CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeals Nos. 231-238/1997 (Klaus FUCHS and others v. Secretary General)

The Administrative Tribunal, composed of:

Mr Carlo RUSSO, Chair,
Mr Kåre HAUGE,
Mr José da CRUZ RODRIGUES, Judges,

assisted by:

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

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The Tribunal has to determine appeals by:

- Mr Klaus FUCHS, Appeal No. 231/1997, lodged on 17 April and registered on 18 April 1997, and Appeal No. 234/1997, lodged on 12 June and registered on 13 June 1997;

- Ms Monique BECRET, Appeal No. 232/1997, lodged on 15 May and registered on 21 May 1997, and Appeal No. 235/1997, lodged on 12 June and registered on 13 June 1997;

- Mr Paul GELEFF, Appeal No. 233/1997, lodged on 30 May and registered on 2 June 1997, and Appeal No. 236/1997, lodged on 12 June and registered on 13 June 1997;

- Mr Jean-Marie FRITSCH, Appeal No. 237/1997, lodged on 27 June and registered on 2 July 1997;

- Mr François THOUVENIN, Appeal No. 238/1997, lodged on 30 June and registered on 2 July 1997.

2. On 30 May 1997 the appellants' representative, Professor D. RUZIE of Paris V University, filed a supplementary memorial on Appeals Nos. 231-233/1997, and on 24 June 1997 a supplementary memorial on Appeals Nos. 234-236/1997. The supplementary memorial on Appeals Nos. 237/1997 and 238/1997 was filed on 4 July 1997.

3. On 18 July 1997 the Secretary General submitted his observations on the appeals. The appellants' counsel filed additional observations on 28 August 1997.

4. The hearing was held in public in the Human Rights Building, Strasbourg, on 20 October 1997. The appellants were represented by Professor RUZIE and the Secretary General by Mr R. LAMPONI, Head of Legal Advice, Directorate of Legal Affairs, assisted by Mr T. MARKERT, Principal Administrative Officer in the same directorate.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. Mr Fuchs, Ms Bécret, Mr Fritsch and Mr Thouvenin are permanent staff members of the Council of Europe in categories A, B, C and L. Mr Géleff is a retired Council of Europe staff member.

Their appeals relate to the manner in which the annual adjustment of remuneration and pensions was made in 1997.

6. At the 584th meeting of the Ministers' Deputies in February 1997, the Committee of Ministers approved the recommendations set out in paragraph 6.4 of the 72nd report of the Co-ordinating Committee on Remuneration (CCR) concerning adjustment of remuneration of Co-ordinated Organisations staff. Having regard, in particular, to paragraph 6.4 of the 72nd report, it approved, with effect as at 16 March 1997, the salary scales resulting from applying the adjustment indices attached to the 72nd report. It noted that, pursuant to the 150th report by the Co-ordinating Committee of Government Budget Experts (CCG) dated 4 April 1978, pensions would be adjusted by the same proportion and at the same date as staff salaries. It then adopted Resolution (97) 3 on Revision of the Regulations governing Staff Salaries and Allowances.

7. Pay and pension slips for January and February 1997 showed that the annual adjustment of the Council of Europe staff remuneration had not taken effect at 1 January 1997.

8. On 24 February 1997 Mr Fuchs sent a memorandum to the Secretary General, formally requesting payment of the difference between the salaries he had received for the months of January and February 1997 and the sums which would have been due to him if the adjustment had been applied at 1 January 1997. Ms Bécret and Mr Géleff did likewise. They lodged administrative complaints against the decisions refusing their requests on 17 March, 21 March and 10 April 1997 respectively.

On 16 April 1997 the Director of Administration, acting on behalf of the Secretary General, dismissed the complaints lodged by Mr Fuchs and Ms Bécret. Mr Géleff's complaint was rejected on 12 May 1997.

It is those rejection decisions that Appeals Nos. 231-233/1997 challenge.

9. The March 1997 back-pay slips and the April 1997 pension slips, which included a backdated increase, again showed that the adjustment of remuneration had not been made as from 1 January 1997, but had only been given effect as from 16 March 1997.

