OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 14 MAY 1981 [1]

Summary

1. Subject-matter of the disputes and general outline of the opinion 1514

2. Course of the procedure in the cases concerning pensions: A. Case 153/79; B. Case 154/79; C. Case 33/80; D. Case 167/80 1514

3. Course of the procedure in the cases concerning transfers abroad of part of officials' remuneration: A. Joined Cases 783 and 786/79; B. Case 817/79; C. Case 828/79; D. Case 1253/79 1517

4. Course of the procedure in Case 72/80 concerning the allowance which replaced the abolished separation allowance 1519

5. Course of the procedure in the cases concerning the weighting applied to the remuneration of officials employed in Italy: A. Case 158/79; B. Cases 543/79 and 799/79; C. Case 737/79 1519

6. Content of the contested regulations: A. Regulations Nos 3085/78 and 3086/78; B. Regulation No 3087/78 1521

7. Examination of the issue of admissibility in Case 153/79: the objection based on the inability of officials to challenge general measures directly 1525

8. Admissibility in Case 153/79 (continued): the objection that there was no act adversely affecting the official against which a complaint could be lodged 1528

9. Admissibility in Case 153/79 (continued): the objection based on the absence of an interest to sue 1529

10. Examination of the issue of admissibility in Case 154/79. Objections based: (a) on the absence of an act capable of adversely affecting the official; (b) the application's failure to come within the terms of Articles 90 and 91 of the Staff Regulations or of Articles 173 and 184 of the EEC Treaty 1531

11. Examination of the issue of admissibility in Case 33/80. Objections relating to the action against the Commission based: (a) on the fact that the contested measures do not emanate from the appointing authority; (b) on the inability of officials to challenge general measures; (c) on the bar to the claim for damages as a result of the inadmissibility of the claim for annulment on which the claim for damages is based; (d) on the absence of a prior complaint through official channels as regards the claim for damages 1531

12. Admissibility in Case 33/80 (continued). Objections concerning the action against the Council based: (a) on the absence of a prior complaint through official channels; (b) on the fact that the Council does not have the capacity of appointing authority; (c) on the inability of officials to challenge general measures; (d) on the bar to the claim for damages as a result of the inadmissibility of the claim for annulment on which the claim for damages is based 1533

1 — Translated from the Italian.

13. Examination of the issue of admissibility in Case 167/80. Objections concerning the action against the Commission based: (a) on the inability of officials to challenge general measures directly; (b) on the fact that the defendant institution is not the appointing authority; (c) on the absence of an act capable of adversely affecting the official 1534

14. Admissibility in Case 167/80 (continued). Objections concerning the action against the Parliament based on the existence of concurrent proceedings and on the failure to lodge a prior complaint through official channels within the prescribed time-limit . 1535

15. Examination of the issue of admissibility in Joined Cases 783 and 786/79. Objections concerning the action against the Commission based: (a) on the inability of officials to challenge general measures; (b) on the inability of the act impugned to affect the officials adversely; (c) on the failure to lodge a prior complaint through official channels; (d) on the inadmissibility of the claim for damages as a result of the inadmissibility of the claim for annulment on which the claim for damages is based. Objections concerning the action against the Council based: (a) on the fact that the defendant institution is not the appointing authority; (b) on the inadmissibility of the claim for damages as a result of the inadmissibility of the claim for annulment on which the claim for damages was based 1536

16. Examination of the issue of admissibility in Case 158/79. Objections based: (a) on the limited extent to which the measures in question may be challenged; (b) on the purely confirmatory nature of the contested measures; (c) on the lateness of the prior complaint through official channels; (d) on the inadmissibility of the claim for damages as a result of the inadmissibility of the claim for annulment on which the claim for damages is based 1538

17. Examination of the issue of admissibility in Cases 543/79 and 799/79. Objections to the action against the Commission based: on the failure to lodge a prior complaint through official channels, on the lateness of the complaint, on the purely confirmatory nature of the contested measure. Objections concerning the action against the Council: see the matters discussed in Case 33/80 1539

18. Examination of the issue of admissibility in Case 737/79. Objections based: (a) on the failure to lodge a prior complaint through official channels; (b) on the inadmissibility of the claim for payment of compensation as a result of the inadmissibility of the claim for annulment on which the former claim is based; (c) on the inadmissibility — for the same reason — of the claim for a declaration that the conditions for the adjustment of the weighting exist and that the Council is under a duty to amend the weightings 1541

19. Examination of the issues of substance in the cases concerning transfers abroad of part of officials' remuneration (Cases 817/79, 828/79 and 1253/79). The vitiating factors alleged: infringement of an essential procedural requirement, breach of general principles, misuse of powers 1542

20. The infringement of an essential procedural requirement. Failure to consult the Staff Committee and the Staff Regulations Committee as required by Article 10 of the Staff Regulations. Failure to consult the Parliament as required by Article 24 of the Merger Treaty and failure to consult the Staff Regulations Committee as required by Article 110 of the Staff Regulations 1543

21. Failure to consult the Economic and Social Committee and the Court of Auditors. Absence of a sufficient statement of the reasons upon which the measures were based 1548

22. Breach of the principle of equality of treatment as between officials 1549

23. Breach of the principle of legitimate expectation 1550

24. Violation of vested rights 1552

25. Breach of the principle that the remuneration of Community officials cannot be reduced 1553

26. Breach of the "fundamental conditions" of employment 1555

27. Breach of the principle of "limited powers of decision" 1556

28. Misuse of powers 1556

29. Case 72/80 concerning the allowance replacing the abolished separation allowance: A. Admissibility; B. Substance 1557

30. Conclusions 1560

Mr President,
Members of the Court,

1. The various cases to which this opinion relates have one feature in common: they arise from applications submitted by Community officials and former officials in reaction to the unfavourable consequences for their respective salaries and pensions of Council Regulations Nos 3085/78, 3086/78 and 3087/78 of 21 December 1978. I shall deal with the contents of those three legislative measures at a later stage. For the time being I would merely mention that by adjusting monetary parities and weightings Regulations Nos 3085/78 and 3086/78 had an adverse effect on the level of pensions, on transfers abroad of part of officials' emoluments and on the allowance which replaced the abolished separation allowance, whilst in adjusting the weighting applicable to the remuneration and pensions of officials employed or having a home in Italy Regulation No 3087/78 granted the benefit of that adjustment only as from 1 January 1978, although in the period immediately preceding that date the lire had also been affected by a high rate of inflation.

I propose to begin by describing the procedural developments, dividing the cases involved into four groups according to whether they relate to (i) pensions, (ii) transfers of part of emoluments in foreign currencies, (iii) the allowance which replaced the separation allowance, or (iv) the weighting for Italy in force between 1 January 1978 and 31 March 1979. I shall then go on to express my opinion on the objections of inadmissibility which the defendant institutions have pleaded in several cases, and finally I shall give my views on the issues of substance discussed in the oral procedure which are ripe for examination in the cases concerning transfers abroad of part of officials' emoluments and also in the only case concerning the allowance which replaced the separation allowance. As far as the last case is concerned, questions of admissibility and substance will be examined together.

2. The first of the groups to which I referred (the question of pensions) comprises Cases 153/79 *(Bowden)*, 154/79 *(Biller)*, 33/80 *(Albini)* and 167/80 *(Curtis)*. The facts may be summarized as follows:

A — By complaints submitted to the Commission between 2 March and 31 August 1979 Gordon Craigie Bowden, David Harris, Alexander George Macrae, Kenneth Ashley George Page, Anthony Seymour, Eric Lewis Snowdon, Peter Annis Walker, Roy Lawton Walker and Thomas Brian Wilson, officials in the service of the said institution, challenged Council Regulations Nos 3086/78 and 3085/78, requesting the Commission to recognize that they would be entitled on termination of their employment, subject to the fulfilment of any other conditions laid down by the Staff Regulations, to a pension of the same amount as that which they would have received if Regulation No 3086/78 had not been adopted.

The Commission rejected all those complaints and sent a circular to the persons concerned (similar to the example which was later attached to the defence dated 26 October 1979). Consequently, by an application dated 28 September 1979 the applicants commenced proceedings against the Commission before the Court of Justice in which they seek a declaration that Council Regulations Nos 3085/78 and 3086/78 are inapplicable as against them on account of the infringement of an essential procedural requirement and the violation of vested rights and, accordingly, the annulment of the institution's decision rejecting their complaints.

B — In March 1979 Stephen Biller, Roy Douglas Brown, Harold Burnham, Frank Carmody, David Millar, Teresa Maria Myskow, Michael Julian Barham Palmer, David R. H. Phillips, Rosamund Smith, John Peter Scott Taylor, Shirley Ward and Marjorie Wood, officials in the service of the European Parliament, submitted complaints to that institution under Article 90 of the Staff Regulations of Officials against Council Regulation No 3086/78, alleging that the adjustment of the weighting effected by that regulation entailed a reduction in the amount of the pension which they would receive if on termination of their employment they chose to reside in the United Kingdom, and requesting the appointing authority to recognize the inviolability of accrued pension rights in respect of periods of service completed before the new regulation came into force. Subsequently, by a complaint dated 30 June 1979, Dunstan Curtis, a former servant of the European Parliament, now retired and resident in the United Kingdom, also attacked Regulation No 3086/78 and submitted a request similar to that made by the aforementioned applicants.

By four notes dated July 1979 and bearing the signature of Secretary General Opitz, the Parliament informed all the applicants (with the exception of Mr Curtis) that their complaints were not admissible because they were directed against a Council regulation and a decision as to whether or not to apply such a regulation could not be treated as falling within the discretion of the institution. Thereupon Mr Biller and the 12 other officials referred to above commenced proceedings in this Court by means of a single application lodged on 3 October 1979. That application alleges that Regulations Nos 3086/78 and 3085/78 are unlawful on account of a whole series of vitiating factors (infringement of essential procedural requirements, violation of vested rights, breach of the principle of legitimate expectation, lack of competence, infringement of the Staff Regulations of Officials and misuse of powers) and requests the Court to declare those regulations inapplicable as against the applicants and consequently to annul the institution's decision rejecting their complaints.

C — Between 1 and 20 March 1979 Secondina Castorini, Nevia Corradini, Francesco De Benedictis, Giuseppe Imparato, Mario Mari, Lydia Quadrio and Giovanni Ugo, all former officials of the Commission now retired on pensions and resident in Italy, complained to that institution alleging that Council Regulations Nos 3085/78 and 3086/78 had brought about a reduction in their respective pensions as from October 1978 and that those regulations were unlawful on account of misuse of powers, factual errors and procedural defects, and therefore inapplicable as against them. The applicants requested the Commission to propose to the Council "appropriate amendments" to those provisions. By a circular dated 12 July 1979 (Annex 3 to the application) the Commission informed the persons concerned that it considered the regulations in question lawful and did not intend to promote any amendment. In view of that negative response the abovementioned former officials (with the exception of Mr Imparato) together with Renato Albini, Alberto Castagnoli and Alcide Trigona, likewise former Community officials now retired on pensions and resident in Italy, each submitted to the Commission a separate request (described in the heading as a "complaint" within the meaning of Article 90 (2) of the Staff Regulations), all challenging the decision contained in the note dated 12 July 1979. The Commission failed to alter its attitude and the former officials who had lodged complaints (together with Mr Imparato, who had merely submitted a request the previous March) commenced proceedings in the Court of Justice by means of an application dated 24 January 1980 in which they requested principally that Regulations Nos 3085/78 and 3086/78 should be annulled or at least declared inapplicable and, in the alternative, that the defendant institution should be ordered to compensate the applicants for the reduction in their pensions as a result of the legislation in question.

D — By a complaint addressed to the European Parliament on 8 January 1980, Dunstan Curtis challenged Council Regulations Nos 3085/78 and 3086/78 and also the note of 22 October 1979 whereby the Commission had informed him that as from November 1979, pursuant to Regulation No 3085/78, his pension would undergo progressive monthly reductions bringing it down from BFR 19 351 in September 1979 to BFR 8 398 at the end of the series of reductions in July 1980. He confirmed the requests already submitted in the previous complaint on 30 June 1979 (referred to above under letter B) and in addition challenged the aforesaid letter of the Commission dated 22 October 1979, which he regarded as an application of Regulation No 3085/78 and therefore a measure which could be challenged separately under the procedure laid down in Article 90 of the Staff Regulations. By a separate instrument, also dated 8 January 1980, Mr Curtis submitted a complaint to the Commission as well in which he once again challenged Regulations Nos 3085/78 and 3086/78 and the note of 22 October 1979. Neither the Parliament nor the Commission acted upon those complaints and Mr Curtis lodged an application on 18 July 1980 against both institutions, requesting principally that the two regulations mentioned above should not be applied as against him on the ground that they are unlawful by reason of the vitiating factors already pleaded in the joint application referred to under letter B, and, in the alternative, that the Commission's letter of 22 October 1979 and the (implied) decisions rejecting the two complaints should be annulled. The applicant further requested that the defendant institution should be

ordered to pay him the sums, with interest, to which he would have been entitled by way of pension if the aforesaid regulations had not brought about the reductions.

In all four of the applications comprising the first group of cases, with which I have dealt so far, both the defendant institutions have raised objections of inadmissibility. As a result the oral procedure was concerned either with that aspect of the dispute alone (in the *Bowden*, *Albini* and *Curtis* cases) or with admissibility and substance where the course of the written procedure so permitted (in the *Biller* case). In the present opinion I shall confine myself in all the cases comprising this group to dealing with the issue of admissibility. Thus I shall leave questions of substance in the *Biller* case (154/79) to be dealt with in a separate opinion, if necessary, after the Court has ruled on the procedural objections.

3. The second group of cases (concerning the questions of transfers abroad of part of officials' emoluments) comprises Cases 783 to 786/79 *(Venus-Obert)*, Case 817/79 *(Buyl)*, Case 828/79 *(Adam)* and Case 1253/79 *(Battaglia)*. As regards the facts it will be sufficient to note that:

A — On 26 March 1979 Gerhard Venus and Wolfgang Obert, temporary agents in the service of the Commission on the Joint European Torus (JET) at Culham in the United Kingdom, submitted a complaint to that institution and requested that Regulations Nos 3085/78 and 3086/78 be not applied as against them on the ground that they brought about an unlawful reduction in the real value of their salaries as a result of the adjustment of the exchange rates, at least as regards transfers abroad effected under Article 17 of Annex VII of the Staff Regulations. By a circular of 12 July 1979 the Commission replied to those requests in the negative. Thereafter Mr Venus and Mr Obert commenced actions in the Court of Justice against both the Commission and the Council by applications lodged respectively on 22 and 26 October 1979. They requested that the Commission's decision to apply in their cases the monetary parities laid down by Regulation No 3085/78 for transfers abroad of part of their earnings be annulled, that consequently the Court declare that the exchange rates applicable to such transfers should continue to be those laid down in their contracts of employment and that the Commission be ordered to compensate them for the loss in earnings suffered as a result of the new rules.

The two applications were joined by order of 13 December 1979. Both the defendant institutions pleaded that the action was inadmissible and the Court decided to set the case down for a hearing at which only that aspect of the dispute would be dealt with.

B — Between 25 and 27 June 1979 Roger Buyl and 19 other officials of the Commission employed at Geel in Belgium made a complaint to that institution against the application of Regulations Nos 3085/78 and 3086/78, objecting to the increased cost of transfers abroad of part of their emoluments and stating that it entailed an unlawful reduction in their total real earnings. The Commission replied in the negative by a letter dated 28 September 1979. Mr Buyl and the other officials thereupon brought an action against the Commission by application of 17 December 1979, claiming that the

decisions relating to their salaries for the month of April 1979 should be annulled and declared inapplicable and that the defendant should be ordered to pay the applicants from that month onwards the difference between their salaries calculated according to the previous rules and the lower salaries paid to them in accordance with the aforesaid regulations. Questions of substance were dealt with both in the written procedure and in the oral procedure.

