a requirement that he be presumed innocent until there was proof to the contrary. Lastly he contended that the penalty was clearly disproportionate to the charges and was therefore legally in error.

44. On 25 August 1994 the Governor dismissed the complaint on the grounds that the proceedings had been lawful, that the Disciplinary Board's opinions were purely advisory, and that the penalty was proportionate to the charge which the Disciplinary Board had upheld as well as to the matters on which he had based his decision. In a letter dated 25 August 1994 he informed the

appellant that the third of his salary which had been deducted on account of his suspension would not be repaid to him.

45. On 21 October 1994 the appellant appealed against the Governor's decision of 6 July 1994 to dismiss him.

THE LAW

46. The two appeals are directed against the decision of 11 March 1994 by the Governor of the Council of Europe Social Development Fund to institute disciplinary proceedings against the appellant, suspend him and notify banks that his authority to sign for the Fund had been withdrawn (Appeal No. 187/1994) and the decision of 6 July 1994 to dismiss him (Appeal No. 193/1994).

47. As they were closely connected the Tribunal decided to join Appeals Nos. 187/1994 and 193/1994 under Rule 14 of its Rules of Procedure (see para. 8 above).

48. In Appeals Nos. 187/1994 and 193/1994 the appellant firstly challenges the lawfulness of the disciplinary proceedings. He maintains that the Disciplinary Board lacked jurisdiction and that both defence rights and the sequence of steps laid down in the Staff Regulations were contravened.

He alleges that the suspension was decided after unlawful procedure and that it was unfounded. He likewise alleges that the notification to banks caused him serious harm and was unjustified.

He denies the charges and contends that in any case the matters to which they relate are not disciplinary offences. Lastly he submits that the penalty was disproportionate to the charges.

49. The Governor takes the view that the decision dated 11 March 1994 to institute disciplinary proceedings against the appellant and suspend him was taken after procedure that was entirely lawful and that notifying banks of the withdrawal of the appellant's authority to sign for the Fund was necessitated by the suspension.

Under Appeal No. 195/1994 he reiterates that the procedure was lawful and maintains that the penalty was factually sound and proportionate to the offences.

I. LAWFULNESS OF THE SUSPENSION PROCEDURE AND JUSTIFICATION FOR THE SUSPENSION AND THE NOTIFICATION TO BANKS

50. The appellant maintains that the suspension was unlawful in that it was taken after unlawful procedure and was unfounded. He likewise maintains that the decision to notify banks that his authority to sign for the Fund was withdrawn did him serious harm and was unjustified.

A. Lawfulness of the suspension procedure

51. The appellant maintains that the procedure which led to the suspension was unlawful in that the Chair of the Disciplinary Board was not competent to be consulted, the decision was not taken at the prescribed time, and defence rights were contravened.

52. He firstly maintains that the Chair of the Council of Europe Disciplinary Board was not competent to be consulted on suspension of a Fund official. He argues that, since the staff of the Fund had no hand in appointing the Council of Europe Disciplinary Board, its Chair was not competent to be consulted on proceedings against Fund staff.

53. He contends that, under Article 57 para. 1 taken with Article 55 para. 3 of the Staff Regulations, suspension cannot be imposed until disciplinary proceedings have been instituted, and that the suspension did not meet this requirement. The Governor consulted the Chair of the Disciplinary Board by telephone at 11.45 am on 9 March 1994 and disciplinary proceedings were not instituted until 11 March 1994.

54. Lastly, as regards to the prior hearing he was given, he also contends that before even allowing him to present his defence the Governor informed him that he had decided to suspend him. He maintains that even assuming that suspension was urgently necessary in the interests of the service - though he disputes that it was, since the matters at issue had occurred five years earlier - the Governor could have taken very speedy action while still complying with the rules, whereas he committed numerous procedural irregularities.

55. The Governor maintains that the Council of Europe Disciplinary Board had jurisdiction in proceedings against staff of the Fund, and that its Chair was therefore the authority which he was required to consult, under Article 57 para. 1 of the Staff Regulations, before taking the decision to suspend the appellant.

He submits that the procedure used was lawful as to the time at which the suspension decision was taken, there being no provision in the Staff Regulations that specifies at what point a suspension decision must be taken. In addition, the suspension was a precautionary measure taken in the interests of the service. Disciplinary proceedings against the appellant were under way at the time of the suspension.

