

# CONSEIL DE L'EUROPE— —COUNCIL OF EUROPE

## COMMISSION DE RECOURS APPEALS BOARD

**Appeals Nos. 118-128/1985 (Veronica JEANNIN and Others v. Secretary General)**

The Appeals Board, composed of

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

assisted by

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

has delivered the following decision after due deliberation.

### PROCEEDINGS

1. The following appellants have lodged appeals with the Board:

- Mrs	Veronica JEANNIN	Appeal	No.	118/1985
- Mr	Roger GRETH	"	No.	119/1985
- Miss	Alison CARDWELL	"	No.	120/1985
- Mr	Jean-Pierre GEILLER	"	No.	121/1985
- Mrs	Danièle SCHREIBER	"	No.	122/1985
- Mrs	Elizabeth LE GUILLOUX	"	No.	123/1985
- Mr	Jean-Claude LANCIEN	"	No.	124/1985
- Mr	Pierre SCHMIDT	"	No.	125/1985
- Mr	Maurice ADAM	"	No.	126/1985
- Mr	Régis SEILER	"	No.	127/1985
- Mr	Paul LOHR	"	No.	128/1985

2. The appellants lodged their appeals on 23 October 1985. The appeals were entered in the Board's register the same day under file Nos. 118-128/1985.

3. The supplementary pleadings were communicated to the Secretary General of the Council of Europe on the same day.

4. On 10 January 1986, the Secretary General's representative submitted his observations.

5. On 31 January 1986, the appellants' representative, Professor David Ruzié of the University of Paris V, submitted his reply.

6. The public hearing took place on 11 February 1986. The parties were represented as follows: the appellants by Professor Ruzié, and the Secretary General by the Deputy Secretary General, Mr G. Adinolfi, assisted by Mr E. Harremoes, Director of Legal Affairs, Mr L. Davies, Principal Administrative Officer in the Private Office of the Secretary General and Mrs G. Tubach-Ortiz, Principal Administrative Officer in Establishment Division.

## **THE FACTS**

7. Mrs V. Jeannin and the other ten appellants are permanent B- and C-grade officials at the Council of Europe. The appeals are against the Secretary General's refusal to revoke the decision whereby he refused to refund sums withheld from the salaries of B- and C-grade staff in the form of an abatement.

### **A. Procedure for determining salaries**

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

9. As part of the triennial review of salaries of staff of the Council of Europe, the Committee of Ministers at its 357<sup>th</sup> meeting in March 1983 approved the recommendations in paragraphs 32-38 of the 191<sup>st</sup> report of the Co-ordinating Committee of Government Budget Experts (16 February 1983) and the salary scales effective from 1 July 1982. In the same report the Co-ordinating Committee recommended that the salary-adjustment procedure it had described in its 159<sup>th</sup> report of 16 February 1979 should be retained.

10. This adjustment procedure is set out in paragraph 8 of the 159<sup>th</sup> report as follows:

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

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

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

11. In its 191<sup>st</sup> report, paragraph 35, the Co-ordinating Committee also recommended the following wage-restraint measures in respect of staff in categories B and C:

*“35. Future developments in the remuneration of category B and C staff and amendments to the procedure (Chapter III of Annex to 159<sup>th</sup> Report)*

a. The following amendments (sub-paragraphs *b, c* and *d*), would be made in the application of the best local employers’ method. It is recognised that these amendments would have a wage restraint effect. The results of these amendments would apply as from 1<sup>st</sup> July 1983. However, the following constraints would have to be complied with the restraint brought about by the combined effect of these amendments and applied at the 1<sup>st</sup> July adjustment each year should not:

i. bring about a reduction in nominal salaries, or

ii. bring salaries down by more than 1 per cent a year for category B staff or 0.5 per cent a year for category C staff.

b. The general policy followed by host countries as regards the length of the working week, reflected in the surveys made for salary adjustment purposes, should normally result in the Co-ordinated Organisations reducing their working hours and even aligning them on practice in the host countries.

