3. The wording of Article 65 (2) precludes any interpretation to the effect that the Council is not obliged to adjust the weightings within a period of two months following any substantial change in the cost of living. The Council's power in this respect is to decide whether or not there has been a substantial increase in the cost of living and, if there has, to draw the appropriate conclusions. Any other interpretation would run counter to the objective of the provision in question which is to guarantee to all officials the same purchasing power whatever their place of employment.

In Joined Cases 532, 534, 567, 600, 618 and 660/79

1. JAN AMESZ, residing at 28 Via Carnisio, Cocquio (Varese), Italy,
2. ROLF BAUCH, residing at 13 Via Matteotti, Angera (Varese), Italy,
3. JAKOB FLAMM, residing at Via Grazzia Deledda, Ranco (Varese), Italy,
4. HANS HOFFMANN, residing at 2 Via Cervino, Taino (Varese), Italy,
5. HELMUT KNOEPPEL, residing at 116 Via Matteotti, Cadrezzate (Varese), Italy,
6. HENRICUS NIJMAN, residing at 55 Via Corridoni, Varese, Italy,

represented by B. Potthast and H. J. Rüber, Rechtsanwälte, Cologne, assisted by Professor E. Steindorff of the University of Munich with an address for service in Luxembourg at the chambers of V. Biel, Advocate, 18a Rue des Glacis,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by J. Pipkorn, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of O. Monalto, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION in the terms set out in the applicants' conclusions,

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: F. Capotorti
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case and the conclusions and arguments of the parties put forward during the written procedure may be summarized as follows:

I — Facts and written procedure

1. Background provisions

This case should be seen against the background of the following provisions:

(a) In the version in force until 31 March 1979, Article 63 of the Staff Regulations of Officials provided that:

"An official's remuneration shall be expressed in Belgian francs.

It shall be paid in the currency of the country in which the official performs his duties.

Remuneration paid in a currency other than Belgian francs shall be calculated on the basis of the par values accepted by the International Monetary Fund, and in force on 1 January 1965."

The relevant parity was BFR 12.50 to DM 1 and BFR 8 to LIT 100.

In accordance with Article 17 of Annex VII to the Staff Regulations, an official may ask to have part of his emoluments transferred, either regularly or on an exceptional basis, to a country other than the one in which he performs his duties. Until 31 March 1979 Article 17 (4) provided that such transfers were to be made through the institution to which the official belonged "at the official rate of exchange in force at the date of the transfer". The "official rate of exchange" within the meaning of that provision was the last parity accepted by the International Monetary Fund, which had not been altered since 1 November 1969 (for example, BFR 13.66 to DM 1).

After the collapse in 1971 of the international system of fixed exchange rates, which is at the heart of those provisions, the parities came to reflect less and less

the purchasing power of the currencies involved and their value on the international money market. Officials who made transfers to countries the value of whose currency had increased in relation to the parities notified to the International Monetary Fund were thus able to realize gains on the exchange rate, as compared with transfers made in normal market conditions.

In accordance with the legal position existing prior to 1 April 1979 the weighting provided for in Article 64 of the Staff Regulations to reflect the living standards at the place where the official performed his duties had to be applied to the whole of the remuneration including the part to be transferred to another country pursuant to Article 17 of Annex VII. This led to an increase in the weighting for officials assigned to countries such as Italy where the value of the currency had decreased in relation to the parities notified to the International Monetary Fund and to a reduction in the weighting for officials assigned to countries whose currency had gained in value in relation to the parities of the Fund. However, the applicant maintains that the increase made in the weighting was very slight. For example, the weighting for Italy was increased, in figures, from 100 to 146.9, whereas the exchange rate had fallen from 12.5 lire for 1 Belgian franc to 28 lire for 1 Belgian franc.

Pensioners were able to derive special advantages from those provisions. If they declared their domicile to be in a country whose currency had diminished in value, the weighting in respect of that country was applied to their pension in accordance with Article 82 (1) of the Staff Regulations. Article 45 of Annex VIII to the Staff Regulations gave them the opportunity of having their pensions paid in the strong currency of their country of origin or of that of the seat of the institution to which they belonged. This state of affairs was condemned by Advocate General Mayras in his Opinion in Case 28/74 (*Gillet*, [1975] ECR 475).

From 1974 onwards the Commission has submitted proposals to the Council with a view to abolishing the anomalies in the rules governing the payment of remuneration and pensions brought about by the break-down in the international system of fixed exchange rates.

The proposal for a Council regulation amending the Staff Regulations of Officials, submitted to the Council by the Commission on 13 June 1974 (Official Journal C 88, p. 25) provided for an amended version of Article 17 (4) of Annex VII to the Staff Regulations as follows:

"Transfers provided for in paragraphs (2) and (3) shall be made on the basis of the par values referred to in the last paragraph of Article 63 of the Staff Regulations; the amounts transferred shall be multiplied by a coefficient representing the difference between the weighting for the country in whose currency the transfer is made and the weighting for the country in which the official is employed."

On 1 April 1977 the Commission submitted to the Council a proposal for a Council regulation introducing the European unit of account (EUA) into the Staff Regulations of Officials (Official Journal C 99, p. 5). That proposal was rejected by the Staff Regulations Committee to which it had been referred. The Council obtained the opinion of the European Parliament and of the Court of Justice. By resolution of 7 July 1977 (Official Journal C 183, p. 55) the Parliament approved the proposal taking note of "the Commission's assurance that its proposal will

in no way affect the real value of the payments made to officials in the form of remuneration, pensions and allowances". At the sitting the Commissioner responsible for administration, Mr Tugendhat, stated: "The object of the Commission's system is financial neutrality, and what we think that our system can achieve is an equality of purchasing power. What we want is that a Commission official of a given grade, whether he is working in Brussels or Luxembourg or London or any other part of the Community, should be able to buy exactly the same quantity of goods as his equal in another part of the Community ... The problem of transfers is also one that has preoccupied the Commission. There is a proposal for an amendment of the Staff Regulations now under consideration. In our view, that amendment must be adopted no later than the present draft regulation and that, I think, covers another point about which there has been concern."