10. The appellants lodged administrative complaints asking the Secretary General to cancel the March 1997 back-pay slips and the April 1997 pension slips with their backdated increase, and to replace them with slips entailing the payment of sums corresponding to an adjustment as from 1 January 1997. Mr Fuchs and Ms Bécret complained on 11 April 1997, and Mr Fritsch and Mr Thouvenin on 17 April 1997. Mr Géleff's complaint was dated 5 May 1997.

11. In memoranda respectively dated 12, 14 and 21 May 1997, the Director of Administration informed the appellants that the Secretary General had decided to dismiss their complaints.

B. The procedure for determining remuneration

12. Staff of the Council of Europe 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).

13. 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 the recommendations of the Co-ordinating Committee on Remuneration. 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 Secretaries General (CRSG) and the Committee of Staff Representatives (CRP) are able to present their views and put forward proposals through a tripartite consultation process.

14. At its 497th meeting, in September 1993, the Committee of Ministers adopted the CCR's 22nd report, which contained a general revision of the remuneration of staff of the Co-ordinated Organisations. The 22nd report laid down a remuneration adjustment procedure (reproduced in Annex 1 to the report) for the period from 1 July 1993 to 31 December 1997.

With regard to the revision's environment, the 22nd report pointed out that the economic, social and budgetary situation in the majority of member countries had resulted in severe restrictions on public spending, that the missions and work programmes of most Co-ordinated Organisations were undergoing transformation, that the international political and economic climate was changing and that staff were more than ever concerned about the stability of their circumstances (paragraph 2 of the report). The CCR then explained, in paragraph 3 of the report, that there was general agreement that an important aim of the exercise was to simplify the remuneration adjustment procedure. Other aims were to replace elements of the method which produced shocks in the salary scales and, for budget management reasons, change the dates of the salary year. It was likewise generally recognised that the budgetary difficulties of member countries and of organisations were real and should be addressed as appropriate. The report also stated that there was less agreement on the need to take account of affordability in the remuneration adjustment procedure.

15. 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 general rule, to be adjusted annually as at 1 January. On certain conditions, intermediate adjustments are to be made at 1 July (Article 11) and special adjustments at any time (Article 12).

16. Article 13 ("Safeguard clause in the event of exceptional circumstances") is the only article in Chapter 6 ("Affordability") of Annex 1.

The French version of the first sentence of paragraph 1 of Article 13 reads:

> "1. En cas de circonstances exceptionnelles, … afin de tenir compte de contraintes budgétaires exceptionnelles dans les Organisations coordonnées (faisant suite, par exemple, à une réduction significative de l'évolution tendancielle du PIB dans n'importe lequel des pays de référence), le CCR peut proposer aux Conseils, par dérogation à l'article 2, que la mise en vigueur totale ou partielle de cette hausse des barèmes soit reportée à une date postérieure à la date normale d'ajustement."

The English version provides:

> "In the event of exceptional circumstances, … in order to take account of exceptional budgetary constraints within Coordinated Organisations (e.g. arising from a significant reduction in the underlying trend of growth of the GDP in any of the reference countries) the CCR may propose to Councils, notwithstanding Article 2, that the application of the increase in scales be implemented in whole or in part from the normal implementation date or a later date."

Under the second sentence of Article 13 para. 1 the full implementation of the scales must be applied within the twelve-month period following the normal date of the annual adjustment.

Under Article 13 para. 2 and para. 3 on making such a proposal the CCR is to set out the reasons which, in its view, warrant a departure from the normal adjustment procedure and undertakes not to invoke the article unless there is a consensus and only if the circumstances necessitate such exceptional action.

17. On 2 December 1996 the CCR adopted its 72nd report on the annual adjustment of remuneration of the staff of the Co-ordinated Organisations at 1 January 1997.

18. In that report the CCR concurs with the spirit of a proposal by the CRSG to invoke the safeguard clause (paragraph 5.1.1). Taking note of statements by the CRSG and other information, the CCR concludes that there are "exceptional budgetary constraints within Co-ordinated Organisations in the sense of Article 13.1 of the remuneration adjustment procedure, the constraints having different technical consequences which vary from one organisation to the other."

It expresses the view that "these constraints are due in part to certain specific elements but also more generally to the stringent budgetary policies in the Member countries of the Co-ordinated Organisations and the underlying trend of growth of the GDP of the reference countries" (paragraphs 5.1.2 and 5.1.3; the latter includes a table showing real GDP growth in the seven reference countries).