56. Under Appeal No. 193/1994 the Governor argues that, with regard to the point at which a staff member is suspended, the appellant confuses consulting the Chair of the Disciplinary Board, which took place on 9 March 1994 and preceded the decision to institute disciplinary proceedings, with the decision to suspend him, which was taken after the decision to institute disciplinary proceedings.

57. The Tribunal points out that the suspension procedure, which is parallel to but separate from the institution of disciplinary proceedings, is governed by Article 57 of the Staff Regulations, which lays down that an official may be suspended in “a case of serious misconduct liable to entail a disciplinary measure as referred to in Article 54, paragraphs 2.d, 2.e and 2.f” (that is, relegation

in step, downgrading, and removal from post). Article 57 para. 1 of the Staff Regulations also provides: "... the [Governor] may, after hearing the Chair of the Disciplinary Board, suspend the presumed author of the misconduct".

58. The Governor's consulting the Chair of the Disciplinary Board before suspending the appellant was in accordance with Article 57 para. 1 of the Staff Regulations. The Tribunal finds that the Chair of the Disciplinary Board was the authority competent to be consulted under that provision. It refers, *mutatis mutandis*, to its arguments below (see para. 80) on whether the Council of Europe Disciplinary Board had jurisdiction in proceedings against staff of the Fund.

59. On the question of the point at which the suspension decision was taken, the appellant relies on Article 55 para. 3 of the Staff Regulations, under which receipt of the referral report is what institutes disciplinary proceedings.

60. The Tribunal observes, however, that this provision, taken with Article 57 para. 1 cannot be interpreted to mean that suspension may not - as the appellant alleges - be imposed until after disciplinary proceedings have been instituted. In the present case the instituting of disciplinary proceedings was certainly preceded by the Governor's consultation of the Chair of the Disciplinary Board concerning the suspension as well as by the suspension decision itself, but that is not prohibited by any provision of the Staff Regulations: these does not provide that the suspension decision must come after the referral of the case to the Disciplinary Board.

61. As regards, lastly, the appellant's argument that the Governor decided to suspend him before even letting him present his defence, the Tribunal would observe that there is no rule governing the matter. It further notes that after being sent a copy of the referral report and being given access to the other documents in the proceedings the appellant, assisted by his lawyer, was heard by the Disciplinary Board and was therefore able to defend himself properly at that stage. The Tribunal therefore does not see in what respect defence rights were contravened from this standpoint.

62. Subsequently the appellant likewise had "the opportunity to put his case to the Tribunal and have it rule on the lawfulness of the procedure" (see, *mutatis mutandis*, Appeal No. 178/1994, Fender v. Secretary General, decision of 24 February 1995, para. 45 *in fine*).

63. The Tribunal accordingly finds that the suspension decision was taken after lawful procedure.

B. Justification for the suspension

64. The appellant likewise challenges the legality of the suspension on substantive grounds.

65. He maintains, here, that there is a connection between the suspension decision and the disciplinary measure subsequently imposed since, under Article 57 para. 1 of the Staff Regulations, suspension is possible only if the penalty is one of those specified in Article 54 para. 2 (d), (e) and

(f) of the Staff Regulations (relegation in step, downgrading, and removal from post). Therefore, he argues, it is only after the disciplinary proceedings, and once the Disciplinary Board has delivered its opinion and the Governor has taken his decision, that it is possible to decide whether suspension was justified. In the appellant's view suspension is not justified if the Governor decides to impose a penalty less severe than those specified in Article 54 para. 2 (d), (e) and (f) of the Staff Regulations or decides not to impose any penalty.

66. He adds that even if the suspension is subsequently legitimised by the penalty imposed, the decision may be challenged before the Administrative Tribunal, which, in ruling on the legality of the disciplinary penalty, is then indirectly called upon to decide whether suspension was justified. He states that his second appeal (No. 193/1994), against the penalty imposed upon him (removal from post), seeks just such a ruling.

67. The Governor argues that under Article 57 of the Staff Regulations serious misconduct resulting in a penalty other than those laid down in Article 54 para. 2 (d), (e) and (f) may justify suspension if, at the time of the suspension decision, it appeared to warrant one of those three penalties. In his view, therefore, the Administrative Tribunal must perform a narrow review, confined to the question whether he was manifestly wrong in the legal significance which he ascribed to the matters with which the appellant is charged.

68. In this connection the Governor observes that the appellant was suspected of having obtained private gain at the Fund's expense and that the seriousness of that charge alone was such as to suggest that one of the penalties provided for in sub-sections (d), (e) and (f) might apply.