C — On 21 June 1979 Robert Adam, an official of the Commission employed at Ispra (Italy), submitted a complaint against the measure which applied Regulations Nos 3085/78 and 3086/78 in his case. Mr Adam set forth considerations similar to those which I mentioned earlier in relation to Mr Buyl's complaint (under letter B). By the aforesaid circular of 28 September 1979 the Commission rejected that complaint. Thereupon Mr Adam instituted proceedings (by an application dated 10 December 1979 and lodged on 21 December 1979), arguing that the (alleged) decision contained in the Commission's letter of 28 September 1979 was vitiated by irregularities in the manner of its notification and by distortion of the facts and that Regulation No 3085/78 was in turn vitiated by the infringement of an essential procedural requirement and by the failure to state the reasons on which it was based. He therefore claimed that the decision rejecting his complaint should be annulled because Regulations Nos 3085/78 and 3086/78 on which that decision was based were vitiated by the infringement of secondary Community legislation, by misuse of powers and infringement of essential procedural requirements; he also sought a declaration establishing the illegality of the reduction in the part of his remuneration paid to him in Italian lire as from April 1979, a reduction caused by the increased burden imposed by transfers of earnings, and in addition a declaration that he is entitled to preserve unchanged the amount of remuneration, in Italian lire and in foreign currency, established in March 1979 until the reduction is absorbed in increases in salary (excluding increases due to changes in purchasing power), and further that he is entitled to the rectification of the monthly payments made subsequent to March 1979.

The Commission defended the action but did not object to its admissibility, so the Court ruled that the substance of the case should be dealt with in the oral procedure.

D — On 21 June 1979 Dino Battaglia, an official of the Commission also employed at the Joint Research Centre at Ispra (Italy), submitted a complaint concerning the application to him of Regulations Nos 3085/78 and 3086/78. The complaint raised the same grievances as those contained in Mr Adam's complaint (under letter C). The Commission replied in the negative, again by the circular of 28 September 1979 referred to above. Thereupon Mr Battaglia, by application dated 20 December 1979, commenced proceedings in the Court of Justice against the Commission, claiming that Regulations Nos 3085/78 and 3086/78 were vitiated by the infringement of an essential procedural requirement, the infringement of vested rights and the breach of the principle of equality; he therefore claimed that the decision whereby the administration had paid him his salary for April 1979 in application of the aforesaid regulations was also vitiated. Consequently, the applicant sought a declaration that the individual decision contained in his salary statement for the month of April 1979 was null and void and that Regulations Nos 3085/78 and 3086/78 were inapplicable as against him; he further requested that the defendant institution be ordered to adopt

all necessary measures to compensate for the negative effects, as against him, of the aforesaid regulations until the extinction of his *ex lege* or contractual obligations involving payments to be made abroad under Article 17 of Annex VII of the Staff Regulations.

The defendant did not object to the admissibility of the action, so the Court was able to rule that the substance of the case should be dealt with during the oral procedure.

4. Case 72/80 *(Airola)* is the only one which involves discussion of the effect of Regulation No 3085/78 on Article 106 of the Staff Regulations, which deals with the allowance replacing the abolished "separation allowance".

The sequence of events began with a complaint submitted to the Commission on 21 June 1979 by Marco Airola, an official employed at the Joint Research Centre in Ispra. He objected to the payment of his salary for the month of April 1979 and for subsequent months, complaining that the amount in Belgian francs of the allowance payable to him under Article 106 of the Staff Regulations had been reduced as a result of the entry into force of Regulation No 3085/78 and that that was contrary to the provisions contained in the last part of that article which excludes the allowance in question from any variation. He therefore considered himself to be entitled to payment of the sums by which his salary had been reduced as a result of the wrongful application of the new rules. The Commission replied in the negative by a letter dated 21 November 1979. Consequently, Mr Airola commenced proceedings against the Commission by application of 7 March 1980, submitting that the decision rejecting his complaint was vitiated by an infringement of secondary Community legislation, by a breach of the principle of equality of treatment as between officials and by an infringement of vested rights. He therefore requested the Court: (a) to annul the Commission's decision of 21 November 1979; (b) to declare that the reduction applied to the allowance under Article 106, having regard to the amount thereof expressed in Belgian francs, was unlawful and that he was entitled to preserve unchanged the original amount in Belgian francs and to have applied to that amount the updated exchange rate resulting from the combined provisions of Regulations Nos 3085/78 and 3086/78; (c) finally, to declare that he was entitled to the arrears of salary resulting from the adjustment of the exchange rate as from 15 February 1976.

The defendant did not object to the admissibility of the action, so the substance of the case was dealt with in the oral procedure.

5. The effects of Regulation No 3087/78 on the salaries of officials based in Italy are the subject of a final group of cases comprising Cases 158/79 *(Roumengous)*, 543/79 *(Birke)*, 737/79 *(Battaglia)* and 799/79 *(Bruckner)*. Two of these cases (543/79 and 799/79) also raise the problem of transfers abroad of part of officials' salaries, a problem which constitutes the sole issue in other cases with which I have already dealt (783 and 786/79, 817/79, 828/79 and 1253/79).

I will briefly summarize the facts.

A — By a complaint to the Commission dated 11 April 1979, Monique Roumengous, née Carpentier, an official in the service of the said institution based at Ispra (Italy), challenged the making of payment of her salary in accordance with Regulation No 3087/78, since the

adjustment of the weighting provided for by that regulation took effect only from 1 January 1978 and thus did not include the years 1976 and 1977. The Commission rejected that complaint by the aforementioned circular of 12 July 1979. Thereupon, Mrs Roumengous brought an action by application of 11 October 1979, submitting that Council Regulation No 3087/78 and the measure whereby the Commission had implemented that regulation in relation to her in April 1979 were unlawful on grounds of infringement of secondary legislation, distortion of the facts, misuse of powers and infringement of essential procedural requirements. She therefore sought a declaration that Regulation No 3087/78 was not applicable in her case and annulment of the measure paying arrears on her salary — which were calculated on the basis of the adjusted weighting as from 1 January 1978 instead of 1 January 1976; she also requested the Court to declare that she was entitled to a sum corresponding to the increase in the weighting for the years 1976 and 1977, with interest.

The Commission submitted that the action was inadmissible. The Court decided that only the issue of admissibility should be dealt with in the oral procedure.

B — On 29 March 1979 Anton Birke, a Community official employed at Ispra (Italy), submitted two complaints to the Commission in which he complained, first, that as a result of the application of Regulations Nos 3085/78 and 3086/78 his real income had been appreciably reduced and, secondly, that Regulation No 3087/78 had not extended the increase in the weighting to the years 1976 and 1977. By a further complaint submitted in June 1979 (as did numerous other officials employed at Ispra), Mr Birke objected to the application of Regulations Nos 3085/78 and 3086/78 to his salary, having regard in particular to the effect which those regulations had on the rules governing transfers abroad of part of officials' salaries. A similar complaint was lodged, likewise in June 1979, by another official, Günter Bruckner, who is also employed at the Centre in Ispra.

The Commission made clear its attitude in two circulars dated 12 July and 26 September 1979 in which it rejected the officials' requests. The officials thereupon instituted proceedings against the Commission and the Council by applications lodged respectively on 11 October 1979 in the case of Mr Birke and on 12 November 1979 in the case of Mr Bruckner. They request the Court: (a) to annul the salary statements for the months from January to April 1979 and the decisions issued by the Commission on 12 July and 26 September 1979 in response to the complaints; (b) to declare that the applicants are entitled to remuneration adjusted in accordance with the cost of living in the province of Varese or, in the alternative, in the province of Rome, calculated as from 1976; (c) to declare that the applicants are entitled, for the period subsequent to 1 April 1979, to remuneration in Italian lire not less than the remuneration paid to them in that currency in March of that year, taking into account the effect on their net income of the payments effected abroad by the procedure under Article 17 of Annex VII of the Staff Regulations and the adjustment in the level of salaries as from 1 April 1979; (d) in the alternative, to declare that the adjustment of salaries in accordance with the new rules laid down by Regulations Nos 3085/78 and 3086/78 must be performed by means of appropriate transitional measures in relation to future increases (in real terms) in salaries; (e) in

the further alternative, to declare that the applicants are entitled to have the new rules applied to their earnings on the same conditions as those laid down for pensions in Article 4 of Regulation No 3085/78 (as from 1 October rather than 1 April 1979 and with the reduction applied in stages and spread over a period of ten months); (f) in any event, to order the Commission to rectify the sum payable to them by way of remuneration in accordance with the claims set out above and to order the Commission and the Council to pay them the difference between the sum paid and the sum to which they are entitled, together with interest.

The Council objected to the admissibility of both the actions; the Commission, for its part, pleaded inadmissibility only in relation to Mr Birke's application. In both cases the Court decided that only the issue of admissibility should be dealt with in the oral procedure.

C — In a complaint submitted to the Commission on 11 April 1979 Dino Battaglia, employed at Ispra (Italy) in the aforesaid Research Centre, objected, together with other officials, to the fact that in his salary for January 1979 he had been paid the arrears due as a result of the adjustment of the weighting for Italy laid down by Regulation No 3087/78 as from 1 January 1978 instead of from 1 January 1976. He requested the Commission to take "appropriate measures to compensate for the loss in his purchasing power" in the years 1976 and 1977. The Commission replied in the negative by the circular dated 12 July 1979. Thereupon Mr Battaglia brought an action against the Commission in which he submits that the decision rejecting his complaint and the application of Regulation No 3087/78 in his case were unlawful and consequently asks the Court: (a) to annul the decision whereby the defendant institution had paid him the arrears provided for in Regulation No 3087/78 as from 1 January 1978 instead of from 1 January 1976 and had calculated those arrears without taking into account the cost of living in the province of Varese; (b) to declare Regulation No 3087/78 inapplicable in his case in so far as its retroactive effect did not extend beyond 1 January 1978; (c) to declare further that the applicant was entitled to receive a supplement to his salary for the years 1976 and 1977 to be calculated on the basis of the cost of living in the province of Varese, together with interest thereon; (d) in the alternative, to order the defendant to pay him damages; (e) in the further alternative, to declare that the conditions for the adjustment of salaries already existed in 1976 and that the Council should therefore have taken appropriate measures to ensure that officials received their remuneration without discrimination in accordance with Article 64 and 65 of the Staff Regulations.

In its defence the Commission formally objected to the admissibility of the action; as a result the Court decided that only that aspect of the dispute should be dealt with in the oral procedure.

6. I think it appropriate now to examine in depth the legislation which forms the background to all the disputes with which the Court is concerned. As has been seen, the source of all these disputes lies in the consequences produced by the entry into force of three Council regulations: Regulations Nos 3085/78, 3086/78 and 3087/78 of 21 December 1978.

A — *Regulation No 3085/78* amended two provisions of the Staff Regulations of Officials namely Article 53 and Article 17 of Annex VII. In its former version the third paragraph of Article 63 provided that remuneration paid in a currency other than Belgian francs was to be calculated on the basis of the par values accepted by the International Monetary Fund in force on 1 January 1965. But the new version of Article 63 provides in the second paragraph that "remuneration paid in a currency other than Belgian francs shall be calculated on the basis of the exchange rates used for the implementation of the general budget of the European Communities on 1 July 1978". The following paragraph adds that "this date shall be changed, at the time of the annual review of remuneration provided for in Article 65, by the Council acting by a qualified majority upon a proposal from the Commission ...".

In effect this amendment resulted in an updating of the exchange rates. The parities accepted by the International Monetary Fund, dating back to 1965, and therefore no longer current, were abandoned in favour of parities more closely in line with market rates (although not coinciding with the latter). That modification was made necessary by the fact that the inflationary process, which accelerated after the mid-seventies, had finally rendered the parities of the International Monetary Fund too far removed from the reality of market exchange rates. It suffices to note that under the IMF rates BFR 1 was equivalent to LIT 12.5 (it is now worth more than 30) in order to realize to what distortions maintenance of the old rates had led.

The adjustment of the monetary parities was accompanied by an adjustment of the weightings: that was effected by *Regulation No 3086/78*. In order to understand the connexion between parities and weightings it is necessary to bear in mind that under Article 64 of the Staff Regulations "an official's remuneration expressed in Belgian francs shall ... be weighted at a rate above, below or equal to 100%, *depending on living conditions in the various places of employment*". I would mention further that Article 65 (2) provides that: "in the event of a substantial change in the cost of living, the Council shall decide ... what adjustments should be made to the weightings and if appropriate to apply them retrospectively". The existence in the system of remunerations of a rigid factor, namely the parities of the International Monetary Fund dating back to 1965 and thus appreciably different from current parities, led the Council to use the weightings as the only variable which could be manipulated in order to ensure that officials employed in countries whose currency had been devalued by inflation — who found themselves at a disadvantage as a result of an exchange rate for the Belgian franc fixed far below the market rate — should receive remuneration equivalent in terms of purchasing power to that received by officials employed in Belgium. In accordance with that reasoning a high weighting had been fixed for Italy, for example, in spite of the fact that the cost of living was lower in Italy than in Belgium.

By Regulation No 3086/78 the Council sought to normalize that situation in

view of the fact that the amendment of the parities enabled it to restore to the weighting the function which the Staff Regulations originally ascribed to it. Accordingly, having established a weighting of 100 for application to Belgium and Luxembourg, the aforesaid regulation fixed higher weightings for countries where the cost of living is higher and lower weightings for countries where the cost of living is lower.

The new system did not materially alter the level of salaries paid in currencies other than the Belgian franc since the increase (in countries such as Italy) brought about by the adoption of the new parities was offset by the corresponding reduction in the new weightings. On the other hand, there was a very considerable reduction in pensions paid in Belgian francs in cases where the person concerned had elected that form of payment under the third paragraph of Article 45 of Annex VIII to the Staff Regulations. Such cases involved former officials resident in countries with weak currencies such as the United Kingdom or Italy. The size of those pensions was in fact previously determined on the basis of the weighting for the country of residence, a weighting which, as I have attempted to explain, was artifically high. However, those pensions did not undergo the compensatory effect (in the negative sense) of the parities accepted by the International Monetary Fund since the persons entitled had exercised the right granted to them by Article 45 of Annex VIII to the Staff Regulations to request payment in the currency of the country where the institution to which they belonged has its seat (that is to say the Belgian franc). In order to restrict the adverse effects which the new rules produced in the case of pensioners resident in countries with weak currencies, Regulation No 3085/78 provided in Article 4 that "for pensions and allowances of which the net amount becomes less than that under the existing arrangements" the new rules "shall only apply from 1 October 1979" and that further "from that date the difference between the net amounts resulting from the implementation of this regulation and those received in September 1979 shall be reduced by $^1/_{10}$ per month".

As I mentioned above, Regulation No 3085/78 also amended the provisions which deal with transfers abroad of part of officials' remuneration and which are contained in Article 17 of Annex VII to the Staff Regulations. In the version repealed, paragraph 2 of that article provided that an official could regularly (that is to say, each month) transfer a certain proportion of his emoluments either in the currency of the Member State of which he was a national or in the currency of the Member State in which his own domicile or the place of residence of a dependent relative was located; paragraph 4 added that such transfers were to be "made at the official exchange rate ruling on the date of transfer", a rate which coincided with the parity of the International Monetary Fund adopted by Article 63 (in the version subsequently repealed by Regulation No 3085/78). The new version of Article 17 contains some amendments to paragraph 2 and provides that an official may also carry out transfers "in the currency of his previous country of employment or of the country in which his institution has its seat, provided that the official in question has been assigned to a post outside the territory of the

European Communities". The new version further provides that an official may "be authorized, in very exceptional circumstances and for good reasons supported by evidence, to have transferred, apart from the aforementioned regular transfers, sums which he may wish to have available in the currencies referred to in paragraph (a)" (that is to say, transfers without particular limit). But the provision which is important in these actions is paragraph 3, which provides that the transfers "shall be made at the exchange rates specified in the second paragraph of Article 63 to the Staff Regulations" — in other words, the new exchange rates contained in Article 3 as amended by Regulation No 3085/78 — and that "the amounts transferred shall be multiplied by a coefficient representing the difference between [the weighting for the country in the currency of which the transfer was made and] the weighting for the country in which the official is employed". It should be noted that for the currencies of countries with a high rate of inflation such as Italy and the United Kingdom this relationship leads to exchange rates which lie approximately half-way between the parities of the International Monetary Fund dating back to 1965 and the current parities. In spite of that the new rules on transfers entailed an appreciable increase in the cost of such operations inasmuch as an official must spend larger sums of the currency of the place where he performs his duties in order to obtain the same quantities of foreign currency as he was previously having sent abroad.