In countries where working hours in the reference enterprises on 1<sup>st</sup> July 1982 are shorter than in the Co-ordinated Organisations, the percentage increase in salary granted on that score would be frozen as from that date so long as the gap between working hours in the Co-ordinated Organisations and in the reference enterprises remains at least what it was 1<sup>st</sup> July 1982. Should the working hours gap between the Co-ordinated Organisations and the reference enterprises decrease, the percentage increase in salary at 1<sup>st</sup> July 1982 would be reduced in the same proportion.

c. Fringe benefits other than those relating to transport and canteen facilities worked out for the 1<sup>st</sup> July 1982 adjustment expressed in nominal terms would be frozen and then phased out. The flatrate element of the expatriation allowance would be frozen and its elimination would continue (CCG (62) 3, paragraph 28, CCG (65) 2, paragraph 18).

The salary reductions resulting therefrom would be put into effect as soon as possible after 1<sup>st</sup> July 1983 in the conditions and within the limits set out above (sub-paragraph a.i and ii).

d. The salary surveys conducted among the best employers in the private and public sectors now carried out every two years, would be made every three years at least, or, possibly, after two years with the agreement of the host country”.

12. In March 1984, at its 368<sup>th</sup> meeting, the Council of Europe’s Committee of Ministers approved the salary scales appended to the Co-ordinating Committee’s 196<sup>th</sup> report, to take effect from 1<sup>st</sup> July 1983.

13. On 19 March 1984, the Committee of Ministers adopted Resolution (84) 2 providing for revision of the Regulations governing staff salaries and allowances. This revision resulted in new salary-scale tables, effective from 1<sup>st</sup> July 1983.

## **B. The circumstances of the case**

14. Eleven B- and C-grade members of staff asked the Secretary General, in a memorandum dated 13 June 1985, to confirm that he intended to repay the sums withheld from the salaries of staff in those grades from 1 July 1983 onwards. This request came in the wake of the Appeals Board’s Decision of 15 May 1985 (ABCE 101-113/1984, Stevens and Others v. Secretary General, Digest, p. 144) setting aside the individual decisions whereby the Secretary General implemented the Committee of Ministers’ decision concerning the

temporary levy on the salaries of A- and L-grade staff and ordering repayment of the sums unlawfully deducted.

15. In a memorandum dated 16 July 1985, the Secretary General stated in reply to the request from these B- and C-grade staff members that, as the Appeals Board's Decision was concerned only with the levy on the salaries of A- and L-grade staff, he was not able to accede to their request.

16. On 22 July 1985, the eleven staff members concerned lodged an administrative complaint with the Secretary General against his explicit refusal of their request for repayment.

17. The Secretary General rejected the complaint on 2 September 1985 on the ground that the Appeals Board's Decision of 15 May 1985 in the case of Stevens and Others was concerned only with the levy on the salaries of A- and L-grade staff.

18. On 23 October 1985, the appellants lodged their appeals.

## **SUBMISSIONS OF THE PARTIES**

The **appellants' submissions** may be summarised as follows:

### **A. As to the modification of the Council of Europe's Staff Regulations**

19. The appellants pleaded a defect of substance, formal defects and a misuse of powers,

1. As to the complaint based on a defect of substance

20. The appellants claimed that the application of an abatement adversely affect fundamental features of their conditions of service and caused them "excessive harm" in the sense given that term by the World Bank Administrative Tribunal (Decision No. 1 of 5 June 1981, De Mérode and Others, paragraph 57).

21. The appellants pointed out that the change in the method of adjustment recommended in the 191<sup>st</sup> report was arbitrary in that it disregarded factors which were important for making any objective comparison with salaries paid in the private sector (see paragraph 11 above).

