3. Whilst the duties and powers assigned to an official must on the whole be in keeping with the post which corresponds to the grade he occupies in the scale of posts that principle of equivalence between grade and post does not apply in respect of posts within the same grades.

4. A Community institution is entitled to expect that senior officials shall be sufficiently adaptable to fill posts of different kinds.

In Joined Cases 193 to 198/82

MARIA ROSANI,

LUIGI DELLA GROCE DI DOJOLA,

PIETRO LAROSA,

FRANCESCO BASTREGHI,

SOSSIO GIAMETTA,

FULVIO STELLIO,

officials of the General Secretariat of the Council of the European Communities, assisted and represented by Edmond Lebrun of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Tony Biever of the Luxembourg Bar, 83 Boulevard Grande-Duchesse-Charlotte,

applicants,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, Brussels, represented by John Carbery, an adviser in the Legal Department of the General Secretariat of the Council in Brussels, with an address for service in Luxembourg at the office of H. J. Pabbruwe, Director of the Legal Department of the European Investment Bank, 100 Boulevard Konrad-Adenauer,

defendant,

APPLICATIONS for the annulment of the decisions of 14 May 1982 assigning the applicants to posts of reviser/principal translator in Grade LA 4, of the notices of adjustment of 15 September 1981 stating that the applicants were placed at the disposal of the department referred to therein as revisers/principal translators and of the decisions of 14 May 1982 rejecting the applicants' complaints against the notices of adjustment of 15 September 1981,

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Lord Mackenzie Stuart and Y. Galmot, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

1 — Facts and written procedure

Council Regulation No 912/78 amending the Staff Regulations of officials of the European Communities and the conditions of employment of other servants of the European Communities (Official Journal, L 119 of 3 May 1978, p. 1) was adopted on 2 May 1978 and came into force on 4 May 1978.

Article 13 of that regulation provides:

"In Annex I (A), the heading 'Language Service' shall be replaced by the following:

'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'."

The main purpose of that amendment was to divide up the former Career Bracket LA 5/LA 6 of translator, interpreter, with a view to forming two new career brackets, LA 6/LA 7 comprising the basic posts of translator and interpreter of the former Career Bracket LA 5/LA 6, and LA 4/LA 5, which corresponds to the basic post of reviser (which was already included in that bracket), and to which two new basic posts were added, that of principal translator and that of principal interpreter.

Article 5 (4) of the Staff Regulations of Officials provides that:

"A table showing basic posts and corresponding career brackets is given in Annex I.

By reference to this table each institution shall, after consulting the Staff Regulations Committee referred to in Article 10, define the duties and powers attaching to each basic post."

In application of that provision, and following the amendment to the Staff Regulations of 4 May 1978, the Council adopted on 17 March 1981 a decision amending that of 7 October 1963 defining the duties and powers of the officals of the General Secretariat of the Council of the European Communities.

That new decision defines the duties of officals in Career Bracket LA 5/LA 4 as follows:

LA 5/LA 4	Head of Translation or Interpretation Group	Supervises the work of a group engaged in translation, conference interpretation, teminology or documentation, or of a group specialized in other linguistic fields.
	Reviser, principal translator	Qualified official charged with carrying out: the revision of translations and the translation of texts; work related to terminology and documentation in the linguistic field; other specialized work in the linguistic field.
	Principal interpreter	. . .

All the applicants worked for the Council as revisers in Grade LA 4. In accordance with the new definition of duties, the administration sent the applicants notices of adjustment dated 15 September 1981 signed by Mr Spence, informing them that they remained "at the disposal of Directorate II of Directorate-General A, . . . as reviser/principal translator . . .".

In consequence, the applicants submitted complaints under Article 90 (2) of the Staff Regulations, requesting essentially that the distinction between the designations and posts of reviser and principal translator be retained and that the post of Head of Translation Group be open to them.

By memoranda of 14 May 1982 the Secretary-General intimated that the notices of adjustment of 15 September 1980 were to be considered void inasmuch as they had not been signed by the appointing authority. Apart from that the memoranda rejected the complaints and communicated Decisions Nos 432 to 437/82 confirming that rejection.