B — *Regulation No 3087/78* concerns only officials and other Community servants employed in Italy and the recipients of pensions who have declared that they are resident in Italy. Its purpose was to correct the weighting for Italy" in line with the findings of the statistical surveys carried out by the Statistical Office of the European Communities" (preamble). Article 1 fixes that weighting at 146.44 for officials and recipients of pensions with effect from 1 January 1978; naturally the previous weighting, based on Regulation No 1461/78 was abolished with effect from the same date (Article 2). But the period of validity of these new rules was limited to 15 months. In fact, is has already been seen that on 1 April 1979 Regulation No 3086/78 came into force, amending all the weightings, including the weighting applicable to the remuneration of officials employed in Italy (and to the pensions of persons resident in Italy), which was fixed at 74.3.

The issues raised by the application of Regulation No 3087/78 are therefore very different from those raised by Regulations Nos 3085/78 and 3086/78, which are intended to have effect indefinitely. In fact, Regulation No 3087/78 belongs to the system for calculating salaries (and pensions) used before the amendments introduced by Regulations Nos 3085/78 and 3086/78; hence the dispute to which it has given rise concerns the past, that is to say the period prior to 1 April 1979. It should be noted at the outset that this dispute divides into two fundamental issues: the limited retroactivity of the new weighting (which the persons concerned would have liked to see extended) and the criteria followed in order to adjust that weighting in line

with the change which had occurred in the cost of living.

7. I will now deal with questions of admissibility. Some of the issues are common to several cases; none the less, I think it preferable to consider each case separately so as to take into account the arguments put forward in the respective pleadings, as well as the particularities of fact where those appear relevant. I shall adhere to the same order as that which I followed when describing the course of the procedure: I shall therefore begin with the cases concerning pensions.

In Case 153/79 *(Bowden)* the Commission objects in the first place that the claim for a declaration that Regulations Nos 3085/78 and 3086/78 are invalid as against the applicants amounts to a direct attack by officials upon general measures. Such an attack, it is argued, is precluded by the system of the EEC Treaty. Let us assume for the time being as a "working hypothesis" that the application is directed against the said regulations of the Council and not against individual implementing measures (this question of fact will be examined again later). Pursuing the hypothesis suggested, it will be necessary to determine whether, and if so within what limits, an application of that nature is admissible.

The applicants submit that Article 90 (2) of the Staff Regulations should be construed as meaning that a complaint may also be directed against a measure of general application, such as a regulation. In support of that argument it is pointed out that the provision in question, in stipulating the time at which the period for submitting a complaint commences, states (in the first indent) that "the period shall start to run on the date of publication of the act if it is a measure of a general nature". The express reference to the possibility of challenging measures "of a general nature" proves that complaints may be directed against such measures. Being more favourable to the protection of the individual, such a construction is consistent with the principle whereby in the event of uncertainty as to the scope of provisions which enable individuals to bring actions the less restrictive solution must be adopted.

I would point out that the provisions in the Staff Regulations on actions before the Court of Justice find their legal basis in Article 179 of the EEC Treaty, which states that "the Court of Justice shall have jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations of the Conditions of Employment". The decisions of the Court of Justice have always construed that provision as meaning that the remedies which it grants to officials in their relations with the administration are of a special and exclusive nature; that is to say, officials have only the remedies laid down by the article in question and by the provisions adopted pursuant to that article, and therefore they may not rely, as against the administration, on the other forms of protection which the Treaty generally grants to individuals. In this regard it should be sufficient to cite the judgment of 17 February 1977 in Case 48/76 *Reinarz* [1977] ECR 291.

Having said that, I am of the opinion that the construction of Article 90 of the Staff Regulations suggested by the applicants cannot be accepted. The fact that paragraph 2 of that article refers, as we have seen, to "a measure of a general nature" cannot constitute a serious argument for maintaining that general

measures may be attacked directly; in fact the passsage in question should be interpreted in a different manner, having regard to the context of that article and to other provisions of the Treaty. When Article 90 refers to attacks on measures of a general nature it really means to refer to those measures, general in form but individual in substance, which are expressly stated to be contestable under the second paragraph of Article 173. This view finds clear confirmation in another part of Article 90, namely the first part of paragraph 2, which provides that an official may submit to the appointing authority a complaint against any "decision" adversely affecting him. The use of the term "decision" adversely affecting him. The use of the term "decision" clearly means that only binding acts of an individual nature may be challenged individual nature may be challenged. The applicants' pleadings do not give consideration to this part of the provision, although its very function is to define the measures which may be challenged, but dwell instead on the aforesaid provision relating to the running of time, which constitutes a particular aspect of the legal system governing complaints, and draw from the provision conclusions about the general question of the concept of an act which may be challenged. Such an argument is clearly contradictory and unconvincing.

In addition, the applicants rely on Article 184 of the Treaty, which, as is well known, provides that "any party may, in proceedings in which a regulation of the Council or of the Commission is in issue, plead the grounds specified in the first paragraph of Article 173" (that is to say, lack of competence, infringement of an essential procedural requirement, infringement of the Treaty or of any rule of law relating to its application, or misuse of powers), "in order to invoke before the Court of Justice the inapplicability of that regulation". According to the applicants, that provision lends support to the argument that regulations may be directly challenged by officials. But it seems to me that actions brought by officials against the administration over questions relating to the employment relationship do not come within the scope of the provision cited. That is demonstrated by various arguments.

We have already seen that, according to a consistent line of authority established by the Court of Justice, officials enjoy only the forms of protection laid down by the Staff Regulations or, at any rate, by the secondary legislation based on Article 179 of the Treaty. That would be sufficient to preclude the possibility of invoking Article 184 in a dispute between a Community institution and its servants or former servants concerning particular aspects of the employment relationship, or problems connected therewith. However, even if that consideration is disregarded, the argument which purports to infer from Article 184 that regulations may be directly challenged by individuals remains equally untenable. In fact, Article 184 does not institute an independent remedy, but merely deals with *incidental* findings of illegality, that is to say findings which occur in the context of proceedings which are concerned principally with the legality of other measures and which have been properly commenced in good time. The wording of the provision is sufficiently clear in this respect since it requires as a pre-condition for invoking the inapplicability of a general measure the existence of "proceedings in which a regulation of the Council or of the Commission is in issue". Moreover, the

second paragraph of Article 173 clearly provides that any natural or legal person may challenge a measure which has the form of a regulation *only* when that form does not correspond to the true nature of the measure and what is really involved is a decision which is of "direct and individual concern" to that person. The principle, therefore, is that individuals cannot impugn regulations and Article 184 provides confirmation thereof inasmuch as it provides, for the very purpose of mitigating the adverse effects of that principle, an opportunity to establish the illegality of a general measure provided that the occasion arises in the context of proceedings properly instituted.

Another provision to which the applicants refer in search of support for their proposition that regulations may be directly challenged is the second paragraph of Article 173 of the Treaty (whereby "any natural or legal person may . . . institute proceedings against a decision . . . which, although in the form of a regulation . . ., is of direct and individual concern"). But here too the special and exclusive nature of the system laid down by Article 179 for actions by officials against the institutions is sufficient argument for excluding such actions from the scope of Article 173. It may be added that the regulations taken into consideration in the second paragraph of Article 173 are in substance individual measures, whilst the measures with which we are concerned on this occasion, and which, it is claimed, may be challenged by officials, are indisputably of general scope. In any event, I do not think that it would be possible to apply the second paragraph of Article 173 by analogy to disputes between officials and institutions: it must be remembered that the granting to individuals of the right to challenge measures having the mere form of regulations is an exception to the principle that regulations may not be challenged, and provisions of an exceptional nature may not be applied by analogy.

Aware of all these difficulties, the applicants' pleadings put forward another view in the alternative. They maintain that even if it is granted that general measures may not be directly challenged, it still remains to be ascertained, case by case, whether particular measures, although of general scope, affect the legal position of certain persons in a different manner from that in which they affect the legal position of others; in such a case, say the applicants, it must be conceded that individuals are entitled to challenge regulations directly.

I do not believe that this view can be endorsed. A measure is said to be of general scope when it applies to situations which are determined objectively and its legal effects are felt by categories of persons regarded generally and in the abstract (see paragraph 6 of the judgment of 26 February 1981 in Case 64/80 *Giuffrida and Campogrande* v *Council* [1981] ECR). The fact that some categories are affected differently or more directly is not a sufficient reason for concluding that the measure governing their treatment is not general and abstract in effect. Thus in the case of a regulation affecting the financial interests of Community officials the fact that certain categories of officials are affected differently from others by reason of objective circumstances (place of employment, seniority, duties performed) is not sufficient to transform the regulation into an individual decision. The Court of Justice recently gave its view on this point, declaring that the nature of a decision is "not called in question by the fact that it is possible to determine more or less exactly the

number or even the identity of the persons to whom it applies at any given time as long as it is established that such application takes effect, as in this case, by virtue of an objective legal or factual situation defined by the instrument in question in relation to its purpose" (see paragraph 7 of the decision of 26 February 1981 in *Giuffrida and Campogrande).*

8. Still with reference to Case 153/79 *(Bowden),* the Commission has submitted that the application is also inadmissible because of the absence of an adverse act against which a complaint may be lodged. Article 91 of the Staff Regulations provides that "an appeal to the Court of Justice of the European Communities shall lie only if the appointing authority has previously had a complaint submitted to it pursuant to Article 90 (2)"; the latter provision in turn lays down that a complaint may be submitted "against an act adversely affecting" an official, and that act must emanate from the appointing authority. According to the Commission, an act which affects the official adversely and which emanates from the appointing authority is lacking in this case and, as a result of the combined effect of Articles 90 and 91 of the Staff Regulations, its absence constitutes a bar to the institution of legal proceedings.

The objection is, I think, well-founded. At the time when the action in question was commenced the Commission had not adopted any individual measure implementing Regulations Nos 3085/78 and 3086/78 in relation to the applicants, who are all serving officials. In those circumstances the persons concerned, wishing to resist the application of the two regulations to the pensions which will be payable to them in the future, submitted their complaints so that when in each case the pension becomes payable they will be able to receive an amount equal to that which they would have received if the new rules had not been issued. However, the complaints were not preceded by a decision (or an omission) of the appointing authority adversely affecting the applicants. Thus the complaints clearly lie outside the terms of Article 90 (2) of the Staff Regulations and the objection is therefore well-founded.

In reply the applicants say that the Commission adopted a decision rejecting their complaints when it sent to the authors thereof the circular dated 12 July 1979. In this regard the first thing which should be pointed out is that the circular constituted a reply to the complaints submitted in March 1979 by all the applicants, with the exception of Mr Seymour; the latter in fact did not submit his complaint until 31 August 1979 (see Annex 1 to the application). Apart from that, it is necessary to consider whether the decision contained in the circular of 12 July 1979 in fact constituted an act adversely affecting the applicants within the meaning of Article 90 (2) of the Staff Regulations. I consider that it did not.

The first obstacle to the applicants' argument lies in the wording of Article 90 (2) of the Staff Regulations, whereby the complaint must be directed against a decision (or an omission) on the part of the administration which adversely affects the official. The adverse decision must therefore *precede* the complaint to the administration. But in this case an attempt is made to identify the adverse act in a decision defining the administration's position *subsequently* to the complaint, which is clearly contrary to the letter and the purpose of the aforesaid provision.

Proceeding then to examine the substantive characteristics of an act adversely affecting an official, it is necessary to conclude that the Commission's reply did not possess those characteristics. I should point out that

according to the case-law of the Court of Justice the term "act adversely affecting an official" means any act capable of directly affecting a particular legal position (see Case 26/63 *Pistoj* v *Commission* [1964] ECR 341, Case 78/63 *Huber* v *Commission* [1964] ECR 367, Case 32/68 *Grasselli* v *Commission* [1969] ECR 505, Joined Cases 177/73 and 5/74 *Reinarz* v *Commission* [1974] ECR 819). It is clear that by virtue of its general and abstract nature a regulation cannot come within the terms of this definition. Therefore the act by which an official challenges a regulation and requests the administration to take no account of it in future when the conditions for its application in relation to him have come to be satisfied is not a complaint within the requirements of Article 90 (2) of the Staff Regulations and cannot therefore constitute an appropriate preliminary step to setting in motion the legal remedy provided by Article 91.

The case-law of the Court confirms the interpretation which I have adopted of the provisions contained in the Staff Regulations. I refer in particular to the judgment of 10 December 1969 in Case 32/68 *Grasselli* v *Commission* (already cited), which makes it clear (in paragraphs 10 and 11 of the decision) that when a complaint is submitted which is not in accordance with Article 90 (2) of the Staff Regulations the subsequent legal action against the institution's decision rejecting the complaint is flawed by the defect of inadmissibility attaching to the complaint. Moreover, if that were not so it would, as the Commission rightly observed, be easy to overcome the obstacle represented by the conditions governing the admissibility of complaints under Article 90 (existence of an individual decision of the appointing authority adversely affecting the official, and observance of the time-limit) by submitting a complaint which did not satisfy the requirements laid down and then bringing an action to challenge the administration's decision rejecting that complaint.

9. The Commission also submitted that the Bowden application is inadmissible for want of *locus standi*. In this regard the Commission points out that since the applicants are serving officials who have confined themselves to requesting a declaration that the Commission is obliged not to apply the new rules for calculating pensions in relation to them when their right to receive pensions matures, they do not allege any *immediate* material damage to their legal positions as a result of the new rules and therefore do not have any interest justifying the application.

In my opinion this objection also deserves to be upheld.

I have already had occasion to state (in my opinion delivered on 28 January 1981 in Case 148/79 *Korter* v *Council* [1981] ECR) that "an interest to sue exists where the decision which is requested of the Court is a means of making good the damage allegedly done to a material interest of the applicant by the conduct of the defendant". Thus the first question to which one must address oneself is whether in fact the applicants have alleged that an interest of theirs was adversely affected as a result of the conduct of the defendant. In my opinion, the answer must be in the negative, for the simple reason that the Commission has not adopted in relation to the applicants any measure implementing the regulations which they are challenging. I have already explained the reasons for my considering that the circular whereby the administration rejected the complaints cannot be treated as an individual implementing measure; on this point therefore I will merely refer to what I said previously.

If one accepts that the applicants do not possess an "immediate" interest in pursuing the legal action, it remains to establish whether they possess a "potential" interest. It is well known that the decisions of the Court of Justice have held such an interest to be admissible: I will cite by way of example the judgment of 29 October 1975 in Joined Cases 81 to 88/74 *Marenco and Others* v *Commission* [1975] ECR 1247, where it was held with regard to the legality of the appointment of a group of officials that even persons who had not applied for the posts advertised in a vacancy notice had an interest in bringing proceedings because they could have submitted applications if the administration had organized an internal competition. But anyone who asserts an interest in bringing legal proceedings, whether it be immediate or potential, must at the same time affirm that he has suffered damage as a result of the individual measure impugned; in this respect the condition that there must be an interest to sue is always closely connected with the condition that there must be an act capable of adversely affecting the official. In other words, even when a potential interest is involved the act adversely affecting it must already exist and must be in the nature of an individual measure. In this case we have seen that no individual measure adversely affecting (even potentially) the legal interests of the applicants has been averred.

Confirmation of this approach to the problem is furnished by the judgment of 1 February 1979 in Case 17/78 *Deshormes* v *Commission* [1979] ECR 189. That case concerned the pension rights of a serving official and the Court declared the claim admissible, observing in paragraph 10 of the decision that "although it is true that before retirement, an uncertain future event, pension rights are contingent rights . . ., it is none the less clear that an administrative act which decides that a particular period of employment cannot be taken into account for the calculation of years of pensionable service immediately and directly affects the legal situation of the person concerned even if that act is to be implemented only subsequently". The Court thus recognized the existence of a "potential" interest, treating as an adverse act a decision of the administration which was to be implemented in the future, years later; but it clearly linked the interest in bringing an action with the existence of a particular measure capable of affecting "immediately and directly" the legal situation of the official.