He points out, in addition, that the suspension decision was shown to be correct by the Disciplinary Board's unanimous finding that the appellant had committed a disciplinary offence of "manifest seriousness" such as "to warrant one of the penalties specified in Article 54 para. 2 (d) to (f) of the Staff Regulations". He accordingly contends that the decision was legally well-founded.

69. The Tribunal notes that under Article 57 "… the [Governor] may ... suspend the presumed author of the misconduct". In this matter he therefore has wide discretion, in exercising which he must nonetheless comply with the procedure laid down in the Staff Regulations and with defence rights and refrain from any abuse of authority causing injury to the staff member.

70. The Tribunal holds that in so far as, at the time of the suspension decision, the matters with which the appellant was charged were "liable" to justify suspension, which is a precautionary measure, and in so far as the Governor's decision was not unreasonable, the Governor did not exceed his powers.

71. In this connection the Tribunal notes that the Disciplinary Board expressed the view that it was inappropriate for it to give an opinion on the Governor's suspension decision. With regard, however, to the required penalty, the Board's finding was that the appellant had committed a number of offences warranting one of the penalties laid down in Article 54 para. 2 (d) to (f) of the Staff Regulations - offences, that is, liable to result in a suspension decision. The Governor was

therefore entitled to decide that suspension was justified and in doing so did not exceed his discretion.

72. As, therefore, the Governor's decision to suspend the appellant was not unreasonable, this ground of appeal must be dismissed.

C. Justification for notifying banks that the appellant's authority to sign for the Fund was withdrawn

73. The appellant maintains that the decision so to notify banks was unjustified. He alleges that the decision amounted to "victimisation" and that it did serious harm to his reputation.

74. The Governor maintains that the decision merely implemented the decision to suspend the appellant and was taken in the interests of the service, not out of vindictiveness. Informing the banks was intended to avert any confusion and was legally justified by the nature of the appellant's duties and the financial implications of the commitments which he was in a position to enter into.

75. The Tribunal can see that the Governor's decision to inform banks with which the Fund did business that the appellant was no longer authorised to sign for it may have damaged his reputation.

However, it takes the view that it was necessary to sound management of the Fund, particularly in view of the appellant's duties. Moreover, it notes that the Governor did not inform banks of the reasons for the withdrawal of authority.

76. This ground of appeal must therefore likewise be dismissed.

II LAWFULNESS OF THE DISCIPLINARY PROCEEDINGS

77. The appellant challenges the lawfulness of the disciplinary proceedings on the grounds firstly that the Disciplinary Board lacked jurisdiction and secondly that there were procedural irregularities.

A. Jurisdiction of the Disciplinary Board

78. The appellant maintains that the proceedings before the Council of Europe Disciplinary Board were unlawful in that the Board did not have jurisdiction in respect of Fund staff. He points out that the staff of the Fund had no hand in appointing the Council of Europe staff representatives who serve on joint bodies such as the Disciplinary Board and are supposed to represent them. In so far, he alleges, as the Disciplinary Board was not a properly joint body and the Fund did not have a disciplinary board of its own, the decision complained of is null, having been taken on the basis of an opinion delivered by a body which did not have jurisdiction.

79. The Governor argues that the Disciplinary Board had jurisdiction in proceedings against

staff of the Fund. He relies on Resolution No. 4 (1956) of the Fund's Administrative Council, which provides:

> "2. Officials of the Fund shall be subject to the following regulations of the Council of Europe:
>
> i. Those contained in the Administrative Regulations/Staff Rules;
> ...
>
> In relation to officials of the Fund, the Governor shall exercise the powers assigned to the Secretary General of the Council of Europe under the above provisions".

The Governor contends that from Fund staff's special circumstances it is not possible to infer that the Disciplinary Board is not a properly joint body: the Fund is "attached to the Council of Europe and administered under its supreme authority" (Article 1 of the Fund's Articles of Agreement). As, moreover, the Fund does not have a large staff, he has no plans - for "practical and ethical reasons" - to give it a disciplinary board on its own.

80. The Tribunal notes that the Fund's Articles of Agreement were adopted by the Committee of Ministers on 16 April 1956 and that Article 1 provides that the Fund is attached to the Council of Europe and administered under its supreme authority.

81. In the Tribunal's view the Fund comes under the Council of Europe and consequently under both Articles 59 to 61 of the Staff Regulations (which lay down the arrangements for appeals by Council of Europe staff) and the Regulations on Disciplinary Proceedings (Appendix X to the Staff Regulations).