22. They submitted that the method adopted in the 133<sup>rd</sup> report, based on a comparison with the level of salaries paid by local employers, already reflected the economic recession. The change in the method of adjustment accordingly meant that the staff were being made to suffer the effects of the recession twice over.

2. As to the complaint based on formal defects

*i. The impugned decision was allegedly unlawful on account of the failure to give any reasons*

23. The appellants observed that the pay slips received by B- and C-grade staff were not accompanied by any explanation concerning the method of adjustment that had been adopted.

Relying on the Appeals Board's case-law and on Committee of Ministers Resolution (77) 31 on the protection of the individual in relation to the acts of administrative authorities, they maintained that the Organisation should have given reasons for the decision.

*ii. Failure to publicise*

24. The appellants claimed that the measures relating to the abatement were unlawful also on account of the failure to give these measures the publicity essential in the management of international organisations.

25. In this connection they pointed out that the general wage-restraint measure in the Co-ordinating Committee's report was not given any publicity and that moreover the individual measures were not notified to those concerned.

3. As to the complaint based on a misuse of powers

26. The appellants claimed that in taking the disputed adjustment measure the Committee of Ministers misused its powers in that the abatement benefited not the Council of Europe but the member states, whose contributions to the Organisation were thereby reduced.

**B. As to the infringement of general principles of law**

1. As to the disregard of principles contained in the Social Charter

27. In the appellants' view, the introduction of an abatement meant that the remuneration of B- and C-grade staff was no longer fair as provided for in the Social Charter (Article 4).

28. Referring to the principles set out in Articles 4 and 6 of the Social Charter, the appellants claimed their right to bargain collectively was disregarded when the method of adjustment employed on this occasion was settled.

In this connection, the appellants pointed out that the Appeals Board recognised that the Committee of Ministers could impose wage restraint if this was "justified by exceptionally serious and urgent circumstances" (ABCE, 101-113/1984, *Stevens and Others v. Secretary General*, paragraph 67). That situation, which was held not to apply in the case of the salaries of A- and L-grade staff, did not apply to the salaries of B- and C-grade staff either.

2. As to infringement of the principle of non-discrimination

29. The appellants claimed that the impugned decision gave rise to discrimination vis-à-vis the remuneration of A- and L-grade staff.

They referred to the case-law of the World Bank Administrative Tribunal, which held that there would be an abuse of discretion if there were unjustifiable discrimination between individuals or groups within the staff (Decision No. 1 of 5 June 1981, *De Mérode and Others*, paragraph 47).

3. As to the frustration of legitimate expectations

30. The appellants claimed that the disputed decision frustrated legitimate expectations as that concept is defined by the Court of Justice of the European Communities (5 June 1973, Case 81-72, *Commission v. Council*, (1973) ECR 575, paragraph 10). In this instance the appellants considered that the organisation's governing bodies failed to fulfill this legitimate expectation as a consequence of the fragility of the system for adjusting salaries and the secrecy surrounding its genesis.

4. As to infringement of the principle of non-retrospective effect

31. The appellants claimed, referring to the case-law of the World Bank Administrative Tribunal, that an international civil servant cannot, in consequence of a unilateral, retrospective change in conditions of service, be deprived of accrued rights for services already rendered (Decision No. 1 previously cited, paragraph 46).

32. They observed that an abatement was applied to their salaries retrospectively with effect from 1<sup>st</sup> July 1983, although there was no special indication on their pay slips or any notification to them of the change in their conditions of service.

The **Secretary General's submissions**, as set out in his written pleadings

**A. As to the modification of the Council of Europe's Staff Regulations**

33. The Secretary General pointed out that the Committee of Ministers' decision in March 1984 constituted implementation by the Council of Europe of the wage-restraint measures recommended in paragraph 35 of the Co-ordinating Committee's 191<sup>st</sup> report. These measures were taken in accordance with the Rules appended to the Co-ordinating Committee's 159<sup>th</sup> report, which provide in Article 3 that "should any amendments be made subsequently to these rules, no provision which ceases to apply shall give rise to vested rights" and in Article 12 paragraph 3 that "it is in the triennial review that consideration shall be given as appropriate to the overall structure of the remuneration of all the grades employed in the Co-ordinated Organisations and to the adjustment procedures covered by the report".