In order to demonstrate the existence of their interest in bringing proceedings even before the termination of their employment and the acquisition of their right to a pension, the applicants invoke the need to ensure the certainty of legal relations and regard the legal proceedings instituted as a declaratory action designed to clarify the law. But that is not, in my opinion, sufficient to overcome the obstacles and to make the application admissible: it is necessary to establish whether the system of remedies which the legal order accords to Community officials in their relations with the administration includes actions for such a declaration and, in the event of an affirmative reply, what conditions are attached to such actions.

I have already had occasion to state (in my opinion in Case 48/76 *Reinarz* v *Commission* [1977] ECR 301) that "any dispute which is begun by a person who relies upon his status as a servant or former servant of the Community and which raises a problem to be resolved under the conditions applicable to servants of the Community must follow

exclusively the procedure laid down in Article 179 and in Articles 90 and 91 of the Staff Regulations not only when the application is for the annulment of a measure but also when compensation for damage is claimed". The same reasoning may be repeated with regard to actions for a declaration, which in my opinion cannot be entertained within the system of guarantees accorded to officials except in the context of Article 179 of the Treaty and Articles 90 and 91 of the Staff Regulations. That means that such actions must also comply with the conditions laid down by those provisions and must therefore be connected with a challenge upon an individual act of the administration capable of adversely affecting the legal position of the official. Since that is not the position in this case the application is inadmissible and the existence of an interest on the part of the applicants in securing clarification of the law is immaterial in view of the fact that an action for a declaration which does not satisfy the conditions stated cannot in any event be entertained.

10. In Case 154/79 *(Biller)* the Parliament has raised an objection of inadmissibility (a) on the ground that there is no act capable of adversely affecting the applicants and therefore the terms of Article 90 (2) of the Staff Regulations are not fulfilled and (b) because the application does not appear to come within the terms of either Articles 90 and 91 of the Staff Regulations or Articles 173 and 184 of the EEC Treaty.

With regard to point (a), I will observe that the Parliament has not adopted individual measures implementing Regulations Nos 3085/78 and 3086/78 in relation to any of the applicants (with the exception of Mr Curtis) and that in the case now under consideration the applicants have attacked two legislative measures directly. Having received complaints from the persons concerned, the Parliament replied in the negative by letters dated July 1979 and signed by Secretary General Opitz, but those letters cannot, for the very reason that they were replies to the complaints, be regarded as acts adversely affecting the applicants within the meaning of the Staff Regulations. I therefore consider that the objection of inadmissibility is, in this regard, well-founded: on this point I would take leave to refer to the considerations expressed when I discussed the admissibility of the Bowden application.

The objection raised by the Parliament also deserves to be upheld in regard to the aspects dealt with in point (b). In substance it is a question of arguments already pleaded by the Commission in Case 153/79: therefore I refer once again to what I said previously.

With regard to the position of Mr Curtis, I note that he has submitted a further application (Case 167/80) against the Commission and the Parliament, again relating to the treatment of his pension rights in the light of the new rules introduced by Regulations Nos 3085/78 and 3086/78. I shall deal with that matter later and in that context I shall also examine the consequences, on the procedural position of the Parliament, of the individual measures implementing those two regulations, adopted exclusively in relation to Mr Curtis. In any event, the application submitted by that official together with 11 colleagues and registered as Case 154/79, must be held inadmissible for the reasons which I have set out above.

11. In Case 33/80 *(Albini and Others* v *Commission and Council)* the first defendant institution has objected in the first place that the claim for the annulment or non-application in relation to the applicants of Regulations Nos 3085/78 and 3086/78 is inadmissible. That objection is based on two grounds:

(a) the application is directed against measures which were not adopted by the appointing authority; (b) the measures impugned are of a general nature.

I consider both grounds of the objection well-founded. Regulations Nos 3085/78 and 3086/78 were enacted by the Council, whereas the appointing authority in this case is the Commission since all the applicants are ex-officials of that institution. The principle that applications by officials may be directed only against acts emanating from the appointing authority is apparent from the Staff Regulations. Article 91 (2) thereof provides that "an appeal to the Court of Justice of the European Communities shall lie only if the appointing authority has previously had a complaint submitted to it ..." and Article 90 (2) clearly stipulates that the complaint in question must be directed against a decision emanating from the appointing authority. According to those provisions, therefore, only an act of the appointing authority may constitute the object of a challenge. The Court of Justice recently expressed such a view in the Order of 4 October 1979 in Case 48/79 *Ooms and Others* v *Commission* [1979] ECR 3121), where it declared that in order to be admissible "actions by officials instituted under Article 179 of the EEC Treaty must be directed against the appointing authority and relate to acts or omissions of that authority...".

As regards the general nature of the measures under challenge, it is not necessary for me to repeat the considerations which I expressed in this respect when dealing with the procedural aspects of the Bowden case. We have seen that regulations are not included amongst the measures against which officials may bring an action for annulment under Article 179 of the Treaty and Article 91 of the Staff Regulations or amongst those measures which individuals may challenge under the second paragraph of Article 173 of the EEC Treaty or by invoking Article 184 as a principal claim.

In the second place, the Commission has submitted that the claim for compensation in respect of the reduction in the pension is inadmissible. In this regard, the Commission argues that the inadmissibility of the claim for the annulment of the two regulations entails the inadmissibility of the claim for compensation since the latter presupposes the invalidity of the measures which the principal claim seeks to annul. In my opinion, that objection should be upheld. It is true that under Article 91 (1) of the Staff Regulations the Court has unlimited jurisdiction in disputes of a financial character between the Community and officials, but that jurisdiction arises only where there exists a dispute within the meaning of the first part of Article 91 (1), that is to say a dispute between the administration and officials occasioned by an act of the administration which adversely affects an official (on this point, see the judgment of 10 December 1969 in Case 32/68 *Grasselli* v *Commission* [1969] ECR 505). In the present case the claim for damages is closely connected with the principal claim for annulment: both are founded on the alleged illegality of Regulations Nos 3085/78 and 3086/78 and both seek to avoid the financial damage associated with the application of those regulations in relation to the applicants. Therefore I think it reasonable that the inadmissibility of the claim for annulment

should extend to the claim for damages. Moreover, if that were not the case the officials could easily circumvent the obstacles arising from the inadmissibility of the claim for annulment by bringing an action for damages. The case-law of the Court confirms my view: see the judgments in Case 59/65 *Schrechenberg* v *Commission* [1966] ECR 543, Case 4/67 *Muller, née Collignon* v *Commission* [1967] ECR 365, Case 53/70 *Vinck* v *Commission* [1971] ECR 601, Joined Cases 15 to 33/73 etc. *Schots, née Kortner and Others* v *Council, Commission and Parliament* [1974] ECR 177.

A further ground pleaded by the Commission in support of its contention that the claim for damages is inadmissible is the absence of a previous complaint through official channels. This aspect of the objection does not strike me as well-founded: claims for compensation do not have to be submitted at the same time as the complaint through official channels, and in actual fact they are not. That is not contrary to the provisions of Article 91 (2) of the Staff Regulations: in fact, in order for the subject-matter of the action to coincide with the subject-matter of the complaint it is sufficient in my opinion if at both stages (administrative and judicial) the illegality of the same measure is pleaded. A narrower interpretation of Article 91 (2) does not seem to me justified either by the wording of the provision, which refers to the identity of the adverse act complained of, or by the purpose of the provision, which is to ensure that each dispute is subject to a two-tier system of guarantees operating first at administrative level and thereafter at judicial level. Therefore I believe that a claim for compensation which is, as I have stressed, necessarily connected with the official's claim for the annulment of an act adversely affecting him may properly be submitted whenever the complaint through official channels alleged the invalidity of the act which is later challenged judicially.

12. The Council also contends that the application in Case 33/80 is inadmissible in various respects.

(a) In relation to the claim for the annulment of Regulations Nos 3085/78 and 3086/78 the Council's first ppint is that the applicants did not previously submit a complaint to the Council. That is correct. All the applicants complained solely to the Commission and then commenced proceedings against both the Commission and the Council. That renders the application against the Council inadmissible: it is well-known that one of the conditions for the admissibility of the application under Article 91 of the Staff Regulations is that a complaint through official channels must have been submitted previously.

(b) A second ground of inadmissibility is based on the fact that the Council is not the appointing authority. That argument is also well-founded in my opinion. It is not in dispute that all the applicants are former officials of the Commission and that the Council does not therefore have the capacity of appointing authority in relation to them. As I have already shown, officials may bring actions under Article 179 of the Treaty only against measures emanating from the appointing authority.

(c) In its third objection to the admissibility of the claim for the annulment of the regulations the Council submits that officials are not entitled to challenge general measures directly. That is true, as we have already seen. The objection must therefore be upheld.

(d) Finally, with regard to the claim for compensation, the grounds pleaded by

the Council in order to demonstrate that that claim is inadmissible are the same as the grounds which are pleaded by the Commission and which I have already examined. I refer therefore to the conclusions which I reached on the basis of that examination.

13. In Case 167/80 *(Curtis* v *Commission and Parliament)* the Commission has objected to the admissibility of the main claim, which seeks to prevent the application of Regulations Nos 3085/78 and 3086/78 in relation to the applicant, arguing that officials cannot be allowed to challenge general measures directly and that in particular such a challenge cannot be based on Article 184 of the EEC Treaty. I share that point of view, as I explained when discussing the procedural aspects of the *Bowden* case.

The claim for the annulment of the Commission's circular of 22 October 1979 is also inadmissible, according to the Commission, both because the Commission does not have the capacity of appointing authority in this particular case and because the action is not directed against a measure capable of adversely affecting the official.

The first of these contentions is well-founded. The applicant is a former official of the Parliament; hence the capacity of appointing authority in relation to him must be ascribed to the Parliament. As for the Commission, a similar capacity cannot be attributed to it on the sole ground that, purely for accounting reasons, it is responsible for the payment of pensions to all former Community officials irrespective of the institution in which they served. That the application must be directed against the appointing authority if it is to be admissible is not disputed, as I have previously pointed out.

On the other hand, I do not find the second contention convincing. It is the fact that the Commission's letter of 22 October 1979 made known to the person concerned the computation of the new level of the pension. The Commission submits that such a document, the sole purpose of which was to furnish information, did not constitute an individual measure implementing Regulation No 3085/78, that is to say a decision adversely affecting Mr Curtis. We are aware that the case-law of the Court distinguishes between explanatory measures and measures which are in the nature of decisions and regards only the second category as capable of adversely affecting an official. In particular, a reply whereby the administration informs the person concerned that his request is under consideration does not constitute a decision (judgment of 17 February 1972 in Case 40/71 *Richez-Parise* v *Commission* [1972] ECR 73) nor does a letter whereby the officials of an institution inform the person concerned of the contents of a decision which requires to be formally adopted (judgment of 5 December 1963 in Joined Cases 35/62 and 16/63 *Leroy* v *High Authority* [1963] ECR 197). However, I do not believe that those precedents may usefully be cited in the present case.

In fact, the letter sent by the Commission on 22 October 1979 (acting as the Council's agent for the payment of pensions in implementation of the budget) made known the manner in which it was going to implement Regulation No 3085/78 in relation to the applicant in the period between October 1979 and July of the following year. That letter followed upon the pension statement for the month of October. That payment had taken place a week earlier and the statement effected the first phase of the reduction and said nothing about the manner in which the pension would subsequently be reduced. The letter, however, contained all the details about the implementation of Regulation No 3085/78 in relation to the specific position of the applicant; so

it may truly be said that it brought to his knowledge the decision of the administration on the implementation of the regulation in relation to him. If that is the case, it seems accurate to describe the letter as a decision adversely affecting the applicant. The adverse effects were due to materialize subsequently and in stages, but the potential damage already existed and therefore justified the immediate submission of the complaint.

The Commission contends that the applicant should have challenged the pension statement for October, the only document which incorporated an individual decision capable of adversely affecting the applicant. But, that statement was partial in nature, since it mentioned only the first of the ten progressive monthly reductions and did not contain any reference to Regulation No 3085/78. In view of that I do not consider that the failure to challenge the statement prejudiced the possibility of attacking the letter of 22 October which fully explained how Regulation No 3085/78 was to be implemented in relation to the applicant.

It is scarcely necessary to add that the fact that the objection based on the absence of an act adversely affecting the applicant may be dismissed is not sufficient to render Mr Curtis's action against the Commission admissible if the Commission's objection based on the fact that it did not have the capacity of appointing authority in this particular case is upheld.

It remains to be said that the Commission has also objected to the admissibility of the claim (in the alternative) for the annulment of the decision rejecting the complaint. On this point, the defendant institution is right to assert that that is not a measure capable of adversely affecting the applicant: I refer to the observations already formulated on this point with reference to Case 153/79.

14. The European Parliament has objected to the admissibility of the application in Case 167/80 in two respects. The first ground pleaded is that Mr Curtis's application has the same content as the one previously lodged by him together with other officials and registered as Case 154/79: that is said to give rise to concurrency of proceedings. According to the case-law of the Court of Justice the existence of concurrent proceedings may render an action inadmissible and the Court must raise the objection of its own motion under Article 92 of the Rules of Procedure (see the judgment of 17 May 1973 in Joined Cases 58 and 75/72 *Perinciolo* v *Council* [1973] ECR 511). But when the two cases are at the same stage of the procedure, as is the position here, it is possible to join the cases and deliver a single judgment; obviously that would cause the objection of inadmissibility to fall. In any event, I consider that the objection is unfounded because the two applications in question are not identical: whereas in Case 154/79 only the annulment of Regulation Nos 3085/78 and 3086/78 is sought, Case 167/80 also involves an attack upon the administration's letter of 22 October 1979. In addition, the former case was preceded by a complaint against Regulation No 3086/78, whilst the latter was set in motion by a different complaint lodged on 8 January 1980.

The other ground of inadmissibility lies, according to the Parliament, in the lateness of the complaint (lodged, as we have seen, on 8 January 1980). It is argued that the applicant was informed of the consequences of the application of the new rules by the administration's letter of 4 September 1979 and that therefore the period of three months for lodging a complaint started to run on that date, with the result that it expired on 4 December 1979. That contention is without foundation. The letter of

4 September 1979 does not have the characteristics of an act capable of adversely afecting an official: it was a circularized letter containing information of a general nature on the effects which the new rules would have on pensions. In order to preclude the possibility of challenging that letter the decisions of the Court relating to so-called explanatory acts may properly be cited; I have already had occasion to mention those decisions when considering the nature of the letter which the Commission sent to the applicant on 22 October 1979. In this regard, it should be stressed that there exists between the two leters, dated 4 September and 22 October respectively, a substantial difference: the former is general and abstract in nature and in that sense adds nothing to the regulations to which it refers, whilst the latter constitutes the implementation of the regulations in relation to the individual and may therefore be described as a decision adversely affecting the legal position of the individual.

In conclusion, both the objections of inadmissibility raised by the Parliament seem unfounded, so the application submitted by Mr Curtis against the Parliament must be held admissible.

15. I shall now go on to deal with two cases belonging to the group of cases relating to transfers abroad of part of officials' salaries, namely Joined Cases 783 and 786/79 *(Venus and Obert* v *Commission and Council).* These are the only cases in that group which have given rise to objections of admissibility on the part of the Community institutions.

It is useful to recall at the outset that the applicants' primary claim is for the annulment of the Commission's decision to apply in relation to them the monetary parities laid down by Regulation No 3085/78 for the purpose of transfers abroad of a part of their salaries under Article 17 of Annex VII to the Staff Regulations. In their reply the applicants made it clear that the decision of the Commission which they meant to impugn was the one contained in the letter of 12 July 1979 or (in the alternative, it seems) the one contained in the other circular letter of 4 April 1979.

