

# CONSEIL DE L'EUROPE— —COUNCIL OF EUROPE

## COMMISSION DE RECOURS APPEALS BOARD

**Appeals Nos. 79-93/1983 (Cyril BUHLER and others v. Secretary General)**

The Appeals Board, consisting of:

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

assisted by

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

has delivered the following decision after due deliberation.

### PROCEEDINGS

1. Appeals have been lodged with the Board by the following appellants:

- Mr Cyril BUHLER	Appeal	No.	79/1983
- Mr Bernard CARBIENER	"	No.	80/1983
- Mrs Jill CHATTERTON	"	No.	81/1983
- Mrs Marie-Christine FARCOT	"	No.	82/1983
- Mrs Linda FITCHETT-ROLL	"	No.	83/1983
- Mrs Marie-José HALT	"	No.	84/1983
- Mrs Michèle KEEFE	"	No.	85/1983
- Mrs Ann MEYER	"	No.	86/1983
- Mrs Annie ROBERT-COTTEREAU	"	No.	87/1983
- Mr William VALK	"	No.	88/1983
- Mrs Gisela WORSDALE	"	No.	89/1983
- Mrs Josette YOSLE-BLANC	"	No.	90/1983
- Mr. Jürgen DROWSKI	"	No.	91/1983
- Mrs Jennifer GRIFFITH	"	No.	92/1983
- Mrs Susan Jane PATTON	"	No.	93/1983

2. These appeals were lodged on 21 July and 1 December 1983, and were entered in the Board's register on the same days.

3. The supplementary pleadings were communicated to the Secretary General of the Council of Europe on 21 July 1983.

4. By a letter dated 21 July 1983, the Secretary General was invited to submit his observations on the appeals within the period running from 1 September 1983 to 31 October 1983. The observations arrived on 12 October 1983 and were communicated to the appellants for a reply by 19 December 1983.

5. On 16 December 1983, the appellants' representative forwarded his reply.

6. By a letter dated 2 February 1984, the parties were informed that the hearing had been set down for 28 February 1984.

7. On 9 February 1984, the Secretary General and the appellants' representative jointly made an application for the hearing to be postponed.

8. On 22 February 1984, the Chairman ordered that a private hearing should be held on 28 February 1984 at which the parties' representatives would state their reasons in support of the application for a postponement.

This order was notified to the parties in a letter dated 23 February 1984.

The hearing of the parties by the Chairman of the Board took place at the Council of Europe on 28 February 1984 and was attended by Mr Buhler, Mrs Farcot and their representative Mr Reinhardt, a barrister at the Strasbourg Bar, and by MM. Harremoes, Director of Legal Affairs, Scheuer of Establishment Division, Buquicchio of the Directorate of Legal Affairs and Miss Podestà, representing the Private Office of the Secretary General.

9. In the light of the information in the letter of 25 May 1984 which the parties sent to the Chairman of the Board, the latter exercised his jurisdiction as Chairman and made an order on 31 May 1984 requesting the parties to appear before the Chairman sitting in private on 21 June 1984.

This order was communicated to the parties in a letter dated 4 June 1984.

10. By a letter dated 22 June 1984, the parties were informed that the date fixed for the interview with the Chairman sitting in private at the Council of Europe was 28 June 1984. The interview took place on the scheduled day and was attended by Mr Buhler and some of the other appellants, represented by Mr Reinhardt, and Mr Harremoes, representing the Secretary General.

11. By a letter dated 18 July 1984, the parties were informed that the public hearing had been set down for 17 September 1984.

With the parties' agreement the hearing was postponed to 6 November 1984 and it continued on 7 November 1984.

12. On 12 December 1984, a letter was received from the appellants concerning the fact that they had not been affiliated on 1 December 1984.