The applicants brought actions for the annulment of those decisions, of the memoranda of 14 May 1982 and of the notices of adjustment of 15 September 1981. The actions were registered at the Court Registry on 30 July 1982.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Third Chamber) decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *applicants* claim that the Court should:

1. Declare the applications admissible and well founded;

2. Consequently

A. *Annul:*

2.1. Decisions Nos 432/82, 433/82, 434/82, 435/82, 436/82 and 437/82 of 14 May 1982 assigning each of the applicants to a post of reviser/principal translator in Grade LA 4;

2.2. The notices of adjustment of 15 September 1981 placing the applicants at the disposal of the department referred to therein as revisers/principal translators;

2.3. The decisions of 14 May 1982 rejecting the complaints of 11 and 14 December 1981;

B. *Declare* that the applicants are and remain assigned to the basic post of reviser.

3. Order the defendant to pay the costs.

The *defendant* contends that the Court should:

"Dismiss the applicants' claims for the annulment of the decisions of the appointing authority assigning each of them to a post of reviser/principal translator as inadmissible, inasmuch as such claims are premature;

Dismiss the claims for the annulment of the notices of adjustment of 15 September 1981 signed by Mr Spence, inasmuch as such claims are devoid of purpose;

Dismiss the claims for the annulment of the decisions of 14 May 1982 of the appointing authority rejecting their complaints of 14 December 1981, inasmuch as such claims are unfounded;

and

Order the applicants to pay the costs in so far as pursuant to Articles 70 and 95 (2) of the Rules of Procedure they are not to be borne by the defendant."

III — Summary of the submissions and arguments of the parties

A. Admissibility

1. In its statement of defence the *defendant* contends that the actions are not admissible. As a result of the applicants' complaints the notices of adjustment concerning the applicants were withdrawn because they had not been signed by the appointing authority. They were replaced by the decisions of 14 May 1982, the annulment of which the applicants now seek.

According to Article 91 (2) of the Staff Regulations of Officials: "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) within the period prescribed therein . . .".

The complaints of December 1981 predated the decisions of 14 May 1982 and cannot therefore be regarded as directed against those decisions. Moreover, the applicants have recognized that that objection is well founded, since on 23 July 1982, they "individually" lodged complaints expressly directed against the decisions of 14 May 1982. In addition,

when the action was lodged with the Court (on 30 July 1982) there had been no express or implied rejection of the complaints (of 23 July 1982) against the decisions (of 14 May 1982).

As to that, the *applicants* note in their reply that:

1. The decisions of 14 May 1982 in no way alter the *substance* of the notices of adjustment which were the subject of the complaints of December 1981; in reality, they amount to a rejection of those complaints as regards the substance;

2. It is in the interests of the administration of justice to avoid unnecessary complaints if the decision in question amounts to a decision which is the consequence of a total or partial rejection of the earlier complaint (see judgment of 30 November 1978 in *Salerno* Joined Cases 4, 9 and 28/78 [1978] ECR 2403).

In its rejoinder the *defendant* considers that the principle laid down in *Salerno* is inapplicable inasmuch as that case concerned an action against a decision of a selection board, and the institution against which the action was directed was powerless to alter such a decision. In this instance, the defendant could have altered the definition of the duties at any time, if it had so desired. The aim of Article 90 (2) is precisely to accord the authority in question sufficient time for reflection in order to effect appropriate alterations, if it considers that they are just.

2. In its statement of defence the *defendant* contends, in addition, that the Court should dismiss the claim for the annulment of the notices of adjustment of 15 September 1981 as superfluous in view of the fact that the notices were replaced by the decisions of the appointing authority of 14 May 1982.

As regards that point the *applicants* state in their reply that if the decisions of 14 May 1982 were annulled by the Court, as is sought, the notices of adjustment of 15 September 1981 would again take effect and it is therefore necessary, in those circumstances, that they also be annulled in order to ensure legal certainty.

In its rejoinder the *defendant* rejects that argument on the ground that it is incorrect because the notices no longer exist.

3. Finally, the *applicants* maintain that in so far as the action seeks the annulment of the decisions of 14 May not on the ground that they assign each of the applicants to a post of reviser/principal translator in Grade LA 4, but on the ground that they expressly reject the complaints of December 1981, the admissiblity of the action is not, and moreover cannot be, contested.

