CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeals Nos. 182-185/1994 (Marianne AUER and others v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Mr Nicolas VALTICOS, Deputy 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 Marianne AUER, Mr Marc FONTANEL, Mr Didier HUGEL and Mr Halvor LERVIK (hereinafter 'the appellants') lodged their appeals between 20 and 26 May 1994. On 2 June 1994 the appeals were registered under file numbers 182/1994, 183/1994, 184/1994 and 185/1994.

2. Their representative, Professor D. Ruzié, University of Paris V, lodged a supplementary memorial on 6 June 1994.

In his memorial, he requested that evidence be taken from Mr G Lamadie, a specialist in remuneration matters. He stated that Mr Lamadie, currently working for the European Patent Office, had been involved, as head of the OECD Inter-Organisations Section, in the preparatory work for the 22nd report of the Co-ordinating Committee on Remuneration, dealing with adjustment of remuneration in the Co-ordinated Organisations at 1 January 1994.

3. On 27 July 1994 the Secretary General submitted his observations on the appeals. The

appellants' counsel lodged additional observations on 26 September 1994. The Secretary General (by letter of 7 March 1995) and the appellants' counsel (by letter of 20 March 1995) subsequently clarified their positions on the request that the Tribunal take evidence from Mr Lamadie.

4. In an order dated 31 March 1995 the Tribunal, pursuant to Article 9 para. 5 of its Statute and Rule 25 para. 1 of its Rules of Procedure, decided to have Mr Lamadie write an expert report on various matters raised by the parties concerning procedure for calculating Council of Europe staff salaries.

5. Mr Lamadie submitted his report on 23 May 1995. The Secretary General submitted his observations on it on 19 June 1995. The appellants' counsel submitted his observations on 29 June 1995. On 3 August 1995 the Secretary General submitted observations in reply and the appellants' counsel replied on 1 September 1995.

6. The hearing was held in public in the Human Rights Building, Strasbourg, on 24 November 1995. The appellants were represented by Professor D. RUZIE, the Secretary General by Mr R. LAMPONI, Principal Administrative Officer, Legal Affairs Division.

THE FACTS

A. THE CIRCUMSTANCES OF THE CASE

7. The appellants are permanent staff (in categories B, L, C and A respectively) of the Council of Europe.

8. In September 1993, at its 497th meeting, the Committee of Ministers adopted the 22nd report of the Co-ordinating Committee on Remuneration, containing a general revision of staff remuneration in the Co-ordinated Organisations.

9. The 31st report of the Co-ordinating Committee on Remuneration, produced in accordance with the procedure laid down in the 22nd report, contained proposals for adjustment, at 1 January 1994, of staff remuneration in the Co-ordinated Organisations. The Ministers' Deputies adopted the report at their 508th meeting, in March 1994.

10. In March 1994 the appellants received arrears due to them for the period since 1 January 1994 (the relevant back-pay slip was dated 1 March 1994). Staff salaries were adjusted as from 1 April 1994.

11. On 6 April 1994 the appellants lodged a complaint challenging the back-pay slip.

12. In a memorandum dated 2 May 1994 the Director of Administration informed them of the Secretary General's decision to dismiss their complaint.

B. THE PROCEDURE FOR CALCULATING REMUNERATION

13. Council of Europe staff are entitled to remuneration in accordance with Article 41 of the Staff Regulations and the Regulations governing Staff Salaries and Allowances (Appendix IV to the Staff Regulations).

14. Since the Council of Europe is one of the Co-ordinated Organisations, the Committee of Ministers takes its decisions in remuneration matters on the basis of recommendations of the Co-ordinated Committee on Remuneration (CCR). The CCR's reports lay down the procedure for adjusting the remuneration of Co-ordinated Organisations staff in accordance with the Regulations concerning the Co-ordination System. The Committee of Representatives of the Secretaries General and the Committee of Staff Representatives are able to present their views and put forward proposals through a tripartite consultation process.