The Council did not succeed in 1978 in adopting the regulation proposed by the Commission on 6 October 1976 (Official Journal C 271, p. 5) "on the procedure for applying the European unit of account (EUA) to the legal acts adopted by the institutions of the European Communities". The Commission therefore set to work to bring up to date, in the light of the situation thereby created, the exchange rates in respect of remuneration for officials as envisaged by the proposal of 1 April 1977. In an annex to its Report in 1978 on the yearly survey of the level of remuneration (COM(78) 673 final of 29 November 1978) the Commission sent the following communication to the Council on which neither the Parliament, the Court of Justice nor the Staff Regulations Committee was consulted:

"... The first two paragraphs of Article 63 are to be replaced by the following: 'Officials' remuneration shall be expressed in Belgian francs. It shall be paid in the currency of the country in which the official performs his duties. 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 ...

The Commission urges the Council to adopt the aforementioned article before the end of the year as well as Article 17 of Annex VII which is the result of the Council's studies relating to the amendments to the Staff Regulations ...

The ... regulation should come into effect on 1 January 1979 ... and should apply from 1 April 1979. However, for pensioners in receipt of allowances whose net financial benefits will be less than those under the existing arrangements, the regulation will apply only from 1 October 1979."

(b) On 21 December 1978 the Council adopted Regulation No 3085/78 (Official Journal 1978 L 369, p. 6), amending, with particular reference to the monetary parities to be used, Regulation No 259/68 laying down the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the Communities, Regulation No 2530/72 and Regulation No 1543/73 concerning certain special measures. The regulation embodies the wording of the communication from the Commission of 29 Nov-

ember 1978 and also the formula contained in the proposal of 1 April 1977 concerning the weighting to be applied to amounts transferred. The Council added, however: "From that date the difference between the net amounts resulting from the implementation of the regulation and those received in September 1979 shall be reduced by 1/10 per month." The regulation fixes 1 July 1978 as the relevant date for calculating remuneration paid in a currency other than Belgian francs on the basis of the exchange rates used for the implementation of the general budget of the Communities and goes on to state that that date shall be changed at the time of the annual review of remuneration.

(c) Hand in hand with the bringing up to date of the rates of exchange, the Council adopted Regulation No 3086/78 of 21 December 1978 (Official Journal L 369, p. 8) adjusting the weightings applicable to the remuneration and pensions of officials and other servants of the European Communities following the amendment of the provisions of the Staff Regulations concerning the monetary parities to be used in implementing the Staff Regulations, which amended the value of the weightings according to the various places of employment. In order to do that the Commission and the Council of the European Communities used a formula the intended result of which was that in the case of each official or other servant employed outside Belgium or Luxembourg the remuneration for April 1979 would be maintained at the same level as that of the previous month. However, in the applicant's view, as far as the disposable amount of his remuneration is concerned, that formula resulted in the changes which he sets out in detail in these proceedings, namely a reduction of about 25%.

In fixing the weighting referred to in Article 64 of the Staff Regulations, the Council and the Commission have, since 1967, used the following procedure for comparing the level of prices between Brussels and the various other places of employment. The Statistical Office of the European Communities, in conjunction with the competent national offices, carries out regular price surveys in respect of goods and services considered as representing typical items of household expenditure for officials in the various places of employment. In respect of each item the relationship is calculated between the price in Brussels and the price prevailing in the town which is used as the point of reference for the place where the official performs his duties. By the use of this weighting it is possible to calculate the relative purchasing power of currencies in the countries where the officials of the Community perform their duties. For example, the index calculated using the "Fisher" method expresses in a single figure the relationship of prices in Brussels to those in Rome and *vice versa*. That figure is used for calculating the weightings within the Community because it expresses the relationship of prices from one town to another in a reversible manner and because it is therefore possible to make not only bilateral but also multilateral price comparisons. According to this method, the weighting is obtained by dividing the "Fisher" index calculated as described above, by the corresponding rate of exchange used to convert the remuneration of officials into the respective national currencies in accordance with Article 63 of the Staff Regulations. In

October and November 1975 a comparative study of prices was carried out in all the capitals of the Community.

(d) Regulation No 3087/78 of 21 December 1978 adjusting the weighting applicable to the remuneration and pensions of officials and other servants of the European Communities employed or having a home in Italy (Official Journal L 369, p. 10) provides:

"The Council of the European Communities, . . .

Having regard to the proposal from the Commission,

Whereas the weighting for Italy should be corrected in line with the findings of the statistical surveys carried out by the Statistical Office of the European Communities,

has adopted this regulation:

Article 1

1. With effect from 1 January 1978, the weighting applicable to the remuneration of officials employed in Italy shall be 146.4.

2. With effect from 1 January 1978 the weighting applicable to pensions in accordance with the second subparagraph of Article 82 (1) of the Staff Regulations shall be 146.4 where the person entitled to the pension declares his home to be in Italy.

Article 2

The weightings for Italy given in Article 1 of Regulation (Euratom, ECSC, EEC) No 1461/78 is repealed with effect from 1 January 1978."

That regulation was adopted in the following circumstances:

The fall in the value of the Italian lira which depreciated rapidly at the end of 1975 and the beginning of 1976 and the monetary measures taken by the Italian Government as a result brought about strong inflationary pressure. It led the staff representatives in Ispra to submit a number of pay demands based on their claims that the weighting for Italy no longer reflected the widening gap between the cost of living in Brussels and Ispra and that the weighting calculated according to the "Fisher" method led in particular to a large gap between the par value of the lira in relation to the Belgian franc on the currency markets and the equivalent value in lire of the remuneration paid to officials at Ispra and considerably reduced the external purchasing power of the remuneration.