In its rejoinder the *defendant* agrees with the applicants on that point. Nevertheless, it contends that the procedural defects in question were rectified by the adoption of the new decisions of 14 May 1982.

B. Substance

The *applicants* challenge the notices inasmuch as they are based on the decision of 17 March 1981 defining the duties and powers of officials of the General Secretariat of the Council of the

European Communities, which in their view is unlawful (under the terms of Article 184 of the EEC Treaty). That decision combines the basic posts of reviser and principal translator corresponding to Career Bracket LA 4/LA 5 in one single basic post, yet:

1. The defendant is not empowered to combine two or more basic posts in such a way inasmuch as Annex I (A) to the Staff Regulations defines the posts of reviser and principal translator as two separate basic posts.

   (i) That is shown by the use of a comma between the two words.

   (ii) The other institutions make the distinction.

   (iii) Revision and translation are two different activities which occupy different positions in the scale of posts, as is shown by the fact that certain revisers were promoted to reviser in Grade LA 5 on the basis of a competition.

   (iv) A letter from the Director-General suggests that there was a deliberate and firm intention to combine the two basic posts in one.

2. The notices encroached on the existing rights of the applicants. In contrast to translators, revisers must have demonstrated that they are extremely good linguists. Moreover, in future the applicants may be required to translate *regularly*, or even exclusively, ordinary texts, whereas before they were only occasionally required to translate particularly difficult texts.

3. It appears from an exchange of letters between the Director-General and the Chairman of the Staff Committee that the Council does not envisage using the basic post of Head of a Translation Group, which deprives the applicants of an opportunity for promotion which was legally provided for. Moreover, revisers assume the responsibilities of Head of Group *de facto*.

The applicants also point out that under the terms of Article 5 (4) of the Staff Regulations different duties must attach to *"each"* basic post.

In the *defendant's* view, on the other hand, Article 5 (4) of the Staff Regulations authorizes the institutions to draw up the definition of the duties attaching to the basic posts in question *"by reference"* to the table. That permits it to adjust the definition of existing duties, or even to introduce a new definition in respect of a duty which does not entirely correspond to a particular basic post. The fact that the duties have not been defined in the same manner in all the institutions shows moreover that it was intended to leave a certain discretion to each of those institutions. Finally, the legislature listed in the table the designation "Head of Translation or Interpretation Group" on a separate line, whereas it placed the duties of reviser, principal translator and principal interpreter together. The

defendant considers that by doing so the legislature left each institution the choice of deciding whether there were three distinct basic posts or whether two or three of the posts referred to constituted a single basic post. The fact that the defendant may define the powers which attach to "each" basic post does not, moreover, prevent it from defining those powers in identical terms.

The defendant takes the view that the duties of reviser and principal translator are intrinsically connected and that consequently it may define their rights and duties in the same way. In that respect it draws attention to the decisions of the Court according to which the administration is alone responsible for the organization of its departments and each institution has complete freedom as regards its internal organization. The possibility that a reviser may translate or that a principal translator may revise has never, as yet, been excluded. However, the excessively rigid distinction which existed previously adversely affected, in the opinion of the defendant, the proper functioning of the service, and was contrary to Article 45 of the Staff Regulations inasmuch as the appointment of a translator in Grade LA 5 to a post of reviser in the same grade did not constitute a promotion within the meaning of the Staff Regulations. Finally, the defendant is not bound by a letter from the Director-General such as was cited by the applicants.

As regards the argument based on existing rights, the defendant points out that the applicants remain "revisers" and in addition become "principal translators". They are therefore required to carry out new duties but their rank is in no way lowered. In any event, the Staff Regulations and the measures adopted for their implementation are always liable to amendment.

Finally, the Director-General of Administration merely suggested in the exchange of letters in question that *"at this stage,* there are no plans to appoint LA officials to the post of Head of Group" which would imply that it is always open to the administration, at the appropriate time, to appoint officials in category LA to the post of Head of Group.