15. The CCR's 22nd report lays down a new remuneration adjustment procedure (see Annex 1 to the report) for the period from 1 July 1993 to 31 December 1997, replacing the procedure laid down in the 254th report of the Co-ordinating Committee of Government Budget Experts.

In its 22nd report the CCR explains that there was general agreement that an important aim of the general revision was to simplify the remuneration adjustment procedure, in particular through adoption of a single procedure for all staff categories, but that there was disagreement as to what this uniform procedure should be and how it should be achieved. The CCR states that co-ordination of remuneration (the reference scales being adapted to the various countries) and parallelism, in real terms, with net remuneration of civil servants of comparable grade in seven reference countries are the fundamental principles of the general revision.

16. As regards the new adjustment method, Article 2 of Annex 1 to the 22nd report states that the salary scales in force in each country at 31 December of the previous year are as a rule to be adjusted annually at 1 January. On certain conditions, intermediate adjustments are also to be made at 1 July (Article 11) and special adjustments may be made at any time (Article 12).

17. Basic salaries of staff in categories A and L are adjusted each year for Belgium and adapted to the other countries in such a way as to ensure equality of purchasing power between scales for different countries (Articles 6 to 8). Basic salaries of staff in categories B and C serving in a given country are subject to an adjustment equal to the percentage change determined for category A and category L staff in that country (Article 9).

18. Basic salaries of category A and L staff serving in Belgium are adjusted according to two criteria: variation in the Brussels composite index and variation in the reference index - that is, the weighted change in net remuneration of national civil services in real terms in seven reference countries (Germany, Belgium, France, Italy, Luxembourg, the Netherlands and the United Kingdom).

19. The Brussels composite index, defined in Appendix 4 to Annex 1, is an index of consumer prices in Belgium. It is based partly on the international index for Belgium (calculated by Eurostat) and partly on the Belgian national index for the whole country, details of which are provided by the Ministry for Economic Affairs.

In the first year of use (1994) the Brussels composite index was made up of the international index for Belgium and the Belgian national index in the ratio of 75% to 25%. In 1995 the ratio was 70% to 30%, in 1996 it is 65% to 35%, and it will be 60% to 40% in 1997 and 50% to 50% in 1998 (if it is decided to retain the method for a further year).

It should be noted that a national price index is based on the prices and weightings of a list of goods selected as being representative of consumption in the particular country and it moves according to annual variation in this basket of goods. An international price index is based on a basket of goods specific to international civil servants and the basket can vary both as to the items it contains and each item's weighting relative to the basket as a whole.

20. In this connection, the 22nd report states that there was disagreement in the CCR as to whether they should adopt a composite index identical to that adopted by the European Communities or take the opportunity to introduce a more appropriate Belgian national index (for the whole country rather than the capital only) and begin phasing out the international-index component in the composite index. The CCR decided that the whole-country index should be used since it was the index used for the Belgian civil service.

The 22nd report also mentions that the Committee of Representatives of the Secretaries General and the Committee of Staff Representatives were hesitant to change the method of measuring the cost of living for international staff serving in Belgium (which takes into account their specific patterns of consumption), but were willing, as a compromise, to accept the same solution as the European Communities had adopted. However, a majority of member States were not prepared to introduce a European Communities mechanism which was felt to have been installed as a result of a particular political compromise relevant to the European Communities only and which had since been strongly criticised on technical and on policy grounds.

21. Article 4 of Annex 1 gives the same definition of the reference index as in the previous regulations appended to the 254th report of the Co-ordinating Committee of Government Budget Experts. It states that by 'net remuneration in the civil services' is meant the arithmetic mean of gross minimum and maximum salaries, to which are added all the other elements normally making up the remuneration of unmarried officials in the grade in question and from which are deducted compulsory social deductions, income tax and other compulsory deductions.

'Changes in real terms' means changes calculated by deflating the index for the trend in nominal salaries by the inflation rate (the relevant consumer price index).