13. On 20 December 1984, the Secretary General was requested to make comments on this letter by 5 January 1985.

14. His comments reached the Secretariat of the Board on 27 December 1984.

## THE FACTS

The facts as set out by the parties may be summarised as follows:

15. Mr Buhler and the other fourteen appellants are conference interpreters employed by the Council of Europe on a temporary basis to reinforce the permanent staff.

16. On 30 March 1983, in the wake of the Decision of 23 February 1983 in Appeals Nos. 52 75/ 1981 (Mrs M.-C. FARCOT and others v. Secretary General) lodged by 24 Conference interpreters and applying the criteria set out in that decision, the Secretary General offered the appellants the opportunity of having, in the following terms, “social-security cover which gives protection on the same conditions against the same risks as those against which temporary staff are protected by virtue of the terms of the Agreement of 21 December 1959. This social-security cover is affected by bringing the persons concerned under the French social-security legislation (general scheme) for all risks (industrial accident, sickness, maternity, invalidity, death and old age). In order to supplement the retirement pension paid under the general scheme, provision is also made for affiliation to a supplementary retirement fund, the IRCANTEC. This scheme for temporary staff under the general law replaces the welfare scheme set up internationally by the profession” (*translation*).

17. On 20 April 1983, the Chairman of the International Association of Conference Interpreters (AIIC) sent the following comments to the Secretary General: “in so far as you appear to want to implement the Decision restrictively, we have advised our members, firstly, not to agree to your placing any condition on their affiliation to the general scheme other than their request to be covered by it, and, secondly, to lodge a fresh appeal with the Appeals Board if you maintain the current conditions” (*translation*).

18. On 20 April 1983, the Director of Administration and Finance wrote to the Chairman of the AIIC informing him that the Council of Europe, “following the decision in Farcot and others, has had to distinguish, for the purpose of social-security cover, between two categories of occasional staff according to their economic dependence on the organisation and integration into the interpreting service” (*translation*).

19. By a letter dated 20 April 1984 to the Director of Administration and Finance, the appellants lodged an administrative complaint in which they sought a review of the proposed arrangements in respect of old age.

20. In reply to Mr Farcot’s application of 25 May 1983 for benefit in kind on behalf of his wife, the Strasbourg Caisse Primaire d’Assurance Maladie (Health Insurance Office) informed him by letter of 8 June 1983 that “in application of Article L 285-1° of the Social Security Code, the spouse of a compulsorily insured person is not entitled to sickness benefits where he or she is covered by a compulsory social-security scheme” (*translation*), which is the case with Mrs Farcot.

21. By a letter dated 21 June 1983, the Director of Administration and Finance wrote to the appellants expressing the view that “for those persons to whom it applied and who claim it, the judicial process has thus led to an adjustment in the agreed arrangements concerning old age (...). This precludes additional membership of welfare schemes” (*translation*).

22. On 26 July 1983, the Strasbourg Caisse d’Assurance Maladie sent a letter to the Director of Administration and Finance reiterating its request for a list of the conference interpreters who had employee status. The letter continues: “if no reply is received we shall be obliged to proceed automatically to affiliate those who apply to us for affiliation and shall ask the Union de Recouvrement des Cotisations de Sécurité Sociale et d’Allocations Familiales (URSSAF) (collection agency for social security and family-allowances contributions) of the department of Bas-Rhin to take steps to recover the contributions” (*translation*). A copy of this letter was sent to the appellants’ representative.

23. On 23 November 1983, the Chairman of the AIIC informed the Secretary General that “our members will only maintain this request (i.e. that the Agreements of 1959 and 1979 should both be applied together) in so far as you maintain your current position of purely and simply substituting the national scheme for the five-year Agreement, when the latter clearly envisages that both shall be implemented jointly” (*translation*).

24. In his letter of 12 December 1983, the Director of Administration and Finance sent the Chairman of the AIIC the following information: “It is because of our obligation to ensure that this decision (the Decision of 23 February 1983) is implemented that the interpreters who satisfy the requirements for affiliation to the general scheme of the French social-security system under the Agreement of 21 December 1959 were invited on 30 March 1983 to choose between such affiliation and continuation of the original arrangement for cover” (*translation*).