82. In addition, in Resolution 247 (1993), the Fund's Governing Board adopted the new Articles of Agreement, which have not yet come into force. Article XI section 1 (d) of these Articles of Agreement provides: "The Council of Europe Staff Regulations shall be applicable to the staff of the Fund in any matter not covered by a specific decision of the Administrative Council".

83. The Tribunal takes the view that the Fund's Administrative Council has accepted the Staff Regulations as they stand and that the Disciplinary Board's jurisdiction is accordingly established.

84. The Tribunal is not unaware that there is a problem concerning representation of the Fund's staff on the Council of Europe Disciplinary Board. In the present case it holds that this lack of representation was not a defect such as to render the proceedings unlawful.

85. The Tribunal would point out that Article 55 of the Staff Regulations provides:

> "2. (…) The Secretary General shall also draw up a list containing, if possible, the names of two staff members from each grade in each category mentioned in Article 4. The

Staff Committee shall at the same time transmit a like list to the Secretary General.

3. (...) The Chair of the Disciplinary Board shall, in the presence of the staff member concerned, draw lots from among the names in the above-mentioned lists to decide which four members shall constitute the Disciplinary Board, two being drawn from each list.

4. Members of the Disciplinary Board shall not be of a lower grade than that of the staff member whose case the Board is to consider".

86. The Tribunal is aware of the difficulty here, which more particularly arises because the Fund does not have a large staff and because of the problem of meeting the requirements of Article 55 of the Staff Regulations, including those relating to grade. It is not for the Tribunal to say how the problem should be tackled but it observes that the Fund staff must be represented, whether directly or indirectly, on the Disciplinary Board and that it is for the parties concerned to agree arrangements for ensuring it.

B. Procedural soundness of the disciplinary proceedings

87. The appellant contends that the disciplinary proceedings were unlawful firstly in that the sequence of steps laid down in the Staff Regulations was not complied with and secondly in that defence rights were contravened in several respects.

a) The sequence of procedural steps

88. The appellant alleges that the decision to institute disciplinary proceedings contravened the prescribed procedure, which, he maintains, consists in:

- a hearing of the staff member concerned (Article 56 para. 1 of the Staff Regulations);
- the decision to institute disciplinary proceedings, in the form of a report referring the matter to the Disciplinary Board, the report being communicated to the staff member (Article 55 para. 3 of the Staff Regulations);
- access to the file (Article 3 of Appendix X to the Staff Regulations);
- if any of the charges is liable to incur any of the three severest disciplinary measures, consultation with the Chair of the Disciplinary Board (Article 57 para. 1 of the Staff Regulations);
- a hearing of the staff member liable to suspension, and
- the suspension decision and its notification to the staff member (Article 57 para. 1 of the Staff Regulations).

89. The appellant says that the Governor informed him of the suspension decision at the end of the actual hearing and that the decision had been drafted and signed before the hearing. Since, he alleges, the instituting of disciplinary proceedings must precede the suspension, this proves that the decision to institute proceedings had already been taken before he was heard, contrary to Article 56 para. 1 of the Staff Regulations. He contends that the hearing was devoid of any useful purpose

(since it did not precede that decision) and that this rendered the decision to institute disciplinary proceedings unlawful.

90. The Governor maintains that the prescribed procedure was complied with, the appellant having been informed and given a prior hearing and the Chair of the Disciplinary Board having been consulted.

91. The Governor states that, in accordance with Article 57 para. 1 of the Staff Regulations, he consulted the Chair of the Disciplinary Board on 9 March 1994 and told him that he was contemplating taking disciplinary proceedings against the appellant and suspending him. On 11 March 1994 he gave the appellant a hearing, as required by Article 56 para. 1, and informed him at the end of it that he intended taking disciplinary proceedings. He then told him that he had now decided to suspend him. Consequently the appellant was given a hearing before disciplinary proceedings were instituted, and the proceedings were therefore lawful. In his observations under Appeal No. 193/1994 the Governor adds that although a draft suspension decision had been prepared before the hearing it was still open to him, in the light of the appellant's explanations, to refrain from signing the draft decision or institute disciplinary proceedings.

92. The Tribunal points out that, under Article 56 of the Staff Regulations, "disciplinary proceedings are instituted by the Secretary General (in this case the Governor) after a hearing of the staff member concerned" and that, under Article 54 of the Staff Regulations, "any failure by a staff member to comply with his obligations under the Staff Regulations or other regulations, whether intentionally or through negligence on his part, may lead to the institution of disciplinary proceedings and possibly disciplinary action".