In this connection the Secretary General referred to the OECD Appeals Board, which held in a similar case that the aforementioned Articles 3 and 12 conferred a power to change the rules in the Staff Regulations "during triennial reviews and to apply these rules as amended straight away, until the next triennial review" (translation) (see Appeals Board of the OECD, Decision No. 106, 20.11.85, p. 6).

1. As to the complaint based on a defect of substance

34. While recognising that remuneration was one of the fundamental elements of the staff's conditions of service, the Secretary General nonetheless maintained that in the present case the wage restraint measures could not be described as "excessive harm".

These measures did not entail any reduction in the appellants' salaries as indicated in the scales but had the effect of slowing down the rate of increase provided for in the 159<sup>th</sup> report.

2. As to the complaint based on the failure to give any reasons

35. The Secretary General observed that this failure was due to the general nature of the measures taken, which had been widely discussed before being adopted; the latter point also disposed of the argument based on failure to publicise.

3. As regards the complaint based on a misuse of powers

36. The Secretary General maintained that this complaint was ill-founded, as any economy measure implemented within the Organisation would result in a reduction in member states' budgetary contributions, which make up the Council of Europe's resources.

**B. As to the infringement of general principles of law**

37. The Secretary General claimed that these principles were designed to put international civil servants' fundamental safeguards beyond the reach of the Secretary General's power of discretion.

1. As to the disregard of principles contained in the Social Charter

38. The Secretary General maintained that the slowing down of the rate of increase of B- and C-grade staff salaries did not amount to an infringement of the right to a fair remuneration guaranteed in Article 4 of the Social Charter.

39. As regards the right to bargain collectively, he observed that, in its Decision of 15 May 1985 the Appeals Board held that, in the conditions in which it was carried out, salary reductions could only be made with the prior agreement of the staff. Such agreement was unnecessary in the case of wage restraint.

2. As to infringement of the principle of non-discrimination

40. The Secretary General pointed out that the Appeals Board recognised the Committee of Ministers' right to vary the criteria for fixing the scales (ABCE, 101-113/1984, Stevens and Others v. Secretary General, Digest p. 152, paragraph 66).

41. In the present case the Committee of Ministers' approval of the recommendations in paragraph 35 of the 191st report (see paragraph 11 above) entailed a variation of "the criteria for fixing the scales" of B- and C-grade staff salaries.

42. In reimbursing only A- and L-grade staff the Secretary General had not discriminated against B- and C-grade staff, who had received and were still receiving the salaries indicated in the scales applicable to them.

3. As to the frustration of legitimate expectations

43. The Secretary General claimed merely that this complaint was ill-founded as the wage-restraint measures were decided on in accordance with Articles 3 and 12 of the Rules appended to the Coordinating Committee's 159<sup>th</sup> report (see paragraph 34 above).

4. As to infringement of the principle of non-retrospective effect

44. The Secretary General pointed out that the wage-restraint measures in paragraphs 32-38 of the 191<sup>st</sup> report were adopted by the Council of Europe's Committee of Ministers in March 1983. As salaries were reviewed on 1<sup>st</sup> July each year, it seemed logical that the measures concerned should come into force at the same time.

45. The delay in approving the salary scales was linked to the delay with which the annual salary adjustments are implemented.

46. The argument that the B- and C-grade staff, including the appellants, had been deprived of accrued rights for services already rendered was unfounded. The B- and C-grade staff were guaranteed their nominal salaries while receiving in full the amounts shown in the salary scales. The appellants could not maintain that they had been deprived of accrued rights for services already rendered. In this connection the Secretary General referred to the OECD Appeals Board, which had held that "although the elimination or even a major modification of such a system (of adjusting salaries) might be held in certain circumstances to have radically altered the structure of the employment relationship in such a way as to infringe established rights, the same cannot be said of a change in the methods used in the system of adjusting salaries such as those in force at the present time" (translation) (ABOEC, Decision No. 106).

