*Registry's translation, the French text alone being authoritative.*

**SEVENTY-SIXTH SESSION**

# *In re* BALL and BORGHINI

**Judgment 1329**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr. Derek Ball and Mr. Michel Borghini against the European Organization for Nuclear Research (CERN) on 11 November 1992 and corrected on 18 December 1992, CERN's replies of 14 April 1993, the complainants' rejoinders of 18 June and the Organization's surrejoinders of 24 September 1993;

Considering the applications to intervene filed by:

J.-P. A Marca

G. Acquistapace

M. d'Adhémar

G. Adrian

F. Aeschimann

V. Agoritsas

A. Albiker

L. Aliu

G. Allaman

M.-N. Alliod

P. Alliod

X. Altuna

J. Alvera

B. Amacker

L. Amevet

T. d'Amico

H. Ancey

P. Anderssen

J. André

R. Angelloz-Nicoud

G. Antoinet

H. Arandel

J.-C. Armand

A. Arn

C. Arnaud

H. Atherton

A. Auberson

J.-P. Audebert

M. Audria

R. Audria

R. Augier

M. d'Auria

J.-P. Avondo-Bedone

M. Aymon

G. Azzoni

R. Bachelard

J. Baczynski

J.-M. Baillod

P. Bailly

G. Bain

S. Baird

L. Baisin

D. Bakker

F. Bal

C. Baleur

C. Ball

R. Bapst

S. Bapst-Deville

M. Barbi

A. Bardin

A. Barlow

J.-C. Baronnet

M. Barranco-Luque

M. Barth

M. Bärtschi

C. Bastie

S. Battisti

C. Baubry

M. Baucher

C. Baud

G. Baud

J.-P. Baud

R. Baud

S. Baudet

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R. Baum

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B. Bel

J.-F. Bel

A. Belk

A. Bellanger

J. Belleman

M. Beltrando

J.-L. Bénichou

J.-C. Benoît

B. Benoît-Jeannin

G. Berard

R. Berard

M. Berardo

A. Bergamaschi

P. Berlinghi

R. Bernard

P. Bernardini

J. Bernasconi

D. Berthet

R. Bertinotti

S. Berto

C. Bertoux

J.-C. Bertrand

J.-P. Bertuzzi

L. Besson

A. Bezaguet

G. Bezard-Brown

E. Bianchi

J. Bilger

J.-P. Bindi

C. Bizeau

H. Blaha

W. Blair

J.-L. Blanc

R. Blanc

J. Blanchard

F. Blas

J.-P. Blaser

N. Blazianu

H. Blessing

André Blin

Antoine Blin

J. Blondel

P. Blondelle

J.-M. Boban

P. Bobbio

G. Boch

G. Bochaton

M. Bochicchio

M. Boffard

O. Bohner

D. Boileau

R. Boileau

D. Boimond

R. Boiry

Y. Boisard

C. Boissat

J.-P. Boiteux

G. Boixader

M. Bole-Feysot

A.-M. Bolomey

G. Bonfillou

M. Bongiovanni

G. Bonnefond

L. Bonnefoy

M. Bonnet

H. Bont

J. Bonthond

G. Bonvallet

L. Borcier

M. Bornet

P. Bossus

H. Bouchat

J.-M. Bouché

J. Boucher

R. Bouhot

W. Boult

R. Bouquin

R. Bourgeois

J.-C. Bourigault

P. Bouriot

J.-M. Bousset

G. Bouvry

R. Bouvry

M.-H. Bovard

J.-P. Brachet

D. Brahy

L. Braize

M. Branchard

J.-P. Brand

K. Braun

J. Brendle

P. Bresciani

R. Bresson

P. Bricchi

L. Briot

R. Brocard

M. Brolli

E. Brouzet

P. Brown

R. Brown

D. Brozzi

Y. Bru

P. Brummer

G. Brun

R. Brun

B. Brunel

J.-C. Brunet

M. Brunet

E. Buchschacher

L. Buffaz

C. Bugnone

R. Bühler

J. Buon

G. Burdet

P. Burkimsher

H. Burmeister

A. Burns

G. Busetta

C. Buttay

G. Cachin

N. Caillet

S. Cairanti

A. Calderone

J. Camas

R. Cambarrat

W. Cameron

R. Campergue

D. Campi

P. Camus

C. Camut

P. Canard

G. Caniac

S. Cannon

G. Canova

J. Capestrani

J.-D. Capt

M. Carchia

F. Carena

W. Carena

J.-C. Carlier

D. Carminati

M. Caron

D. Carpentier

E. Carpin

J.-C. Carpin

Y. Carrère

I. Carriero

G. Carron

C. Carter

A. Cass

R. Castant

A. Castel

G. Castelli

J. Cathenoz

M. Cathenoz

R. Catherall

J.-C. Catin

G. Cavallari

A. Cavalli

P. Cavallo

M. Cayla

R. Ceccato

L. Ceccone

C. Cerruti

R. Chacornac

P. Chaffard

D. Chalamet

C. Challes

C. Chalons

M. Chambardon

R. Chanut

A. Chapman-Hatchett

J. Chapuis

C. Charlotton

F. Charmot

P. Charra

P. Charrue

B. Charveys

M. Chassard

J. Chasseloup de Laubat

M. Chatel

A. Chavanel

H. Chenavard

A. Cheneval-Pallud

J.-L. Chevalley

T. Chevret

Y. Chevret