The average percentage change for the whole sample is calculated by giving specified weightings, expressed as percentages of the total, to the data for each reference country. The weightings are arrived at by allocating 50% among the reference countries in proportion to their contributions to the 1976 OECD budget and by allocating the other 50% among them equally.

The indexes obtained in this manner are then weighted according to staff numbers in central government in the reference countries (Appendix 5 to Annex 1).

22. The 22nd report states that a proposal from the Committee of Representatives of the

Secretaries General and the Committee of Staff Representatives for a new mechanism intended to avoid double counting of social security and pension contributions in the gross-to-net calculations had met with 'little understanding'.

C. MR LAMADIE'S REPORT

23. In his report Mr Lamadie gives a general account of the procedure for the setting and adjustment of salary. He explains the two basic principles in the adjustment procedure introduced by the 22nd report: parallelism between movement of scales in the reference country (Belgium) and the remuneration of the civil service in the seven reference countries, and equality of purchasing power between the base country and other countries of employment.

24. After describing the background to adjustment of remuneration scales in the Co-ordinated Organisations, which had used international price indexes since 1962 in France and 1965 in Belgium, he deals with price-index adjustment in the context of adjusting the reference scale (Belgium).

25. He states that the most appropriate price-trend index for purposes of adjusting the reference scale would be the Brussels international index, which was based on consumption patterns among international civil servants serving in Brussels and on Brussels price trends. However, periodic verification of purchasing-power parities had on occasions resulted in large upwards adjustments to certain scales, and this was a problem both for the co-ordinating budget experts and the Co-ordinated Organisations themselves. The various studies carried out to try and identify the cause of the problem were inconclusive, he says, but showed the international index for Brussels to stand fairly consistently higher than the corresponding national index whereas in other countries the difference was small.

26. Mr Lamadie specifies that from a strictly technical standpoint there is no evidence that the Brussels international index produces or does not produce excessive rises in scales. Had the Brussels international index been shown to be grossly and consistently on the high side, resultant distortion of the system as a whole could have been corrected by smaller adjustment of the reference scale, and this technical solution was indeed adopted by the Co-ordinated system from 1989 to 1992.

27. According to him, the new approach purports to actually prevent distortion by changing the price index used for Brussels. The European Communities use a composite index, made up of the Brussels international index (75%) and the national-capital (Brussels) index (25%). On the basis that the national index would have a restraining effect, the CCR recommended gradually increasing the weighting of that component in the new Brussels composite index and adopting the Belgian whole-country index rather than the national-capital index, believing that the former would not rise as much as the latter. In Mr Lamadie's view that compromise is unjustified from the technical standpoint in that it does not guarantee that there will be no or less distortion in future. But however legitimate that point might be in technical terms, the fact is that the decision taken was a negotiated one and must be viewed in the light of considerations which may outweigh mere concern for statistical coherence.

THE LAW

28. The appellants have appealed against the Secretary General's decision of 2 May 1994 dismissing their administrative complaint in which they challenged their March 1994 back-pay slips.

A. THE PARTIES' OBSERVATIONS

29. Relying on case-law of the Appeals Board, in particular the decision of 15 May 1985 in Appeals Nos. 101-113/1984, the appellants maintained that the Tribunal was competent to determine their appeals against a decision of the Secretary General implementing measures adopted by the Committee of Ministers.

30. They contended that the Committee of Ministers decision approving the Co-ordinating Committee's 31st report, which put into effect the adjustment procedure laid down in the 22nd report, was legally flawed, being contrary to general principles of the international civil service.

31. They argued that the Committee of Ministers had disregarded general legal principles in connection with two aspects of the remuneration-adjustment method, namely an alleged double-counting and amendment of the consumer price index used to adjust the scales for Belgium.