From July 1975 the weighting for Italy was 166.6 as against 148.7 for Brussels and Luxembourg. In the spring of 1976 the Commission proposed provisionally to increase the weighting for Italy to 5.5% from 1 January 1976, the final percentage to be fixed once precise statistical data were available. The applicants claim that on 19 March 1976 the Commission of the European Communities also told officials that the examination of the weighting applicable to Italy had absolute priority. The Council did not accept that proposal.

The statistical inquiries to which the Commission referred were conducted by the Statistical Office in May 1976 in the province of Varese. An inquiry into rent

levels was then taken into account. The ensuing report found that there was a difference of 8.5% between the weighting for Italy, calculated for Varese by the Statistical Office to be (121.5 to the base 100 for Brussels) and the weighting for Italy adopted by the Council (112.04 to the base 100 for Belgium). Of that 8.5%, 6.7% was attributed to the widening gap between the cost of living index in Italy and that in Belgium from December 1975 to June 1976. According to the Statistical Office approximately 2% might be attributed to the difference in price levels between the Varese and Rome regions.

On 21 December 1976 the Council adopted Regulation No 3177/76 (Official Journal L 359, p. 1) which from 1 July 1976 fixed the weighting at 189.3 for Italy as against 157.8 for Belgium and from 1 January 1977 at 120 for Italy as against 100 for Belgium.

The inquiry was the outcome of various representations made by staff representatives at Ispra to the Commission and in particular of a meeting with the President of the Commission on 23 May 1976. The staff representatives questioned the statistical method used to fix the weighting and sought to have it amended. They considered the large gap between the purchasing power parities and the monetary parities of remuneration paid in lire to be incompatible with the principle of the equal treatment of officials. That was the result in particular of the fact that prices of imported goods react very much more quickly to the appreciation of a currency on the currency markets than the general price level. Equality of treatment in regard to pay can be attained only by reference to a common European "basket" of goods and services which are qualitatively and quantitatively identical. The Commission representatives rejected that basis of reference but they did agree that the purchasing power parities used to calculate the weighting might present some distortion. By a telex message of 12 December 1977 the staff representatives asked the Member of the Commission responsible for administrative matters, Mr Tugendhat, to make representations to the Council in order to have the weighting for 1977 acknowledged to be provisional.

In May 1978, in addition to an adjustment of the weightings to the increased cost of living, the Commission proposed to the Council a supplementary increase of 5% in the weightings for Italy, the United Kingdom and Ireland.

On 12 June 1978 the President of the Commission met the staff representatives for a discussion on policy. A joint working party was set up in order to study the method of calculating and periodically reviewing the weighting. In its report of 26 July 1978 the party recommended the Commission to submit to the Council a proposal based on these points:

The 1967 list of consumer goods to be brought into line with that used for the 1975 inquiry;

The price adopted in 1975 to be adopted and extrapolated to 1978 using common indices (namely for Rome and Brussels);

Justification of the use of those prices by the need to introduce a system enabling weightings to be regularly adjusted.

The Commission representatives stated that the method proposed should apply to the weighting as from 1 January 1978 while the staff representatives believed there was justification for applying it from an earlier date and reserved their freedom of action before the Council on this point. They also pointed out that some disparity still remained owing in particular to the differences in prices between Rome and Varese.

The working party's recommendations were incorporated in the Commission's proposal to the Council of 10 November 1978 to increase the weighting by 6.4% as from 1 January 1978 (Doc. COM(78) 591). During the discussions at Council level the staff representatives refused to accept 1 January 1978 as the date for the entry into force of the amended weighting.

After the adoption on 21 December 1978 of Regulation No 3087/78, in January 1979 the administration of the Commission calculated and paid the arrears due in respect of the period from 1 January 1978 to 30 June 1978. At the same time there were paid the arrears due in respect of the period of 1 July 1978 to 31 December 1978 under Council Regulation No 3084/78 of 21 December 1978 adjusting the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto (Official Journal L 369, p. 1), which fixed the weighting for Italy at 146.8 with effect from 1 July 1978.

2. *Facts*

The applicant Amesz was engaged as an official by the Commission on 15 March 1961 and with effect from that day was assigned to the EAEC Joint Research Centre in Ispra. He is now in Grade A 5. He is a Netherlands national. On the date on which this action was brought he was 46 years old, was married and had four dependent children.

The applicant Bauch was engaged as an official by the Commission on 1 April 1961 and with effect from that date was assigned to the EAEC Joint Research Centre in Ispra. He is now in Grade B 1, Step 6. He is a German national. On the date on which this action was brought he was 51 years old, was married and had two dependent children.

The applicant Flamm was engaged as an official by the Commission on 1 July 1962 and with effect from that date was assigned to the EAEC Joint Research Centre in Ispra. He is now in Grade A 4. He is a German national. On the date on which this action was brought he was 48 years old, was married and had three dependent children.

The applicant Hoffmann was engaged as an official by the Commission on 3 January 1961 and with effect from that date was assigned to the EAEC Joint Research Centre in Ispra. He is now in Grade B 2. He is a German national. On the date on which this action was brought he was 48 years old, was married and had three dependent children.

The applicant Knoeppel was engaged as an official by the Commission on 1 January 1966 and with effect from that date was assigned to the EAEC Joint Research Centre in Ispra. He is now in

Grade A 5, Step 7. He is a German national. On the date on which this action was brought he was 45 years old, was married and had three dependent children.

The applicant Nijman was engaged as an official by the Commission on 1 March 1961 and with effect from that date was assigned to the EAEC Joint Research Centre in Ispra. He is now in Grade B 2. He is a Netherlands national. On the date on which this action was brought he was 52 years old, was married and had three dependent children.

The method applicable until 31 March 1979 was advantageous for officials employed in Italy. It may be seen from this application that in the case, for example, of two employees of German nationality employed in Brussels and Ispra, in Grade B 3, Step 3, and married with two children at secondary school, who transfer through the Commission to the BHW house-purchase savings scheme 35% of their net salary (the maximum), the one employed at Ispra obtained in January 1976 12% more than his colleague in Brussels for the part of his salary transferred to the Federal Republic of Germany, whereas in March 1979 he obtained 46.8% more.