E. Chiaveri

G. Chil

V. Chohan

C.-M. Chollet

Yvette Cholley

Yvon Cholley

J. Chouard

A. Chouvelon

D. Claes

R. Claret

G. Claude

B. Clerc

S. Clerc

F. Cliff

R. Coccoli

E. Cochet

D. Cocq

R. Coignée

A. Coin

A. Cojan

G. Colin

R. Collomb

G. Collongues

M. Comte

J. Conciencia

M. Condemine

F. Coninckx

A. Contat

R. Contival

H. Conus

M. Corcelle

D. Cornuet

F. Cossey Puget

M. Coti

H. Coudray

M. Couturier

G. Cuccuru

A. Cuenca-Perez

R. Cuenot

G. Cumer

P. Da Costa

S. Dalbignat

J. Dall'Igna

D. Dallman

G. Dalloz

M. Dalloz

M. Damiani

A. Daneels

M. Danesin

P. Danzeisen

S. Datta-Cockerill

F. Daveine

D. David

E. David

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M. Decombaz

R. Décombaz

P. Defert

C. Degrange

C. Dehavay

D. Dekkers

R. Del-Monaco

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Y. Delenclos

M. Delidais

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R. Della Biancia

R. Delsole

E. Deluermoz

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D. Denuzière

H. Depierre

N. Dépierre

M. Derosiaux

M. Deroussent

P. Deroyer

C. Desbissons

B. Desforges

C. Desmaris

C. Despas

R. Desperier

M. Desroziers

J.-M. Dessi

D. Deville

S. Di Pietro

M. Diedrich

R. Dillon

M. Diraison

M. Disdier

N.-D. Dixon

G. Dolivet

A. Doméniconi

J. Doméniconi

G. Dominichini

F. de Donato

P. Donnat-Bouillud

J. Donnier

J. Doody

V. Doré

T. Dorenbos

J. Drecourt

G. Drouet

P. Droux

G. Dubail

P. Dubief

M. Dubois

C. Ducastel

B. Ducret

N. Dudragne

M. Dufourd

B. Dumas

G. Dumont

A. Dumur

L. Dunand

N. Dunand

D. Dupraz

P. Duraffourg

J. Durand

M. Durand

M. Duret

E. Durieu

B. Duthion

J.-M. Dutour

N. Eatough

C. Ecarnot

H. Elattar

M. Ellefsplass

H. Emery

G. Engelmann

T. Ericson

C. Escaffre

J.-L. Escourrou

M. Etienne

L. Even

M. Eveno

H. Excoffier

J.-P. Fabre

J.-C. Fabris

R. Faes

M. Farastier

J.-J. Farey

M. Faure

C. Favre

A. Fayet

R. Feix

G. Ferioli

A. Feron

C. Ferrari

G.-P. Ferri

G. Fersurella

A. Fiebig

C. Fischer

J. Fivet

M. Flachat

A. Flamand

H. Flotow

M. Fluckiger

G. Focker

A. Folley

L. Fonovich

J. Fontaine

M. Fontanet

R. Forrest

H. Fouilloux

G. Fournier

A. Fowler

J.-M. Fraigne

D. Fraissard

J. Fraisse

J.-C. Frances

F. Francia

A. François

G. Françon

P. Frandsen

M. Frauchiger

G. Frick

P. Frolot

C. Fromm

D. Fromm

J.-C. Frot

M. Frot

J. Fullerton

F. Gagliardi

D. Gagnière

H. Gaillard

Y. Gaillard

B. Gaillard-Grenadier

P. Galbraith

G. Gallay

J.-C. Gallois

B. Galmant

C. Galmant

A. Gandi

J.-L. Garavel

J.-F. Garçon

Y. Gardette

J. Gardies

P. Garel

J. Gareyte

V. Garlenc

R. Garoby

M. Gasparini

A. Gasser

P. Gauss

M. Gautier

R. Gay

D. Geiss

R. Genand

J.-P. Gendras

M. Genet

J. Genevois

C. Genier

M. de Gennaro

C. Gentet

M. Geoffroy

V. Gérard

P. Geroudet

J.-C. Gervais

P. Gervasoni

M. Gevrey

G. Geydet

F. Ghinet

M. Giesch

J.-M. Giguet

J. Gilquin

D. Girard

M. Girardini

A. Girardoz

F. Giudici

P.-A. Giudici

M. Glaser

B. Goïcoechea

M. Goossens

P. Gorce

W. Gorlitz

J.-J. Gottraux

M. Goujon

P. Gourcy

I. Graf

J. Graff

J.-M. Grand'Homme

G. Granger

G. Grangier

N. Grant

D. Graskamp

C. Gregory

C. Grenouilleau

P. Griessen

C. Griggs

G.-P. Grillet

J. de Groot

M. Gros

C. Groscarret

M. Grospiron

J. Groz

F. Guénéhec

C. Guenin

J. Guérin

L. Guerrero

A. Guiard-Marigny

G. Guignard

A. Guillaume

J. Guillet

C. Guillet-Dauphiné

M. Guillon

J. Guiraud

J.-C. Guiraud

W. Gunder

G. Gurrieri

D. Guyon

R. Guyon

M. Gyr

J. Haffner

J.-B. Hainaud

M. Hajdinjak

B. Hallgren

J. Halon

P. Hannhart

R. Hänni

J.-M. Hanon

M. Hansroul

M. Hausermann

H. Hayes

H. Heijne

G. Henchoz

L. Henny

M. Hénoux

E. Heritier

C. Herman

L.-G. Hernberg

P. Herzog

A. Hester