32. They pointed out that, under Article 4 para. 2 of the 22nd report, changes in remuneration of the seven reference civil services were measured after deduction of compulsory social contributions and that the result was applied to the scales used in the Co-ordinated Organisations, ie to remuneration before deduction of social contributions. They alleged that this involved double counting, which was contrary to the general principle of good faith in that, to the detriment of staff of the Co-ordinated Organisations, data were being compared which were not comparable. They pointed out that this had also been the view expressed by the Committee of Representatives of the Secretaries General during the discussions preceding adoption of the 22nd report.

33. In addition they invoked the principle of a fair balance between deductions and benefits, as established in the Appeals Board's case-law. In their view, the fact of twice taking social contributions into account destroyed that balance.

34. They explained that it was because of the adverse trend in the various factors which the new adjustment method took into account that they had lodged a complaint about the matter even though it was a long-standing one. Here they relied on international administrative case-law, under which an appeal could be lodged against a decision whose effects were recurrent.

35. Their second ground of appeal was that changing the consumer price index used for adjustment of the scales applying in Belgium - that is, replacing the Brussels international index, used before the adjustment method laid down in the 22nd report, by the Brussels composite index - was illegal in that it contravened general legal principles in two respects.

They submitted that these issues of legality arose regardless of the actual trend in the

indexes concerned.

36. They argued that the national whole-country index was not a relevant index: the basket used for calculating it took into account the self-employed and the non-working population as well as wage-earners (even though nearly all international civil servants were wage-earning) and it ignored the fact that 80% of international staff serving in Belgium were employed in Greater Brussels. They observed that, under Appendix 4 to Annex 1 to the 22nd report, the parity used for the country as a whole was normally the parity for the capital, with the exceptions of Germany, the Netherlands and the United Kingdom, where the reference towns (Munich, The Hague and Reading) were the towns where staff were actually in post. In this connection they endorsed Mr Lamadie's observations.

37. In addition they contended that the planned evolution of the two parts of the index did not serve any technical purpose but was aimed at indirectly bringing about a reduction in staff remuneration in the Co-ordinated Organisations. They pointed out that, during the preparatory discussions, the Committee of Representatives of the Secretaries General had argued that the method adopted neither was intrinsically justifiable nor had been formally justified.

38. In the appellants' view, refusing to take into account that staff in Belgium generally worked in the Brussels area was either a breach of good faith or at the very least unlawful on account of drawing erroneous conclusions from the file and thus obviously misassessing the facts.

39. They maintained that the evolution arbitrarily imposed on the components of the composite index constituted a breach of staff's legitimate expectations of their employers.

Before the 22nd report it had been accepted that comparison with the European Communities system was an integral part of the pay-calculation methods applied to the Co-ordinated Organisations, whereas, they alleged, there were two important differences between the system laid down in the 22nd report and the system introduced by the European Communities: the international index and the national index were in a fixed 75%:25% ratio and the choice of the whole-country index as the national index. The Organisation had thereby allegedly disregarded the staff's legitimate expectation that the principle of alignment on the system of the European Communities for indexing purposes would be retained, as agreed to by staff representatives during the co-ordination consultations.

40. The Secretary General pointed out that he took part in pay procedures in two capacities. In the co-ordinated system he appointed a representative to the Committee of Representatives of Secretaries General of the Co-ordinated Organisations which performed an advisory role in the drawing up of the recommendations which the CCR, composed of government representatives, made to Committees or Councils of Ministers of the Co-ordinated Organisations. In this context he put forward his views in his managerial capacity. Once the co-ordination process was over and the Committee of Ministers had approved the CCR's recommendations, he resumed his institutional role within the Council of Europe. He had therefore been bound to implement the Committee of Ministers decisions under Article 16 of the Statute of the Council of Europe and Article 41 of the Staff Regulations, and he had done so in compliance with the regulations in force. Thus the measure which might or might not have adversely affected the appellants was the decision taken by

the Committee of Ministers.

41. He contended that the appellants had not established that they had suffered any infringement of the Staff Regulations or of general legal principles relevant to the international civil service.

42. In his view, the Committee of Ministers had made proper use of the discretion vested in it, complying with the regulations and with general legal principles.