Therefore, the applicants claim, a privilege was removed but the disadvantages, which might have been to some degree offset by the advantages of the method previously applied, remained. Those advantages stem for example from the fact that in Italy property values do not increase in the same way as in the Federal Republic of Germany or from the fact that officials employed in Italy have to use a larger portion of their salary to purchase currency if they do not wish to spend their holidays in Italy.

If an official had to change a part of his remuneration, say 35%, into German marks at a bank, an employee working at Ispra obtained in January 1976 34% less and in March 1979 35% less than his colleague in Brussels.

The applicant Amesz used the direct transfer method in order to pay the following expenses:

Transfer of remuneration	DM 3 000
Other monthly commitments	HFL 2 835
Annual holidays in the country of origin, approximately	HFL 585
Other monthly commitments, approximately	HFL 100

Under the previous transfer system the financial position was as follows:

Net salary	BFR 255 993
Amount thereof paid	LIT 2 079 937
Transfers: (BHW) DM 3 000 Others HFL 3 520.48	
Sum in lire	LIT 1 119 973
Total sum	LIT 3 199 910

Under the new system the financial position appears to be as follows:

Net salary	BFR 122 591
Paid	LIT 1 353 577
Transfers: (BHW) DM 3 000 Others HFL 3 520.47	
Sum in lire	LIT 1 847 240
Total sum	LIT 3 180 817

On 15 April 1979 the loss was:

Total sum	LIT 727 267
Of total salary	22.7%
Of March salary	35.0%

The applicant Bauch used the direct transfer method in order to pay the following expenses:

Transfer of remuneration	DM 2 162
Building loan from the Commission	BFR 3 351
Other monthly commitments, approximately	DM 350
Annual holidays in the country of origin, approximately	DM 6 600
Other commitments, approximately	DM 2 542

The applicant Bauch has not provided the remainder of the statistical information.

The applicant Flamm used the direct transfer method in order to pay the following expenses:

Transfer of remuneration	DM 3 113
Building loan from the Commission	BFR 4 661
Annual holidays in the country of origin, approximately	DM 10 000
Annual payment to savings account	DM 15 000
Other annual commitments, approximately	DM 11 000

Under the previous transfer system the financial position was as follows:

Net salary	BFR 241 460
Amount thereof paid	LIT 1 905 575
Transfers: (BHW) DM 3 113 (Commission) BFR 4 661 (Others) DM 3 062.30	
Sum in lire	LIT 1 112 700
Total sum	LIT 3 018 275

Under the new system the financial position appears to be as follows:

Net salary	BFR 115 632
Amount thereof paid	LIT 1 123 655
Transfers: (BHW) DM 3 113 (Commission) BFR 4 661 (Others) DM 3 062.30	
Sum in lire	LIT 1 895 474
Total sum	LIT 3 019 129

On 15 April 1979 the loss was:

Total sum	LIT 782 774
Of the total salary	25.9%
Of the salary for March	41.1%

The applicant Hoffmann used the direct transfer method in order to pay the following expenses:

Transfer of remuneration	DM 1 830
Building loan from the Commission	BFR 3 985
Other monthly commitments	DM 1 100
Annual holidays in the country of origin, approximately	DM 6 000
Monthly payment to savings account, approximately	DM 500

Under the previous transfer system the financial position was as follows:

Net salary	BFR 215 991
Amount thereof paid	LIT 1 512 801
Transfers: (BHW) DM 1 830 (Commission) BFR 3 985 (Others) DM 2 164.09	
Sum in lire	LIT 731 806
Total sum	LIT 2 244 607

Under the new system the financial position appears to be as follows:

Net salary	BFR 85 986
Amount thereof paid	LIT 1 001 331
Transfers:	
(BHW) DM 1 830	
(Commission) BFR 3 985	
(Others) DM 2 164.08	
Sum in lire	LIT 1 243 772
Total sum	LIT 2 245 103

On 15 April 1979 the loss was:

Total sum	LIT 511 966
Of total salary	19.0%
Of March salary	33.8%

The applicant Knoeppel used the direct transfer method in order to pay the following expenses:

Transfer of remuneration	DM 1 924
Building loan from the Commission	BFR 3 402
Other monthly commitments	DM 245
Annual holidays in the country of origin, approximately	DM 8 400
Monthly payment to savings account, approximately	DM 1 400
Other monthly commitments, approximately	DM 1 200

Under the previous transfer system the financial position was as follows:

Net salary	BFR 230 113
Amount thereof paid	LIT 1 892 263
Transfers:	
(BHW) DM 1 924	
(Commission) BFR 3 402	
(Others) DM 3 587.29	
Sum in lire	LIT 983 580
Total sum	LIT 2 876 443

Under the new system the financial position appears to be as follows:

Net salary	BFR 110 198
Paid	LIT 1 199 504
Transfers:	
(BHW) DM 1 924	
(Commission) DM 3 587.29	
(Other) BFR 3 402	
Sum in lire	LIT 677 750
Total sum	LIT 2 877 254

On 15 April 1979 the loss was:

Total sum	LIT 894 170
Of total salary	24.1%
Of March salary	36.7%

The applicant Nijman used the direct transfer method in order to pay the following expenses:

Transfer of remuneration	DM 2 085
Other monthly commitments	HFL 2 000
Annual holidays in the country of origin, approximately	HFL 3 200
Monthly payment to savings account, approximately	HFL 1 100

Under the previous transfer system the financial position was as follows:

Net salary	BFR 196 304
Amount thereof paid	LIT 1 647 438
Transfers:	
(BHW) DM 2 085	
(Others) DM 2 608.82	
Sum in lire	LIT 806 361
Total sum	LIT 2 453 799

Under the new system the financial position appears to be as follows:

Net salary	BFR 94 007
Paid	LIT 1 123 693

Transfers:	
(BHW) DM 2 085	
(Others) DM 2 608.82	
Sum in lire	LIT 1 328 400
Total sum	LIT 2 452 093

On 15 April 1979 the loss was:

Total sum	LIT 522 039
Of total salary	21.3%
Of March salary	31.7%

3. Written procedure

By identical complaints submitted under Article 90 (2) of the Staff Regulations a large number of officials at Ispra made objection to a reduction of approximately 26% in their actual remuneration which they claimed was the result of the application of Regulations Nos 3085 and 3086/78. They claimed that those regulations were unlawful and that Regulation No 3087/78 had not been given sufficient retroactive effect and asked for measures to be taken to make up for the loss in purchasing power which they claimed had taken place in 1976 and 1977.