A. Hilaire

N. Hilleret

P. Hirbec

Y. Hog

R. Hoh

M. Hourican

M. Howie

J.-P. Huber

G. Huet

A. Hugi

B. Hugot

S. Hutchins

J. Igo-Kemenes

A. Ijspeert

H. Isch

C. Isnard

D. Jacob

A. Jacquemin

C. Jacquemoud

A. Jaeger

R. Jaggi

W. Jank

M. Jeanrenaud

M. Jenin

M. Jimenez

L. de Jonge

F. Josa

M. Jouhet

J. Jourdan

C. Jouve

G. Juban

J.-F. Juget

J.-C. Juillard

F. Julliard

L. Kaczmarek

R. Kaiser

E. Kaiser-Bouzelmat

K. Karner

T. Kehrer

M. King

C. Kirchner

A. Knight

G. Knott

J. Knott

J. Koopman

R. Kopp

L.-J. Kottelat

H. Kropf

M. Kubly

H.-K. Kuhn

H. Kummer

A. Kupferschmid

I. Kurth

A. Küttel

F. Küttel

A. Lacourt

C. Lacroix

D. Lacroix

M. Lafaverges

J.-P. Lagrue

J. Lahaye

B. Lambert

M. Lamidon

G. Lamoureux

P. Lançon

J.-C. Langelez

H. Laporte

J.-P. Lappe

G. Larour

G. Lartigue

J.-C. Lassalle

R. Lassausaie

A. Lasserre

R. Laude

S. Laudet

G. Launay

S. Lauper

M. Laurent

L. Lauri

P. Le Cossec

M. Le Gras

N. Le Vasseur

G. Lebée

B. Lebegue

P. Lebrun

P. Leclère

G. Lecoeur

A. Lecomte

P. Lecoq

C. Leech O'Neale

P. Lefèvre

L. Leggiero

P. Legrand

P. Lelourdy

F. Lemeilleur

P. Lenot

J. Lepagnot

D. Leroy

G. Leroy

E. Lessmann

C. Lestienne

P. Lestienne

M. Letheren

M. Letisserand

J. Letort

L. Levrat

Alain Levrier

Antonia Levrier

K. Ley

B. Libera

G. Linser

C. Lissajoux

J. Lissajoux

G. Lobeau

K.-D. Lohmann

G. Lohr

P. Loïez

B. Lombard

S. Long

J.-L. Loquet

R. Lorenzi

P. Loridon

B. Louchet

P. Loup

F. Louvet

P. Luc

L. Lunardi

H.-D. Lustig

A. Lütke

B. Lutz

A.-J. Mabut

C. Mader

E. Magnani

R. Magnier

F. Magnin

B. Maire

J. Maire

P. Malacarne

R. Mallay

M. Mandray

M. Manent

D. Manglunki

J. Mann

J.-P. Maquenne

C. Marcel

H. Marchal

A. Marchand

C. Margaroli

A. Marin

C. Marin

J.-C. Marin

M. Marquet

F. Martin

G. Martin

J. Martin

D. Martine

H. Martine

G. Martinez

Patricia Martucci

Pietro Martucci

H. Masseboeuf

F. Masset

A. Masson

B. Masson

L. Mastrostefano

R. Matet

J.-P. Matheys

G. Mathis

N. de Matos

B. Maulini

R. Mauris

M. Mayor

M. Mayoud

J. Mazars

A. Mazzari

C. Mazzari

F. McIntosh

J. Melin

R. Menazzi

D. Menoni

C. Menot

G. Merighi

D. Mertina

M. Métais

K.-D. Metzmacher

G.-H. Meyer

H. Meyer

N. Mezin

J.-F. Michaud

E. Michaux

R. Milan

C. Millerin

M. Minella

M. Miolane

D. Mir

R. Mirmand

E. Mitis

R. Mohr

A.-F. Molat-Berbiers

G. Momeux

M. Monesi

R. Monet

M.-T. Monnet

E. Monney

J. Monteiro

C. Montuelle

J. Montuelle

J. Morand

P. Morel

J.-P. Morellet

P. Moret

D. Moriaud

M. Moskofian

J. Motz

G. Mourgue

R. Mourier

D. Mouton

B. Moy

G. Mugnai

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Rolf Müller

V. Munda

R. Mundwiller

S. Muratori

M. Musso

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M. Nawrocki

J. Nebout

K. Neil

R. Nettleton

D. Nibbio

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G. Niel

M. Nielsen

Y. Ninet

E. Nitsch

M. Noldin

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C. Oberto

G. Olesen

R. Olsen

A. Orêve

J. Ottaviani

G. Ozun

C. de Pablos

M. Paccani

G. Paillard

D. Parchet

C. Parthé

B. Pasche

A. Pasquale

J.-P. Pasquet

G. Passardi

L. Passardi

G. Patron

G. Patti

D. Peach

G. Pecheur

R. Péder

R. Pégaitaz

D. Pégat-Toquet

G. Peiro

J.-M. Pelissier

J.-L. Penaud

E. Penny

P. Pequignot

S. Péraire

F. Pérez

C. Perlemoine

M.-C. Perler

A. Perosino

L. Perraud

J.-C. Perreard

A. Perrelle

J.-C. Perrier

J.-J. Perriraz

F. Perrissou

B. Perritaz

A. Perrot

L. Persello

E. Peschardt

B. Petiot

P. Petit

C. Petit-Jean-Genaz

J. Pett

D. Peytoud

A. Philipona

J. Philippe

R. Piccarreta

G. Pierre

L. Pigni

J.-C. Pinasseau

C. Pinaud

G. Pinaud

P. Pinget

C. Pinto-Pereira

B. Pires

G. Pistolato