## THE LAW

47. The appellants brought their appeals against the Secretary General's decision of 16 July 1985 whereby he refused the request for repayment of the sums which had been withheld from the salaries of B- and C-grade staff from 1<sup>st</sup> July 1983 onwards.

They sought to have the decision set aside and to have the sums which they claimed had been unlawfully deducted refunded to them.

They were also seeking the costs of the appeals.

48. The Secretary General maintained in his written observations that there was no taint of unlawfulness in the present case.

49. At the hearing on 11 February 1986, the Deputy Secretary General, appearing on behalf of the Secretary General, limited himself to making the following statement: "The presence of the Secretary General in these proceedings, as in the proceedings relating to the case of Stevens and Others heard on 6 February last year, is due to the fact that our organisation's disputes system provides only for appeals against the Secretary General.

But in reality, the Secretary General has never made a secret of his opinion as to the substance of the problem which is the subject-matter of the hearing today. He has always made known his opinion of the levy on the A and L-grades, the wage restraint in respect of the B and C grades and the repercussions of these on the working atmosphere in the organisation affecting all the bodies concerned, whether the Council of Europe's statutory bodies, meetings of the Secretary General of the Coordinated Organisations or the staff of this organisation.



On the other hand, the Secretary General cannot disregard his statutory accountability to the Committee of Ministers, and this explains why he is obliged to implement in full the Committee of Ministers' decisions regarding the remuneration of the B and C grades, since your Decision in the Stevens case related only to the levy on the salaries of A- and L-grade staff. As in the case of Stevens and Others, the Secretary General has made written submissions to the Board. He considers that these ensure that the proceedings before the Board are properly adversarial and he deems them sufficient for the Organisation's legal defence".

By expressing himself in this way, the Secretary General implied that he did not agree with the levy on the A and L grades and that he also had reservations in respect of the wage restraint concerning B- and C-grade staff.

He felt bound to add, however, that his attitude, even after the Appeals Board's Decision of 15 May 1985, was dictated by his statutory responsibilities vis-a-vis the Committee of Ministers.

50. As part of the triennial review of Council of Europe staff salaries, effective from 1<sup>st</sup> July 1982, the Committee of Ministers at its 357<sup>th</sup> meeting in March 1983 approved the recommendations in paragraphs 32-38 of the 191<sup>st</sup> report of the Co-ordinating Committee of Government Budget Experts (16 February 1983) and the salary scales effective from 1<sup>st</sup> July 1982.

51. In the same report, the Co-ordinating Committee recommended that the salary-adjustment procedure it had described in its 159<sup>th</sup> report of 16 February 1979 should be retained (see paragraph 10 above).

52. In its 191<sup>st</sup> report, paragraph 35, the Co-ordinating Committee also recommended wage restraint measures in respect of staff in categories B and C (see paragraph 11 above).

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

54. On 13 June 1985, the appellants, having studied the Appeals Board's decision of 15 May 1985 in the Stevens case, asked the Secretary General to refund the sums they claimed had been unlawfully withheld, the principle of such a repayment being inferred from the reasoning of that Decision.

55. The Secretary General, in his memorandum dated 16 July 1985, replied to the appellants: "As the Appeals Board Decision was concerned only with the levy on the salaries of A- and L-grade staff I am unfortunately not able to accede to your request" (memorandum of 16 July 1985 from the Secretary General to the appellants).

The Secretary General used similar terms in his decision rejecting the appellants' administrative complaint (letter of 2 September 1985 from the Secretary General to the appellants).