43. On observance of the rules, he firstly noted that the appellants did not dispute that the CCR's recommendations in the 22nd and 31st reports had been adopted in accordance with the Regulations concerning the Co-ordination System. Nor was it disputed that the decisions adopting the two reports had been taken in compliance with the Statute of the Council of Europe and the rules of procedure governing Committee of Ministers meetings.

44. On the question of compliance with general legal principles, he firstly pointed out that the purpose of the 22nd report was to lay down, not the basic pay scales (which already existed), but arrangements for adjusting them.

45. He submitted that the complexity of the adjustment process was not artificial but derived from the many factors that pay adjustment had to take into account. No one factor was decisive: all of them were interconnected, and it was the method as a whole that must be assessed. He argued that the appellants had ignored that consideration and had singled out two points of detail.

46. With regard to the alleged double-counting, he maintained that their argument that the reference index as laid down in the 22nd report contravened the principle of striking a fair balance between burdens and benefits was based on a misunderstanding. The aim of the adjustment method laid down in the 22nd report was to ensure that, in terms of purchasing power, staff remuneration in the Co-ordinated Organisations moved parallel (without necessarily being identical) to remuneration in the reference civil services. This parallelism was ensured by taking the percentage by which the purchasing power of national civil servants had moved and applying it in the co-ordinated adjustment method. What required to be taken into account was not actual pay levels in the reference civil services but the pay trend (upwards or downwards).

The Secretary General likewise pointed out that the procedure to which the appellants referred had in fact been used in the adjustment method before adoption of the 22nd report, and he argued that its retention did not cause any radical change in staff's employment conditions.

47. With regard to the appellants' second ground of appeal, concerning the Brussels composite index, he stated that in 1994 and 1995 the national index of Belgium had risen more than the Brussels international index. In the absence of any injury, he contended, the appellants had no direct or existing interest in lodging appeals. He therefore considered that ground of appeal inadmissible.

48. He maintained that it was also unfounded. There had neither been factual error nor contravention of the principles of good faith or legitimate expectation: the CCR in the first instance

and afterwards the Committee of Ministers had made logical and reasonable use of their discretionary powers, basing their decisions on considerations that were proper and relevant.

49. He firstly observed that even though, in his report, Mr Lamadie expressed the view that the Brussels international index was the most appropriate instrument for measuring the effects of inflation for purposes of pay adjustment, the report did not show the Brussels international index to be the only instrument possible.

Since one of the components of the composite index had to be a national index there was nothing unreasonable about using a Belgian whole-country index in which Brussels was given due weight: as the Brussels index referred only to one part of Belgium, it could not have met the objective requirements for a national index.

50. The Secretary General further observed that the appellants' argument, relying on Article 2 of Appendix 4 to Annex 1 of the 22nd report, that the parity for any country was the parity for its capital city, with the specific exceptions of Germany, the Netherlands and the United Kingdom, was irrelevant: the appendix applied only to the calculation of scales for countries other than Belgium, after the scales for Belgium had been calculated.

51. In the Secretary General's view the appellants' objection to the evolving structure of the composite index was not justified either. Given the concept of a composite index, various structures were conceivable. The relative weightings of the national index and the international index were, by their very nature, a discretionary matter and the particular decision could not be described as unreasonable since the essential compositeness of the index was unaffected.

52. In addition the Secretary General said that the appellants had not offered any conclusive evidence that, on the pretext of distortions in the previous method, the CCR and the Committee of Ministers had deliberately and unjustifiably taken a course of action solely designed to bring about an arbitrary fall in remuneration, to the staff's detriment. Mr Lamadie's report confirmed, he submitted, that there had indeed been distortions such as it was sought to counter. Given the specific divergence - as explained by Mr Lamadie - between the international index used for Brussels and the Belgian national index, the CCR and the Committee of Ministers had not acted unreasonably in tackling the only anomaly which the various studies had been able to identify.