M. Pittet

R. Pizot

M. Plaisantin

M. Plasse

R. Platteaux

A. Ployer

R. Ployer

J.-C. Poirier

J. Polaillon

A. Poncet

M. Ponzo

R. Popelin

F. Pouyat

H. Preis

P. Prévost

M. Primadei

K. Protoulis-Dalmaz

D. Prud'Homme

G. Pythoud

F. Quanquin

A. Querrou

L. Quiquandon

M. Quittoud

M. Rabany

M. Rabian

M. Rabian-Content

M. Raclet

U. Raich

G. Rajchman

J. Ramillon

S. Rangod

N. Rasmussen

G. Rau

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J. Raux

B. Raynard

E. Regat

A. Regelbrugge

D. Regin

I. Reguero

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V. Remondino

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J. Renaud

Y. Renaud

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Z. Rendetzky

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A. Renoux

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P. Rey

R. Rey-Mermier

C. Reymermier

S. Reynaud

T. Reynes

J.-B. Ribes

C. Ricciardi

Y. Richard

H. Rieder

L. Rinolfi

S. Ritossa

D. Rivalli

C. Rivoiron

G. Robbiano

A. Roberts

J. Robin

M. Robin

J. Roche

G. Rochepeau

F. Rodriguez

A. Roguet

C. Rollinger

G. Rollinger

J. Romand

J.-P. Roméro

D. Rosset

Y. Roussel

C. Roy

J.-P. Royer

M. Royer

E. Rugo

C. Ruiz-Llamas

A. Russo

D. Rybkowski

P. Saillard

E. Saint-Aubert

J.-M. Saint-Viteux

F. Saldana

J.-P. Salmon

H. Salomon

M. Samson

A. Sanders

S. Santiago

G. Santiard

C. Sanz Martin

Y. Sayot

J. Sbaraglia

R. Schall

A. Scharding

J.-P. Scheffre

B. Schellenberg

J.-D. Scheurer

P. Schilly

G. Schmidlin

W. Schmidt

C. Schmitt

M. Schmitt

J.-P. Schnewlin

F. Schöfel

R. Schweitzer

P. Segarra

M. Seguin

C. Seidl

M. Seinera-Buffo

I. Seis

M. Seissau

P. Séraphin

G. Serras

J.-L. Servais

M. Sheehan

P. Sievers

J.-M. Siffredi

M. Sillanoli

J. Simeoni

A. Simon

P. Simon

W. Simon

G. Simonet

R. Simonin

F. Siohan

J. Sladen

L. Soby

E. Soff

A. Solioz

A. Sonzogni

M. Sorrenti

H. Soubeyran

J. Soubeyran

G. Soulière

B. Southworth

K. Spiegel

R. Spigato

G. Spigo

A. Spinks

M. Sporli

R. Stöckli

M. Streit-Bianchi

M. Studer

B. Stumpe

D. Stungo

M. Stuwe

G. Suberlucq

D. Swoboda

B. T'Hart

G. Tallet

M. Tardy

M. Tarrant

M. Tavlet

B. Taylor

D. Taylor

T. Taylor

B. Tercier

A. Thérond

M.-F. Thevenet

M. Thevenon

C. Thiboud

G. Thirolle

J.-M. Thomas

J.-C. Thomi

B. Thony

A. Togninalli

B. Tomat

T. Tortschanoff

J. Toullieux

C. Tournu

G. Tranquille

M. Trebulle

M. Tremblay

P. Trilhe

B. Trincat

G. Trinquart

M. Truchet

D. Tserkezoglou

S. Turner

M. Tyrrell

M. Uldry

J.-L. Valaud

M. Valceschini

B. Valentin

D. Vallet

P. Vallois

C. Van der Vlugt

O. Van der Vossen

A. Van Hove

R. Van Robays

P. Vande Vyvre

M. Vannier

P. Vannier

J. Vanoli

C. Vasseur

L. Veillet

F. Vermeille

D. Vernamonte

J. Vernois

H. Vestergard

E. Vial

J.-P. Vidal

H. Vigier

O. Vigne

J.-M. Vigneau

P. Villard

Patrick Viret

Pierre Viret

T. Visser

M. Vitasse

S. de Vito

D. Vivien

R. Volck

C. Vollerin

S. von Wartburg

L. Vos

M. Vosdey

M. Vretenar

C. Vuitton

B. Vullierme

M. Wachnik

L. Walckiers

A. Wang

E. Watson

G. Waurick

R. Wilhelm

W. Wilkens

J. Wilkinson

I. Willers

D. Williams

M. Wilson

G. Winkler

T. Wiszniowski

F. Wittgenstein

P. Woillet

J. Wolf

M. Zahnd

G. Zambelli

P. Zampaglione

M. Zanolli

A. Zimmer

E. Zimmermann

N. Ziogas

J. Zueras

R. Zurbuchen

Considering Articles II, paragraph 5, and VII, paragraphs 1 and 2, of the Statute of the Tribunal, Article V, paragraph 5, of the Convention for the Establishment of a European Organization for Nuclear Research, Articles 6 and 9 of the Rules of Procedure of the CERN Council, Rules IV 1.01, VI 1.01 and VII 1.03 and Regulations R IV 1.01, R VII 1.01 and R VII 1.02 of the CERN Staff Rules and Regulations;