The Commission asserts in the first place that if the application is to be understood as an attempt to impugn Regulations Nos 3085/78 and 3086/78, it must be declared inadmissible since regulations cannot be directly challenged by officials. In my opinion, this interpretation of the application is not correct if account is also taken of the clarifications which the applicants furnished in their reply in order to identify the acts which formed the object of the application for annulment. However, if it were to be held that the application is indeed directed against the regulations, the objection would be well-founded for the reasons which I have already explained and emphasized.

The same conclusion must in my view be reached if the application is regarded as being directed against the circular letter sent on 4 April 1979 by the administration of the Joint European Torus (JET) to all Euratom staff assigned to that project. The letter stated that transfers abroad, beginning with those relating to the salary for April 1979, would take place on the basis of different exchange rates from those applied the previous month. Attached to the letter were the new provisions, in force as from 1 April 1979, on the calculation of the amounts of salary which could be

transferred abroad. In my view, such a letter does not have the nature of a decision: it merely supplies information of a very general type, applicable to all the staff, and cannot be regarded as an instrument for implementing a general measure in relation to the individual, which constitutes an essential characteristic of a decision capable of adversely affecting the individual and liable to challenge under the Staff Regulations. On this point I refer to my previous observations on the concept of an adverse act in the context of the provisions of the Staff Regulations on applications by officials.

If the view is taken that the application was directed against the circular letter of 12 July 1979, the conclusion does not change. In that letter the Commission replied collectively to a large number of complaints, all relating to the application of Regulations Nos 3085/78, 3086/78 and 3087/78, and supplied rather detailed explanations about the new rules on exchange rates, also with regard to Article 17 of Annex VII (which, as we have seen, deals with transfers abroad of part of officials' salaries). Since it was of general scope, that letter was equally incapable of constituting an adverse act for the same reasons as those which I mentioned with reference to the letter of 4 April 1979. It may be added that, as it was a reply to the complaints, it cannot in any event be confused with the decision impugned for the reasons which I had occasion to explain when discussing the *Bowden* case.

In the present case it is indisputable that the Commission adopted in relation to the applicants individual measures implementing the new rules on transfers of currency: I refer to the decisions contained in the salary statements for April 1979 and the succeeding months. The calculation of those salaries took into account the new cost of the transfers of a part thereof (that cost being higher if the same sum of foreign currency was transferred). Therefore, if the actions could be construed as attempts to challenge the individual decisions contained in the salary statements, that would be the end of the objection of inadmissibility based on the argument that no act capable of adversely affecting the applicants is being challenged. But when an attempt is made to proceed along that path a further, insuperable obstacle is encountered: namely, the absence of a previous complaint through official channels. In fact, the decisions contained in the salary statements date back to April 1979, whilst the complaints were lodged in March of the same year; that is to say, they preceded those decisions. The inescapable conclusion therefore is that the applications of Mr Venus and Mr Obert, and the complaints through official channels which preceded those applications, must be held inadmissible on the ground that they are not directed against decisions capable of being challenged.

Finally, as regards the fate of the claim for compensation submitted by the applicants, I confirm what I said previously: that claim is barred by virtue of the inadmissibility of the action for annulment.

The Council, which identifies the measures under challenge in the payment of salaries for the month of April 1979, also objects to the admissibility of the claim for annulment and of the claim for compensation. With regard to the former, the Council states that it does not have the capacity of appointing authority in relation to the applicants, who are in the service of the Commission, and with regard to the latter, it states that the claim for compensation is closely connected with the claim for annulment, with the result that the inadmissibility of the one

necessarily extends to the other. Both these points have already been dealt with in the course of the present opinion: I will therefore confine myself to the observation that the Council's objections are well-founded.

16. There remain to be considered the procedural aspects of the cases concerning the weighting applied to the salaries of officials based in Italy: Cases 158/79, 543/79 and 799/79, and 737/79.

I shall begin with Case 158/79 *(Roumengous* v *Commission)* in which it has been submitted that application is inadmissible both as regards the claim for annulment of the payment of arrears of salary, which took place in January 1979, and as regards the claim for compensation for the damage caused by the implementation of Regulation No 3087/78.

With regard to the first objection, it should be noted that the applicant's criticism concerns: (a) the extent of the revaluation of the weighting, which it considers inadequate and erroneous, and (b) the insufficient retroactivity of the revaluation, which was limited to the period commencing on 1 January 1978, whereas according to the applicant it should have been extended so as to include the previous two years, that is to say the years 1976 and 1977.

With regard to the criticism covered by point (a), the defendant institution submits that the claim is inadmissible in so far as it relates to the period from July to December 1978, with the result that the weighting fixed for that period can have no bearing on the present dispute. According to the Commission, the adjustment of the weighting for the period in question was effected by Council Regulation No 3084/78, whilst Regulation No 3087/78 fixed the weighting solely for the first half of 1978; but, both in her complaint and in her application to the Court, the applicant has challenged only the effects of Regulation No 3087/78. However, I would point out that, whilst it is true that the application and the complaint refer only to Regulation No 3087/78, it is also true that they clearly challenge the adjustment of the weighting for the whole of 1978, if only because they attack the payment of the arrears in January 1979, which relate to the whole of 1978. There is no doubt therefore that the applicant's intention was to challenge the adjustment of the weighting for the whole year and I do not believe that the inaccuracy with which she described the source of the provision which introduced that adjustment can restrict the breadth of the application in a manner incompatible with the clear intention of the applicant. As for the criticism referred to in point (b), the Commission takes the view that both the claim for the revaluation of the weighting applied in 1976 and 1977 and the claim which seeks to extend to that period the weighting as adjusted by Regulation No 3087/78 are inadmissible. In support of that contention the Commission puts forward two reasons: the payment of arrears in January 1979 was a confirmatory measure in relation to the monthly salary payments effected in 1976 and 1977 (and also in relation to the previous payments) and so is not a measure which can be challenged separately; in any event, the complaints against the salary payments in respect of the said period of two years were not submitted in good time. I find the first of these reasons excessively contrived. In fact, neither Regulation No 3087/78 nor the measures adopted pursuant thereto for the payment of arrears concern the size of the weighting for the period prior to 1 January 1978. It

would be arbitrary to infer from that simple fact an implied intention to confirm the weighting in force during the aforesaid period. I believe that it would be more correct simply to recognize that Regulation No 3087/78 and the measures whereby it was implemented are in no way related to the salary payments effected prior to 1 April 1978.

On the other hand, the second of the above-mentioned reasons seems sound to me. The person concerned should immediately have challenged, by a complaint through official channels, the salary payments effected during the two years in dispute, objecting to the inadequacy of the weighting. But since no such complaint was lodged at the time, it must be asked whether the subsequent adoption of Regulation No 3087/78, fixing a new weighting with a certain measure of retroactivity, revived the whole question, thus allowing the person concerned to lodge a complaint extending to the salary payments effected more than two years earlier. I do not think that such a view may be accepted; it would deprive of meaning the provision in the Staff Regulations which requires the prior lodging of a complaint through official channels within a relatively short period. The need for certainty in the relations between officials and the administration is the basis for that rule and no one could deny that that requirement would be compromised if credence were given to the idea that the period for lodging a complaint may start running again. It will readily be seen how unreasonable such an idea is when it is realized that it would mean that officials could revive the issue of the weighting *without any time-limit:* that is clearly unacceptable because it is totally inconsistent with the rule requiring a prior complaint through official channels.

In conclusion, I consider the claim for the re-adjustment of the weighting admissible only as regards that part of the claim which relates to the year 1978, whilst I consider entirely inadmissible the claim which seeks to extend the application of Regulation No 3087/78 to the years 1976 and 1977.

The second objection raised by the defendant institution concerns, as I have said, the claim for compensation. The applicant seeks a declaration that she is entitled to the sum resulting from the increase in the weighting of 6·4% also in relation to her earnings for 1976 and 1977, "with a further supplement required in order to take account of the higher cost of living in Varese in relation to Rome ... and a further sum by way of interest". It should be stressed that that claim, as is clear from the unambiguous manner in which it is formulated, concerns only the damage allegedly caused by the failure to apply the weighting as adjusted by Regulation No 3087/78 to the years 1976 and 1977. I consider the objection of inadmissibility well-founded, having regard to the fact that the claim for the annulment of the payment of arrears is in my opinion inadmissible as regards the years 1976 and 1977 and the fact that, according to the case-law of the Court, the inadmissibility of the claim for annulment is a bar to the admissibility of the claim for damages when, as in the present case, it is a question of claims submitted by officials and one claim is closely connected with the other. It should be sufficient for me to refer to the observations which I expressed on this point when considering similar objections.

17. In Case 543/79 *(Birke* v *Commission and Council)* the Commission has objected to the admissibility of the claim on several grounds.

Before considering whether the individual objections are well-founded, it should be noted that Mr Birke lodged three complaints against the Commission at various times. Two of them, registered on 26 March 1979, concern respectively the application of Regulations Nos 3085/78 and 3086/78 (concerning the salary paid as from April 1979) and the application of Regulation No 3087 (which increased the weighting for the period from 1 January 1978 to 31 March 1979). The third complaint, lodged in June 1979, concerns Regulations Nos 3085/78 and 3086/78 and in particular the specific issue of the cost of currency transfers. As for the claim concerning the application of Regulation No 3087/78, it revolves around two issues: the extension of the retroactivity of the regulation in question to the years 1976 and 1977 and the revision of the weighting applied to salaries between 1976 and 1978 (assuming as the point of reference the cost of living in the province of Varese or, in the alternative, in the province of Rome).

The Commission observes that the complaint of 26 March 1979 relating to Regulation No 3087/78 concerned only the extension of the retroactivity and did not express any grievance in relation to the method employed to assess the variations in the cost of living and so determine the size of the increase in the weighting; from that the Commission infers that the application is inadmissible as regards the claim for revision of the weighting on the basis of the variations in the cost of living. I find this objection well-founded. The complaint about Regulation No 3087/78 does not concern the size of the increase in the cost of living ascertained by the Commission, but solely the payment of arrears for the years 1976 and 1977: in fact, Mr Birke stated in the closing part of the complaint that he intended to act against the incompleteness of the payment of arrears made on 15 January 1978. Moreover, it is well-known that under Article 91 of the Staff Regulations the complaint and the application must have substantially the same subject-matter in the sense that the matter in issue must have been submitted to the administration by means of the complaint so that the administration is in a position to take action and to settle the dispute before the judicial stage is embarked upon. In the present case the sole issue put to the Commission in the complaint was that of the arrears. That being so, I do not believe that it is possible to admit that part of the claim which relates to the revision of the calculations concerning the size of increase in the cost of living. A different interpretation of Article 91 of the Staff Regulations would destroy the function of the requirement that the application to the Court must be preceded by a complaint through official channels, that function being to provide the parties — official and institution — with an opportunity to take cognizance of the dispute and to settle it at administrative level.

The Commission further submits that the claim relating to Regulation No 3087/78 is inadmissible in so far as it concerns the extension of the arrears to the period prior to 1 January 1978, observing that the complaint submitted on 26 March 1979 in order to challenge the failure to pay the arrears for the years 1976 and 1977 was out of time and that consequently the application is inadmissible. A further ground of inadmissibility is alleged to consist in the fact that the payment of the arrears in January 1979, which related only to the period from 1 January 1978, in substance confirmed the monthly payments prior to 1 January 1978; thus it is said to be a question of a

measure which may not be challenged separately. Similar arguments were formulated by the Commission and discussed by me in the context of Case 158/79. The conclusion which I reached is that the complaint concerning the failure to pay arrears for the years 1976 and 1977, having been lodged after the adoption of Regulation No 3087/78, is indeed out of time; whereas the argument to the effect that the payment of the arrears was in the nature of a measure confirming the salary payments for those two years is not convincing. Those conclusions apply equally in the case with which I am dealing now.

It remains to be said that both in Case 543/79 and in Case 799/79 *(Bruckner* v *Commission and Council)* the Council has also objected to the admissibility of the applications on various grounds which are identical to those pleaded in Case 33/80 *(Albini and Others* v *Commission and Council).* As was seen when the *Albini* case was considered, all those objections of inadmissibility are well-founded and it suffices for me to refer to the arguments dealt with in that context.

18. In Case 737/79 *(Battaglia* v *Commission),* the defendant institution has objected to the admissibility of the application with reference to various heads of claim, namely those concerning: (a) the annulment of the payment of arrears made in January 1979; (b) the payment of the differences in salary which would become due if the preceding request were granted; (c) in the alternative, compensation for the damage which the Commission is alleged to have caused the applicant by its breach of the principle of non-discrimination and the breach of its duty to provide assistance; (d) in the further alternative, the declaration that the conditions for the revision of the weighting laid down in Article 65 of the Staff Regulations are satisfied and that the Council is bound to proceed with such a revision in respect of the period which commenced on 1 January 1976.

As regards the claim for annulment, it should be made clear that, as in Case 158/79, that claim is based on the inadequate revision of the weighting and on the insufficient retroactivity of the adjustment. As in Case 158/79, the Commission submits in the first place that as regards the part relating to the second half of 1978, the payment of the arrears lies outside the scope of the dispute. For the reasons which I have already had occasion to explain, I am not able to share that opinion. Secondly, with reference to the claim that the weighting laid down in Regulation No 3087/78 should be applied to the years 1976 and 1977, the Commission again relies on the absence of a prior complaint through official channels and on the confirmatory nature of the measure impugned. Only the first aspect of the objection strikes me as well-founded: I refer the Court to the observations which I formulated on this point when dealing with Case 158/79.

As regards the claim for the payment of the sums which would become due as a result of the annulment of the payment of the arrears made in January 1979, the Commission submits that the inadmissibility of the claim for annulment is reflected in the other claim also. This objection is well-founded. Therefore, I consider that this head of the claim is admissible to the extent to which I considered admissible the claim for annulment, that is to say only in relation to the question of the revision of the weighting for 1978. In effect, the claim which seeks to obtain payment of the differences in salary is merely the corollary of the claim for annulment in

view of the fact that the Court has unlimited jurisdiction in disputes between officials and the administration.

As regards the claim for compensation, the Commission objects to its admissibility on the ground that it is closely connected with the action for annulment, which is in turn inadmissible. On this point I would refer to what I have already said with regard to Case 33/80. I am of the opinion that the claim for compensation is also admissible subject to the same limitations as the claim for annulment.

Finally, with regard to the claim for a mere declaration, the Commission objects to its admissibility, observing that the remedies granted to officials in their relations with the administration by Article 179 of the Treaty do not include actions for a declaration. That objection has already been encountered in the context of other cases covered by my present opinion and I repeat that I find the objection well-founded. An action for a declaration on the part of an official is inconceivable as an independent remedy; in fact, the declaratory judgment must necessarily be connected with the illegality of a Community measure of an individual nature. I would refer to the observations which I expressed on this point above. It should be noted that in the present case the claim for a declaration is a subsidiary claim in that it is pleaded in the alternative in the event of the failure of the other claims seeking annulment of the payment of remuneration in January 1979 and, in the alternative, compensation for the damage; that means that the applicant intends to advance the claim as an independent form of action. That being so, the claim in question must be held inadmissible.

As regards, in particular, the claim for a declaration that the Council is bound to proceed with due diligence to adjust the weightings in relation to the variations in the cost of living, I do not believe that that claim can usefully be supported by citing the judgment of the Court of Justice of 19 March 1975 in Case 28/74 *Gillet* v *Commission* [1975] ECR 463, where it was said in paragraph 16 of the decision that "it is for the Council to adapt the [Staff] Regulations to economic realities and thus to seek the means of alleviating any loss suffered by officials residing in a country whose currency has been substantially revalued". The fact that in that decision the Court observed that the Council has a task to perform has, in my opinion, nothing to do with a declaratory ruling establishing the existence of an obligation. Thus the precedent in question is not apt to alter the conclusion which I reached above with regard to the inadmissibility of the claim for a declaration.

19. Having finished with the questions of admissibility, I shall now go on to deal with the issues of substance arising in Cases 817/79 *(Buyl* v *Commission)*, 828/79 *(Adam* v *Commission)* and 1253/79 *(Battaglia* v *Commission)*. I would observe that in the oral procedure questions of substance were also discussed in Case 154/79 *(Biller)* and in Case 72/80 *(Airola)*, but in the first case I reserved the right to deliver a separate opinion, if required, after the Court has ruled on the question of admissibility, whilst the second case will be dealt with later as regards both procedural aspects and questions of substance.