B. THE TRIBUNAL'S FINDINGS

53. The Tribunal notes that, under Article 59 para. 1 of the Staff Regulations, the appellants have lodged appeals against measures taken by the Secretary General to implement the Committee of Ministers decision on adjustment of Council of Europe staff remuneration.

54. The Tribunal's jurisdiction to rule on a decision or measure taken by the Secretary General where, as here, he was bound to implement a decision of the Committee of Ministers with no possibility of questioning that decision has been accepted 'due to the fact that, our Organisation's dispute system provides only for appeals against the Secretary General' (see ABCE No. 101-113/84, decision of 15 May 1995, Stevens and others v. Secretary General; No. 118-128/85, decision of 30 April 1986, Jeannin and others v. Secretary General; No. 133-145/86, decision of 3

August 1987, Ausems and others v. Secretary General; No. 154/89 and No. 155/89, decisions of 21 September 1989, Canales and Andrei v. Secretary General; ATCE No. 191/94, decision of 25 November 1994, Eissen v. Secretary General).

The Tribunal sees no reason to depart from that case-law.

55. The substance of the present dispute concerns adjustment of Council of Europe staff remuneration.

56. The Tribunal would point out that adjustment of remuneration necessitates taking accoung of numerous political, legal and economic parameters. Obviously such a matter falls primarily within the competence of the States which, through their contributions, furnish International Organisations with the resources necessary for the pursuit of the co-operation objectives assigned to them. The competent authorities must therefore be allowed broad scope to appraise all relevant parameters in order to determine salary levels.

However, an international administrative tribunal dealing with questions relating to the application of a remuneration adjustment method must ascertain not only whether the rules have been correctly applied, but also whether the general principles of law, to which the legal systems of *i*nternational Organisations are subject, have been complied with (ABCE No. 133-145/86, paras. 77-78; No. 163-164/90, paras. 43-45).

57. The Tribunal notes that the appellants challenge certain aspects of the new pay-adjustment arrangements set out in the CCR's 22nd report. The report was a general revision of the procedure for the adjustment of staff remuneration in the Co-ordinated Organisations and the Committee of Ministers adopted it at its 497th meeting, in September 1993. The CCR's 31st report, drawn up under the arrangements laid down in the 22nd report, contained proposals for the adjustment of staff remuneration in the Co-ordinated Organisations on 1 January 1994. The Ministers' Deputies adopted it at their 508th meeting, in March 1994.

58. The Tribunal firstly notes that the contested decision has not been challenged on any formal or procedural grounds.

59. As regards the first ground of appeal, which concerns the calculation of the reference index, it observes that, in the procedure for adjusting the remuneration of Council of Europe staff and staff of the Co-ordinated Organisations generally, a key factor is the movement in the pay of national civil servants in seven reference countries. Calculation of the index is based on weighted variation in net remuneration in real terms and takes into account the arithmetic mean of gross minimum and maximum salaries, to which are added all the other elements normally making up the remuneration of unmarried officials in the grade in question and from which are deducted compulsory social deductions, income tax and other compulsory deductions (see Article 4 of Annex 1 to the 22nd report and para. 21 above).

60. The appellants maintain that the process involves double counting, in contravention of the principle of striking a fair balance between benefits and deductions or disbenefits.

61. The Tribunal holds that the question whether a fair balance has been struck between the interests at stake must be considered in the light of the particular circumstances. In the present case it believes that in assessing the facts it must adopt a general approach as most appropriate to the nature of the issue and to the difficulties inherent in an adjustment method in which international civil servants' remuneration is kept parallel to remuneration in national civil services.

62. The purpose of the reference index, in the arrangements under challenge, is to ensure that adjustment of remuneration in the Co-ordinated Organisations follows movement in remuneration in civil services in the reference countries.

63. The principle, as stated in the CCR's 22nd report, is one of parallelism. The aim, however, is not to ensure that change in remuneration of the two groups stays absolutely identical according to mathematical rules - as is evident from the very fact that the reference index is only a corrective to the index of change in basic prices. In the Tribunal's view the means adopted makes reasonably sure that remuneration of national civil servants and international civil servants in the Co-ordinated Organisations moves in the same direction (whether upwards or downwards).