Having examined the written submissions and decided not to order hearings, which none of the parties has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Regulation R IV 1.01 of the Staff Regulations of CERN, which has its headquarters in Geneva, states that "when reviewing remuneration, the Council shall use as a guide an index, the composition and method of calculation of which it shall determine". On 20 December 1979 the Council of CERN accordingly decided on the procedure and method to be followed for five-yearly review of staff pay and annual review of the salary scale. The text of the decision explained that the purpose of the five-yearly review was to establish financial and social conditions for CERN staff that would be in line with the situation in member States; the purpose of annual review was to adjust the scale of basic salaries set in the five-yearly review by reference to the agreed salary index, and the rate of adjustment took two factors into account, trends in the cost of living at Geneva from August to August and the level of pay in the Swiss civil service.

At a meeting on 23 June 1989 the Council decided to set up a body made up of representatives of member States, management and staff that was known at first as the Consultative Committee, and then as the Tripartite Advisory Committee, on Conditions of Employment and to have it study the findings of the five-yearly review that the Administration had carried out earlier that year.

On 14 December 1989, at the close of the annual review in 1989, the Council decided to approve the salary adjustment for 1990 in disregard of the second factor, pay in the Swiss civil service.

The Tripartite Committee's report of 7 June 1990 to the Council offered three differing opinions about the level of pay.

At a meeting on 22 June 1990 the Council decided to raise salaries by 1 per cent as from 1 July 1990 and ask the Administration to start negotiating with the Staff Association. The negotiators agreed when meeting on 29 August 1990 that basic salaries should go up by 6.4 per cent in four instalments: by 1 per cent at 1 July 1990, as decided on 22 June 1990; by 2.4 per cent at 1 January 1991; by 1.5 per cent at 1 January 1992 and by 1.5 per cent at 1 January 1993.

On 11 December 1990 the Finance Committee submitted to the Council recommendations that were based on a motion by a member State, the Netherlands. On 14 December the Council approved a total salary increase of 2 per cent as from 1 January 1991 in the context of the five-yearly review, and a rate of adjustment of 5.09 per cent for 1991.

On 17 and 18 December 1991 the Administration submitted its proposals on the rate of adjustment for 1992 to the Finance Committee and the Council: the cost-of-living increase at Geneva warranted a weighted average salary adjustment of 5.37 per cent; and after review of pay in the Swiss civil service there should be a comprehensive increase of 1.67 per cent over and above the rate of inflation.

On 18 December 1991 the Finance Committee approved the Administration's proposals about the cost-of-living increase. On 20 December the Council introduced a new procedure for voting in the Finance Committee: as from 1 January 1992 the Committee's decisions were to be taken by a "double" majority: a majority of Members and a majority that accounted for 55 per cent of Members' contributions to the Organization's budget. At the same meeting the Council approved an increase in salaries of 5.5 per cent for 1992.

Mr. Ball, who joined CERN in 1959, was elected Vice-Chairman of the Staff Association in January 1991. Mr. Borghini was recruited in 1965 and was elected Chairman of the Staff Association in June 1990.

On 15 January 1992 the complainants received pay slips for that month and saw that their basic salary had gone up by 5.7 per cent which meant an increase of about 0.1 per cent in real terms.

By letters of 3 March 1992 they appealed as "elected representatives of the staff and individually" to the Joint Advisory Appeals Board against both the Council's decision of 20 December 1991 and the individual decisions in their pay slips.

On 3 July the Joint Advisory Appeals Board refused to make any recommendations to the Director-General on the grounds that it was not competent to review the Council's decisions.

By letters of 17 August 1992 - the decisions impugned - the Director-General rejected the appeals as irreceivable insofar as they challenged "a general decision of the Council" and as devoid of merit insofar as they challenged "individual decisions applying the Council's decision" and alleged "no breach of the Staff Rules and Regulations or individual contractual rights".

B. The complainants are impugning, first, the Director-General's decisions to reject their internal appeals as irreceivable and devoid of merit.

They contend that they did plead breach of several Rules and Regulations. What is more, the impugned decisions offend against general principles of international civil service law and commitments by CERN authorities towards the staff.

The "general" nature of the decision of 20 December 1991 was not a reason either for treating their internal appeals as irreceivable. For one thing, Article II of the Tribunal's Statute does not restrict its competence to complaints against individual decisions, and a strong line of precedent has it that "the right to impugn a decision subsumes the right to challenge the rule on which the decision is founded". So a decision may be impugned either directly or by challenging the lawfulness of the basis for it. Again, it is wrong to say that the Council's decision is unchallengeable because the Council is an inter-governmental decision-making body.

The complainants are contending, secondly, that the Council's decision of 20 December 1991 shows several flaws.

One is that neither the five-yearly salary review in 1990 nor the annual review in 1991 that preceded the impugned decision was done properly.

The Staff Association was constantly kept out of the decision-making process, though Rule VII 1.03 and Regulation R VII 1.02 require the Director-General to consult the staff on general questions concerning them. In June 1990 the Council did not endorse the Tripartite Advisory Committee's proposals but merely approved a new method of negotiating. It based its decision of 14 December 1990 not on the outcome of the negotiations in the summer of 1990, but on the Dutch motion. In the annual review for 1991 it disregarded the figure that the Administration and the Staff Association had agreed upon. By discounting the outcome of the negotiations between the Administration and the Staff Association - after itself asking for them - the Council was in breach of the principles of good faith and stability in law.

