CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

COMMISSION DE RECOURS
APPEALS BOARD

Appeals Nos. 133-145/1986 (Egbert AUSEMS and others v. Secretary General)

The Appeals Board, composed of:

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

assisted by:

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

has delivered the following decision after due deliberation.

PROCEEDINGS

1. Appeals were brought by the following:

– Mr Egbert AUSEMS	Appeal No. 133/1986
– Mr Hugh BEESLEY	Appeal No. 134/1986
– Ms Ghislaine BLANCHARD	Appeal No. 135/1986
– Ms Anna CAPELLO-BRILLAT	Appeal No. 136/1986
– Mr Gian-Paolo CASTENETTO	Appeal No. 137/1986
– Mr Candido CUNHA	Appeal No. 138/1986
– Mr John ELLIS	Appeal No. 139/1986
– Mr Paul GELEFF	Appeal No. 140/1986
– Ms Marie-Claude de GRANDPRE	Appeal No. 141/1986
– Mr Hanno HARTIG	Appeal No. 142/1986
– Mr John HARTLAND	Appeal No. 143/1986
– Mr Félix KAPPLER	Appeal No. 144/1986
– Mr Jean SABATTIER	Appeal No. 145/1986

2. The appeals were lodged on 7 August 1986 and entered in the Board's register the same day under the numbers 133/1986 to 145/1986.

3. The supplementary pleadings were submitted on 23 September 1986.

4. The Secretary General's representative communicated his observations on 12 November 1986.

5. By a letter dated 2 December 1986, counsel for the appellants stated that he did not intend to submit a reply to those observations.

6. On 6 January 1987, the Chairman of the Appeals Board informed the parties that the hearing had been set down for 17 February 1987 at 9.30 am.

7. The public hearing was attended by Professor D. Ruzié, counsel for the appellants, and by Mr G. Adinolfi, Deputy Secretary General, assisted by Mr E. Harremoes, Director of Legal Affairs, and Mr C. Kohler, Deputy Director of Administration.

THE FACTS

8. Mr E. Ausems and the twelve other appellants are permanent members of the staff of the Council of Europe in categories A and L. The appeals concerned irregularities in the calculation of the basic salary scales of A and L category staff at the Council of Europe. It was sought to obtain a rectification of the salary scales with retroactive effect from 1 July 1981.

A. Procedure for determining salaries

9. The members of the Council of Europe staff are paid in accordance with Article 41 of the Staff Regulations and the Regulations governing Staff Salaries and Allowances (Appendix IV to the Staff Regulations). The salary scales are laid down by the Committee of Ministers and appended to the resolution in which it determines the level of remuneration.

10. In connection with the annual review of salaries of the Council of Europe staff taking effect from 1 July 1985, at its 392nd session in January 1986 the Committee of Ministers approved the 215th report of the Co-ordinating Committee of Government Budget Experts and, at its 395th session in April 1986, Addendum I to that report. Following the approval of the report, the Committee of Ministers updated the Regulations governing Staff Salaries and Allowances and laid down the scales for basic salaries and other emoluments with effect from 1 July 1985.

11. The 215th report of the Co-ordinating Committee of Government Budget Experts (hereinafter referred to as "the Co-ordinating Committee"), which was adopted on 20 December 1985, states inter alia:

"...2. For category A and L staff, the salary scales submitted by the Secretaries General were drawn up on the basis of the Annex to the 159th report [CCG (79)1] which sets out the procedure for adjusting remuneration (...)

3. In their proposals for category A and L staff the Secretaries General drew attention to the fact that since 1981 the data provided by the Netherlands authorities on the remuneration of national civil servants has taken account of a special deduction ('inhouding'). They were convinced that this special deduction was neither a tax nor a contribution to a social security scheme. For this reason, its deduction from the gross figures to arrive at the net remuneration provided by the Netherlands authorities was not considered to be in conformity with the procedure laid down by the 159th report (...)

4. Discussions have taken place between the representatives of the Secretaries General and the Netherlands authorities on both these matters without a mutually agreed conclusion having been reached. With respect to the 'inhouding', the Secretaries General maintained their point of view and proposed that this matter be examined by the Co-ordinating Committee shortly. In the meantime, in order not to delay the 1985 annual review, and, as a temporary measure, they presented figures which took account of the special deduction at 1 July 1985, as has been done since its introduction.