93. In addition, where the alleged misconduct may incur one of the disciplinary measures laid down in Article 54 para. 2 (c), (d), (e) and (f) of the Staff Regulations (deferment of advancement to a higher step, relegation in step, downgrading, and removal from post), there is a requirement not only that the staff member be given a hearing before proceedings are instituted (Article 56 para. 1 of the Staff Regulations) but also that the Governor lay before the Disciplinary Board a report clearly specifying the reprehensible acts and the circumstances in which they were allegedly committed (Article 2 para. 2 of Appendix X). This report, which institutes the disciplinary proceedings (see Article 55 para. 3 of the Staff Regulations), is sent to the Chair of the Disciplinary Board, who brings it to the knowledge of the Board members and of the staff member (Article 2 para. 3 of Appendix X). The staff member is then entitled to see his complete personal file (Article 3 of Appendix X).

94. The Tribunal has considered all the documentary and other evidence which the parties have submitted, including the Disciplinary Board's opinion. The documentary evidence shows that the Governor gave the appellant a hearing on 25 March 1994 and that on the same date he instituted disciplinary proceedings by signing the referral report provided for in Article 2 para. 2 of Appendix X to the Staff Regulations. Here, the Tribunal notes, the parties disagree. The appellant maintains that the referral report had already been written and signed before the hearing whereas the Governor contends that he did not sign it until after hearing the appellant and that he thereby

instituted disciplinary proceedings while complying with the sequence of steps laid down in the Staff Regulations.

95. The Tribunal notes that the appellant's hearing consisted in an interview in which he had the opportunity to provide explanations and clarifications. In the Tribunal's view, that the report may have been prepared beforehand does not make the hearing any less precedent.

96. It further observes that, even though the appellant may have had the impression that the Governor's decision had already been taken, it finds no reason to draw any such inference itself. Even assuming the referral report had been signed beforehand, it remained open to the Governor not to forward it to the Disciplinary Board and thereby institute disciplinary proceedings. Lastly and most importantly, the Governor heard six other people, only 3 of whom ultimately had disciplinary proceedings brought against them.

The sequence of steps which the Staff Regulations lay down for instituting disciplinary proceedings was therefore complied with.

b) Defence rights

97. The appellant contends that, in view of the "haste" with which, at the end of the hearing on 11 March 1994, the Governor took the decision to suspend him, it would have made sense if, immediately after the hearing, he had been given the referral report. In actual fact the report was sent to him more than ten days after the decision to institute disciplinary proceedings and suspend him. He says that because of serious delay in letting him have the referral report he did not have access to his file as soon as Article 3 of Appendix X to the Staff Regulations required.

98. The Governor points out that under Article 2 para. 3 of Appendix X to the Staff Regulations, the Governor sends the referral report to the Chair of the Disciplinary Board, who brings it to the knowledge of the staff member. It is at that point, under Article 3 of Appendix X, that the staff member is entitled to see his personal file and the case file and that the appellant - as he does not dispute - in fact saw them in the present case. The proceedings were therefore unobjectionable from this standpoint. The Governor adds that the appellant was given access to his file and that he does not dispute the fact.

99. The Tribunal notes that the Chair of the Disciplinary Board received the referral report of 11 March 1994 on 21 March 1994 and sent it to the appellant's lawyer on 22 March 1994.

100. In the Tribunal's view, firstly, it is undoubtedly desirable that the referral report be communicated to the staff member immediately and that the staff member has the opportunity to present his defence to the charges.

101. In the present case the Disciplinary Board sent the appellant a copy of the referral report the day after receiving it, a lapse of time which is perfectly reasonable. In addition the Tribunal points out that the fifteen days within which, under article 5 para. 1 of Appendix X, "the staff member

must lodge any observations do not start running until the date on which he receives the report initiating disciplinary proceedings", that date being the only one which has any legal effect. The Tribunal also refers to paragraphs 61 and 62 above.

102. The Tribunal therefore cannot find any contravention of defence rights and dismisses this ground of appeal.

III. JUSTIFICATION FOR THE PENALTY

103. The appellant firstly denies the charges and secondly argues that the penalty was disproportionate to them.

A. The Substance of the allegations

104. The appellant disputes the substance of the allegations on which the Governor based his dismissal decision, which he considers unlawful on grounds of an error of fact.