Furthermore, the Council's vote of 20 December 1991 was improper in that it offended against Article V, paragraph 5, of the Convention for the Establishment of a European Organization for Nuclear Research by introducing the "double" majority for financial decisions.

Lastly, no reasons are stated for the general decision setting pay or for the Director-General's final decisions.

The complainants' second plea is that CERN disregarded the rules and the substantive criteria for adjusting pay which it set in 1979 and has consistently applied ever since.

They concede that the Council may set and periodically review salary scales - indeed Rule IV 1.01 says that it shall - and that it has discretion in doing so. But they maintain that once the competent authority has laid down the procedure and method to be followed in adjusting pay it is itself bound to comply. Yet three times - in 1989, 1990 and 1991 - the Council's reckoning of the salary index was utterly arbitrary and ignored the method approved in 1979. As a result the complainants have, they allege, suffered a loss of at least 6 per cent in earnings over three years. So CERN has failed in its duty to treat its staff fairly and in good faith.

They ask the Tribunal to quash the Director-General's decisions of 17 August 1992 and award them costs.

C. In its replies CERN does not challenge the receivability of the internal appeals against the individual decisions in the pay slips of January 1992. But it submits that the appeals against the Council's decision of 20 December 1991 were irreceivable under Rule VI 1.01, which says that "every member of the personnel shall have the right to appeal against any decision of the Director-General concerning himself". Furthermore, according to the Tribunal's case law, the complaints are receivable only insofar as they challenge the individual decisions applying the Council's general one. And the indirect challenge to the individual decisions applying the Council's decisions of 1989 and 1990 is out of time.

On the merits CERN submits that none of the complainants' pleas is sound.

Rule VII 1.03 and Regulation R VII 1.02 require consultation, not between Council and Staff Association, but only between Association and Director-General. So the Council's decision of 20 December 1991 was not in breach of those provisions.

When it asked the Administration on 22 June 1990 to enter into direct negotiation with the staff the Council did not relinquish its sovereign power of decision.

The Council's new rule about the "double" majority affected voting only in the Finance Committee and did not take effect until 1 January 1992.

The Council is not bound to state reasons for general decisions and the Director-General did state the reasons for his decisions of 17 August 1992.

The method of adjusting pay used since 1979 and the prescribed procedure were followed in 1992. In any event the index provided for in Regulation R IV 1.01 for the periodic salary review is not binding in law.

D. In their rejoinders the complainants state that although the Staff Association may not itself go to the Tribunal they are appealing as members of the Association to secure the enforcement of the rights of the staff as a whole. Besides, CERN has said that it would not challenge receivability on that score.

In the complainants' submission CERN is mistaken in pleading that their complaints are in part irreceivable. Rule

VI 1.01 means that an administrative appeal must first be made to the Director-General against a decision by someone else. So appeal does not lie only against decisions by him. Furthermore, under Article II of its Statute the Tribunal's competence is not restricted to complaints against individual decisions.

CERN does not deny that the Council's decision may be challenged on the grounds that it affords an unlawful basis for decisions. By the same token the Council's decisions of 1989 and 1990 too may be challenged. The legal basis for the individual decisions notified on 15 January 1992 was the Council's decisions of 20 December 1991 and of the two previous years. What the complainants are challenging is not the individual decisions prior to January 1992 but the new individual one applying the Council's decisions of 1989 and 1990.

On the merits the complainants concede that the Director-General is the go-between in consultations between Council and Staff Association; but for consultations to serve any purpose the Council must be kept informed as the body empowered to make final decisions.

The Council decided to hold proper negotiations and accept in full the legal consequences of the outcome. When the proposals that came out of the negotiations were rejected the negotiations should have resumed since the Council's decision had amounted to a promise to the staff. The Council acted in bad faith and abused the staff's trust.

The Council's rule about the double majority was applied prematurely. The Council refused to endorse the Finance Committee's recommendation on the pretext that that majority had not been attained, though the decision requiring it had just been taken and was not supposed to take effect for twelve days.

The Council's decision of 14 December 1990 did not bring the five-yearly salary review to a close. The Council disregarded the outcome of the negotiations in the summer of 1990 between Administration and staff about pay rises at 1 January 1992 and 1 January 1993. There should have been further increases in 1992 and 1993, over and above the annual one, under the five-yearly review.

As for the annual adjustment for 1992, the procedure was flawed and, just to save money, the Council did not apply the proper method.

E. CERN contends in its surrejoinders that the complaints are irreceivable inasfar as the complainants are acting as staff representatives and denies ever admitting them as receivable on that score. They are further irreceivable insofar as they challenge the Council's decisions of 1989 and 1990. To challenge an individual decision a staff member may plead the unlawfulness of the general decision it rests on. But here the only general decision that affords the basis in law for the individual decisions of January 1992 is the one of 20 December 1991, and it alone may be challenged in that way. Letting the appeal lie against decisions taken years ago would impair stability in law within the Organization.

In subsidiary argument on the merits CERN submits that consultations between the Staff Association and the Council are not required in law.

The vote at the Council's meeting of December 1991 was proper; the usual rules on the simple majority were observed, though some delegations did think it odd that the matters at issue should be settled by a majority of Members that contributed but a small part of the budget.