Paragraph 5.1.4 reads:

"In these circumstances, and on the basis of legal advice, the CCR can agree that affordability measures are required and accordingly proposes that a modulated recommendation be submitted to Councils concerning application of the adjustment of remuneration at 1 January 1997, leaving to the discretion of Councils, in the light of the budgetary constraints of each organisation, the decision to invoke the safeguard clause on affordability, if appropriate, and to decide on the manner of its application providing that the adjustment is fully implemented by 31 December 1997 at the latest."

19. Lastly, the report makes the following recommendation:

"6.4 Recommends Councils, in order to make it possible to adapt payment of the annual adjustment to availability of resources of each organisation, while ensuring that the subsequent adjustment of remuneration at 1 January 1998 is made on the basis of common co-ordinated salary scales:

a. to approve, subject to sub-paragraph (b) below, the salary scales at 1 January 1997 resulting from the application of the adjustment indices set out in Annex 2, column 2…;

b. to decide, in case of exceptional budgetary constraints in their organisation, to postpone, in that organisation in whole or in part, the implementation of the salary scales referred to in sub-paragraph (a and the adjustment of allowances expressed in percentages of salary to a date later than 1 January 1997, it being understood that the scales and allowances will be wholly implemented not later than 31 December 1997;

c. to approve and to implement, with effect at 1 January 1997, the amounts of allowances expressed in fixed terms, adjusted in accordance with the procedure, set out in Annex 6;

d. to note that, in pursuance of the 150th report by the Co-ordinating Committee of Government Budget Experts (CCG) dated 4 April 1978..., pensions will be adjusted in the same proportions and at the same date as the salary of staff in relation to which they are calculated;

e. to note that, in accordance with the interpretation given to paragraph 3 of the 34th Report by the CCG dated 25 October 1965..., at its 77th Session on 29 June 1966 …, the salary of auxiliary staff serving in the Co-ordinated Organisations concerned will be adjusted in the same proportions as that of permanent staff."

THE LAW

20. The appellants have appealed against the Secretary General's decisions dismissing their administrative complaints concerning failure to pay the adjustment for the period from 1 January to 15 March 1997. They are seeking the annulment of the impugned decisions, interest for late

payment of sums due and reimbursement of any expenses engendered by the appeals, where appropriate pursuant to Article 11 para. 3 of the Statute of the Administrative Tribunal.

21. They explain at the outset that the eight appeals, lodged in three stages, concern two series of decisions. Mr Fuchs, Ms Bécret and Mr Géleff initially contested the failure to increase remuneration and pensions at 1 January 1997 and then, when the Secretary General rejected their administrative complaints, challenged, as did MM. Fritsch and Thouvenin, the decision to backdate the increase to 16 March and not 1 January 1997.

22. As the eight appeals are closely connected, the Administrative Tribunal decides to join them pursuant to Rule 14 of its Rules of Procedure.

23. The appellants believe themselves justified in referring the decisions to the Administrative Tribunal of the Council of Europe on all their grounds of appeal, in particular breach of the statutory provisions and regulations applicable to the Organisation's staff, including the Pension Scheme Rules, and disregard general principles of law.

24. They maintain that the Secretary General's refusal to grant the increase as at 1 January 1997 and his decision to allow it only with effect from 16 March 1997 are unlawful in that they are based on a decision by the Ministers' Deputies which is itself unlawful. Referring to the case-law of the Appeals Board, in particular its decision of 15 May 1985 on Appeals Nos. 101-113/1984, they contend that the Secretary General should have refused to act upon an unlawful decision of that kind.

25. According to the appellants, the decision taken by the Ministers' Deputies breaches Article 13 of Annex 1 to the 22nd report of the Co-ordinating Committee on Remuneration (CCR) in that it disregards the rules of interpretation in public international law as set out in the Vienna Convention on the Law of Treaties, which also apply to the regulations governing international organisations. None of those rules makes it possible to justify a "modulated" application of the affordability clause.

In the case of retired staff members of the Council of Europe, the refusal to grant an increase at 1 January 1997 also breaches Article 51 of the Pension Scheme Rules, taken together with Articles 3, 10 and 33.

26. As regards the failure to observe general principles of law, the appellants firstly object to the absence of reasons in the decision adopted by the Ministers' Deputies at their 584th meeting. They submit that mere reference to paragraph 6.4 b) of the CCR's 72nd report, which mentions "exceptional budgetary constraints in their organisation", is not a sufficient statement of reasons.