The three cases on which I shall now speak have certain features in common. The applicants, all officials in the service of the Commission, challenged the payment of their emoluments in April 1979, complaining that those payments had been reduced as a result of the

increased cost of the transfer of part of their emoluments to other countries. In this regard, I would point out that Regulation No 3085/78 amended two provisions of the Staff Regulations: Article 63 concerning monetary parities and Article 17 of Annex VII, which concerns transfers abroad of part of officials' salaries. Not wishing to repeat everything that I have said with regard to these provisions, I shall confine myself to the observation that the new system entailed an appreciable increase in the cost of currency transfers, an increase which was even more pronounced for officials who are employed in countries with weak currencies, notwithstanding the application of the special weighting introduced by Article 17 (3). By way of example, for an official who is employed in Italy the rate for the conversion of lire into Belgian francs changed from 12·5 to 21 lire per franc; none the less, it is a more favourable rate than the current market rate of approximately 30 lire per franc.

According to the applicants, the monthly salary payments in April 1979 — the first individual decisions applying the new rules — and the regulations on which those payments rest (I refer to Regulations Nos 3085/78 and 3086/78) are vitiated in various respects, namely: (a) infringement of an essential procedural requirement; (b) breach of various general principles of the Community legal order (the principle of equality, the principle of the protection of legitimate expectation, the principle of the inviolability of vested rights, the principle that Community officials' salaries may not be reduced, the principle of limited powers of decision and finally the principle that the administration should respect the fundamental conditions of employment); (c) misuse of powers. I shall deal with these complaints in the same order.

20. The first question to discuss is whether Regulations Nos 3085/78 and 3086/78 are vitiated by the *infringement of an essential procedural requirement.* According to the applicants, those two measures, on which the contested individual decisions of April 1979 were based, were adopted by means of an irregular procedure inasmuch as there was no consultation of the European Parliament, the Staff Regulations Committee or the Staff Committee.

As a preliminary observation, it should be noted that when it is a question of amending the Staff Regulations and the Conditions of Employment of Other Servants, Community law lays down a legislative procedure involving the consultation of both the European Parliament (as well as the Court of Justice) and the Staff Regulations Committee. In fact, Article 24 of the Treaty establishing a Single Council and a Single Commission of the European Communities [the Merger Treaty] provides that "the Council shall, acting by a qualified majority on a proposal from the Commission *and after consulting the other institutions concerned,* lay down the Staff Regulations of Officials ... and the Conditions of Employment of Other Servants ...". The Staff Regulations in turn provide, in the third paragraph of Article 10, that the Staff Regulations Committee (composed of representatives of the institutions of the Communities and representatives of the Staff Committees) "shall be consulted by the Commission on any proposal for the revision of the Staff Regulations". In the present case, therefore, there is no doubt that Regulation No 3085/78, which introduced a number of amendments to

the Staff Regulations, could not have been adopted unless the Commission had consulted the Staff Regulations Committee and the Council had in turn, on a proposal from the Commission, consulted the Parliament and the Court of Justice. And indeed the preamble to that regulation records that the three opinions were given.

The legal context is quite different as far as Regulation No 3086/78 is concerned, since its function is to implement the provisions of the Staff Regulations on weightings (Articles 64, 65 (2) and 82 of the Staff Regulations; the first paragraph of Article 20 and Article 64 of the Conditions of Employment of Other Servants). Therefore in the hierarchy of the sources of Community law it occupies a subordinate position in relation to the Staff Regulations. It is apparent that Article 24 of the Merger Treaty (quoted above) and the third paragraph of Article 10 of the Staff Regulations do not concern Regulation No 3086/78. At most, it might be thought that there is reason to apply, with regard to this regulation, Article 110 of the Staff Regulations, which provides that "the general provisions for giving effect to these Staff Regulations shall be adopted by each institution after consulting its Staff Committee and the Staff Regulations Committee provided for in Article 10". But that proposition collapses when it is realized that Article 110 refers to the general provisions which it falls to each institution to adopt in order to give effect to the Staff Regulations internally (that is to say, it is an instance of the special legislative autonomy of each institution), whereas Regulation No 3086/78 was adopted by the Council in the exercise of its ordinary legislative power and contains provisions which are intended to be applied in the same way in relation to the staff of all the institutions. Thus the objections which have been directed against Regulation No 3086/78 on the ground of failure to consult the Staff Committee and the Staff Regulations Committee are without foundation; and there is no legal basis for supposing that the Parliament and the Court of Justice must be consulted about a regulation of this type.

Having said that, how does one explain the fact that the applicants complain of the failure to seek the opinion of the Parliament and the Staff Regulations Committee with regard to Regulation No 3085/78 when the preamble to that regulation declares that the opinion of those bodies was obtained?

In fact, the applicants do not dispute that the consultation took place. They merely observe that the Parliament and the Committee were consulted on draft amendments to the Staff Regulations which were very different from the text adopted in December 1978: to be precise, on the proposal submitted to the Council by the Commission on 1 April 1977 (see Official Journal C 99, p. 5 of 27 April 1977) on the introduction of the European unit of account into the Staff Regulations of Officials of the European Communities and into the Conditions of Employment of Other Servants of the Communities. In their opinion, the 1978 text, being different from the text submitted in the previous year, should have been the subject of further consultations.

The Court of Justice had occasion to examine the legal aspects of the consultation of the Parliament in the judgment of 15 July 1970 in Case 41/69 *ACF Chemiefarma* v *Commission* [1970] ECR 661. There it was a question of establishing whether amendments which the Council makes to the wording of a regulation proposed by the Commission make it necessary to consult the Parliament again. The Court declared that when the Parliament has been consulted on a draft regulation, the Council is not bound to consult it again unless the amendments affect the *substance* of the

draft, considered as a whole. That satisfies the need to ensure that the Parliament is able to express its opinion without unnecessarily complicating the procedure for the enactment of regulations. More recently, the Court confirmed that when consultation of the Parliament is mandatory its opinion must actually be expressed (judgments of 29 October 1980 in Cases 138/79 *Roquette Frères* v *Council* at paragraph 34 of the decision, and 139/79 *Maizena* v *Council* at paragraph 35 of the decision). Thus the crux of the problem is to establish, case by case, whether the amendments to the Commission's initial draft were so radical as to render the first consultation outdated and irrelevant; wherever that turns out to be the case, the Parliament must be consulted again so that it may effectively express its opinion.

Let us now examine, in the light of those criteria, the procedure whereby Regulation No 3085/78 was adopted. The proposal submitted by the Commission on 1 April 1977 (Official Journal C 99, p. 5 of 22 April 1977) provided that Article 63 of the Staff Regulations was to be amended so that the remuneration of Community officials would be expressed in European units of account instead of in Belgian francs (see Article 1 of the draft); and further, that Article 17 of Annex VII to the Staff Regulations should be amended so that currency transfers should be weighted by a coefficient representing the ratio between the weighting for the country in the currency of which the transfer was made and the weighting for the country of the official's employment. It may be noted that a similar proposal for the amendment of Article 17 of Annex VI had already been submitted by the Commission on 13 June 1974 (Official Journal C 88, p. 25 of 26 July 1974).

In 1978 the definitive version of Regulation No 3085/78 abandoned the idea of introducing the European unit of account into the field of remunerations, but adhered to the principal motivation behind the amendment, namely, the need to escape from the parities adopted by the International Monetary Fund and to apply to remunerations realistic exchange rates, substantially in line with current quotations. In the amended version, the second paragraph of Article 63 provides that "remuneration paid in a currency other than Belgian francs shall be calculated on the basis of the exchange rates used for the implementation of the general budget of the European Communities . . .". Both the adoption of the European unit of account and the reference to the rates used for the Community budget constitute solutions which satisfy the same objective: to avoid the continuation of a situation in which remuneration paid in local currencies is calculated on the basis of obsolete and fictitious exchange rates.

The principal difference between the two solutions resides in the fact that in the event of the general adoption of the European unit of account salaries paid in Belgian francs would also have required to be expressed in such terms, whereas in the system which was adopted salaries in Belgian francs remain the point of reference from which salaries paid in other currencies are calculated. But it is well known that the Community budget is calculated in European units of account and that consequently the

exchange rates used for the implementation of the budget correspond to the relationship between the European unit of account and national currencies. Therefore I do not believe that the new technical solution devised (recourse to the exchange rates used for the Community budget instead of the European unit of account) amended *in economic terms* the system applicable to remuneration paid in currencies other than the Belgian franc.

We now come to Article 17 of Annex VII. The system which the original proposal put forward for the calculation of the weighting for transfers abroad of part of officials' remuneration was identical to the system adopted in the version which was enacted. Thus the sole difference lies in the replacement of the European unit of account by the parities used for the budget of which I have just spoken. That means that the proposal put forward in 1977 already entailed the increase in the cost of transfers which Regulation No 3085/78 finally authorized.

Other differences between the two versions are certainly not substantial. I have already had occasion to point out that Regulation No 3085/78 amends Article 17 of Annex VII not only with regard to the currency parities and weightings applicable, but also in other respects, making possible transfers "in the currency of [the official's] previous country of employment or of the country in which his institution has its seat, provided that the official in question has been assigned to a post outside the territory of the European Communities" (Article 17 (2) (a), third indent) and making it possible to have regular transfers made in excess of the amount received by way of foreign residence or expatriation allowance in certain circumstances (Article 17 (2) (b)). Those two amendments were not contained in the 1977 draft. However, those aspects of the rules on transfers are clearly of a marginal nature in comparison with the central innovation, which lay in the introduction of new parities and new weightings.

That being so, I consider, in short, that, as regards the rules on transfers abroad of part of officials' emoluments (the subject-matter of the cases with which we are concerned), the text adopted by the Council was not substantially different from the text originally submitted by the Commission. Therefore it was not necessary to obtain a fresh opinion from the Parliament and Regulation No 3085/78 cannot be held to be vitiated, in this respect, on the ground that the Parliament was not consulted. Similar conclusions apply to the alleged failure to consult the Staff Regulations Committee.

The applicants also contend that the Commission gave the Parliament insufficient and misleading information when in 1977 it sent to the Parliament its first proposal for the amendment of the Staff Regulations and declared that the new rules on exchange rates would not entail reductions in officials' financial benefits. In fact the report submitted on behalf of the Committee on Budgets (Document 218/77 of 7 July 1977, PE 49.101/def.) states that "the rapporteur accepts the Commission's assurances that

its proposals will in no way adversely affect the rights of officials and other servants as regards the real value of their remuneration, pensions, allowances, etc." In the course of the discussion which took place in the Parliament (still on the same argument) at the session of 7 July 1977, Commissioner Tugendhat explained that the objective of the new system was "financial neutrality" (Official Journal, Annex, No 219, July 1977, Report of Proceedings from 4 July 1977 to 8 July 1977, p. 303). Similar sentiments were expressed in the resolution whereby the Parliament expressed its opinion on the Commission's proposal; the fifth recital in the preamble to that resolution states that "the Commission has given assurances that its proposals will in no way adversely affect the remunerations and other allowances of officials and other servants of the European Communities" (Official Journal C 183, p. 55 of 1 August 1977).

However, it must be noted that on the specific question of the cost of transfers abroad of part of officials' salaries the attitude of the Commission was more vague, not to say evasive. At the session of the European Parliament on 7 July 1977, Commissioner Tugendhat merely declared that the question of transfers had also been of concern to the Commission and that a proposal to amend the Staff Regulations in that connexion was under consideration. (Official Journal, Annex No 219, July 1977, p. 304). The truth is that the new system was really neutral only for salaries paid entirely in a currency other than the Belgian franc to officials employed in countries other than Belgium and Luxembourg. In fact it is not disputed that after the adjustment of the parities and weightings those officials received, in April 1979 (when the new system was first applied) the same salary — in terms of local currency — as they had received the previous month under the old system. For transfers abroad of part of their salaries the positions was different because the cost of such transfers increased appreciably in certain countries with a weak currency such as Italy, Ireland and the United Kingdom.

In any event, I believe it may be said that the Parliament was sufficiently well-informed about all aspects of the new rules, and that strikes me as the decisive factor. I have already stressed that the wording of Article 17 of Annex VII, in the proposal made in 1977, entailed the same effect of increasing the cost of transfers as was eventually produced by Regulation No 3085/78. As regards other items of information available, I note that the annexes to the report submitted to the Committee on Budgets by Mr Cointat include not only the table relating to the cost of transfers of currency from Germany and from the Netherlands (see p. 18 of the report, already cited), but also a table relating to the costs of transfers of currency from Italy, the United Kingdom, Germany, Denmark and France (ibid p. 19). Thus the Members of the Parliament could have learned of the increased costs by examining those documents, not to mention the fact that they could in any case have sought the opinion of experts if they were not able properly to understand those aspects of the new rules which were of a predominantly technical nature. Therefore I think that the Parliament was put in a position to express its opinion effectively.

21. In Cases 828/79 and 1253/79 the applicants further complain that the Economic and Social Committee and the Court of Auditors were not consulted during the preparation of Regulation No 3085/78. Their argument is based on the notion that when Article 24 of the Merger Treaty, quoted above, speaks of the need to consult "other institutions concerned" before provisions of the Staff Regulations are adopted or amended, it also refers to the Court of Auditors and the Economic and Social Committee.

That argument cannot be endorsed. I am not persuaded that the word "institutions", which in the Treaties establishing the Community is used exclusively to refer to the Council, Commission, Parliament and Court of Justice, was in this case meant to indicate all the bodies which employ staff within the framework of the Communities. Such an interpretation would do violence to the letter of the provision and is justified neither by consideration of the scheme of the Treaties nor by reference to the objectives of the said Article 24. I think it reasonable that only the Community institutions *stricto sensu* should have been endowed with a specific and particularly important role in the adoption and amendment of the Staff Regulations.

The opinion which I have adopted is confirmed by the amendment recently made to Article 1 of the Staff Regulations by Council Regulation No 1376/77 of 21 June 1977 (Official Journal 1977, L 157, p. 1). That amendment consists in the addition of a second paragraph which provides that "save as otherwise provided for, the Economic and Social Committee and the Court of Auditors shall, *for the purpose of these Staff Regulations,* be treated as institutions of the Communities". That proves that when the Community legislature intended certain bodies to be *treated* as Community institutions it did so by recourse to express provisions and confined the effects of those provisions to a particular legislative context. It is proper to infer that, in the absence of specific provisions, when the primary or secondary sources of law speak of "institutions" they refer to the bodies treated as such by the Treaties. Consequently, the failure to consult the Economic and Social Committee and the Court of Auditors does not affect the validity of Regulation No 3085/78.

Finally, Mr Adam contends that a further infringement of an essential procedural requirement lay in the fact that Regulations Nos 3085/78 and 3086/78 were not accompanied by a *sufficient statement of the reasons on which they were based.* I do not believe that that criticism is well-founded. The second recital in the preamble to Regulation No 3085/78 declared that it was necessary to amend the provisions of the Staff Regulations concerning not only monetary parities, but also "the detailed arrangements for the transfer of part of an official's emoluments to a country other than the country of employment of the person concerned". Though succinct, that declaration seems to me sufficient for the purpose of discharging the duty to state reasons laid down by Article 190 of the EEC Treaty, especially when it is read in conjunction with the opinions expressed by the institutions consulted, which the preamble mentions. As regards Regulation No 3086/78, the statement of reasons seems equally sufficient to me: the preamble refers to the amendment

made to the provisions of the Staff Regulations concerning the monetary parities and to the resulting need to adjust the weightings applied to remuneration and pensions.

