

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

## TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

### Decision of the Administrative Tribunal of 27 October 1994 in the case of Simone BERNHARDT and others v. Secretary General

The Administrative Tribunal, composed of:

Mr Carlo RUSSO, Chair,  
Mr Kåre HAUGE,  
Mr Alan GREY, judges,

assisted by:

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

has delivered the following decision after due deliberation.

### PROCEEDINGS

1. Mrs Simone BERNHARDT, Mr John PARSONS, Mr Rinaldo LOCATELLI and Mr Albert WACK (hereinafter “the appellants”) lodged their appeals on 16 December 1993. On 20 December 1993 the appeals were registered under Nos. 174/1993, 175/1993, 176/1993 and 177/1993.
2. The appellants’ representative, Mr Jean-Didier SICAULT, filed a supplementary pleading on 18 February 1994.
3. On 18 July 1994 the Secretary General submitted his observations on the appeals. Further observations were filed by Mr Sicault on 24 August 1994 and the Secretary General on 15 September 1994.
4. The Administrative Tribunal decided not to hear oral submissions.

## THE FACTS

5. The appellants are grade A, grade L, grade B and grade C permanent staff of the Council of Europe. Their appeals concern the increase in the rate of staff contribution to the pension scheme with effect from 1 February 1993.

6. The pension scheme covering Council of Europe staff and staff of the other Co-ordinated Organisations has been in force since 1 July 1974.

7. When the scheme was set up, staff contributions to it were set at 7% of monthly salary, to cover one-third of the costs of the scheme. However, the Pension Scheme Rules provided for adjustments to the rate of contribution if an evaluation of the cost of the scheme were to show that staff contributions were insufficient to cover one-third of the financing of the benefits payable under the Pension Scheme Rules.

8. On 13 January 1993, at the Ministers' Deputies' 484th meeting, the Committee of Ministers of the Council of Europe adopted the following decision:

“The Deputies:

1. took note of the 15th report of the Co-ordinating Committee on Remuneration concerning the pension scheme (rate of contribution) and particularly the recommendation by the CCR as well as the opinions expressed by the Secretaries General and the staff representatives concerning the procedure itself;

2. decided that, pending completion of work on the consolidation and review of the results of the actuarial studies, on the basis of the findings of actuarial experts, the staff rate of contribution to the Pension Scheme be increased to 7.5%, as a temporary precautionary measure, with effect at 1 February 1993;

3. decided that the additional amounts collected in respect of the increase of 0.5% would be placed in a blocked account until a final decision had been taken;

4. instructed the Secretary General to present a report by 15 February 1993 on the administrative measures to accompany such a decision in order to ensure its implementation within the specific framework of the Council of Europe;

5. agreed to invite the Chair of the CCR to an exchange of views with the Ministers' Deputies on the functioning of the co-ordination system.”

9. In a memorandum dated 28 January 1983 the Council of Europe Head of Personnel Division informed the staff of this decision.

10. A rate of contribution to the pension scheme of 7.5% instead of 7% was introduced with effect from 1 February 1993.

11. On 29 September 1993 the appellants lodged complaints. These were dismissed on 20 October 1993.

12. At their 515th meeting, on 23 June 1994, the Ministers' Deputies took a number of decisions concerning the pension scheme. In particular they adopted Resolution (94) 17 on revision of the pension scheme rules and decided to increase the rate of staff contribution to the scheme to 8% of basic pay with effect from 1 June 1994.

In addition, noting that the final actuarial results which had become available at the end of 1993 confirmed the need to increase the rate of contribution already fixed by the preliminary results of November 1992, the Deputies "decided, however, with a view to maintaining a climate of goodwill within co-ordination, to refund to staff the product of the provisional contribution of 0.5% levied up to 1 June 1994 and placed in a blocked account".

## **THE LAW**

13. The appellants challenge the Secretary General's decision to raise their rate of contribution to the pension scheme by 0.5% as from 1 February 1993. They also seek reimbursement of their legal costs.

14. The Administrative Tribunal has ordered the joinder of the appeals, as being closely related, in accordance with Article 14 of its Rules of Procedure.

15. The Secretary General maintains that the appeals are now devoid of purpose and requests that the Administrative Tribunal strike them from the list.

16. The appellants maintain that, in withdrawing the original decision to levy an additional amount of contribution, the Council of Europe has implicitly recognised that their appeals were justified. They point out that they likewise applied for the reimbursement, if their appeals succeeded, of their legal costs in respect of the present proceedings, which they state to be FF 64 044.

17. The Tribunal observes that in June 1994 the Ministers' Deputies decided to refund to the staff the product of the provisional contribution of 0.5% levied up to 1 June 1994 and placed in a blocked account. It follows that the appeals are now devoid of purpose and that there is no need for a ruling on the merits.

18. The Tribunal nonetheless accepts that the appellants had a legitimate interest in taking proceedings and considers that reimbursement of their costs should take this into account.

For these reasons the Administrative Tribunal:

Directs that Appeals Nos. 174-177/1993 be joined;

Orders that the Council of Europe pay the appellants the sum of 30 000 French francs in costs;

Strikes the remainder of the case from the list.

Done in French at Strasbourg on 27 October 1994 and then delivered in accordance with Article 25, para. 1 of the Rules of Procedure.

The Registrar of the  
Administrative Tribunal

The Chair of the  
Administrative Tribunal

S. SANSOTTA

C. RUSSO