5. CPAPOC (the Standing Committee of Staff Associations, of the Co-ordinated Organisations) did not share this point of view and insisted that the procedure laid down in the 159th report be fully and correctly applied. It was deeply regretted that, since 1981, CPAPOC had not been informed that the special deduction ('inhouding'), which had been introduced in the Netherlands, had been taken into account in the calculation of salary scales. CPAPOC emphasised that, in reality, since this date these salary scales had no longer been established in accordance with the procedure. (...)

7. The Netherlands authorities maintained their position that both the way in which they had taken account of the special deduction ('inhouding') and their choice of the age group for the tax abatement for an unmarried civil servant were in conformity with the procedure set out in Article 6 of the 159th report...

8. National delegations decided not to adopt a position on these two problems at the present time, being of the opinion that since they were related to the principles of the remuneration adjustment procedure and its interpretation, they should be examined in depth on the basis of solid arguments presented by all the parties before any final decision could be adopted. They proposed that this examination be carried out at a meeting in the near future.

9. However, in order not to delay the Annual Review of remuneration, all national delegations have agreed that the special deduction ('inhouding') should continue to be taken into account as in the past...".

12. Annex II to the 159th report of the Co-ordinating Committee (adopted on 16 February 1979), to which the 215th report refers, lays down detailed rules for the adjustment of remuneration.

With regard to the annual review, Article 4 provides as follows:

"With effect from 1 July each year, and on the basis of comparable grades, the basic salaries of staff in categories A and L... shall be adjusted by the change in the international cost of living index... over the previous 12 months modified upwards or downwards by the applicable weighted average of the percentage changes in real terms in the net remuneration in all the national civil services of the reference countries during the same period. This percentage adjustment shall be applied to the salary scales in force on 1 July of the previous year."

13. The triennial review provided for in Article 5 is based inter alia on:

> "(b) the weighted average of the percentage changes in real terms that have taken place for comparable grades since the previous triennial review in the levels of net remuneration in the national civil services taken as reference".

14. Article 6 (c) provides that:

> "Net remuneration in the civil services means 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, but with the deduction of the amount of compulsory contributions to Social Security, and also income tax levied by the central authority on unmarried officials and calculated without taking into account non-automatic personal allowances".

15. According to Article 6 (b) of Annex II to the 159th report of the Co-ordinating Committee, for the purposes of the aforementioned Articles 4 and 5, the expression "national civil services of the reference countries", means "the civil services of the following countries: Belgium, France, Germany, Italy, Luxembourg, the Netherlands and the United Kingdom."

B. The introduction of the 'inhouding'

16. On 24 February 1981, the Netherlands Government issued a Royal Decree imposing an 'inhouding' with effect from 1 January 1981.

17. Netherlands' civil servants do not pay any Social Security contribution and this deduction from their salary scales was intended to correct the imbalance resulting from the increase in Social Security contributions in the private sector.

18. In 1981, the deduction represented between 0.1 and 2.58% of the monthly salary of civil servants.

19. That rate increased in line with the rate of Social Security contributions and began to fall in 1984.

C. The facts of the case

20. In 1985, the representatives of the Secretaries General of the Co-ordinated Organisations and the staff representatives became aware that the figures provided by the Netherlands authorities took account of the 'inhouding'.

21. On 30 May 1985, the Secretaries General of the Co-ordinated Organisations sent a letter to the Chairman of the Co-ordinating Committee in order to notify the Netherlands authorities that the Inter-Organisations Section had been asked to conduct a study to assess the effects of the 'inhouding'.

According to the results of that study, the reduction of the scales as a result of a calculation

taking into account the 'inhouding' was inconsistent with Article 6 of Annex II to the 159th report.

22. When the 215th repot was adopted, no mutually agreed conclusion was forthcoming and "all national delegations (...) agreed that the special deduction ('inhouding') should continue to be taken into account..." (see paragraph 11 above).

23. On 10 April 1986, the Committee of Ministers adopted Resolution (86) 1, updating the Regulations governing Staff Salaries and Allowances on the basis of the 215th report of the Co-ordinating Committee.