22. With regard to the alleged breaches of general principles which are said to vitiate Regulations Nos 3085/78 and 3086/78, it was stated in the first place that those two measures bring about discrimination in the treatment of the staff. The applicants observe that Regulation No 3085/78 contains, in the final paragraph of Article 4, a transitional provision which seeks to stagger the application of the new rules in relation to recipients of pensions so as to avoid the negative consequences of a sudden change in their financial position. In fact, the said Article 4 provides, as I have already had occasion to note, that "for pensions and allowances of which the net amount becomes less than that under the existing arrangements, the regulation shall only apply from 1 October 1979" and that "from that date the difference between the net amounts resulting from the implementation of this regulation and those received in September 1979 shall be reduced by 1/10 per month". On the other hand, no transitional measure is laid down in that regulation with regard to the application of the new rules to salaries and transfers abroad of a part thereof. The applicants submit that that treatment constitutes a breach of the principle of equality.

In truth, I do not believe that anything can be gained by invoking that principle in the present case. According to the settled case-law of the Court of Justice, the principle in question means that identical or comparable situations may not be treated differently unless a difference of treatment is objectively justified. I shall cite the most recent judgments on this point: the judgment of 19 October 1977 in Joined Cases 117/76 and 16/77 *Ruckdeschel* v *Hauptzollamt Itzehoe* [1977] ECR 1753, where it was stated in general terms that the principle of equality precludes discrimination between comparable situations, with the qualification that a difference of treatment is possible if it is objectively justified (see paragraph 7 of the decision); judgments of 25 October 1978 in Cases 125/77 *Koninklijke Scholten Honig* v *Hoofdproduktschap voor Akkerbouwprodukten* [1978] ECR 1991, at paragraphs 26 and 27 of the decision and Joined Cases 103 and 145/77 *Royal Scholten Honig* v *Intervention Board for Agricultural Produce* [1978] ECR 2037, at paragraphs 26 and 27 of the decision, where the same test was adopted; the judgment of 20 October 1977 in Case 5/76 *Jansch* v *Commission* [1977] ECR 1817, which refers specifically to the treatment of officials and reaffirms the view that a difference of treatment is not contrary to the principle of equality when it is based on objective criteria (see paragraph 19 of the decision); the judgment of 13 July 1978 in Case 114/77 *Jacquemart* v *Commission* [1978] ECR 1697, where the same approach was maintained once more, again with regard to the treatment of officials (see paragraph 24 of the decision).

In the present case the alleged discrimination was between serving officials and pensioners. But the two categories do not seem to be in a similar situation in view of the differences which exist between the financial benefits accorded to serving officials and those accorded to pensioners. Those differences are based on the different functions of the two forms of payment: the function of salaries is remunerative, whilst pensions are a form

of social insurance. Moreover, the Staff Regulations deal with the two forms of payment differently; salaries are governed by Articles 62 to 70a and pensions by Articles 77 to 83.

In order to appreciate how profound the difference between the two systems is, it suffices to consider that an official serving abroad is not in a position to choose his country of residence (that choice being performed by the administration of the institution to which he belongs) and is therefore subject, without the possibility of a different option, to the rules for the calculation of his salary (currency of payment, weighting applicable) laid down for the place of residence, whilst the recipient of a pension may choose his country of residence and thus have some influence over the rules for calculating his pension. In fact, the second subparagraph of Article 82 (1) of the Staff Regulations provides that pensions "shall be weighted in the manner provided for in Article 64 and Article 65 (2) for the country of the Communities where the person entitled to the pension *declares his home to be*".

If we then go on to examine the specific content of the amendments made to the Staff Regulations by Regulation No 3085/78 and the effects of the new rules — based on realistic monetary parities and on weightings which take into account differences in the cost of living — we find further confirmation that the position of pensioners cannot be compared with that of officials and that, in particular, the transitional provisions laid down in Regulation No 3085/78 in order to protect pensioners meet specific, objective requirements of that category, requirements which do not apply in the case of officials. In fact, as we have already seen, the new rules entail a reduction of approximately 50% in the pensions paid to former officials who, under the previous rules, chose to reside in countries with weak currencies and to have their pensions paid in Belgian francs. But those rules did not alter the level of officials' salaries, apart from increasing the cost of transfers of part of those salaries to other countries; and in any case that increase affects the financial situation, as a whole, of officials serving in countries with weak currencies to a far lesser extent than retired persons are affected by the reduction in pensions. Therefore, whilst there was apparent justification for staggering the reduction in pensions, since it was a reduction which, all things considered, was very large, there was not the same necessity for staggering the application of the new rules as regards the effect of the cost of currency transfers on the monthly earnings of officials.

Finally, I would add that I do not find the two situations similar for a further reason. As I shall explain later, because of their variable and erratic nature the benefits which the Staff Regulations confer upon officials in the field of currency transfers do not, in my opinion, form part of officials' remuneration. This factor demonstrates even more clearly, in my opinion, that the reduction in pensions cannot be compared with the increase in the cost of transfers of part of officials' remuneration to other countries.

23. A further criticism levelled against the new rules on currency transfers is that they are in *breach of the principle of legitimate expectation.* The officials who had for years been transferring part of

their salaries abroad under the previous rules at rates of exchange which were particularly favourable to those residing in countries with weak currencies had a reasonable expectation, so it is argued, that those rules, together with the resulting advantages, would be maintained. The amendments introduced by the Council in 1978, which were not even accompanied by transitional provisions designed to temper the negative effects thereof, were in breach of that expectation and are therefore illegal.

It must be borne in mind that, according to the case-law of the Court, the expectation is relevant only if it is based on assurances given by the other party. In the judgment of 5 June 1973 in Case 81/72 *Commission* v *Council* [1973] ECR 575, the Court recognized that there had been a breach of the legitimate expectation of the staff in their relations with the administration because the Council, after undertaking to observe — in the exercise of the powers conferred upon it by Article 65 of the Staff Regulations in the field of salaries — a particular method involving consideration of a number of factors, subsequently acted in disregard of that method. Thus it is necessary to ascertain whether in the present case the administration behaved in such a way as to arouse the justifiable expectation that currency transfers would always be made under the same system involving exchange rates which provided not insignificant benefits.

It is worth noting that the system of rigid exchange rates connected with the parities of the International Monetary Fund was introduced at a time of relatively stable currencies and that as a result in the first years it did not confer any particular advantage upon officials residing in countries with weak currencies. The progressive decline of certain currencies made those parities less and less realistic, so that the need to reform the system became obvious. I have already said that an initial proposal for the amendment of Article 17 of Annex VII to the Staff Regulations was submitted by the Commission in 1974. That proposal provided that the weighting to be applied to transfers should lie half-way between the weighting for the official's place of employment and the weighting for the country to which the currency was to be sent. Acceptance of that proposal, assuming no change in the parities of the International Monetary Fund, would have meant an appreciable increase in the cost of transfers because the weighting for the place of employment is, in the case of countries with weak currencies, very high, generally speaking higher than the weighting for the country to which the sums transferred are sent. Thus a figure lying half-way between those two weightings would have been lower than the weighting for the place of employment and the cost of transferring the same amount of currency would have increased. A similar amendment to Article 17 of Annex VII was again proposed in 1977, but was this time accompanied by the introduction of realistic monetary parities, through the use of the European unit of account, for the calculation of officials' remuneration. The logical corollary of the adoption of realistic exchange rates was the amendment of the weightings, and in particular the abandonment of the much higher weightings previously laid down for countries with a low cost of living, since the adoption of current parities made it unnecessary to use the weighting in order to carry out adjustments which had been essential as long as the parities of the International Monetary Fund were

maintained. Thus the weighting would again have the function which it is given in the Staff Regulations, namely to adjust salaries in accordance with the cost of living at the place of employment. The final result of this series of amendments — even after the replacement of the 1977 draft by the wording used in Regulation No 3085/78 — was to make the transfers a little less expensive than would have resulted from the straightforward application of the new parities, but in any event more expensive than under the rules previously enforced.

All this demonstrates that the increase in the cost of transfers certainly did not happen by surprise, from one day to the next. It may be added that in a circular issued in May 1978 (Annex 2 to the Commission's defence of 13 March 1980 in Case 828/79), the Commission informed officials how their financial position would be affected by the new rules for the payment of salaries based on the European unit of account and on the radical alteration of the weightings. In particular, with regard to the rules on transfers, it was stated that the new formula (which was described with great clarity) would entail the disappearance of certain advantages (see p. 4 of the document cited). The same information was given by the Commission to the European Parliament in the reply on 12 October 1978 to the written question by Mr Ripamonti (Question No 412/78 of 30 June 1978). It was pointed out on that occasion that the amendment of the rules on transfers had already been proposed, with the agreement of the representatives of the staff, in 1974 and was based on "the need to replace the old parities laid down in the ... Staff Regulations". In the same context, the Commission stated that "the new rates take account of recent monetary trends" and that they also constituted "a major improvement, bringing the transfer arrangements into line with economic reality" and could lead to a nominal reduction in the disposable salary of certain officials (Official Journal C 267, p. 18 of 10 November 1978).

In the circumstances, I think it would be extremely bold to maintain that the applicants were led by the administration to believe that the rules on transfers would remain unchanged. On the contrary, a number of very clear indications made the officials aware that that system was to be changed. therefore I do not believe that Regulations Nos 3085/78 and 3086/78 may be impugned on the ground that they were in breach of officials' expectation that the previous legal rules would be maintained, because that expectation was entirely unjustified.

24. The applicants then contend that by bringing about an increase in the cost of transfers Regulations Nos 3085/78 and 3086/78 infringed their right to preserve the advantages which the previous rules conferred upon them in this respect. But I do not believe that there is any justification for holding that the regulations in question infringed *vested rights.*

It is only possible to speak of vested rights if the facts creating the rights occurred under a provision existing before the amendments subsequently introduced by the Community authority; that much was made clear by the judgment of 19 March 1975 in Case

28/74 *Gillet* v *Commission* [1975] ECR 463 (see in particular paragraph 5 of the decision). In his opinion in the same case Mr Advocate General Mayras rightly observed that "the Community authority is therefore entitled at any time to amend the provisions of the regulations in any way which it considers to be in accordance with the interest of the service, on condition that such amendments are adopted by the competent authority, namely the Council, that they do not have retroactive effect to the detriment of servants ...". We can without doubt rule out the possibility that Regulations Nos 3085/78 and 3086/78 were intended to have retroactive effect: they clearly make provisions applying only in the future. It is equally clear that Article 17 of Annex VII to the Staff Regulations, in the version in force before the amendments of 1978, did not give the officials any guarantee that the exchange rates of the International Monetary Fund would be maintained for transfers of part of their emoluments indefinitely and irrespective of currency fluctuations, so as to confer upon officials a right in this respect: there is nothing in the wording of the provision to justify such an interpretation and moreover a provision of that kind would be absurd and unreasonable. The truth is that each monthly transfer of currency is the event which gives rise to an official's right to benefit from the operation under the rules in force when the transfer is requested. Thus, even if the new rules removed some advantages which the previous rules conferred upon officials, they did not infringe vested rights.

25. There is a further reason, according to the applicants, for recognizing the inviolability of the advantages attached to the old rules on transfers. It is asserted that those advantages, which derived from the application of extremely favourable exchange rates, represented an element of officials' salaries and that therefore their abolition led to a reduction in salaries. That is said to be contrary to a general principle of the Community legal order, whereby the salaries of European officials cannot be reduced under any circumstances, even by measures which are of general application.

That argument cannot be accepted. The alleged general principle of the non-reducibility of salaries cannot be inferred either from the Staff Regulations of European Officials or from the laws of the Member States. As for the former, the only provision which may come into consideration with regard to variations in the level of salaries is Article 65, which provides that the Council must each year review the remunerations of officials in the light of a report by the Commission based on certain indices prepared by the Statistical Office of the European Communities. On such an occasion the Council must consider whether, as part of the economic and social policy of the Communities remuneration should be adjusted (see Article 65 (1)). In the event of a substantial change in the cost of living, the Council must then decide what adjustments should be made to the weightings and if appropriate to apply them retrospectively (Article 65 (2)). Thus the provision in Question deals with two different points: first, the adjustment of salaries and, secondly, the adjustment of the weightings.

The second of these two points has nothing to do with the alleged inviolability of salaries: in fact the sole purpose of adjustments to the weightings, according to the Staff Regulations, is to prevent reductions in the purchasing power of salaries as a result

of variations in the cost of living. With regard to the legal rules on the adjustment of salaries, the points of reference indicated in Article 65 (variations in statistical indices, the economic and social policy of the Community) are phenomena which are capable of leading to increases or reductions in salaries.

The final sentence of the second subparagraph of Article 65 (1) provides that in adjusting salaries the Council must take account "of any increases in salaries in the public service and the needs of recruitment". Here the Community legislature clearly had regard to situations which may justify only increases in salaries but I do not believe that from such a sentence, which is in any case of marginal importance with respect to the context of the provision, it is possible to infer that Article 65 prohibits reductions in salaries. There is still less reason to read into the use of the verb "adjust" in paragraph 1 in order to denote salary alterations, an intention to convey the notion of an increase in salaries. I would observe in this regard that paragraph 2 also speaks of "adjustments" in order to denote alterations in the weightings, and there is no doubt that such alterations could also take the form of reductions in the event (admittedly unlikely at the present time) of a fall in the cost of living. From that it may be inferred that the term "adjustment" is apt to denote variations in either direction.

These considerations lead me to conclude that the Staff Regulations do not prohibit reductions in salaries; besides, even if they did contain such a prohibition, the Council would always be able to derogate from it because an ordinary regulation has the same value in the hierarchy of legal sources as the Staff Regulations. It remains to be determined whether the Community legal order contains a general principle, based on principles common to the Member States, which prohibits reductions in the salaries of officials. So far as I can see, only the laws of Italy and of Luxembourg contain provisions of that kind for the benefit of public servants. In the case of Italy, Article 227 of the Testo Unico No 383 of 3 March 1934 (referring only to the servants of local authorities, but extended to all public servants as a result of the interpretation given by the courts) provides that the financial position "already attained" by public servants may not be altered to their detriment. However, I would point out that this rule was laid down by an ordinary law and is not entrenched in the Constitution, so that, as the Consiglio di Stato recently declared (see Consiglio di Stato, Sezione V, No 830, 7 July 1978), there is nothing to prevent a subsequent ordinary law from providing for reductions in salaries. As for Luxembourg, the Law of 16 April 1979 provides that for the duration of their employment officials have a vested right to the salary which they enjoy under a provision of law. In this regard too, it may be noted that in speaking of a "vested right" the Luxembourg law protects officials from provisions reducing their salaries retroactively, but not prospectively; besides, it may be noted that this provision is not in any way constitutionally entrenched either. The laws of the other countries of the Community contain no provisions which

prevent the salaries of public servants from being reduced.

Thus it is not possible to infer from the national legal systems the alleged principle of the inviolability of public servants' salaries. But in any case I am of the opinion that even if such a principle existed in the Community legal system it would be irrelevant to the disposal of the present case. In fact I do not consider that the advantages associated with transfers abroad of part of officials' emoluments come within the concept of salaries. It is well-known that in the material benefits to which the worker is entitled a distinction must be made between those which, because of their continual and compulsory nature, form part of the remuneration and those which, although supplementing the remuneration, do not constitute remuneration in the technical sense because they are incidental or exceptional and thus not of a continual nature. The benefits attached to the transfers with which I am dealing do not in my opinion display those characteristics of continuity and compulsoriness which are necessary in order for them to be regarded as an integral part of the remuneration. Those benefits are not accorded to all officials, but only to those who request transfers of currency abroad; moreover, even amongst those who apply to make transfers there are differences as a result of the different size of the transfers which each makes, to say nothing of transfers in excess of the expatriation allowance, which are of a wholly exceptional nature and require the authorization of the administration in each case (Article 17 (2) (c) of Annex VII). Besides, they are benefits which may not be continual because — even in the cases covered by Article 17 (b) and (c) — they are subject to conditions which are liable to change.

The applicants Adam and Battaglia claim in the alternative that they should be allowed to retain the benefits in question as a sort of personal allowance which should be gradually absorbed by future increases in salary. This claim cannot be granted, in the first place for the reasons which I explained when establishing the non-existence of any right of officials to retain the benefits connected with the former rules on transfers. Besides, it would not be proper to create disparity of treatment as between officials who would enjoy the aforesaid allowance for the sole reason that, purely by chance, they applied at the right moment to have a certain part of their salaries transferred abroad and those who could not enjoy the same treatment because they did not make such an application at the appropriate time or asked to have a smaller amount transferred.