The applicants sent their complaints to the Commission on 27 March and 11 April 1979.

On 12 July 1979 the Commission rejected those complaints.

By fresh complaints submitted in June 1979 and identical in form a large number of officials at Ispra objected to the application to their remuneration for April 1979 of Regulations Nos 3085 and 3086/78 and the updated exchange rates fixed by those regulations and to the changes in the method whereby officials transferred a part of their monthly salary to a country other than that in which they were employed.

The applicants' complaints were received at the Commission on 21 June 1979.

On 28 September 1979 the Commission replied to the complaints of 21 June 1979 and once again to the complaints of 11 April 1979.

These applications against the Commission and the Council were received at the Court on 11 October 1979 at the same time as 199 other parallel applications (Cases 530 to 729/79 and 781/79).

By a letter of 27 December 1979 the applicants amended their applications to challenge, in addition to the salary statement for April 1979, that for January 1979.

By document dated 11 January 1980 the Council raised an objection of inadmissibility.

By a letter of 8 February 1980 the Commission submitted its observations on the amendment of the applications contending that the period prescribed for bringing an action against the statements of 15 January 1979 had expired in October 1979.

On 19 June 1980 the Commission withdrew that objection.

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

By order dated 10 November 1981, the Court (First Chamber) decided to join the present cases for the purposes of the oral procedure and judgment.

By order dated 10 November 1981 the Court (First Chamber) decided that these applications were inadmissible in so far as they were directed against the Council.

II — Conclusions of the parties

1. The *applicants* each claim that the Court should:

I. As against the first defendant:

1. Declare unlawful and annul the salary statements issued by the first defendant for January and April 1979 and its decisions of 12 July 1979 and 28 September 1979 on his complaints in so far as they contain particulars of salary calculated on the basis of Regulations Nos 3085, 3086 and 3087/78 of the Council of the European Communities;

2. Declare that the applicant is entitled to remuneration which also takes account of the purchasing power of the Italian lira abroad as well as in the Province of Varese from the time when the applicant was posted to Ispra, but from no later than January 1976;

3. In the alternative to 2. above, declare that the applicant is entitled to remuneration which also takes account of the purchasing power of the Italian lira in the Province of Varese from the time at which the applicant was posted to Ispra, but from no later than January 1976;

4. In the alternative to 2. and 3. declare that the applicants are entitled to remuneration which takes account of the purchasing power of the Italian lira, taking Rome as the base, from the time at which the applicant was posted to Ispra, but from no later than January 1976;

5. Declare that from and including April 1979 the applicants have been entitled to remuneration corresponding to at least what they were paid in Italian lire up to and including March 1979 after making the same transfers under Article 17 of Annex VII to the Staff Regulations as up to March 1979 but increased by the percentage of the salary adjustment applied from April 1979 in accordance with Article 65 (1) of the Staff Regulations;

6. In the alternative to 5. above, declare that from and including April 1979 the applicants have been entitled to remuneration calculated on the basis of the legal provisions in force and applicable until March 1979, Council Regulations Nos 3085 and 3086/78 thus not being applied, that is to say, in the same amount as the sum payable in Italian lire after the same transfers had been made in accordance with Article 17 of Annex VII to the Staff Regulations as up to March 1979;

7. In the alternative to 6. above, declare that the applicants are entitled to remuneration which, after transfers of the same amounts in accordance with Article 17 of Annex VII to the Staff Regulations, leaves a disposable amount in lire corresponding to the amount in lire which the applicant had until March 1979, with of course an adjustment to the new legal situation arising out of Council Regulations Nos 3085 and 3086/78 having to be made during a transitional period from actual increases in salary in the future, but not from adjustments on the basis of Articles 64 and 65 (1) of the Staff Regulations;

8. As a further alternative to 6. and 7. above, declare that the applicants are entitled to remuneration in accordance with Article 4 of Council Regulation No 3085/78;

9. Declare that the first defendant must correct the applicant's salary statement in accordance with the obligations under 2. to 8. above and pay the ensuing increased amount.

II. As against both defendants:

1. Order the defendants to pay in Italian lire the amount of the difference resulting from the calculation referred to in I.9. above;

III. 1. Order the defendants to compensate the applicants for their financial loss the amount of which the Court is asked to fix together with interest of 6% on the amount of arrears from the date on which they fell due to the date of payment;

2. Order the defendants to pay the costs.

2. The *Commission* contends that the Court should:

I. 1. Dismiss the applications as inadmissible in so far as they directly or indirectly challenge the correctness of the weighting applied for Italy to the applicants' salary statements for January and April 1979 by alleging Council Regulation No 3087/78 of 21 December 1978 to be vitiated by a mistake;

2. Dismiss the rest of the applications as unfounded as far as the Commission is concerned;

3. Order the applicants to pay the costs;

II. In the alternative to I.1. grant leave for the Commission to give its views within a period to be fixed by the Court on the question how far the claims set forth above are justified;

III. In the alternative to I.2. dismiss the claim formulated in III.1. as unfounded in so far as default interest is claimed in respect of a period prior to the date on which the applicants lodged their complaint against the salary statement for April 1979.

In their reply, the *applicants* claim that the Court should, in addition, declare that Regulation No 3086/78 in so far as relevant to their claims, ought to be based on the weighting of 74.3 and not on the "rectified" weighting of 70.3 (Official Journal L 77 of 29. 3. 1979, p. 43).