64. In view of this, and bearing in mind that the competent authorities have amargin of appreciation in questions of remuneration adjustment, the Tribunal has reached the conclusion that the facts of the case do not show the structure of the reference index to place the appellants at a disadvantage such that Council of Europe staff carry an unfair financial burden as compared with civil servants in the reference countries.

65. Thus no contravention of the principle of good faith is to be found and in this respect the decision challenged is not legally defective.

66. As regards the second ground of appeal, concerning use of the Brussels composite index, the Secretary General argues that it is inadmissible as not meeting the requirements of Article 59 para. 1 of the Staff Regulations.

67. The Tribunal observes that in 1994 and 1995 the national index for Belgium rose more than the Brussels international index. The question therefore is whether, despite that greater increase, the appellants have a 'direct and existing' interest within the meaning of Article 59 para. 1 of the Staff Regulations. However, the Tribunal does not require to rule on that question since the ground of appeal must in any case be rejected as unfounded for the following reasons.

68. The Tribunal must decide whether, of the various components of the pay-adjustment arrangements, use of the Brussels composite index contravenes general principles of law. It takes the view that, for the reasons already explained (see para. 61), the complexity of the factors involved again requires a general approach.

69. The Brussels composite index, which is defined in Appendix 4 to Annex 1 to the 22nd report, is an index of consumer prices in Belgium. It is based partly on the international index for Belgium and partly on the national index for the whole of Belgium. The international index to national index ratio was 75%:25% in 1994 and 70%:30% in 1995 is 65%:35% in 1996, and will be 60%:40% in 1997 and 50%:50% in 1998 (if use of the method is extended for a further year).

70. The Tribunal notes the discussions within the CCR concerning the structure of the composite index and the reason for its decision to use the national price index for Belgium. Above all, a majority of member States were not prepared to introduce a mechanism like the one in the European Communities which was felt to have been installed as a result of a particular political compromise relevant to the European Communities only and which had since been severely criticised on technical and policy grounds.

71. The Tribunal notes Mr Lamadie's explanation concerning the background to the changes, namely that, in the past, periodic checks on purchasing-power parities had resulted in sizeable increases in certain scales and that this posed a problem both for the co-ordinating budget experts and the Co-ordinated Organisations themselves. According to Mr Lamadie, the various studies conducted to identify the cause of the problem were inconclusive but showed the international index used for Brussels to be fairly consistently higher than the corresponding national index, whereas in other countries the difference was small.

72. The Tribunal holds that, in the circumstances, the budget experts' view that a change of index was required cannot be considered unreasonable. In view of the many financial, social and political considerations there were good reasons for using an index such as the Brussels composite index as defined in the 22nd report. The appellants arguments have not convinced the Tribunal that this component of the method was a roundabout means of achieving a reduction of pay in the Co-ordinated Organisations.

73. In conclusion, in using the Brussels composite index the decision contested did not exceed the competent authorities' margin of appreciation. Opinions may certainly differ - and did so within the CCR and in the consultation process - as to whether the method adopted in the 22nd report and subsequently approved by the Committee of Ministers was the right one and whether different weight should not have been given to certain relevant factors. However, it is not for the Tribunal to say whether the competent authorities have chosen the best way of dealing with the problems.

74. Nor, in the Tribunal's view, did this aspect of the challenged decision contravene the principle of good faith: there is nothing in undertakings given by the Council of Europe to suggest that the appellants had any legitimate expectations in this connection.

75. Consequently no illegality is to be found in the present case.

76. However, consideration of the circumstances of the case prompts the Tribunal to observe that adjustment of the remuneration of the Council of Europe staff is a highly complex and technical question, and that methods adopted in this important matter also have to comply, to a high degree, with the requirement of transparency so as to avert suspicion or mistrust which cannot but damage the climate of mutual understanding and full co-operation necessary in an international organisation like the Council of Europe. With this proviso,

In conclusion,

The Administrative Tribunal:

Declares the appeals unfounded;

Dismisses them;

Orders that each party bear its own costs.