24. That question was reconsidered at the 257th session of the Co-ordinating Committee on 19 and 20 March 1986 which concluded as follows:

> "Since there did not appear to be any possibility of reconciling the positions of the parties and as national delegations supported that of the Netherlands delegation, the Committee:
>
> - agreed that the material result of the method of calculation applied by the Netherlands since the inception of the special deduction in 1981 to arrive at net remuneration figures for civil servants was consistent with the spirit of the procedure laid down in Article 6 of the 159th report".

25. On 9 June 1986, the appellants submitted to the Secretary General of the Council of Europe a complaint in which they challenged the legality of Resolution (86) 1.

26. On 6 August 1986, on behalf of the Secretary General, the Director of Administration and Finance rejected that complaint.

27. On 7 August 1986, the appellants lodged their appeals.

28. At the 403rd session of the Ministers' Deputies in January 1987, the Committee of Ministers took note of the conclusions of the Co-ordinating Committee as set out in Addendum II to the 215th report.

THE LAW

SUBMISSIONS OF THE PARTIES

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

A. Unlawful alteration of the Staff Regulations

29. The appellants submitted that the unlawfulness of the alteration of the Staff Regulations arose from the disregard of the Co-ordinating Committee's 159th report and of the rules of interpretation applicable in international law, together with the organisation's failure to observe the principle of good faith.

a. The disregard of the 159th report of the Co-ordinating Committee

30. The appellants submitted that the provisions of the Co-ordinating Committee's reports took on the character of regulations once they had been approved by the Committee of Ministers.

31. They noted that in accordance with a general principle of law:

> "... the Administration must ensure, in the interests of proper staff management of the Organisation, that it complies with the regulations in force, in particular as it must comply with the principle whereby an authority is bound by the rules which it has laid down as long as it has not repealed or amended them" (ILOAT, Poulain d'Andecy Case, Decision N° 51).

32. They maintained that according to Article 6 (c) of Annex II to the 159th report, the only deductions which might be taken into account were "compulsory contributions to Social Security" and "income tax", and that the deduction of the 'inhouding', which did not fall within either of those two categories, contravened the principle laid down in that provision.

33. They noted that the Netherlands statisticians concerned, and the OECD experts considered that the 'inhouding' was neither a Social Security contribution nor a tax on income.

On that point they cited the memorandum of 15 May 1985 from the Inter-Organisations Section to the Standing Committee of Secretaries General:

> "It is not a tax, nor is it a Social Security contribution, because it is not a contribution whose proceeds go to financing a specific welfare benefit. In the Netherlands official statistics (CBS) the deduction does not appear under the heading either of taxes or of Social Security contributions"

b. Disregard of the rules of interpretation in public international law

34. The appellants submitted that the Organisation's conduct raised doubts about the interpretation of the relevant provisions of the report in question.

35. In that regard they cited the Appeals Board of the Council of Europe:

> "This is a general principle of interpretation which, in the opinion of the Board, is valid not only in regard of treaties but also in respect of statutory provisions such as the present regulations. The Board refers in this connection to the statement of the Permanent Court of International Justice (Series B, Nos 2 and 3, p. 23) and to Article 31 (1) of the Vienna Convention on the Law of Treaties...". (Footnote to paragraph 21 of the Decision of 5 November 1973, Appeal N° 9/1973)

36. They pointed out that the first principle of interpretation consisted in examining the text and that it was necessary to adhere to the "natural meaning of the terms" if they were "clear and unambiguous" (S. Bastid, Les traités dans la vie internationale, Paris - Economica - 1985, p. 129).

They maintained that that was exactly the case in this instance and that that interpretation was confirmed by consideration of the preparatory documents (Article 32, Vienna Convention).

37. They noted that international administrative tribunals had consistently held that a literal interpretation was to be adopted where the provisions in issue were unambiguous (NATO Appeals Board, 10 March 1978, Decision N° 89 and OECD Appeals Board, 16 November 1978, Decision N° 66).

38. The pointed out that the government budget experts had sought to refer to the "spirit" of the procedure laid down in Article 6 of the 159th report (summary record of the 257th session, para. 28) and had considered that the method followed was "in line" with the procedure established in the aforementioned article (addendum to the 215th report, para. 2.2).