27. Secondly, they allege that, by interpreting Article 13 of the 22nd report in a manner which was not intended at the time of its adoption, the Committee of Representatives of Secretaries General (CRSG) failed in its duty of good faith towards the Committee of Staff Representatives (CRP). They base this contention on the positions adopted by both the CSRG and the CCR in February and April 1997 at the time of the general review of the remuneration adjustment procedure, which were that the wording of the affordability clause needed amending.

28. Thirdly, they complain of a breach of the principle of legitimate expectations in that

Article 13 on affordability was not applied in the way explained to the CRP in the co-ordination context. They contend that they were entitled to expect to be in the same position as other staff members of Co-ordinated Organisations since it was a matter of implementing a principle (affordability) applicable to all the organisations.

29. Fourthly, they maintain that the Ministers' Deputies committed an abuse of procedure at their 584th meeting by using the CCR's recommendation as a pretext for making budgetary savings at the expense of the Organisation's serving and retired staff.

The draft 1997 budget, drawn up in October 1996, had included provision for a 2.3% adjustment of remuneration with effect from 1 January 1997 on the basis of the rate of inflation in the host country over the reference period. The appellants allege that, subsequently, the Ministers' Deputies sought to adopt this provisional estimate as the final figure and, by making 16 March 1997 the starting date for the 2.8% adjustment, instead of 1 January 1997, they in practice decided on a 2.3% adjustment for the whole of 1997.

At no time had the Organisation's budget authorities argued that material conditions justified applying the affordability clause. The Secretary General had stated in December 1996 that the Council of Europe was not confronted with exceptional budgetary constraints and that the unscheduled amount could be found within the 1997 budget. The appellants point out that this was consistent with past practice.

30. Lastly, on the basis of the position taken by the Secretary General in December 1996, the appellants raise an objection of estoppel.

31. The Secretary General maintains that Appeals Nos. 234-236/1997 are inadmissible since their subject-matter is the same as that of Appeals Nos. 231-233/1997. In any case, he considers all the appeals to be unfounded.

32. He points out that, under Article 16 of the Statute of the Council of Europe and Article 41 of the Staff Regulations, he was bound to implement the decision taken by the Committee of Ministers.

33. He takes the view that both the CCR's recommendation and the Committee of Ministers' decision were in accordance with the applicable texts and general principles of law and that there is no reason to annul the decisions which he took pursuant to the decision of the Committee of Ministers.

34. He contends that the affordability clause set out in Article 13 of Annex 1 to the 22nd report may be applied selectively in order to take account of budgetary difficulties specific to particular organisations. He does not consider any of the appellants' arguments convincing.

35. He asserts that in paragraph 5 of its 72nd report the CCR gave ample grounds for its recommending differentiated application of remuneration adjustment.

36. As to the Committee of Ministers' decision, he argues, in particular, that it is not systematic practice for the Committee's decisions to have a preamble or a full statement of reasons but that the Committee takes care to specify the basis on which a decision is taken and that the text

of the decision referred to the relevant paragraph of the 72nd report, containing the CCR's recommendations. The Committee of Ministers had therefore endorsed the CCR's reasoning, especially paragraphs 5.1.3 and 5.1.4 of the report.

37. The Secretary General also maintains that, given the existence of an affordability clause recognising the principle of deferral of adjustments, the staff could not legitimately expect to receive the adjustment as from 1 January 1997.

38. He challenges the appellants' assertion that the Committee of Ministers committed an abuse of procedure. In his view the Committee of Ministers' decision must be assessed in the political and economic context in which it was taken.

Here, he refers to the increase in the number of Council of Europe member states, in particular the admission of the Russian Federation, and to the significant expansion of the Organisation's activities, to conduct which therefore requires ever larger resources. In 1997, as he points out, insufficient resources were allocated to co-operation programmes, and exceptional contributions had to be sought from the European Community for specific programmes. He concludes that, on the basis of the resources available in 1997, the Committee of Ministers did not exceed its discretionary power when it found that the Council of Europe was subject to budgetary constraints and that those constraints were exceptional, since they originated in the Organisation's unprecedented enlargement.

39. He further contends that, where a decision has been taken by the Committee of Ministers, a defence of estoppel cannot be raised against him on account of positions he may have adopted prior to that decision.