26. In addition to arguing that the amendment of the rules on transfers of part of officials' salaries resulted in an unlawful reduction of salaries, Mr Battaglia contends in his pleadings that that amendment constitutes such a profound alteration of the Staff Regulations as to affect an official's decision to submit to those regulations. That argument cannot prevail. Since the Staff Regulations of Community officials are based on legislative provisions and not on contract, there cannot be any question of relying on the concept of a breach of the fundamental conditions of employment, a concept which — as is well-known and as Mr Battaglia's

counsel himself concedes — was developed with regard to employment relationships based on contract.

27. Mr Buyl (in Case 817/79) pleads that the amendment of the rules on transfers of part of officials' remuneration is in breach of the *principle of limited powers of decision.* The expression "limited powers of decision" usually refers to cases in which the administration is bound, under the rules in force, to take a particular decision in the presence of certain circumstances and is not able to choose between various options. I do not believe that when the Council adopted Regulations Nos 3085/78 and 3086/78 it was bound to choose options different from the ones embodied in those regulations. As the Commission rightly observes, the theory of limited powers of decision could only be upheld on proof of the existence of superior principles of law with which the administration's action should have complied. But no such proof has been given: in fact we have already seen that no superior principle of law was infringed in this case.

28. Mr Battaglia (Case 1253/79) and Mr Adam (Case 828/79) contend that Regulations Nos 3085/78 and 3086/78 are also vitiated by *misuse of powers.* I would observe that, in particular as regards the amendment made to Article 17 of Annex VII by Regulation No 3085/78, there is nothing to justify holding that in making that provision the Council misused or distorted its powers. Besides, no specific point was pleaded by the applicants in illustration of their contention. As regards the determination of the new weightings in Regulation No 3086/78, the applicants complain in effect that those weightings were fixed not on the basis of the changes which had taken place in the cost of living, but according to purely mathematical criteria and with the sole aim of maintaining the level of salaries unchanged in relation to the previous months.

To counter that argument it is sufficient to note that the salaries for March 1978 had been adjusted in accordance with the cost of living by virtue of the weightings fixed by Regulation No 3084/78: if therefore it is true that the new weightings applied as from 1 April 1978 did not alter the previous level of salaries, it must be said that they constituted technical instruments suitable for maintaining the relationship between salaries and the cost of living. In other words, even if the new weightings were fixed on the basis of a purely mathematical calculation, what matters is that the result was in accordance with the requirements of Article 64 of the Staff Regulations. Moreover, after the new parities had been introduced there was no other solution but to adjust the weighting arithmetically in order to maintain salaries at their previous level.

If it is possible to speak of a misuse of powers, it is rather with reference to the application which the Council and Commission had made of the said Article 64 for many years, bending it to meet requirements which are extraneous to it. I would recall that until April 1979, in order to compensate for the negative effect of the parities of the International Monetary Fund on salaries paid in weak currencies, the institutions made a truly distorted use of the weighting, which had certainly not been conceived as an

instrument for restoring the balance between fictitious currency parities. If by means of the regulations under discussion the Council and Commission have now set about securing the normal functioning of Article 64 of the Staff Regulations, I do not believe that they may be charged with a misuse of powers.

29. I have now finished with the issues of substance in Cases 817/79, 828/79 and 1253/79 and it remains for me to consider Case 72/80 *(Airola* v *Commission)* with regard to both admissibility and substance. In this case the applicant makes two criticisms of the defendant, both relating to the effect which the new rules on currency parities have on Article 106 of the Staff Regulations, which deals with the allowance replacing the separation allowance. He complains first of the fact that between February 1976 and March 1978 an updated exchange rate was not applied to the allowance paid to him; his second objection concerns the fact that in April 1979 the new rules of law contained in Regulation No 3085/78 were not extended to that allowance as far as concerns the exchange rate to be applied for the purpose of determining the amount thereof.

The admissibility of the application is contested by the Commission, albeit only in general terms, in the defence lodged on 5 May 1980 (see p. 11). In this regard, I believe that it is necessary to distinguish between the two limbs into which the claim divides. As regards the claim that the allowance should be revalued for the period between February 1976 and March 1978 and calculated with reference to updated exchange rates, I am of the opinion that it is inadmissible because no complaint was lodged at the appropriate time against the monthly payments of salary in which the allowance is alleged to have been calculated at too low a level. In fact, the applicant only expressed the grievance in question in the complaint lodged on 28 June 1979, that is to say over three months after the last payment (that of March 1979) which this first point of the claim concerns. In this respect, it must be remembered that under Article 16 (1) of Annex VII to the Staff Regulations payment of remuneration to officials is to be made on the fifteenth day of each month; thus the salary statement for the month of March must be deemed to have been dispatched to the person concerned by 15 March 1979. Even if the Commission did not expressly raise this formal defect in its pleadings, the Court may do so of its own motion: there is in fact settled case-law to the effect that the Court may examine the admissibility of applications of its own motion (see the judgment of 17 March 1976 in Joined Cases 67 and 85/75 *Lesieur Cotelle et Associés,* paragraph 12 of the decision, [1976] ECR 391).

On the other hand, with regard to the claim relating to the allowance paid by means of the monthly statement for April 1979, I do not think that there are grounds for questioning its admissibility. In this case the application to the Court was in fact preceded by the corresponding complaint, which was in turn lodged within the time-limit.

As to the substance of the application, it must be said that the outcome of the dispute depends essentially on the interpretation of Article 106 of the Staff Regulations.

It will be useful to examine briefly the history of that provision and to recall that before the entry into force of the Staff Regulations (on 1 January 1962) Community officials in the service of the Commission were paid a special allowance, called a "separation allowance", equal to 20% of the basic salary, when they were posted to a place of employment over 70 kms away from their respective places of origin. The Staff Regulations adopted in 1962

abolished that allowance and replaced it with the expatriation allowance, which however was subject not to a test based upon distance but to the fact of serving in a State other than the State of which the official was a national. However, Article 106 granted to any official who had been in receipt of the separation allowance under the previous rules, and who did not qualify for the new expatriation allowance, "the same amount as that which he would have received by way of separation allowance" under the previous rules. That provision added that "such amount shall not in future be varied for any reason whatever. . .".

The applicant, an official of the Commission attached to Euratom from July 1960, did not receive the separation allowance at that time. It was only as from 1 February 1973 that he and other officials recruited by Euratom prior to 31 December 1961 became entitled to receive the allowance which, under Article 106, replaced the separation allowance. That allowance was always paid to him at an amount in lire equal to the amount, likewise expressed in lire, which would have been payable to him by way of analogy in 1960. Even after April 1979, that amount remained unchanged notwithstanding the entry into force of Regulations Nos 3085/78 and 3086/78, which introduced new rates of exchange and new weightings.

Mr Airola now submits that the allowance payable to him should have been calculated on the basis of the amount in Belgian francs of the original separation allowance, which should then have been converted into lire at current rates of exchange until March 1979 and on the basis of the parities fixed by Regulation No 3085/78 from April 1979 onwards.

In answer to that argument the Commission objects that when Article 106 provided that an official in receipt of a separation allowance who did not qualify for the expatriation allowance should be allowed "the same amount as that which he would have received by way of separation allowance under the scale of remunerations existing before these staff Regulations entered into force", it was intended to refer to the amount *in local currency* which was paid or should have been paid by way of separation allowance. That amount constitutes the allowance replacing the separation allowance and under the final sentence of Article 106 that amount could not "in future [that is to say, after the entry into force of the Staff Regulations] be varied for any reason whatever". But the updating of the exchange rates would, it is argued, give rise to an increase in the amount of the allowance, contrary to the terms of the final sentence of Article 106.

In support of its argument the Commission emphasizes that the rules preceding the Staff Regulations — to which reference must be made for the purpose of identifying the basic amount of the current allowance under Article 106 — laid down for officals a particular salary expressed in Belgian francs but paid in different currencies according to the country of employment. Those rules did not envisage weightings; the conversion of the salaries from Belgian francs into local currency took place only at the official rates of exchange, which were substantially in line with the market rates. According to the Commission, the only way of complying with the rule prohibiting the alteration of the original amount of the separation allowance was the method which it had followed, namely to link the current amount of the allowance replacing the separation allowance to the amount in lire which would have been paid by way of separation allowance before 1962. The defendant adds that in this case the replacement allowance was always paid to the applicant, from the beginning, in lire: for that reason also, the "freezing" thereof could take effect only with reference to the amount in lire.

I would observe that, ever since the rules preceding the Staff Regulations, the Belgian franc was the currency in which the remuneration of officials was calculated and that, then as now, conversion into local currency took place only by reason of the official's place of employment. The calculation of salaries in Belgian francs was, and still is, in accordance not only with accounting reasons, but also, and primarily, with the need to ensure equality of treatment as between officials. It happens that the factor which works in favour of the applicant's argument is precisely the need to safeguard equality of treatment, which must be adopted as a criterion for the interpretation of Article 106.

In order to appreciate the discriminatory effects of the interpretation of this article urged by the Commission, let us imagine the situation of two officials who before 1962 were in receipt of the separation allowance, residing for the sake of their employment one in Germany and the other in Italy. Let us suppose that at the time both received a separation allowance of BFR 1 000 converted into the local currencies at the official rate of exchange in force on 20 June 1961 (DM 1 = BFR 12.61; LIT 100 = BFR 8.70; I have used the table of exchange rates produced by the Commission in Annex III to the defence of 25 July 1980). The amount of the allowance would have been respectively DM 79.30 and LIT 11 494. If the Commission's argument is followed, the same officials would now receive exactly the same sums in marks and in lire, although the relationship between the exchange rates and the relationship between the purchasing power of those two currencies has changed greatly in the meantime (LIT 11 500 now correspond to just over DM 23). Thus the result is that the two officials who initially — by reference to the basic amount expressed in Belgian francs — received the same allowance (that is to say, an allowance which conferred upon them the same purchasing power), now receive two allowances which in real terms are very different, the allowance received by the official residing in Germany being three times greater in value than the allowance received by the official residing in Italy.

I do not believe that it is possible to accept an argument, such as that urged by the Commission, which leads to such gravely discriminatory results. In order to avoid such incongruities, it is, in my opinion, necessary to relate the allowance in question to the Belgian franc, the only point of reference which enables equality of treatment as between officials to be maintained. For conversion from the Belgian franc into the local currencies the official rate of exchange — which is the rate stated in Regulation No 3085/78 — should be applied; it is a mobile rate which is adjusted in accordance with the fluctuations of the currency, just as the rate used in 1961 for the conversion of the separation allowance (and the other items of remuneration) from the Belgian franc into the local currencies was a variable rate.

The Commission has not adduced any convincing argument against the adoption of the principle of equality as the guiding criterion in the interpretation of Article 106. It is certainly not helpful to observe that the Community authorities need not have introduced the allowance in question into the Staff Regulations: it suffices to consider that once its introduction has been decided upon the rules governing it must respect the general principles of the system, including the principle of equality of treatment as between officials. Nor is there any validity in the observation that monetary erosion was foreseeable in view of the rule prohibiting the variation

of the allowance, nor in the remark that Article 106 is in the final analysis a transitional provision. It may be replied that in any event it is essential that the monetary erosion should affect in the same measure all officials who are in the same situation. In its defence of 25 July 1980 the Commission complains of the difficulties which it would face if, as a result of the rejection of its point of view, it were compelled not only to increase the allowance paid under Article 106 to officials resident in countries with weak currencies, but in addition to reduce the allowance paid to officials serving in countries with strong currencies. In my opinion, that is a point which, far from giving weight to the Commission's argument, proves how profound the disparity of treatment between officials now is as a result of the application of Article 106.

The applicant then contends that by paying him in April 1979 the allowance under Article 106 at a rate lower than that which was due, the Commission acted in breach of two other general principles: the principle of the inviolability of vested rights and the principle of legitimate expectation. Those criticisms are without foundation. As regards the content of the principle of the inviolability of vested rights, I refer the Court to what I said previously. In relation to the case in point I shall merely observe that the protection of an acquired position has not been called in question in this instance: it is on the contrary a question of correcting an erroneous interpretation of Article 106 and of granting to the applicant a right whose precise scope has hitherto been misunderstood by the Commission. As for the principle of legitimate expectation, I do not see on what basis it could be argued that the Commission acted in breach thereof in the present case: that institution did not in fact behave in such a way as to arouse the expectations of the applicant, but on the contrary refused to recognize a right which is his.

I therefore consider well-founded the claim of Mr Airola that the allowance under Article 106 should be calculated by application of the updated exchange rates contained in Regulation No 3085/78. However, I do not believe that the weightings contained in Regulation No 3086/78 should be applied because the basic point of reference is the original amount in Belgian francs, which was originally not subject to adjustment by means of the application of weightings.

30. On the basis of all these considerations, I suggest in conclusion that the Court should:

(a) Declare admissible the applications submitted by Dunstan Curtis against the European Parliament (Case 167/80) on 18 July 1980; by Monique Roumengous against the Commission (Case 158/79) on 11 October 1979, but only so far as the claim for the revision of the weighting for 1978 is concerned; by Dino Battaglia against the Commission (Case 737/79) on 17 October 1979, as far as concerns the claim for the revision of the weighting for 1978 and the related claim for payment of the differences in remuneration which will be payable if the claim for revision of the weighting is granted, and the claim (an alternative to the

latter claim) for compensation for the damage caused by the erroneous fixing of the weighting for 1978; by Marco Airola against the Commission (Case 72/80) on 7 March 1980, but only so far as concerns the claim for revision of the allowance paid as from April 1979 under Article 106 of the Staff Regulations; by Anton Birke against the Commission (Case 543/79) on 11 October 1979 but only so far as concerns the claim for the annulment of the salary statements for January and April 1979 and resulting claims;

(b) Declare inadmissible the applications submitted by Gordon Craigie Bowden and Others against the Commission (Case 153/79) on 28 September 1979; by Stephen Biller and Others against the European Parliament (Case 154/79) on 3 October 1979; by Renato Albini and Others against the Commission and the Council (Case 33/80) on 24 October 1980; by Dunsten Curtis against the Commission (Case 167/80) on 18 July 1980; by Gerhard Venus and Wolfgang Obert against the Commission and the Council (Joined Cases 783/79 and 786/79) on 22 and 26 October 1979; by Monique Roumengous against the Commission (Case 158/79) as regards all the claims except those which I held admissible under paragraph (a); by Anton Birke against the the Council (Case 543/79) on 11 October 1979; by Günter Bruckner against the Council (Case 799/79) on 12 November 1979; by Dino Battaglia against the Commission (Case 737/79), as regards all the claims other than those which I held admissible under paragraph (a); by Marco Airola against the Commission (Case 72/80), but only so far as concerns the claim for the revision of the allowance under Article 106 of the Staff Regulations for the period from February 1976 to March 1978;

(c) Declare that as from 1 April 1979 Marco Airola (Case 72/80) is entitled to have applied to the allowance under Article 106 of the Staff Regulations, for the purpose of the conversion of the amount originally payable in Belgian francs on 31 December 1961, the exchange rates contained in Council Regulation No 3085/78;

(d) Dismiss as unfounded the applications submitted against the Commission by Roger Buyl (Case 817/79) on 17 December 1979; by Robert Battaglia (Case 1253/79) on 20 December 1979.

As to costs, I consider it just that, pursuant to Article 70 of the Rules of Procedure, the Court should order the defendant institutions to bear their own costs in Cases 153/79, 154/79, 543/79, 783 and 786/79, 799/79 and 33/80, if it accepts my proposal that the applications be declared inadmissible and so delivers final judgments; the same goes for Cases 817/79, 828/79 and 1253/79, if the Court accepts my proposal to dismiss the applications as unfounded. In Case 72/80 I propose that the Commission be ordered to pay the applicant's costs, in application of the rule that costs follow the event.

Finally, it is necessary to reserve costs in the cases which are to proceed on the issues of substance (Case 158/79, Roumengous; 737/79, Battaglia; 167/80, Curtis).