39. They claimed that the Organisation had contravened the principle of good faith by trying in this way to dissociate the letter from the spirit of the procedure, especially so in the light of the emphasis placed by the Appeals Board of the Council of Europe on the need to respect "the letter and spirit of the provisions of internal rules and regulations" (Decision of 14 February 1986, Appeals Nos 115-117/1985, para.117).

c. Failure to observe the principle of good faith

40. The appellants maintained that the principle of good faith must play a vital role as a criterion for interpreting circumstances (see the above-mentioned decisions).

41. They noted at the 239th session of the Co-ordinating Committee and in the 199th report of that committee, reference had been made to the need to adhere to the "strict application" of the procedure laid down in the 159th report.

42. They submitted that by following the Co-ordinating Committee's recommendations, the Organisation had deviated from the "strict application" of the texts in order to reduce the revaluation of salaries.

43. They added that the precision of the expression "contributions to Social Security" precluded any extrapolation such as would extend it to cover all and any contributions or deductions, albeit compulsory ones.

44. They noted, moreover, that their interpretation of the 159th report was the same as that of the Secretaries General of the Co-ordinated Organisations (215th report, para. 3, record of the 257th session, para. 23).

They concluded that that interpretation was wholly consistent with the result of applying principles of interpretation laid down by the European Court of Human Rights, notably in the Golder Case (Eur Court HR, Golder Judgment of 21 February 1975, Series A, Vol. 18).

B. Failure to give reasons

45. The appellants claimed that the decision which was the subject of their appeals was based on the Co-ordinating Committee's recommendations which themselves contained no statement of

the reasons on which they were based.

46. They submitted that the experts had adopted their position by making categorical statements to the effect that the outcome was "consistent" or "in line" in practice with the method laid down in the 159th report.

47. They added that the Netherlands experts had expressly recognised that the 'inhouding' was not a Social Security contribution but was "very closely related to it" and that "the relationship is even (so) close that it could be easily transformed if necessary from inhouding into a Social Security contribution".

48. They noted that the Secretaries General of the Co-ordinated Organisations had themselves set out their reasons for considering that the Netherlands argument was unacceptable in the light of the 159th report:

- Under Article 6 c) of the 159th report, the gross salaries could not be anything but those in the official scales laid down in the BBRA (Bezoldigingsbesluit Burgelijke Rijksambtenaren - Decree laying down the remuneration for civil servants). Since the amount of the levy varied for a given basic salary, it could not be put forward as one of the components of the official scales.
- The Netherlands decree introducing the levy had expressly stated that the deduction was effected in the calculation from gross to net.

C. Arbitrary and unjust nature of the contested decision

49. The appellants drew attention to the fact that, as the representatives of the Secretaries General had observed, the levy was introduced because of the increase in the cost of a welfare (unemployment/invalidity) insurance scheme from which members of the staff of the Co-ordinated Organisations derived no benefit.

50. They added that the 'inhouding' did not affect civil service pensioners in the Netherlands, whereas its incorporation in the calculation penalised pensioners of the Co-ordinated Organisations.

51. They took the view that, in those circumstances, the contested measures resulted in an "unjustified difference of treatment" between staff of the Netherlands civil service and the Council of Europe's staff.

They noted that the Appeals Board of the Council of Europe appeared to have been anxious in one of its recent decisions to ensure that such differences did not become an established practice (Decision of 30 April 1986 - Appeals N° 118-128/1985, para. 69).

The **Secretary General's** arguments may be summarised as follows:

A. The alleged irregular amendment of the statutory texts

a. The alleged failure to apply correctly the 159th report of the Co-ordinating Committee.

52. "With regard to the appellants' contentions under this heading, these can only have any validity to the extent to which the Appeals Board considers the 'inhouding' to be a deduction additional to those provided for in Article 6 (c) of the Rules appended to the 159th report of the Co-ordinating Committee, and not capable of being assimilated to a permissible deduction."

53. "If, on the other hand, the Appeals Board were to hold that the 'inhouding' either may be assimilated to a permissible deduction or has to be deducted from the official scales in order to arrive at the gross salary (paragraphs 42 et seq.) the Secretary General points out that no question of any 'irregular' amendment of the texts would arise."

b. Alleged failure to apply rules of interpretation of public international law

54. "It may remain open whether the rules of interpretation contained in Article 31 of the Vienna Convention on the Law of Treaties apply to the internal administrative regulations of the Council of Europe. Even in the absence of Article 31 aforesaid, it is clear that the usual rules of interpretation would lead to broadly similar results as those suggested by the applicants."