25. On 16 December 1983, the Director of Administration and Finance informed the Chairman of the AIIC that the five-year Agreement expiring on 31 December 1983 would not be extended beyond that date. The letter continued: “its provisions will accordingly no longer be binding as such, in particular those on which there are diverging views or which are in dispute or on which there have been decisions of the Appeals Board” (*translation*).

26. On 13 January 1984, the Head of, Establishment Division sent the interpreters two standard contract forms, the first of which “provides for any additional health-insurance cover with Stewart-Wrightson and for a contribution to an approved welfare fund” (*translation*), and the second of which “provides for payment of contributions to the general scheme of the social-security system in respect of all risks covered by that scheme and to the IRCANTEC, in accordance with the social-security agreements between France and the Council of Europe” (*translation*). The reply had to be received by 1 February 1984.

27. In a letter of 1 February 1984 to Mrs Farcot the Director of Administration and Finance said that “without being legally bound to do so, the Council of Europe will continue to apply all the provisions of the Agreement which expired on 31 December 1983 for the whole duration of the negotiations, except for matters concerning interpreters’ social-security cover which may come under the general scheme of the social-security system” (*translation*).

28. Dissatisfied with the failure of the negotiations with the Council of Europe for renewing the five-year Agreement, the interpreters went on strike on 2 February 1984.

29. In a letter dated 9 February 1984, the Deputy Secretary General informed Mr Nadaud, the AIIC's delegate, that the Council of Europe undertook to extend the five-year Agreement of 1979 until negotiations between the AIIC and the Co-ordinated Organisations were successfully concluded.

30. On the same day, in a letter to the Chairman of the Appeals Board, the parties sought an adjournment of the hearing planned for 28 February 1984.

31. Following the Chairman's order of 22 February 1984, a meeting attended by the parties and their representatives was held in private on 28 February, in the course of which the explanations they gave of their respective positions were heard.

The Board granted a postponement of the hearing provided that the parties reached an agreement by 28 May at the latest.

32. In March 1984, negotiations took place between the Council of Europe and the Co-ordinated Organisations concerning implementation of the new five-year Agreement.

33. On 2 April 1984, the Council of Europe wrote to the Ministry for National Solidarity seeking approval for the affiliation of the interpreters to the general social-security scheme, with the exception of old-age cover which was to be provided by contributions to a welfare fund set up for the profession as a whole. A copy of the letter was sent to the Chairman of the AIIC.

34. On 10 May 1984, Council of Europe representatives had talks with representatives from the Ministry for National Solidarity.

35. On 21 May 1984, the final round of negotiations took place between the Co-ordinated Organisations and the AIIC concerning the drawing up of the new five-year Agreement.

36. On 10 July 1984, the Director of Administration and Finance wrote to the Ministry for National Solidarity reiterating the request he had made in his earlier letter of 2 April 1984 and asking for a reply as soon as possible.

37. On 13 July 1984, the new five-year Agreement was signed by the Co-ordinated Organisations and the AIIC.

An additional agreement between the Council of Europe and the AIIC was also signed.

38. On 30 August 1984, the Ministry for National Solidarity approved the assimilation of the interpreters as members of the permanent staff. They would be covered by all the provisions of the agreement concerning permanent staff, including membership of the voluntary old-age insurance scheme.

39. On 10 September 1984, the Council of Europe contacted the URSSAF and the Strasbourg Caisse Primaire by telephone.

40. On 11 September 1984, the Council of Europe wrote to the URSSAF referring to the Ministry's approval and seeking the URSSAF's approval.

41. On 14 September 1984, the URSSAF gave its approval to the system proposed on 10 July, subject to the agreement of the Caisse Primaire.