In their reply the *applicants* claim that the defendant's position is ambiguous inasmuch as it does not anywhere indicate whether it denies that the posts of reviser and principal translator are in fact two distinct basic posts. According to the applicants, although as from 1981 revisers might be required to translate the fact remains that the two posts involve different linguistic activities which correspond to different levels in the scale of posts. Indeed, at that time, revisers could only be required to translate particularly difficult texts. Moreover, some of the applicants were only promoted to the post on the basis of a competition, and in any event all of them were appointed, after having duly demonstrated that they were excellent translators, because a post of reviser was vacant and following the decision of the selection board or the promotion committee. Therefore, if the appointment of a translator in Grade LA 5 to a post of reviser in Grade LA 5 did not constitute a promotion in grade, it was nevertheless a promotion in terms of career. Finally, the applicants do not deny that the defendant enjoys a discretion as regards its internal organization. Nevertheless, they emphasize that that discretion is limited by the provisions of the Staff Regulations.

Since the disputed decision of 17 March 1981, the holder of a basic post of "reviser/principal translator" in the defendant institution does not offer the same guarantees as the holder of a basic post of "reviser" in the other institutions, so that the transfer of the former to other institutions of the three European Communities within the meaning of Article 29 (1) (c) has been rendered more difficult.

In the further alternative, the applicants claim that the two basic posts in question have been combined not in order to improve management of the language service but, in this instance, in order to satisfy a corporatist interest. In their view, "the interests and the rights of a minority which have been duly and deservedly acquired after many years have been sacrificed to the egalitarian demands of a majority".

In its rejoinder, the *defendant* raises the question whether it is possible to rely on Article 184 in view of the fact that the defendant's decision of 17 March 1981, the legality of which is disputed, does not constitute a "general" decision, the criterion to which the Court itself referred in its judgment of 6 March 1979 (Case 92/78 *Simmenthal* [1979] ECR 777).

The defendant contends that it is entitled pursuant to Article 5 (4) of the Staff Regulations to define duties in a way which corresponds to what it considers to be the best organization of its language service. A department cannot be efficient with too many revisers or heads of group. The defendant's purpose in adopting the amendment was twofold: to make it possible for other members of the language service to revise and to prevent "established" revisers from evading translation duties when the proper functioning of the service required the immediate translation of a considerable number of documents. The career promotion to which the applicants refer is not recognized in the Staff Regulations, which only acknowledges differences in grade.

As regards the opportunities for applying for a post of reviser in another institution, the defendant considers that a reviser/principal translator can always rely on the experience acquired in carrying out both duties at the Council.

Finally, the defendant rejects the argument that it acted in a corporatist interest. It maintains that it adopted the measure in question solely because translation was slower than revision and consequently there must be many more translators than revisers. If translators, at a certain point in their career, became revisers and carried out revision exclusively, there would be too many revisers and not enough translators. In its opinion, there are only two solutions to that problem: either the definition of the duties must be changed or some officials must have progress in their career blocked.

IV — Oral procedure

At the sitting on 9 June 1983 the applicants, represented by E. Lebrun of the Brussels Bar, and the defendant, represented by its Agent, J. Carbery,

presented oral argument and replied to the questions put by the Court.

The Advocate General delivered his opinion at the sitting on 14 July 1983.

Decision

1 By application lodged at the Court Registry on 30 July 1982 the applicants, who are officials in the General Secretariat of the Council of the European Communities, brought an action pursuant to Article 91 of the Staff Regulations of Officials (hereinafter referred to as "the Staff Regulations") for the annulment of various decisions of the Council assigning the applicants to posts of reviser/principal translator.

2 Article 5 (4) of the Staff Regulations provides:

"A table showing basic posts and corresponding career brackets is given in Annex I.

By reference to this table each institution shall, after consulting the Staff Regulations Committee referred to in Article 10, define the duties and powers attaching to each basic post."

3 Annex I to the Staff Regulations, as amended by Council Regulation No 912/78 of 2 May 1978 (Official Journal 1978, L 119, p. 1) shows under the heading "Language Service" that Career Bracket LA 4/LA 5 comprises the basic posts of both "Head of Translation or Interpretation Group" and, on a separate line, "Reviser, principal translator, principal interpreter".