40. He observes that there is no legal ground for granting the appellants interest on arrears.

41. Lastly, he maintains that the appellants have failed to show any justification for applying Article 11 para. 3 of the Statute of the Tribunal, relating to reimbursement of expenses in the event of rejection of an appeal.

42. The Tribunal notes that the appeals concern individual measures taken by the Secretary General pursuant to a decision by the Committee of Ministers on adjustment of remuneration of serving Council of Europe staff, and of the pensions of retired staff.

43. The Tribunal's jurisdiction to rule on a decision or measure taken by the Secretary General where, as here, he was bound to pursue execution of 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 Nos. 101-113/1984, decision of 15 May 1985, Stevens and others v. Secretary General; Nos. 118-128/1985, decision of 30 April 1986, Jeannin and others v. Secretary General; Nos. 133-145/1986, decision of 3 August 1987, Ausems and others v. Secretary General; Nos. 154/1989 and 155/1989, decisions of 21 September 1989, Canales and Andrei v. Secretary General; ATCE No. 191/1994, decision of 25 November 1994, Eissen v. Secretary General; and ATCE Nos. 182-185/1994, decision of 26 January 1996, Auer and others v. Secretary General).

44. The substance of the present dispute concerns adjustment of the remuneration of serving

staff of the Council of Europe, and of the pensions of retired staff.

45. In view of its decision to join the appeals (see paragraph 22 above), the Tribunal holds that there is no need to examine the Secretary General's objection of inadmissibility in respect of Appeals Nos. 234-236/1997.

46. The Tribunal points out that adjustment of remuneration necessitates taking amount 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 international organisations are subject, have been complied with (ABCE, Nos. 133-145/1986, cited above, paras. 77 and 78; Nos. 163-164/1990, cited above, paras. 43-45; and ATCE Nos. 182-185/1994, cited above, para. 56).

47. The appellants are contesting the annual adjustment of their remuneration or pension in 1997 according to the procedure provided for in the 22nd report of the CCR. The 22nd report, which was adopted by the Committee of Ministers in September 1993, lays down an adjustment procedure for the period from 1 July 1993 to 31 December 1997. On the basis of a recommendation made by the CCR in its 72nd report, at the 584th session of the Ministers' Deputies in February 1997 the Committee of Ministers approved annual adjustments with effect at 16 March instead of 1 January 1997, the normal date of the annual adjustment.

48. On the first ground of appeal - infringement of Article 13 para. 1 of Annex 1 to the 22nd report - the Tribunal notes that the arguments advanced by the parties firstly relate to the interpretation of this saving clause. The appellants contend that differential application of the clause in the light of organisations' budgetary circumstances is not permitted.

49. Even where Council of Europe internal rules are concerned, the Tribunal has to be guided by Articles 31 to 33 of the Vienna Convention on the Law of Treaties of 23 May 1969, which primarily contain generally accepted principles of international law, referred to by the European Court of Human Rights in its case-law (see ECHR, Golder v. United Kingdom judgment of 21 February 1975, Series A No. 18, p. 14, para. 29; ATCE No. 266/1996 of 24 April 1997, Zimmermann v. Secretary General, para. 24).

The "general rule of interpretation", as set out in Article 31 para. 1 of the Convention, reads:

> "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

50. The text of Article 13 para. 1 is the first factor relied on by the appellants, who challenge its "modulated" application.

51. The Tribunal accepts that, in the French version, the expression "contraintes budgétaires exceptionelles dans les Organisations coordonnées", which the appellants cite in support of their argument, seems to refer to the financial situation of all of the Co-ordinated Organisations, though, taken in context, the meaning is not entirely clear. The wording of the English version, "exceptional budgetary constraints within Coordinated Organisations", does not corroborate the analysis proposed by the appellants (see also OECD Administrative Tribunal, decision No. 24/25 of 25 June 1997, Billaud/Bessoles v. Secretary General).

Nor does the fact that the first sentence of Article 13 para. 1 refers to the CCR's authority to make a proposal "aux Conseils" ("to Councils" in the English version) appear to be of evidential value. The Tribunal notes that, in the present case, the proposal to apply the safeguard clause forms part of the text as a whole of the recommendation made in the CCR's 72nd report and is addressed to all the Councils of the Co-ordinated Organisations.