42. On 3 October 1984, approval was given by the Caisse Primaire.

43. On 10 October 1984, the Council submitted the new standard contracts to the AIIC.

44. On 22 October 1984, the AIIC gave its approval to the new contracts.

45. On the same day, the Council of Europe wrote to the interpreters offering them a choice between, on the one hand, affiliation to the general social-security scheme-excluding the old-age risk, which would be covered by the Organisation's and the interpreters' contributions to the Caisse de Prévoyance des Interprètes de Conférence (CPIC) (Conference Interpreters' Welfare Fund) and, on the other, affiliation to the scheme for independent professional persons. The closing date for receipt of the replies was 1 November 1984.

46. On 12 December 1984, the appellants' representative wrote to the Chairman of the Appeals Board informing him that although his clients had all been appointed since 1 December on the basis of the standard contract, "the final calculation of the amounts payable under the 'employee' contracts had not been made".

47. On 27 December 1984, the Secretary General wrote to the Appeals Board and enclosed the following documents:

- a copy of the standard contract offered since 1 December 1984;

- a copy of the Head of Establishment Division's correspondence with the Strasbourg Caisse Primaire indicating the names of the interpreters who had opted for affiliation; and

- a memorandum from the Head of the Finance Division certifying that final payment of the amounts due under the contracts of these interpreters would make allowance for their affiliation as of 1 December 1984.

The Secretary General ended his covering letter accompanying the documents for the Appeals Board with these words: "It is clear from these documents that, contrary to the assertions of the opposing side's counsel, affiliation took effect on the planned date" (*translation*).

## **SUBMISSIONS OF THE PARTIES**

48. The appellants ask the Board to annul the decision of the Secretary General to offer them comprehensive social-security cover including the old-age cover.

Having the decision set aside is calculated to compel the Secretary General to approach the appropriate French authorities with a view to adjusting the five-year Agreement with the AIIC as regards the old-age cover. If there is no such adjustment, the appellants claim entitlement to the double welfare system.

They reserve the right to quantify the damage suffered, and for this purpose they are applying to have an expert appointed.

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

49. The appellants claim that the decision taken by the Secretary General on 30 March 1983 by affiliating the interpreters to the general social-security scheme set up for the profession as a whole, has infringed the general principle of welfare law by which an employee must be provided by his employer with proper social-security cover.

50. Moreover, the offer of affiliation would carry with it the consequence of bringing to an end the benefits produced by the old-age insurance scheme which had been specifically acquired by those concerned by reason of the provisions of the five-year Agreement of 1969 between the AIIC and the Co-ordinated Organisations.

51. This Agreement, which has since been renewed, amounts to an international collective agreement binding on the appellants and on the Council of Europe. The latter, as employer, cannot depart from it unilaterally.

52. In this connection, the appellants dispute the Director of Administration and Finance's letter of 21 June 1983, which states that "in respect of the persons covered by it and who are relying on it, the legal proceedings have accordingly led to an adjustment being made to the agreed arrangements concerning old age, by requiring the Organisation to apply the 1959 Agreement (...)" (*translation*).

53. They point out that no judicial decision can call into question a collective agreement. The appellants refer in this context to the AIIC's letter of 20 April 1983 to the Secretary General, in which mention was made of the fact that such a decision was not binding on the Association.

54. They also point out that the five-year Agreement was not at issue-either as regards the principle of it or as regards its application-in the appeals which gave rise to the Decision of 23 February 1983.

55. They consider that the purpose of bringing this case to the Appeals Board was not to obtain from the Board its view on the incompatibility of applying the Agreement by affiliating those concerned to the general social-security scheme, but rather to penalise the violation of the Agreement by the Council of Europe.

56. The appellants are not claiming a new right but recognition of an existing right stemming from a collective agreement.

They observe, lastly, that the established right derives not from individual contracts but from the collective agreement signed with the AIIC under the five-year Agreement, which is binding on all the Co-ordinated Organisations, including the Council of Europe.