As to the absence of a statement of reasons for the Council's decision of 20 December 1991, Articles 6 and 9 of the Council's Rules of Procedure do not require any such statement. The reasons for the decision of 17 August 1992 were stated.

The Council's decision of 14 December 1990 did end the five-yearly salary review, as is plain from the records of its meeting of that date, and it did observe the procedure and method set in 1979.

CONSIDERATIONS:

1. The Council of CERN sets each year the rate corresponding to the "weighted average salary adjustment". On 20 December 1991, by fifteen votes to none and with one abstention, it set the rate at 5.5 per cent for 1992. Many staff, including the complainants, were unhappy with the figure, their basic salary rising by only 5.7 per cent at 1 January 1992. They filed internal appeals challenging the general decision on the average rise in pay and the

individual decisions in the pay slips they got for January 1992. Their appeals went to the Joint Advisory Appeals Board, which felt that it was not competent to go into the merits. On 17 August 1992 the Director-General rejected the appeals on the grounds that they were irreceivable insofar as they were challenging a general decision by the Council and devoid of merit insofar as they were challenging the individual decisions in the pay slips.

2. The two complaints before the Tribunal are joined because they challenge the same decision and make the same pleas.

Receivability

3. The Organization contends that the complaints are irreceivable for reasons that relate to the complainants' locus standi, the nature of the impugned decisions and the thrust of the complainants' pleas.

4. What the parties have to say of the complainants' locus standi is immaterial. It is obvious - and the Organization does not demur - that as members of staff they may, subject to the bounds of the Tribunal's competence, appeal against any decision they believe to be in breach of their rights under the Staff Regulations or the terms of their appointment. They further contend that they may act as President and Vice-President of the Staff Association. On that score the Organization pleads precedents - for example Judgment 911 (in re de Padirac) - which say that staff associations do not as such have access to the Tribunal. But the issue is immaterial since, as has just been said, the complainants may in any event act independently of their status as staff representatives.

5. They seek the quashing of the individual decisions in their pay slips for January 1992 and of the Council's decision of 20 December 1991. CERN expressly allows that the complaints are receivable insofar as the complainants challenge individual decisions that cause them injury by withholding the pay rise they claim.

6. But the Organization argued in the internal proceedings, and argues still, that the complaints are irreceivable insofar as they challenge the Council's decision of 20 December 1991. There are many precedents for holding a complaint irreceivable if it impugns a general decision against which there can be no direct internal appeal, but which must ordinarily be followed by individual decisions against which appeal does lie. Rule VI 1.01 of the CERN Staff Rules provides that "every member of the personnel shall have the right to appeal against any decision of the Director-General concerning himself". No provision of the Staff Regulations or Staff Rules says that a general decision by the Council is challengeable. So CERN is right to plead that the challenge to the Council's decision of 20 December 1991 is irreceivable.

7. Yet the complainants may still plead the unlawfulness of a general decision by the Council. Firm precedent has it - see for example Judgment 1000 (in re Clements, Patak and Rödl) of 23 January 1990 - that an international civil servant may, in challenging a decision that affects him directly, plead the unlawfulness of any general measure that affords the basis for it in law. The indisputable basis in law for the individual decisions challenged in this case is the Council's decision of 20 December 1991 setting the rate of the rise in staff pay for 1992. The conclusion is that the complainants may plead the unlawfulness of the Council's decision.

8. But the complainants go further and contend that earlier decisions by the Council adjusting staff pay broke the rules it had itself set and that such breach warrants setting aside the individual decisions now impugned. In their submission the Council overlooked in 1989 and in 1991 increases in net pay in the Swiss civil service. Again, having failed to complete the five-yearly review for which it had already set the method and aims, it made in 1991 merely "makeshift arrangements according to arbitrary criteria and in disregard of the data the method required, such as pay levels and trends in other European organisations".

9. The plea fails. If it succeeded it would mean that in a matter as delicate as setting and adjusting staff pay appeal would lie sine die against past decisions. Every year the Council approves expenditure for the year ahead and thereby determines expenditure on staff according to the pay scales that Rule IV l.01 of the Staff Rules empowers it to determine. By means of general five-yearly reviews and intermediate annual ones it approves each year the adjustments needed. The decision it takes each year, though based on the pay scales adopted in earlier years, fully supersedes the earlier decisions. So it is by reference to the latest of them that the lawfulness of the individual decisions in the complainants' pay slips may be determined. The complainants may plead only flaws in the Council's general decision of 20 December 1991, the sole basis in law for the decisions they are impugning.

The merits

10. The complainants' first plea is that consultations with the Staff Association are compulsory and that there were none before the five-yearly review or the annual reviews preceding the Council's decision of 20 December 1991. As was explained above, the plea is receivable only insofar as it relates to the procedure in 1991 that led to the decision of 20 December 1991.

11. Rule VII 1.03 of the Staff Rules says that "The Staff Association shall be kept informed by the Director-General on the policy of the Organization". Regulation R VII 1.01 sets up a Standing Concertation Committee as "the official joint body for information and consultation between the Director-General and the representatives of the personnel". Regulation R VII 1.02 stipulates that the Director-General "shall consult the Committee and receive its recommendations on general questions concerning the personnel". That obviously covers pay policy and proposals the Director-General puts to the Council for amending pay scales, and means, as the complainants contend, that the staff representatives must be given adequate information and allowed their say.