4 Following that amendment of the Staff Regulations of 2 May 1978 the Council adopted on 17 March 1981 in pursuance of Article 5 (4) of the Staff Regulations a decision amending, *inter alia*, the definition of the duties and powers of the officials of the language service of the Council. That new decision defines the duties of a reviser and those of a principal translator in identical terms.

5 As a result of the new definition of duties the administration sent to the applicants notices of adjustment dated 15 September 1981 informing them

that in future they would be deemed to be carrying out the duties of "reviser/principal translator" and no longer those of "reviser" alone.

6 On receipt of the notices the applicants submitted complaints under Article 90 of the Staff Regulations seeking to secure the retention of the distinction between the designations and posts of reviser and principal translator and requesting that the post of Head of Translation Group should be open to them.

7 By memoranda of 14 May 1982, the Secretary-General of the Council informed the applicants that the notices of adjustment of 15 September 1981 were to be regarded as void inasmuch as they had not been signed by the appointing authority. The Council rejected the remainder of the applicant's complaints and communicated to them Decisions Nos 432 to 437/82 of 14 May 1982 confirming that rejection.

8 The applicants have brought actions for the annulment of those decisions, of the memoranda of 14 May 1982 and of the notices of adjustment of 15 September 1981.

9 The Council raises three objections of inadmissibility. Nevertheless, it is appropriate to consider first the substance of the case, and to determine subsequently whether it is still necessary to rule on the submissions as to inadmissibility relied on by the Council.

10 The applicants base their actions on the claim that the general decision of 17 March 1981 defining the duties and powers of officials of the General Secretariat of the Council of the European Communities is unlawful inasmuch as it combines in a single basic post the basic posts of reviser and principal translator. They maintain that in so doing, and in thus disregarding the policies pursued by other institutions, the Council infringed the second subparagraph of Article 5 (4) of the Staff Regulations which prohibits the definition of two basic posts in identical terms.

11 The fact that the second subparagraph of Article 5 (4) of the Staff Regulations requires the institutions to define the duties of "each" basic post in no way implies that they must define them differently. That applies in particular

in respect of duties within the same grade, concerning similar posts which are as closely linked as are the posts of reviser and principal translator and which are listed in the Staff Regulations on a single separate line.

12 Moreover, it should be noted that Article 5 (4) of the Staff Regulations states that each institution is to define the duties and powers attaching to a basic post, and does not require that that definition be identical in all the institutions.

13 Secondly, the applicants claim that the relevant measures require them to carry out tasks which are inferior to their status and therefore encroach on their existing rights.

14 Whilst the duties and powers assigned to an official must on the whole be in keeping with the post which corresponds to the grade he occupies in the scale of posts, as the Court has repeatedly held, that principle of equivalence between grade and post does not apply in respect of posts within the same grades.

15 In that respect the Council rightly points out that the applicants remain "revisers" but become in addition "principal translators", which enables them to carry out new duties but in no way lowers their rank. Moreover, it appears from the case-law of the Court that an institution is entitled to expect that senior officials shall be sufficiently adaptable to fill posts of different kinds (judgment of 28 May 1970 in Case 39/69 *Peco* [1970] ECR 361).

16 In their third submission, finally, the applicants take issue with an exchange of letters between the Director-General of Personnel and the Chairman of the Staff Committee from which it appears that the Council does not comtemplate using the basic post of Head of Translation Group. In that respect, it need only be observed that such correspondence does not constitute a decision within the meaning of Article 90 (1) of the Staff Regulations; it falls merely within the category of administrative information inasmuch as it does not emanate from the appointing authority.

17 As consideration of the arguments advanced by the applicants has established that none of their submissions may be accepted, the applications must be dismissed as unfounded. In those circumstances it is not necessary to consider the objections of inadmissibility raised by the Council.

Costs

18 Under the terms of Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

19 However, under Article 70 of the Rules of Procedure, the institutions shall bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Dismisses the applications;**

2. **Orders each of the parties to bear their own costs.**

Everling Mackenzie Stuart Galmot

Delivered in open court in Luxembourg on 28 September 1983.

For the Registrar

H. A. Rühl

Principal Administrator

U. Everling

President of the Third Chamber