In its rejoinder the *Commission* contends that the Court should dismiss as inadmissible, or in any event as unfounded, the claims put forward in the alternative in the replies, seeking the application of a weighting of 74.3 to the payment of remuneration for April 1979.

III — Submissions and arguments of the parties

It should be noted that the applicants and the Commission request the Court to regard the arguments put forward in the parallel case *Birke* (543/79) as forming an integral part of their arguments in these cases.

The applicants Amesz, Hoffmann, Knoeppel and Nijman lay stress on the fact that they require the amounts transferred to Article 17 of Annex VII for the payment of their children's school fees and the applicant Bauch for the payment of voluntary contributions to the legal insurance pension scheme or for

the payment of monthly instalments for a building loan granted by the Commission or obtained in the context of other long-term commitments entered into in particular with the BHW. The applicants take the view that the procedure introduced by Regulation No 3085/78 altered the situation as regards their emoluments to such an extent that they can no longer adequately cover their essential requirements in Italy if they continue to carry out long-term commitments contracted by them on the basis of a practice of transfers going back several years.

The *Commission* is of the opinion that a distinction must be made between the level of the remuneration and the transfer system for emoluments. Regulations Nos 3085/78 and 3086/78 brought about no reduction in the emoluments received by officials. They simply had the effect of eliminating advantages not provided for by the legislature which officials from Member States other than Italy who were employed in that Member State were able to derive as from 1971, that is to say after the breakdown of the International Monetary System, from the former system of transfers based on superseded IMF exchange rates, until the entry into force of Regulation No 3085/78.

The Commission refers to its pleadings in the *Birke* case (543/79) in which it claims in particular that by undertaking a reform of the transfer system it properly took care to safeguard the interests of the officials concerned.

Thus, an official employed in Brussels before 1 April 1979 had to use an amount of BFR 13 660 for transferring to Germany an amount of DM 1 000 in accordance with Article 17 of Annex VII. Under the terms of the new rules governing transfers, the amount in question is increased to BFR 15 968. Since the transferred part of the remuneration of that official is not linked to the weighting applicable to Germany, that fact would confer on him, by comparison with an official employed in Germany to whom an identical amount in Deutschmarks is transferred, an increase in purchasing power of BFR 2 308. For an official employed in Ispra an identical transfer of DM 1 000 to Germany would also have amounted to BFR 13 660 at the last IMF rate of BFR 13.66 to DM 1. However, converted into lire at the rate of exchange applicable in 1965 (LIT 100 = BFR 8), that amount would have meant a reduction of only LIT 170 750 in the part of the remuneration paid in Italy. By the application of the new method, the remuneration at the disposal of that official in Italy is reduced by LIT 293 111. Until 1 April 1979 the official employed in Italy was therefore able to realize an increase in his purchasing power of LIT 122 361 by reason of the fact that his transfer was not linked to the weighting in force in Germany. The Commission does not see how the maintenance of the situation in force before 1 April 1979 could have been reconciled with the principle of equal treatment.

All the applicants increased the amounts of the transfers pursuant to Article 17 of Annex VII to the Staff Regulations between 1 January 1979 and 1 April 1979 in spite of the fact that they were aware of the imminent reform. To all intents and purposes they therefore agreed to reduce the portion of their remuneration which remained available in Italy. In any event that reduction was nothing other than the price they had to pay for the exchange rate advantages which, during the period prior to 1 April 1979, the application of the transfer system at that time in force had brought them without there being any objective justification for those advantages.

The *applicants* request the Court to declare that Regulation No 3086/78

ought not to have been applied in the form provided for by a later correction appearing in the Official Journal. The regulation provided for a weighting of 74.3 for Italy which appeared moreover in all the proposals leading up to the adoption of the regulation. On page 43 of Official Journal L 77 of 29 March 1979 a corrigendum of the regulation was published which, to the detriment of the applicants, reduced the weighting for Italy to 70.3. That corrigendum is of no legal effect. The wording of a regulation drafted in a certain way throughout the whole legislative process cannot be amended by a corrigendum emanating from the publication of the Official Journal or from any other administrative authority but only by a new regulation also satisfying the requirements of the procedure for drafting legislative measures.

The applicants claim that the heads of claim should be interpreted to the effect that the applicants' remuneration ought to be calculated in accordance with the regulation as published in its original version. Consequently the applicants are entitled to payment of the amount of the resulting difference.

The Commission's statement that none of the promises or guarantees which it gave to the Parliament or the latter's resolution related to transfers and that the Parliament itself authorized the losses incurred is wrong as is shown by Written Question No 2140/80 addressed by Mr Linkohr to the Commission:

"1. The implementation of Council Regulations 3085/78 and 3086/78 has in part led to substantial decreases in the salaries of Community officials. Officials whose place of employment is in Italy have been particularly affected, suffering in some cases reductions of more than 30 %.

Why has the Commission not kept the assurances given to Parliament that:

(a) its proposals would in no way affect the real value of the payments made to officials in the form of remunerations and allowances;

and

(b) its proposals would in no way adversely affect the remunerations and other allowances of officials and other servants of the European Communities?"

The question whether the weighting, altered by Council Regulation No 3087/78, is to take account of the cost of living in Varese or in Rome is crucial. At the sitting in February 1981 the Commission's representative stated that, as regards the weightings applicable to places of employment, only the capitals could be taken into consideration because of the muliplicity of places of employment which made it difficult to adopt any different procedures. However, under the Staff Regulations it is the actual place of employment which is relevant and not the capital of the country, seeing that approximately 1 800 officials are employed in Varese and approximately 20 in Rome. Moreover it should be added that a weighting existed until 1970 for Varese. On 17 March 1981 the Commission informed the Council that as regards the weightings applicable to the place of employment it was necessary to take into account not only the capitals of the Member States but also the other places of employment in those countries in which it appeared from objective factors that there was a

risk of significant distortions regard being had to the information recorded in the capital of the country in question when remuneration levels were established (Doc. COM(81) 109 final).