52. In addition, the Tribunal does not regard any of the provisions of Annex 1 as limiting the CCR's authority to gather information and proposals needed for it to form an opinion on application of the safeguard clause.

53. The second factor cited by the appellants is the aim, as they see it, of the system in question, that of achieving a comparable situation in all the Co-ordinated Organisations.

The Secretary General contends that the purpose of the clause is to allow the Co-ordinated Organisations to meet exceptional constraints as and when they arise. It would be a contradiction in terms to require, in each case, that budgetary constraints be both exceptional and generally applicable to all the organisations.

54. The Tribunal notes that the safeguard clause in exceptional circumstances, contained in Article 13 para. 1, which is contained in the chapter entitled "Affordability", provides for a departure from the rule of annual adjustment of remuneration at 1 January as laid down in Article 2 of Annex 1. In the event of exceptional budgetary constraints, it allows the CCR to propose that all or part of an increase in salary scales be deferred to a date later than the normal adjustment date, at the latest 31 December of the year in question. The self-imposed limits on the CCR's action (paragraph 3 of Article 13) confirm the exceptional nature of such a measure.

55. The safeguard clause thus provides a degree of flexibility in a salary adjustment method based in general on objective criteria. Differences in annual adjustments within the co-ordination system as a result of differential application of this clause are temporary and do not affect subsequent annual adjustments.

56. In these circumstances, and given the diversity of the Co-ordinated Organisations and in particular their different budgetary situation, the Tribunal cannot agree with the appellants that only uniform application of the safeguard clause in the event of exceptional budgetary constraints in all the Co-ordinated Organisations is permitted.

57. Lastly, neither the *travaux préparatoires* nor the subsequent practice of the relevant institutions support the appellants' interpretation (see OECD Administrative Tribunal, decision No. 24/25 previously cited).

58. The Tribunal cannot reach any other conclusion with regard to the situation of retired Council of Europe staff.

Pensions are calculated on the basis of the staff member's basic monthly salary, according to the scales in force in the Co-ordinated Organisations (Articles 3, 10 and 33 of the Pension Scheme Rules). Pursuant to the CCG's 150th report, pensions are adjusted by the same proportion and at the same date as the salaries of serving staff. The Pension Scheme Rules themselves stipulate that salaries and pensions are adjusted at the same time (Article 36 para. 1). Article 51 of the Pension Scheme Rules, relating to co-ordination, cannot be interpreted as requiring that pension adjustments in all the Co-ordinated Organisations take place simultaneously; the co-ordination in question has the more general aim of ensuring that the rules are applied in a uniform manner (see also OECD Administrative Tribunal, Decision No. 24/25 cited above).

59. The above observations lead the Tribunal to hold that a "modulated" application of the safeguard clause, as such, does not breach the regulations.

60. Nor, therefore does it infringe the principle of good faith. Annual adjustments are not automatic but are decided by the Committee of Ministers on the basis of the CCR's recommendations. There is nothing in the commitments entered into by the Council of Europe or in the usual practice to suggest that anyone concerned had legitimate expectations raised in the matter.

61. In this respect the impugned decisions are not unlawful.

62. The appellants also complain of a failure to give sufficient reasons for the Ministers' Deputies' decision. The Secretary General rejects this statement.

63. The Tribunal points out that the requirement of giving adequate reasons for an administrative decision helps to ensure the necessary transparency in matters of staff management (ABCE No. 151/1988, Bohner v. Secretary General, decision of 1 December 1988, para. 28 and No. 186/1994, Bouillon v. Secretary General, decision of 24 February 1994, para. 35; ATCE No. 194/1994, Fernandez-Galliano v. Secretary General, decision of 5 April 1995, para. 24).

64. The rule that reasons must be given is therefore a means of preserving confidence in the administration. In its Auer and others v. Secretary General decision of 26 January 1996 the Tribunal observed that adjustment of the remuneration of staff of the Council of Europe 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 (Nos. 182-185/1994, para. 76).

65. This does not mean that the reasons for an administrative decision must always be given in detail and in full. The extent of the obligation may vary with the nature of the decision. Account must also be taken, inter alia, of the complexity of the issues and of the decision-making process. For this reason the question whether there has been a breach of the obligation to give reasons can only be examined in the light of the particular circumstances.