105. On the charge that he held a private account in the same bank branch as dealt with the Fund's business, he observes that the Disciplinary Board did not regard that as a disciplinary offence in itself. He admits that it would have been more prudent to open an account with another bank for his private transactions but maintains that not doing so was not contrary to banking ethics. He argues that in this matter he cannot be accused of having contravened his obligations of loyalty and integrity under Article 25 of the Staff Regulations and that for the sake of convenience officials have accounts at the same bank as their employer.

106. He likewise disputes that he took advantage of his position to conduct currency exchange deals on his own behalf and on behalf of others. He points out here that, even though he had conventional international civil-servant status, his outlook, because of the Fund's special features and his own professional background, was more that of a financial dealer. He maintains that his conduct should therefore be assessed with reference to practice amongst financial dealers. Further, states that his private transactions and those on behalf of the Fund were kept completely separate and he had received permission from his superiors to conduct his own transactions through the same bank.

107. On the charge of obtaining financial gain at the Fund's expense in the manner described by Mr M. B., he contends that the documentary evidence provided by Mr M. B. does not substantiate the charge and that the transit account was a mere technical device.

108. On the final charge he maintains that internal swaps are a well-established banking practice and he vigorously denies having concealed the swaps. He points out that he had nothing to gain by falsifying the Fund's 1993 balance sheet. Further, it was on the former Governor's instructions that the asset swaps were set up and he did not raise any objection since there are not yet any fixed rules on entering derivatives in the accounts and it was therefore by no means clear that the instructions were illegal.

109. In addition he contends that the Governor was not entitled to base the dismissal decision on the French authorities' decision to begin a judicial investigation. The latter decision does not mean that any facts have been established. Furthermore he himself is not under investigation.

110. Lastly the appellant does not dispute that the Governor has discretionary powers as to the final decision and he accepts that the Governor is not legally bound by the Disciplinary Board's opinion. He contends, however, that the Governor deliberately dismissed the findings of the Disciplinary Board's inquiry, thereby committing a factual error against which his discretionary powers are no defence. In this connection he maintains that the Governor's attitude is extremely suspect in that he took the same line with the other staff facing charges and disregarded the Disciplinary Board's opinions, whether the technical findings (by deciding that there had been a disciplinary offence where the Disciplinary Board found none) or the recommendations as to the penalty (by imposing, as in the present case, a severer penalty than the Board recommended). The appellant contends that although the Administrative Tribunal's powers of review of the Governor's disciplinary decisions are restricted, they are nonetheless wider than the Governor suggests (see ILOAT, Judgement No.191 of 15 May 1972 in the Ballo case, confirmed by Judgement No.1000 of 23 January 1990 in the Clements case, under which the Tribunal is entitled to review the lawfulness of a decision taken under discretionary powers).

111. The Governor maintains that the charges are factually accurate and points out that he is not bound by Disciplinary Board opinions in the assessment of misconduct.

112. He takes the view that the Disciplinary Board misjudged the nature of the appellant's offences. He likewise points out that the Administrative Tribunal is not allowed to replace the Governor's assessment by its own and that it is for the Tribunal solely to satisfy itself that there was no manifest misassessment of the evidence.

113. With regard to the currency deals the Governor maintains that even if the view is taken that the Fund has not been shown to have been harmed, it is not disputed that the appellant had an account for speculative purposes at the same bank branch as dealt with the Fund's transactions. The Governor submits that holding such an account at a bank with which the Fund had dealings was contrary not only to banking and exchange ethics but also to Article 25 of the Staff Regulations and that the appellant's duties cannot excuse these contraventions. In the Governor's view the appellant took advantage of his position to engage in speculative deals for himself and his friends.

114. As far as the internal swaps are concerned the Governor takes the view that they were non-existent instruments, firstly because they were based on fictitious contracts and secondly because they are not recognised by financial or accountancy rules. In addition, the contrivance altered the profit and loss account and made a difference of ECU 66 million to the 1992 balance sheet. As a result of the discovery of the contrivance, the procedure for approving the balance sheet and the profit and loss account was delayed and serious harm was done both to the member states and the Fund itself, whose effectiveness and financial success depend heavily on the accuracy and

punctuality of the balance sheets issued to the institutions with which the Fund deals.

He accordingly maintains that the appellant, who was head of the Front Office at the time of these matters, committed a serious disciplinary offence in setting up the fictitious swaps and in deliberately concealing them from the auditors, the Auditing Board, the Administrative Council and the new Governor. He further takes the view that since the appellant was aware, or should have been, of the fraudulence of the contrivance, he should have refused to make use of it. The extent of his responsibilities and the seriousness of the matters at issue preclude his exonerating himself by blaming the former Governor.