Delivered at Strasbourg on 26 January 1996, the French text being authentic.

The Registrar of the Administrative Tribunal	The Deputy Chair of the Administrative Tribunal
S. SANSOTTA	N. VALTICOS

Appendix

CHAIRMAN'S ORDER OF 31 MARCH 1995

Appeals Nos. 182-185/1994 – Marianne AUER and others v. Secretary General

1. The Tribunal recalls that the above-mentioned appeals concern the adjustment of remuneration of Council of Europe staff on 1 January 1994.

2. The Tribunal observes that, in his supplementary memorial of 6 June 1994, Professor Ruzié, counsel for the appellants, requested the hearing of Mr Lamadie, currently employed at the European Patent Office. According to the appellants, Mr Lamadie, an expert on questions relating to the fixing of salaries, who was involved, as head of the Inter-Organisations Section at the OECD, in the preparatory work preceding adoption of the 22nd Report of the Co-ordinating Committee on Remuneration on adjustment of staff remuneration in the Co-ordinated Organisations as from 1 January 1994, could provide objective evidence of the consequences of certain options. In his memorial in reply of 26 September 1994 and in a letter dated 20 March 1995, the counsel for the appellants supplied further details of this request, in particular the questions to be put to Mr Lamadie. His proposals concerning these questions are appended hereto.

3. The Tribunal notes that, in his observations dated 27 July 1994, the Secretary General expressed doubt as to the advisability of hearing a witness involved in the negotiations of the Co-ordinating Committee on Remuneration (CCR). However, he also said that he would not object to the Tribunal's hearing Mr Lamadie as an expert witness capable of enlightening the Tribunal and the two parties on technical matters underlying the case. In a letter dated 7 March 1995 the Secretary General for his part suggested that the Tribunal also ask the expert to provide a general description of the procedures for fixing and adjusting salaries, with particular reference to the differences between the procedure for determining the basic salary scale and the method for applying the system of purchasing power parities.

4. In light of Article 9 para. 5 of the Statute of the Administrative Tribunal and Rule 25 para. 1 of its Rules of Procedure, the Tribunal decides to accede to the appellants' request as it considers that Mr Lamadie may provide useful information on the problems raised in this appeal.

5. The Tribunal instructs Mr Lamadie to submit a written report dealing with the points raised by the parties, which are listed in the appendix hereto. The Tribunal also wishes to draw attention to the principle of the confidentiality of the CCR's deliberations. The expert is requested to submit his report within two months.

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

Done in San Marino, 31 March 1995

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

APPENDIX

The Secretary General suggested that the Tribunal ask the expert to provide a general description of the procedures for fixing and adjusting salaries, with particular reference to the differences between the procedure for determining the basic salary scale and the method for applying the system of purchasing power parities.

The counsel for the appellants proposed that the expert be asked to answer the following questions:

- When was the international index first introduced?

- What were the technical reasons for the introduction and the subsequent use of the international index?

- Did the CCR put forward any technical reasons in support of the changeover to a composite index, and if so, which ones?

- Were any technical reasons put forward to justify the amendment, over the years of implementation of the method, of the two components of the new index (international and national indices), and if so what were they?

- From the historical point of view, did the use of the international index exert any positive or negative influence on the evolution of the purchasing power of the staff of the Co-ordinated Organisations ?

- In connection with the national index, were any technical reasons put forward to justify the choice of the national index for the whole of Belgium rather than the 'Brussels capital' index, and if so what were they?

- Considering that economic parity is usually calculated with reference to the capital cities of the countries in which staff of Co-ordinated Organisations are employed, what are the technical reasons which might justify the sudden calling into question, in the 22nd Report, of the method applied hitherto (i.e. comparison between Brussels-capital and other cities)?