66. In the present case, as the Secretary General has pointed out, the Committee of Ministers

referred in its decision to the relevant paragraph of the 72nd report, containing the CCR's recommendations.

67. The Ministers' Deputies thus specified the legal basis for their decision. By implication it follows that they approved the CCR's conclusions, set out in particular in paragraphs 5.1.3 and 5.1.4 of the 72nd report. This method of referring staff to the reasons given in another document is justifiable in so far as the report, which is classified as restricted, is nevertheless accessible to the persons concerned, at least through the staff representatives involved in the tripartite consultation process. The accessibility of the documents in question is not in fact in dispute.

68. However, the reasons given by the CCR relate solely to "the existence of exceptional budgetary constraints within Co-ordinated Organisations in the sense of Article 13.1 of the remuneration adjustment procedure, the constraints having different technical consequences which vary from one organisation to the other." By making a "modulated" recommendation concerning application of the adjustment of remuneration at 1 January 1997 the CCR intended to leave "to the discretion of Councils, in the light of the budgetary constraints of each organisation, the decision to invoke the safeguard clause on affordability, if appropriate, and to decide on the manner of its application providing that the adjustment is fully implemented by 31 December 1997 at the latest" (see paragraph 18 above).

69. In applying the safeguard clause on the basis of the CCR's recommendation, the Ministers' Deputies were therefore bound to establish whether the condition it laid down (the existence of "exceptional budgetary constraints in their organisation") was satisfied.

70. In this connection, it should be noted that the appellants contest that there were budgetary difficulties specific to the Council of Europe. They allege that, in an abuse of procedure, the Ministers' Deputies used the CCR's recommendation as a pretext for making budgetary savings at the expense of Organisation's serving and retired staff.

The Secretary General maintains that the Committee of Ministers' decision must be seen in its political and economic context - the increase in the number of Council of Europe member states, in particular the Russian Federation's admission, and the significant expansion of the Organisation's activities. On the basis of the resources available in 1997, he says, the Committee of Ministers took the view that there were budgetary constraints on the Council of Europe and that those constraints were exceptional, originating as they did in the Organisation's unprecedented enlargement.

71. The Administrative Tribunal acknowledges that, as the Secretary General has pointed out, the Committee of Ministers generally does not give grounds for its decisions. In the instant case, the Committee of Ministers duly cited the recommendation made by the CCR in its 72nd report as the basis for its decision, and that recommendation allowed a departure from the rule of adjustment at 1 January on condition that the Co-ordinated Organisation concerned was confronted with "exceptional budgetary constraints". The Committee of Ministers should have given reasons for its decision by making explicit reference to the Council of Europe's budgetary situation. Such an explanation was all the more necessary in that the Secretary General had stated at a meeting of the Rapporteur Group on Administrative and Budgetary Questions on 29 November 1996 that "the unscheduled amount totalled 2.5 million francs" and "(t)his sum could be found within the 1997 budget" (*carnet de bord* of 11 December 1996, GR-AB(96)12). Regard being had, in particular, to

this assessment's critical importance to serving and retired staff's entitlement to their salaries and pensions, explicit clarification or even a more detailed statement of reasons was necessary. In the absence of any explanation, it is difficult for staff members and the Administrative Tribunal to assess and scrutinise properly the use the Committee of Ministers made of its discretionary power in this matter.

72. In the light of these observations, the Tribunal holds that the Ministers' Deputies' decision and the Secretary General's individual decisions based thereon are unlawful.

73. As regards the claim for payment of interest, the Tribunal points out that the unlawfulness found consists in a breach of the obligation to give reasons for a decision. The appellants' claim therefore cannot be allowed.

74. Lastly, the appellants seek reimbursement of 25,000 French francs in costs and expenses. In view of the nature and importance of the dispute, the Tribunal awards them the sum of 25,000 French francs.

On these grounds,

the Administrative Tribunal:

Joins Appeals Nos. 231-238/1997;

Declares the appeals founded;

Annuls the individual decisions whereby the Secretary General applied to serving and retired staff the Committee of Ministers decision to implement the saving clause and postpone the annual adjustment of remuneration and pensions to 16 March 1997;

Dismisses the claim for payment of interest;

Orders the Council of Europe to reimburse the appellants the sum of 25,000 French francs in expenses.

Delivered at Strasbourg on 29 January 1998, the French text being authentic.

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