115. The Tribunal points out that the Governor is not bound by opinions of the Disciplinary Board (see, for example, UNAT, No. 210, Reid v. Secretary General of the United Nations, judgement of 26 April 1976, in particular section IV, where the Secretary General had come to a different conclusion from the Joint Disciplinary Committee and the Joint Appeals Board; see also ILOAT, Judgement No.207 of 14 May 1973, Khelifati v. UNESCO, pp.4 and 5, and, more recently, ILOAT, Judgement No.1441 of 6 July 1995, Sock v. UNESCO, para. 20).

116. In addition, as regards whether the alleged offences occurred, "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 the aforementioned Khelifati judgement, p. 5). In the present case the Tribunal notes, in relation to the charges of having an account with the same bank branch as handled the Fund's business and engaging, through that branch, in private transactions on his own behalf and on behalf of others (his wife, the former Governor, the latter's wife and daughter and two other Fund officials), that the appellant does not dispute the facts, merely disputing that any offences were involved.

117. The Tribunal holds, given more particularly the size of the sums involved in his speculative transactions, that the appellant would not have been able to engage in them had it not been for his position as the Fund's Head of Treasury. That instructions regarding the appellant's private transactions were kept separate from instructions concerning Fund business is immaterial: he still took advantage of facilities afforded him by his duties. This in itself would be reprehensible even if there were no proof that the instructions damaged the Fund. The Tribunal accordingly finds that in this matter the Governor did not make any factual error.

118. Further, the Tribunal holds, on the evidence in the file, that the internal swaps are proven fact. The appellant merely endeavours to show that they are an established banking practice. In addition, while taking the view that the swaps were the former Governor's responsibility, the Disciplinary Board accepted that the appellant had indeed carried them out.

119. The Tribunal accordingly holds that the Governor was legally entitled to find that the charges were proved.

120. With regard, lastly, to the charge that the appellant's foreign exchange deals had damaged the Fund, the Tribunal notes that, in the Disciplinary Board's view, the Governor's evidence did

not amount to proof that there had been a contrivance of the kind described by Mr M. B. The Disciplinary Board did observe, however, that cancelled statements concerning transit funds agreed with statements for transactions entered, with the same value date and virtually the same exchange rate, to the accounts of the Fund, the appellant and the former Governor respectively.

In this matter, regard being had to the evidence available to it in the file and more particularly to the other charges, the Tribunal does not consider it necessary to conduct any further investigation.

B. Proportionality of the penalty

121. The appellant contends that the decision to dismiss him is invalidated by legal error in that it contravened the proportionality principle: from the file, read together with the Disciplinary Board's opinion, it is apparent, he suggests, that the penalty was disproportionate to any offences he may have committed.

122. Although critical of the Disciplinary Board's recommendation of downgrading, he points out that the sole charge which the Board upheld was that of misusing facilities afforded him by his duties to engage in deals of his own and on behalf of other people. Here he notes that the Board did not regard such conduct as incompatible with performance of his duties and did not recommend dismissal. He further maintains that private dealing of this kind is accepted practice in leading investment banks provided that the private transactions are kept separate from transactions on behalf of the particular bank.

He accepts that the Governor was not bound by the Board's opinion but he contends that in imposing a penalty a degree severer, in the list of penalties given in Article 54 para. 2 of the Staff Regulations, than that which the Disciplinary Board recommended, the Governor contravened the proportionality principle and was guilty of legal error.

123. Lastly, he observes that as a result firstly of the special features of the institution employing him, whose policy emphasis was on high profit, and secondly of his own professional background, his outlook was that of a financial dealer far more than a conventional international civil-servant. He submits, therefore, that the facts need to be assessed mainly with reference to accepted practice among financial dealers.

124. The Governor maintains that the dismissal was not disproportionate to the charges. Even if the sole offence attributable to the appellant were the one which the Disciplinary Board found to have been committed - namely, taking advantage of his position to engage in speculative currency deals - downgrading, as recommended by the Disciplinary Board, and dismissal differ by only one degree of seriousness and this is a matter which the tribunals recognise as falling under the competent authority's discretionary powers.

125. He takes the view that the offence amounted to dishonesty, that the appellant broke the oath which he had taken on entering the Fund's service and that this offence in itself justifies dismissing

an official of the appellant's level of responsibility. He maintains that the further two offences by which this serious offence is compounded confirm that keeping him on the staff was impossible.