56. The appellants are challenging the decision of 16 July 1985, by which the Secretary General rejected the request for the reimbursement of the sums which have been withheld from the salaries of B- and C-grade staff from 1<sup>st</sup> July 1983 onwards and which they claimed had adversely affected their salaries, on the grounds indicated in paragraphs 19-33 above.

57. The remuneration of Council of Europe staff (Article 41 (1) of the Staff Regulations) is shown in scales determined by means of an adjustment procedure laid down in advance in the Co-ordinating Committee's report, as approved by the Committee of Ministers.

58. In the present case, the scales effective from 1<sup>st</sup> July 1983 were fixed at the 368<sup>th</sup> meeting of the Committee of Ministers on the basis of the criteria it had adopted at its 357<sup>th</sup> meeting.

59. The Secretary General implemented Resolution (84) 2 of the Committee of Ministers from April 1984 in respect of all Council of Europe staff, including therefore the B- and C-grade staff, (see paragraph 13).

60. The salary increase which appeared on the April 1984 pay slips and had given rise to a supplementary pay slip dated 19 March 1984 corresponded to the adjustment from which all B- and C-grade staff have benefited.

61. In their requests of 13 June 1985 and in their administrative complaint of 22 July 1985, the appellants did not claim that the remuneration resulting from the scales approved by the Committee of Ministers had been subject to a levy.

Contrary to the situation considered by the Appeals Board in the Stevens case, it has not in fact been alleged in the present case that the Secretary General unlawfully withheld part of the remuneration laid down in the salary scales. By means of a request for repayment the appellants contested the lawfulness of the method the Committee of Ministers used for determining the new scales.

62. It will be remembered that the Resolution of the Committee of Ministers of 19 March 1984 and its implementation by the Secretary General in April 1984 were challenged by the A- and L-grade staff, initially by means of an administrative complaint and subsequently by an appeal to the Board.

63. The disputes procedure laid down in Articles 59 and 60 of the Staff Regulations provides that the administrative complaints and appeals that members of the staff may lodge against administrative acts adversely affecting them, must comply with certain time-limits.

64. As the Appeals Board has pointed out in the past, the formal requirements and procedures provided for in the Statute are designed to safeguard the principle of legal certainty inherent in the Council of Europe's legal order in the interests both of the organisation and of the staff (see Decision of 14 February 1986 on Appeals Nos. 115-117/1985).

65. This principle of legal certainty requires that it should be known at what point in time the lawfulness of an administrative act ceases to be subject to review by the Appeals Board.

66. The appellants in the present case can no longer contest the merits of the Resolution, which was implemented by the Secretary General in April 1984.

67. The appellants did not institute any proceedings against the measures whereby the Secretary General implemented the Committee of Ministers' Resolution of 19 March 1984 in April 1984. In the case of administrative acts adversely affecting them within the meaning of Article 59, the appellants should have challenged them within the time-limits provided for in Articles 59 and 60 of the Staff Regulations i.e. by means of a complaint made within 60 days from the above measures and by means of an appeal made within 60 days against any decision rejecting the complaint. The Board has no power to alter these time-limits.

68. Since the measures taken by the Secretary General in April 1984 in implementation of the Resolution of the Committee of Ministers of 19 March 1984 were not challenged in time, it follows that the decision of the Secretary General of 16 July 1985 not to reimburse the amounts allegedly underpaid, by reason of wage restraint, is not illegal.

69. Neither the decision of 15 May 1985, nor the present decision prevents the competent statutory bodies from taking steps to avoid any unjustified differences of treatment between staff.

For these reasons,

The Appeals Board:

Declares the appeals unfounded;

Dismisses them; and

Orders that each party shall bear its own costs.

Given in public in Strasbourg on 30 April 1986, the French text of the decision being authoritative.

The Secretary of the  
Appeals Board

The Chairman of the  
Appeals Board

M. de SALVIA

W.J. GANSHOF VAN DER MEERSCH