55. "However, it might be possible to consider interpreting the statutory texts of the Council of Europe in the light of the reality of widespread socio-economic change (cf. decision of the Appeals Board in Case N° 114/1985). It is well-known that, since the rules appended to the 159th report of the CCG were adopted, the economic situation in most European countries has been caracterised by recession and crisis which might be seen as justifying the Appeals Board, in accordance with its case-law, in interpreting Article 6 (c) in a broad and dynamic way. Such an interpretation could assimilate the 'inhouding' to a 'social security contribution'. The Secretary General would not however be in favour of such an interpretation."

c. Alleged breach of good faith

56. "The Secretary General regrets that the appellants have seen fit to bring accusations of bad faith against the Government of one of the member States of the Council of Europe in the form in which they are presented at pages 8, 9 and 10 of the pleadings of the appellants. He thinks that to place the allegations contained therein on this footing serves no useful purpose in clarifying the issues at stake."

57. "Often a text must be interpreted in the light of new developments, which were not foreseen at the time of its drawing up. To equate this rule of teleological interpretation with bad faith is not in the Secretary General's view permissible. (...)

The Secretary General considers it helpful "to quote the first paragraph of Article 31 of the

Vienna Convention" which in fact supports a teleological interpretation."

> (...) "SECTION 3: INTERPRETATION OF TREATIES
>
> Article 31
>
> General rule of interpretation
>
> 1. 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." (...) (underlined by the Secretary General)

58. The Secretary General notes that "the words underlined which are undoubtedly of general validity guard against taking too literal or narrow a view of legal texts and permit, where it is necessary, the kind of dynamic, teleological interpretation which the applicants in fact suggest is excluded in this case."

B. Alleged failure to provide statement of reasons

59. "With regard to these submissions, it seems appropriate to the Secretary General to remind the Appeals Board that, under the jurisdictional system of the Council of Europe (Article 59 of the Staff Regulations), it is only the Secretary General who can adopt an act adversely affecting an official".

60. "It is clear (...) that the Committee of Ministers, in adopting Resolution (86) 1, did not act in a void but based itself on the reasoned recommendations contained in the CCG's 215th report and addenda and that the Secretary General in implementing that decision did nothing more than carry out his statutory duties."

The jurisdiction of the Appeals Board

61. At the hearing on 17 February 1987, the Deputy Secretary General made the following statement on behald of the Secretary General:

> "Mr Chairman, Members of the Board, as in the proceedings in the cases Stevens and others and Jeannin and others, the Secretary General is a party in these proceedings because under the rules governing disputes in this organisation appeals may be lodged only against the Secretary General. In fact the Secretary General has never concealed his reservations with respect to the taking into account of the special deduction, the 'inhouding', applied to salaries in the Netherlands Civil Service, in the calculation of the basic salary scales of the staff of this Organisation in categories A and L.
>
> That is why, after considering the problem, the Secretary General was not able to endorse the conclusions adopted by the Co-ordinating Committee of Government Budget Experts. He has always made his position in this respect clear at every level of authority, whether to the statutory bodies of the Council of Europe or to the Committee of Secretaries General of the Co-ordinating Organisations.
>
> Moreover, the Secretary General may clearly not disregard his statutory duty to the Committee of Ministers. Accordingly, he is bound to apply fully Resolution (86) 1 of the Committee of Ministers of the Council of Europe updating the Regulations governing Staff Salaries and Allowances adopted by the Ministers' Deputies

on 10 April 1986 at their 395th session.

As in the cases Stevens and others and Jeannin and others, the Secretary General has submitted written observations to the Board. He takes the view that these observations establish the adversary nature of the proceedings before the Board and constitute a sufficient legal defence of the Organisation. Since he does not intend to develop them orally, he refers the Board to the above-mentioned submissions".

The merits of the appeals

62. The 'inhouding' was introduced by the Netherlands Government in January 1981 and was intended, according to that Government, to redress the imbalance created by the increase in social security contributions in the private sector in view of the fact that civil servants do not pay social security contributions.

This deduction from civil service salaries was taken into account in the figures supplied by the Netherlands Government to the Co-ordinating Committee to enable it to draw up its opinion regarding salary scales of staff of the Co-ordinated organisations in categories A and L.