126. The Tribunal points out that it is for the administrative authority - in the present case the Governor - to decide what penalty to impose and the Tribunal cannot substitute its own judgement for the administration (see, *mutatis mutandis*, ATCE, 178/1994, Fender v. Secretary General, para. 39).

127. It likewise points out that, under well-established international case-law (see para. 115 above), the Governor is not bound by Disciplinary Board opinions.

128. On the other hand, although they have no say as to whether a disciplinary measure is called for, administrative tribunals are allowed to satisfy themselves that the punishment is appropriate and to set aside any punishment which is disproportionately severe.

129. In this connection there is error of law if the disciplinary measure is "out of all proportion to the objective and subjective circumstances in which the misbehaviour was committed" (see, for example, ATILO, Judgement No. 203 of 14 May 1973 in the Ferrecchia case, para. 2; CJEC, case 46/72, De Greef v. Commission, paras. 45-48).

130. The Tribunal notes that, in imposing a severe penalty, the Governor took into account both the nature of the offences and the appellant's conduct. In doing so he did not exceed his discretionary powers.

131. It takes the view that the appellant cannot be held responsible for the Fund's general malfunctioning.

However, as Head of Treasury, on grade A5 at the time of the matters at issue, he had important and delicate duties. In several respects he was unsupervised and accountable direct to the Governor, whom he advised, in particular, on risk-management strategy.

132. In the Tribunal's view having an account at the same bank branch as dealt with the Fund's business was not in itself reprehensible.

However, using that account to engage in speculative deals involving large sums of money on his own behalf as well as on behalf of others (his wife, the former Governor, the Governor's wife and daughter and two other Fund officials) was a very serious offence. The Tribunal points out too that, for such transactions, the appellant had a forward exchange line with a credit guarantee of not less than 10% of outstanding exchange transactions in his name.

133. It is therefore clear from the file that in engaging in the deals in question, he took advantage of his position at the Fund and of facilities it afforded him.

134. In signing his contract with the Fund he accepted the rights and obligations of an

international civil servant. He thus agreed to be bound by the Council of Europe Staff Regulations, and more particularly Part III (Articles 25 and following), which deal with the duties and obligations of staff. He thus undertook to "carry out the duties entrusted to [him] ... loyally and conscientiously", to "have regard exclusively to the interests of the Council of Europe" in his official conduct, and to "refrain from any action which might reflect upon [his] position as a member of the staff of the Council or which might be prejudicial morally or materially to the Council" (Article 25 of the Staff Regulations).

135. The Tribunal would emphasise that even though, within the Fund, the appellant was performing the work of a financial dealer, he was an international civil servant and had a duty to conduct himself accordingly. His behaviour amounts to misconduct of exceptional seriousness.

136. With regard to the charge of fabricating internal swaps, the Tribunal notes that even though the decisions concerning the swaps were taken by the former Governor and even though the appellant was carrying out the latter's instructions in setting them up, the fact is that in agreeing to carry out the instructions he was fully aware of the implications. In view of his responsibilities under his contract and his duty to assist and advise his superiors as laid down in Article 30 of the Staff Regulations, the Tribunal holds that he must share the blame for the swaps.

137. It further observes that the firm of Coopers and Lybrand, which certified the accuracy of the balance sheet at 31 December 1993, stated in a letter of 27 April 1994 that, following further enquiries and further conversations with the head of the Back Office, serious irregularities consisting in fictitious swaps had been brought to light. Further, in its report dated 25 May 1994 on the 1993 balance sheet and profit and loss account, the Fund's Auditing Board expressed the view that "registration of swaps without any external counterpart in this manner and for such purposes is unacceptable and contrary to international rules as well as misrepresenting the state of the Fund's finances".

138. Having examined the evidence in the file, and considering it unnecessary to determine whether the charge of harming the Fund by engaging in exchange deals is founded, the Tribunal cannot find any manifest disproportion between the charges and the penalty imposed.

139. In addition it observes that at the time of the matters at issue a state of general disorder prevailed at the Fund. Although the Fund leadership was mainly to blame for the mismanagement, the Tribunal takes the view that the higher an official's grade the greater his responsibilities and that an official in charge of a department is responsible for any shortcomings or negligence in the handling of matters with which that department is concerned.

140. It follows that the allegation of legal error must be dismissed.

141. To sum up, no illegality is to be found.

For these reasons the Administrative Tribunal:

Declares the appeals unfounded;

Dismisses them; and

Orders that each party bear its own costs.

Delivered at Strasbourg, on 29 September 1995, the French text being authentic.

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