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

57. On the basis of the criteria set out in the Decision of 23 February 1983, the Secretary General exercised his discretion to determine which persons could be affiliated to the general scheme of the French social-security system.

58. He points out, however, that his discretion is fettered as regards the scope of social-security cover. Paragraph 76 of the Decision states that a person must, where he so requests, be given the benefit of social-security cover which gives protection on the same conditions against the same risks as those against which temporary staff are protected by virtue of the terms of the Agreement of 21 December 1959.

59. The offer of affiliation made by the Secretary General to the appellants accordingly embraced all the risks covered by the general scheme applicable to temporary staff (industrial accident, sickness, maternity, death and old age), supplemented by affiliation to a complementary retirement fund, the IRCANTEC.

60. In making this offer, the Secretary General complied with the general principle of welfare law that every employer is obliged to ensure that the staff he employs has proper social-security cover (cf. *inter alia* Article 12 of the European Social Charter).

61. As regards the legal basis on which the affiliation of the interpreters must be carried out, the Secretary General points out that the Decision refers exclusively to the Agreement of 21 December 1959. It follows from this that the provisions of the five-year Agreement concerning interpreters' social security cover have ceased to apply to the appellants.

62. In this connection, the Secretary General observes that the 1959 Agreement and the five-year Agreement set up separate, autonomous social-security schemes and that the component parts of the one cannot be combined with those of the other.

63. Allowing the appellants to benefit, as regards the old-age cover, from the combined operation of both Agreements – namely to enjoy cover by the general scheme and by the special scheme (the Conference Interpreters' Welfare Fund) (CPIC) – would result in double social-security cover for a single risk, and this advantage would be manifestly unjustified and would infringe the principle of equal treatment of staff, as the Court of Justice of the European Communities pointed out ICJEC, Case 48/70 G. Bernardi v. European Parliament (1971) ECR 185).

64. The argument that cancelling affiliation to the CPIC would have the effect of terminating enjoyment of rights acquired by the appellants cannot be accepted. Violation of an established right can only occur in a specific legal context, viz. during the performance of a given contract. The Secretary General notes in this regard that the appellants have a succession of contracts, and in the intervals between them have no legal relations with the Council of Europe.

65. Moreover, infringement of an established right presupposes a deterioration in the appellants' position, in this instance in their social-security cover.

In the Secretary General's opinion, the offer made to them represents, on the contrary, a clear improvement in their individual positions.

66. The Secretary General consequently considers that the appellants' claim respecting possible damage is unfounded.



## THE LAW

67. The appellants have brought their appeal against the Secretary General's decision to affiliate them to the general French social-security system, including the old-age cover, the cover for which is to replace the scheme set up by the Conference Interpreters' Welfare Fund (CPIC).

They seek to have this decision set aside in that it does damage the system of old-age provision which is special to the profession and to which they claim to have an acquired right.

They are also asking the Board to:

- order the Council of Europe to affiliate all the appellants who so request to the general social security system on penalty of a 500 FF fine for each day's delay once 8 days have elapsed after each appellant's application;
- order the Council of Europe to take the necessary steps with a view to aligning the five-year Agreement with affiliation to the general scheme on penalty of a 500 FF fine for each day's delay once 8 days have elapsed after the decision;
- hold that otherwise the appellants shall be entitled to the double system of insurance, the cost of which shall be borne entirely by the Council of Europe;
- reserve the appellants the right to quantify the damage they have suffered on the Council of Europe's account;
- order the Council of Europe to *pay* each appellant the sum of 15 000 FF as an advance to cover the damages; and
- order the Council of Europe to pay the costs incurred in the present appeals.

68. The Secretary General maintains that the decision in dispute containing the disputed offer of affiliation is in accordance with the Decision of 23 February 1983, which grants conference interpreters social-security cover for the same risks as those for which temporary staff are covered under the Agreement of 21 December 1959 and on the same terms.