63. In the first six months of 1985, the representatives of the staff of the Co-ordinated Organisations and the representatives of the Secretaries General of these Organisations became aware of the taking into account of the 'inhouding' in the figures supplied by the Netherlands Government as a "reference country" in the procedure for adjustment of salaries.

64. This procedure was laid down in the Annex to the Co-ordinating Committee's 159th report adopted in 1979 and reaffirmed by the 215th report in 1985 (see above, paras 11 to 15).

65. In connection with the annual review of salaries of members of staff of the Council of Europe, taking effect as from 1 july 1985, at its 392nd session in January 1986 the Committee of Ministers approved the 215th report of the Co-ordinating Committee, and Annex I thereto at its 395th session in April 1986 (see above paras. 21, 22 and 23).

66. Following that approval, on 10 April 1986, the Committee of Ministers adopted Resolution (86) 1 updating the Regulations governing Staff Salaries and Allowances. Since Resolution (86) 1 had been adopted by the Committee of Ministers, the Secretary General applied those scales.

67. The appellants submitted that this decision adversely affected their salaries. In their view it represented an unlawful amendment to the Staff Regulations. It was not accompanied by a statement of the reasons on which it was based and was both arbitrary and unjust (see above paras. 29 to 51).

68. A staff member's salary is an essential element in the legal basis of his conditions of employment. It therefore falls to the Board to determine whether the appellants are entitled to the part of their salaries of which they claim to have been deprived.

69. The salaries of staff of the Council of Europe (Article 41 (1) of the Staff Regulations) are

set out in the scales approved by the Committee of Ministers.

70. A Committee of Experts on Emoluments was first set up in 1957. Its role was to put forward in the framework of a uniform structure of grades the scales and the rules governing the fixing of staff emoluments and allowances to be submitted to the competent bodies of the four European organisations whose headquarters were in France.

71. At the Deputies 61st session in June 1958, the Committee of Ministers authorised the Secretary General to apply to the staff of the Council of Europe the measures adopted by the Council of the OECD in relation to its staff, on the basis of the proposals of the Co-ordinating Committee set up in 1958 to formulate an opinion on the report of the Committee of Experts on Emoluments.

72. In 1961, a draft resolution was drawn up proposing the creation of an advisory co-ordinating committee which was to replace the co-ordinating committee set up in 1958, but this proposal was not put into effect.

73. According to a memorandum from the Secretaries General and Directors General of the Councils of the Co-ordinated Organisations drawn up in 1968 and produced at the hearing by the Secretary General's representative: "the Co-ordinating Committee was thus created, in an advisory capacity. (...) There has never been any enactment defining (...) its mandate or its competence. It owes its continued existence to the difficulties which arose in 1960 in implementing the periodic review procedure, which led the Councils to make new rules, still in force, which included a provision for the intervention by the Committee of Co-ordination.

Such was the purely practical origin of the Co-ordinating Procedure (...). The Co-ordinating Committee has not yet any official status".

74. This situation has remained unchanged.

75. Thus, from a juridical point of view the Co-ordinating Committee is not one of the structures of the Council of Europe and the decisions which it takes do not generate legal rules applicable to members of staff of the Council of Europe. Its role is merely advisory and is limited to questions concerning staff salaries. The Committee of Ministers is not bound by its proposals and therefore has the right to approve or reject them.

76. As regards staff salaries, only the Committee of Ministers has the power to lay down the scales and it does so on the basis of the method of calculation which it itself adopted.

77. By approving the Co-ordinating Committee's 215th report, which reaffirmed the method and the criteria laid down in the 159th report, the Committee of Ministers, acting pursuant to the authority conferred on it by the Staff Regulations (Article 41), entered into obligations which it is bound to respect for the period defined by it.

78. When it updates the Regulations governing Staff Salaries and Allowances on the basis of

this method and these criteria, the Committee of Ministers is required, as is any other authority which implements a decision which it has taken, to ensure the observance of general principles of law to which the legal systems of international organisations are subject.

79. Like the principle of legitimate expectations, the principle of good faith, which is based on well-established international legal precedent, recognises the fact that the staff of international institutions and their representative must be entitled to rely on the respect by the administrative authorities of the undertaking entered into by such authorities (see CJEC, Case 81/72 Commission of the European Communities v. Council of the European Communities, 5 June 1973, [1973] ECR 575).