12. It is plain on the evidence that in this case the Standing Concertation Committee held several meetings to discuss the adjustment of pay; the Administration constantly consulted the staff representatives; and it gave fully detailed information about staff expectations to the Finance Committee at its meetings on 17 and 18 December 1990. It said:

"After showing understanding last year for the financial difficulties of the Organization, the staff legitimately expects the approved procedures to be now fully applied. Any shortfall in the granted index would have adverse effects on the morale of the staff at a time when all energies have to be mobilised for the coming projects."

13. The Administration consulted the Staff Association, as it was required to do, and reported the results of consultations to the decision-making authorities. Although against the Association's advice the Council resolved in the end to reduce the average rise in pay, that was not because it lacked proper information on the views of the staff. On 22 June 1990 it had asked the Administration to start direct negotiations under the auspices of its own chairman with the Staff Association so as to come up with proposals that both staff and Council could accept. But that neither had the purpose, nor in law the effect, of making its decision on the matter subject to the outcome of "negotiations" with the staff or of requiring it to solicit the staff's comments on any decision it was minded to take. There is no evidence to suggest that it broke any promise by refusing to give effect to any earlier agreement, or betrayed the staff's trust, or acted in breach of the good faith an international organisation must show. In fact the purpose of the "negotiations" the Administration launched was to find proposals that both the staff and the Council could accept. But the only obligation the Council has in this area is to determine pay scales from time to time. In doing so it is not bound to agree to scales that would have satisfied the staff.

14. The complainants' second plea is that the vote in the Finance Committee, or rather the Council's understanding of it, was improper. Also on 20 December 1991 the Council decided to require for recommendations by the Finance Committee on budget and other matters a "double majority" based on the amount of Members' contributions. The new rule was not to come in until 1 January 1992. The Committee approved the Administration's proposals for pay rises by nine votes to four, with three abstentions; but the Council did not endorse that majority recommendation and the complainants suspect that it anticipated the rule that was to apply from 1 January 1992 by reckoning the majority in the Committee according to the criterion of the size of Members' contributions.

15. Though some delegates at the Council's meeting pointed out that the biggest contributors were not in the majority that had voted for the Committee's recommendation, and though they were right, there was no flaw on that account in the Council's decision. The Council alone was competent to decide, whatever the views of the Administration or the majority of the Finance Committee may have been, and it took the decision by fifteen votes to none, with one abstention.

16. The complainants' third plea is that there was no statement of the reasons for the impugned decisions. They seem to concede that it is impossible to state reasons for a pay slip and that there would be "serious practical difficulties in requiring them", but they contend that the Director-General's decisions rejecting their internal appeals are unexplained and that the Council's decision that has prompted the dispute shows the same flaw.

17. The answer to the first point is that the text of the Director-General's decisions does state reasons. They may not have satisfied the complainants and the wording of them may be exceptionable; but they do discharge the duty that the authorities of an international organisation have to explain the reasons for rejecting a claim from a member of staff.

18. As for the Council's general decision, there was no need for the text to set out in detail the reasons why member States were limiting the average pay rise for 1992 to 5.5 per cent. The records of the prior debate - and the complainants agree those records were given due publicity - plainly disclose the Council's reasons for differing from the Administration. Besides, the Director-General told the staff in January 1992 that it had been clear from discussion with delegates on the Council that because of the current economic situation, which had recently grown worse in some member States, 5.5 per cent was the very most they could get. The Director-General went on:

"Although our expectations were not fully met, I understand the serious reasons behind this outcome and appreciate the importance which Council attached to the need for a final decision based on a solid consensus. We are all aware of the economic problems of many countries in Europe and the rest of the world, and must bear these in mind, while not flagging in our efforts to achieve just and adequate compensation for our work."

19. Those explanations, which the complainants learned of in time to defend their interests, made it thoroughly clear what the problem was and why the Council had decided as it had, and they show that the staff were in any event kept informed of the reasons for the Council's reducing the pay rise.

20. Apart from their pleas about what they call the "external" lawfulness of the impugned decisions, the complainants maintain that CERN failed to abide by the rules and criteria it had laid down in 1979 and had since confirmed for determining annual pay adjustments.

21. The approach that CERN followed in 1991 for adjusting pay does not seem very methodical: the complainants are right on that score. But if, as it seems, they are pleading that the Council was bound to the automatic application of any particular method of adjusting pay, they are mistaken. Regulation R IV 1.01 says that "when reviewing remuneration, the Council shall use as a guide an index, the composition and method of calculation of which it shall determine". There is no requirement that the Council follow that guide unthinkingly. Indeed the recommendations by the Finance Committee which the Council adopted in 1979 and which lay down the rules for five-yearly and annual reviews say that the criteria set for the purpose create no obligation in law. In that respect they differ from the methods that other organisations follow. CERN's sole obligations are to carry out the prescribed reviews to pay scales each year, to work out the "index" of adjustment by reference to certain factors and to propose the index to the Council, which, after consulting the Finance Committee, decides an adjustment for the year in question by reference to the index as a "guide". It may be a pity that, despite this seemingly strict method, the Organization had to resort to the compromises that the financial straits of its Members demanded; but the Tribunal holds that the Council committed no breach of any legal obligation in setting pay for 1992.

22. The conclusion is that the complainants' claims, including the claim to costs, must fail.

23. Since the complaints fail, so do the applications to intervene.

DECISION:

For the above reasons,

The complaints and the applications to intervene are dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Mr. Pierre Pescatore, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 31 January 1994.

(Signed)

José Maria Ruda
P. Pescatore
Michel Gentot
A.B. Gardner