The applicants dispute the Commission's argument to the effect that Regulations Nos 3085/78 and 3086/78 brought about no reduction in the remuneration paid to officials and claim that officials employed in Italy, in obtaining currency on the free market, had to spend for example LIT 26 for BFR 1, in other words, clearly more than was paid to them by application of the parity for salaries of LIT 18.35 to BFR 1. It was also specifically for that reason that the number of officials who could make transfers under Article 17 of Annex VII was extended.

The applicants reject the Commission's argument that they ought to compare the losses incurred in April 1979 not to the salary for March 1979 when the weighting was 146.8 but to the salary for December 1978 when the weighting was 137.6. For the reform introduced as from 1 April 1979 the Commission converted the weightings applied in March 1979 (as regards Italy 146.8 pursuant to Council Regulation No 3084/78). That conversion was carried out by Council Regulation No 3086/78. Consequently a comparison between the months of March and April is substantively appropriate and its content is correct. The calculation of the remuneration current on 15 December 1978 was in fact carried out by means of the weighting of 137.6 for Italy pursuant to Council Regulation No 1461/78. That weighting was abolished on 21 December 1978 by a decision of the Council with retroactive effect to 1 July 1978 by Council Regulation No 3084/78 and replaced by the weighting of 146.8. In its numerical examples the Commission used the weighting of 137.6 provided for by Council Regulation No 1461/78 for Italy. In fact for the calculations carried out for the salaries of December 1978 it ought to have applied the legally applicable weighting of 146.8 laid down in Council Regulation No 3084/78. It is from that fact that the loss indicated and calculated by the applicants arises. The Commission should therefore abandon its tactic of sowing confusion and agree with the applicants at least on the basis of objective data.

The *Commission* is of the opinion that the portion of the application relating to the correction of the published weightings is not admissible since the applicants' claim was not made the subject of a complaint pursuant to the provisions of Article 90 (2) of the Staff Regulations or, within the period specified, of an application under Article 91 (2).

In any event the application is unfounded. It is clear from the concept of a corrigendum in contrast to a subsequent amendment relating to the substance of a legal measure that a corrigendum does not have to be adopted following the same procedure as the corrected measure itself. The correction of publishing errors contained in Council regulations by means of a simple corrigendum of the text published in the Official Journal is a normal practice. Hitherto, the Court has expressed no criticism of this practice.

The sole purpose of the provisions of Regulation No 3086/78 was to adjust the weighting of 146.8 laid down by Regulation No 3084/78 of 21 December 1978 with effect from 1 July 1978 to the

monetary parities as amended by Regulation No 3085/78. The weightings appearing in the regulations adopted pursuant to Articles 64 and 65 of the Staff Regulations are calculated by dividing the index obtained by the use of the "Fisher" method by the corresponding exchange rate used for the conversion of officials' remuneration into the currency of the country of the place of employment pursuant to Article 63 of the Staff Regulations. Until 31 March 1979 the rate applicable to that transfer was LIT 12.5 to BFR 1. With effect from 1 April 1979, pursuant to the provisions of Regulation No 3085/78, the rate applicable became the rate used for the implementation of the general budget of the European Communities on 1 July 1978, that is to say 26.1097 LIT to BFR 1. The weighting for Italy, which until 31 March 1979 had been 146.8, was then recalculated on the basis of the following formula:

$$\frac{146.8 \times 12.50 \text{ (former rate of the lira)}}{26.1097 \text{ (new rate of the lira)}}$$

That calculation gives a result rounded up of 70.3.

The weighting of 74.3 published in Official Journal L 369 of 29 December 1978 on page 8 is therefore clearly a printing error. That error was therefore properly corrected by means of a corrigendum published in the Official Journal which could not have affected the rights of the applicants in any way. Moreover, the Commission's communication to its staff in March 1979 contains the correct weighting.

If the Court does not share the Commission's opinion on the inadmissibility of the applications alleging that the weighting applicable to the remuneration of officials employed in Italy is wrong on the ground that it does not take into account the cost of living in Varese or the cost of obtaining currency, the Commission must then express its opinion in particular on the question whether the Council was able, at the time when the weightings were laid down, to have regard to the efforts made by Member States to promote uniformity in living conditions in their national territory. It would also have to reply to the question to what extent the applicants' staff representatives were able to justify the new method of calculating the Fisher index on which the weighting was based.

The argument cannot be accepted that a member of the Parliament may put a written question which shows that commitments were made to the Parliament. It is clear moreover from the speech made by the President of the Committee on Budgets on 7 July 1977 before the Parliament that the latter had been informed of all the essential features of the updating of the transfer system.

The case of temporary staff is no different from that of officials; they have no special right to protection of legitimate expectation. In fact their remuneration and the system of transfers were not settled directly in the contract of appointment. In the same way, that contract contains no provision stating that the Staff Regulations in force at a given time must be applied to the subsequent performance of the contract of appointment without amendment. That means that in each case the Staff Regulations in their latest form must be applied. Hence the provisions of Regulation No 3085/78 apply to the remuneration of temporary staff and to transfers made by them in the same way as they apply to officials.

The Commission considers that the basic factors to be applied in the calculation of remuneration are not at issue. The applicants are not entitled to use the advantages which they were able to derive retroactively until 1 January 1978 from the regulations in question simply to determine the amount of the damage which they have suffered on that ground as from 1 April 1979. Furthermore, as mentioned above, they added to that damage by increasing the transfers effected between 1 January 1979 and 1 April 1979 pursuant to Article 17 of Annex VII at a time when they were aware of the imminent reform. Finally, neither the origin nor the extent of the damage claimed by the applicants is of such a nature as to require the Community to eliminate that damage by virtue of its duty of assistance. The damage suffered is not excessive. It merely constitutes the counterpart of the excessive purchasing power which the parties concerned enjoyed without justification for several years, as the Court has already clearly stated.

IV — Oral procedure

The parties presented oral argument at the sitting on 10 December 1981.

The Advocate General delivered his Opinion at the sitting on 30 September 1982.