80. By adopting the 215th report reaffirming the method set out in the 159th report, the Committee of Ministers raised legitimate expectations on the part of the staff of the Council of Europe concerning the scope of its undertakings regarding the method and the criteria on which the calculation of salaries ought to be based.

81. By taking account, for the purpose of fixing the salary scales at the time of the adjustment of salaries, of the 'inhouding' in the figures supplied by the Netherlands Government as one of the representative levels of "net remuneration in the national civil services taken as reference" (Article 5 of Annex II to the Co-ordinating Committee's 159th report) the Committee of Ministers applied to all the members of the Council of Europe's staff a measure which, in the reference country, did not affect all civil servants.

82. The 'inhouding' is a deduction at source which has been levied since 1981 by the Netherlands authorities on the gross remuneration of serving civil servants in that country. The Committee of Ministers took the view that it was legitimate to take into account such a deduction in the figures supplied by the Netherlands delegation and, in regard to the serving members of the Council of Europe's staff, in the manner in which it exercised its discretion regarding the effect to be given to the rules, which it had itself laid down in the matter, was neither unreasonable nor unjustified nor disproportionate given that the resulting calculation merely incorporated the figures showing the salaries actually paid to serving civil servants in the country in question.

It follows that there has been no breach of the principle of fairness which requires equality as regards charges on salaries as between serving national civil servants of the reference country and the members of the Council of Europe's staff in the same situation.

It is therefore not possible to discern any breach of the principle of good faith in this instance and the contested decision is not unlawful in that respect.

83. On the other hand, the question arises as to whether such equality has been preserved when it comes to the effect of the taking into account of the 'inhouding' on the pensions paid to former members of the Council of Europe's staff.

84. The pensions of Council of Europe staff are determined by reference to the monthly basic

salaries of serving staff (Article 3 of the Pension Scheme Rules).

Consequently, any factor which may affect staff salaries necessarily has repercussions on the amount of retirement pensions.

The 'inhouding' in the reference country is levied only on the gross salaries of serving civil servants and the Board has recognised (see para. 82) that it was neither unreasonable nor unjustified to impose, proportionately, on serving staff of the Council of Europe a deduction which is levied on serving civil servants in a reference country within the meaning of Article 6 (b) of Annex II to the 159th report.

85. On the other hand, the retired civil servants in this reference country were, for their part, not liable to this deduction, the consequences of which are nonetheless reflected in the level of Council of Europe pensions.

86. In these circumstances, the balance in respect of charges on salaries has been destroyed to the detriment of retired Council of Europe staff insofar as in the reference country retired civil servants are not affected by the deduction resulting from the 'inhouding'.

87. Accordingly, there has been a breach of the principle of good faith as regards retired staff of the Council of Europe. Such staff are entitled to expect that the methods and criteria adopted by the Committee of Ministers will be applied to them in such a way as to protect them from being placed in a more disadvantageous position than that of corresponding civil servants in reference countries.

88. It follows that by including the 'inhouding' in the calculation of the figures supplied by the Netherlands Government as representing the "net remuneration of national civil servants taken as reference" (Article 5 of Annex II to the above-mentioned 159th report), the Committee of Ministers has disregarded the principle of good faith with regard to retired staff of the Council of Europe.

89. In the light of the foregoing it is not necessary for the Board to consider all the other submissions advanced by the applicants against the contested decision.

For these reasons,

The Appeals Board:

Hereby declares the appeals founded as regards the effects for the appellants of the taking into account of the 'inhouding' in the calculation of retirement pensions paid to Council of Europe staff;

Annuls the individual decisions whereby the Secretary General applied to retired staff the decision of the Committee of Ministers taking into account the 'inhouding' in the fixing of salaries of Council of Europe staff;

Orders the reimbursement of the sums unlawfully deducted thereby;

Decides that the Council of Europe shall refund the applicants the costs incurred by them up to the amount of FF 10,000 for all the applicants.

Delivered at the public hearing in Strasbourg on 3 August 1987, the French text of the decision being authentic.

The Secretary of the Appeals Board	The Chairman of the Appeals Board
M. de SALVIA	W.J. GANSHOF VAN DER MEERSCH