OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 14 JULY 1983 [1]

Mr President,
Members of the Court,

1. The most relevant facts

Council Regulation No 912/78 of 2 May 1978 (Official Journal, L 119, p. 1) *inter alia* amended Annex I A to the Staff Regulations. Article 13 of that amending regulation reads as follows:

"Article 13

Language Service

LA 3	Head of a Translation or Interpretation Division
LA 4	Head of Translation or Interpretation Group
LA 5	reviser, principal translator, principal interpreter
LA 6	translator
LA 7	interpreter
LA 8	assistant translator assistant interpreter"

On 17 March 1981 the Council implemented that amendment by amending the description of the duties of the officials of the General Secretariat of the Council as laid down in a decision of 7 October 1963. With regard to the duties in Grades LA 5/LA 4 the French version of the amending decision read as follows:

LA 5/LA 4	Chef d'équipe de traduction ou d'interprétation	Conduit les travaux d'une équipe de traduction, d'interprétation de conférence, de terminologie, de documentation ou d'une équipe spécialisée dans d'autres domaines linguistiques
	Réviseur, traducteur principal	Fonctionnaire qualifié chargé d'effectuer: — la révision de traductions et la traduction de textes, — des travaux de terminologie et de documentation dans le domaine linguistique, — d'autres travaux spécialisés dans le domaine linguistique
	Interprète principal	. . .

On 15 September 1981 the *applicants* were informed in a letter from Mr Spence of the decision that each of them was "placed at the disposal of Directorate II of Directorate-General A . . . as a reviser, principal translator . . .". The

1 — Translated from the Dutch.

applicants in these joined cases, who had hitherto been revisers, submitted a complaint against the description as "reviser/principal translator" pursuant to Article 90 (2) of the Staff Regulations, the object of which was to ensure that, so far as they were concerned, the distinction between revisers and principal translators was maintained. On 14 May 1982 the Secretary General informed the applicants that the decisions of 15 September 1981 were void in view of the fact that they had not been signed by the appointing authority. The remaining parts of the complaints were dismissed and Decisions 432 to 437/82 were enclosed, confirming the content of the earlier decisions, but on this occasion actually signed by the appointing authority.

2. Submissions relied upon

The applicants brought actions before the Court against these last-mentioned decisions, that is that of 15 September 1981 and the rejection of their complaints concerning the notification of 14 May 1982, relying upon Article 184 of the EEC Treaty against the Decision of the Council of 17 March 1981.

3. Admissibility of the application

The Council has advanced two grounds of inadmissibility.

In the first place the Council claims that the application against Decisions Nos 432 to 437/82 of 14 May 1982 is not admissible in view of the fact that no complaint against the new decisions was submitted to the appointing authority, as is required by Article 90 (2) of the Staff Regulations. The applicants likewise do not rule out that possibility, as is shown by the fact that they submitted a complaint on 23 July 1982 against those decisions which, at the time at which the application was lodged, 30 July 1981, had not yet been rejected expressly or by implication, so that the said condition has not been met. The Court of Justice has in general expressly upheld that interpretation of Article 90 (2) in its judgments in Cases 58/75, 48/76 and 91/76 ([1976] ECR 1153; [1977] ECR 298 and [1977] ECR 229). The applicants rightly claim, however, that the decisions of 14 May 1982 have not brought about any substantive alteration in the decisions of 15 September 1981 and in fact may be regarded as a rejection of their complaints against the former decisions. Having regard to what is set out in paragraphs 5 to 8 inclusive of the judgment of the Court of Justice in Case 7/77 ([1978] ECR 769) concerning the general plan of the procedures laid down in Articles 90 and 91 it in fact appears to me that in this case too Article 91 (2) should not be interpreted so that the only result is a futile prolongation of the procedure. Accordingly that submission of the Council should in my view be rejected on the basis of the principle embodied in the said considerations to the effect that procedures must be properly applied.

According to its rejoinder, the Council considers secondly that it is impossible to rely upon Article 184 of the EEC Treaty against its decision of 17 March 1981 in view of the fact that the present proceedings do not concern a regulation or measure of general application. In my opinion it is correct that that decision does not constitute a regulation in the formal sense but is in fact a measure which produces a similar effect as regards all present and future officials in the said descriptions of duties. Having regard to Article 40 of the judgment of

the Court in Case 92/78 ([1979] ECR 777) such an effect is sufficient for it to be considered that Article 184 is in fact applicable.

4. Substance of the case

The applicants' argument is entirely based on the distinction, which they consider incontestable, between the duties of "reviser" on the one hand and "principal translator" on the other. In addition to differences in the content of the work it is alleged that there are also differences in rank between the work of reviser and that of principal translator. In my opinion it is unnecessary to consider whether that view is correct. The point at issue is whether the Staff Regulations take cognizance of such distinctions and, if so, whether the Council was empowered to declare both descriptions of the duties applicable to the applicants.

The applicants contend in that connection that this case concerns two different basic posts, which means that pursuant to the second subparagraph of Article 5 (4) there must be a different description of the duties. It is contended that that is clear from the presence of a comma between the words "reviser" and "principal translator" whilst, finally, the other institutions of the Community observe the same distinction in the description of the duties. In my opinion this argument cannot succeed. The second subparagraph of Article 5 (4) of the Staff Regulations merely states that the powers and duties attaching to "each basic post" must be described but it does not follow that that description of basic posts relating to the same career bracket must of necessity be *different.* The said provision of the Staff Regulations furthermore rules out the possibility that on grounds of the interests of the service a common description of duties may be applied for different basic posts associated with a single career bracket. I do not by any means wish to state that the Council, by acting in this way, intended entirely to disregard any differences between the duties of reviser and of principal translator. It may however take the view, on grounds of the interests of the service, that officials are sufficiently adaptable to carry out, with a view to the best possible organization of work, duties which are in any case related and partly overlapping, within one and the same career bracket. I refer in this connection to paragraph 17 of the judgment of the Court in Case 36/69 ([1970] ECR 361) and with regard to the interchangeability of the basic posts relating to the same career bracket *inter alia* to paragraph 10 of the judgment of the Court in Case 46/69 ([1970] ECR 275). Likewise the argument that other institutions adopt a different practice with regard to revisers and principal translators must be rejected as the second subparagraph of Article 5 (4) refers clearly to "each" institution. It is entirely possible for considerations concerning the efficient organization of translators' duties in this connection to lead to different conclusions in the case of the various institutions.

5. Conclusion

I am accordingly of the opinion that all the applications which have been submitted should be dismissed. Although I consider that, in the light of the case-law of the Court of Justice, it is evident that the applicants' arguments are untenable, the wording of Article 70, in conjunction with the second subparagraph of Article 69 (3) of the Rules of Procedure does not, in my judgment, require that they should in this case pay all the costs. Consequently, in accordance with the conclusions of the Council in pursuance of Article 70, the applicants can only be ordered to pay their own costs.