### **As to the main issue of appeal**

69. Under paragraph 2 of Article 59 of the Staff Regulations, a "staff member who has a direct and existing interest in so doing" has standing to complain of "an administrative act adversely affecting him".

This provision, which defines the notion of victim, lays down the circumstances in which a person affected by the act or omission in dispute is entitled to take action. The interest which the person concerned must demonstrate must be direct i.e. it must be capable of having an impact which is personal, and actual, that is to say the impact must continue to exist for so long as the case has not been determined.

70. The question whether an appellant can claim to be a victim in this sense of an act adversely affecting him remains relevant throughout the proceedings instituted by him before the Appeals Board.

71. The Appeals Board has before it a number of appeals which seek to annul acts adversely affecting the individual rights of the appellants.

72. In the present case, it is not disputed that when they brought their appeals the appellants had an interest in establishing that the Secretary General had infringed the rights they are seeking to have enforced.

In addition, after the parties had exchanged written pleadings and in the framework of collective work relations between the AIIC and the Co-ordinated Organisations, including the Council of Europe, an agreement between the Co-ordinated Organisations and the AIIC was signed on 13 July 1984.

73. By the terms of Article 15 of this Agreement, which is also binding on the appellants, “interpreters residing and working in France or on an official journey abroad for an Organisation or one of its subsidiary bodies based in France may be affiliated either to the Caisse Mutuelle des Professions Libérales (Independent Professions’ Mutual Fund) or to the general scheme of the French social-security system (excluding the old-age cover)” (*translation*).

74. An additional agreement concluded between the Council of Europe and the AIIC on the same day provides in this connection: “The Council of Europe undertakes, however, to open negotiations with the French authorities with a view to enabling interpreters to become affiliated to the old-age insurance scheme on a personal basis by voluntarily paying contributions for the purpose” (*translation*).

75. By a letter dated 22 October 1984, the Council of Europe offered the persons concerned the possibility of choosing between affiliation to the general French social-security scheme-excluding the old-age cover-and affiliation to the independent professions’ scheme.

At the public hearing on 6 November 1984, the representative of the appellants agreed, in their name, to their affiliation as employees to the general French social-security scheme.

76. Moreover, it appears from the letter of 27 December 1984 from Mr Harremoes to the Appeals Board, a copy of which was sent to the appellants, that affiliation to the social-security scheme will have effect retrospectively from 1 December 1984.

77. It follows from the foregoing that the agreement between the Council of Europe and the AIIC has satisfied the appellants’ claim. It has had the effect of removing the cause of the dispute as put before the Appeals Board and consequently it has brought to an end any interest the appellants would have had in persevering with the appeals.

#### **As to the claim for compensation**

78. The appellants are seeking compensation for the damage caused by the Council of Europe’s delay in carrying out the Decision of 23 February 1982.

79. Now, the Appeals Board having concluded that the object of the proceedings had ceased to exist, the act complained of has not been annulled. Under the terms of the last part of paragraph 2 of Article 60 of the Staff Regulations, compensation for alleged damage presupposes that the act complained of will first have been annulled. It follows from this that the Appeals Board cannot accept the claim for compensation made by the appellants. Nor is it for the Appeals Board to give effect to the appellants' reservation.

**As to the applications for penalties**

80. Neither paragraph 2 of Article 60 of the Staff Regulations nor the Statute of the Appeals Board give the Board the power or the jurisdiction to order the penalties which in this case were requested by the appellants during the hearing on 6 November 1984.

For these reasons,

The Appeals Board

Declares the appeals unfounded;

Dismisses them; and

Orders that each party shall bear its own costs.

Given in public in Strasbourg on 1 March 1985, the French text of the Decision being authoritative.

The Secretary to the  
Appeals Board

M. de SALVIA

The Chairman of the  
Appeals Board

W.J. GANSHOF VAN DER MEERSCH