Decision

1 By application lodged at the Court Registry on 11 October 1979, the applicants, officials of the Commission employed at the Joint Research Centre in Ispra, Italy, brought an action under Article 91 of the Staff Regulations of Officials for the annulment of the Commission's decisions fixing their remuneration for the months of January and April 1979 and an order that the Commission make good the damage incurred by them as a result of the unlawful decisions fixing their remuneration.

2 Until the end of 1978 the Staff Regulations provided that an official's remuneration was to be expressed in Belgian francs and paid in the currency of the country in which the official performed his duties on the basis of the par values accepted by the International Monetary Fund which were in force on 1 January 1965. Remuneration expressed in Belgian francs was to be weighted at a rate above, below or equal to 100 %, depending on living conditions in the various places of employment. Article 17 of Annex VII to the Staff Regulations enabled an official, within certain limits, to have part of his emoluments, regularly transferred through the institution to which the official belonged in the currency of the other Member States listed in that article.

3 Following the devaluation of certain currencies since 1970 the Council used the weighting not merely to adjust remuneration according to living conditions in the various places of employment but also to compensate for the devaluation of certain weak currencies. As a result, if an official employed in a country having a weak currency transferred a part of his remuneration to a Member State having a strong currency he obtained special advantages.

4 On 21 December 1978 the Council adopted Regulation (Euratom, ECSC, EEC) No 3085/78 (Official Journal L 369, p. 6) amending the provisions of the Staff Regulations. The rate of exchange to be used for converting remuneration into the currency of the place of employment was to be that used for the implementation of the general budget of the European Communities on 1 July 1978. Article 17 of Annex VII to the Staff Regulations was also amended. In its new version paragraph (3) of Article 17 provides that:

"The transfers provided for in paragraph (2) shall be made at the exchange rate specified in the second paragraph of Article 63 of the Staff Regulations, the amounts transferred shall be multiplied by a coefficient representing the difference between the weighting for the country in which the official is employed."

5 Article 4 of the regulation provided that the regulation was to enter into force on 1 January 1979 and was to apply from 1 April 1979.

6 On 21 December 1978 the Council also adopted Regulation (Euratom, ECSC, EEC) No 3086/78 adjusting the weightings applicable to the remuneration and pensions of officials and other servants of the European Communities following the amendment of the provisions of the Staff Regulations concerning the monetary parities to be used in implementing the Staff Regulations (Official Journal L 369, p. 8). Article 1 of the regulation fixes *inter alia* the weighting applicable to remuneration at 74.3 for Italy and at 98.7 for the Federal Republic of Germany.

7 The applicants had regularly transferred, through the Commission, pursuant to Article 17 of Annex VII to the Staff Regulations, certain amounts to the Federal Republic of Germany.

8 As a result of the application of the provisions cited above, after 1 April 1979 the cost of those transfers, expressed in Italian lire, increased and the balance of the applicants' remuneration after the transfers was consequently reduced.

9 From 1975 officials employed at the Joint Research Centre in Ispra complained to the Commission that the cost of living in Italy had considerably increased and accordingly requested that the weighting for Italy be revised. They complained in particular that in their opinion the cost of living in the Province of Varese was higher than in Rome and they urged the Commission to take account of that difference when fixing the weighting applicable to their remuneration.

10 In 1976, 1977 and 1978 consultations on technical matters took place between representatives of the staff and those of the Commission and Council but no agreement was reached on the alteration of the weighting or on the date to which the new weighting should have retroactive effect. In the meantime by a series of regulations the Council had increased the weighting for Italy as from 1 January 1976 to 176.6 as against 157.8 for Belgium, as from 1 July 1976 to 189.3 as against 157.8 for Belgium, as from 1 January 1977 to 120 as against 100 for Belgium, as from 1 January 1977 to 132.1 as against 104.5 for Belgium, and as from 1 July 1977 to 130.2 as against 100 for Belgium. In most cases those regulations had a retroactive effect of about six months.

11 On 26 June 1978 the Council adopted Regulation No 1461/78 (Official Journal L 176, p. 1) by which the weighting for Italy was fixed at 137.6 as against 102.3 for Belgium. The recitals in the preamble to that regulation state that "a decision on the Commission proposal for the correction of the

weightings for three countries of employment will be taken only in the light of a study to be carried out by the Commission".

12 After a fresh inquiry by the Statistical Office of the Communities and discussions between the Commission and the Council, on 10 November 1978 the Commission proposed to the Council to fix the weighting for Italy at 146.4 as against 102.3 for Belgium with retroactive effect to 1 January 1978. That proposal was accepted by the Council by the adoption of Regulation No 3087/78 of 21 December 1978 (Official Journal L 369, p. 10). On the same date the Council adopted Regulation No 3084/78 (Official Journal L 369, p. 1) fixing the weighting for Italy at 146.8 as against 100 for Belgium as from 1 July 1978.

13 The staff concerned challenged Regulation No 3087/78 in so far as it fixed the weighting at a level which did not take account of the cost of living in Varese and gave that weighting retroactive effect only to 1 January 1978.

14 In January 1979 the Commission paid the arrears of remuneration due under Regulations Nos 3087/78 and 3084/78.

15 On 26 March 1979 the applicants submitted to the Commission a complaint under Article 90 (2) of the Staff Regulations against Regulations Nos 3085/78 and 3086/78. On the same date they submitted to the Commission a request under Article 90 (1) of the Staff Regulations that the Commission immediately adopt the measures necessary to make up for the loss of purchasing power in 1976 and 1977. That request concerned Regulation No 3087/78.

16 By a letter of 4 April 1979 the applicants submitted a complaint under Article 90 (2) of the Staff Regulations concerning the retroactive effect of the weighting for Italy resulting from Regulation No 3087/78. On 13 June the applicants submitted a complaint against the application of Regulations Nos 3085/78 and 3086/78 as shown in their salary statements for April.

17 By circular letters of 12 July and 28 September 1979 the Commission rejected those complaints.

18 The applicants therefore brought these applications against the Council and the Commission challenging the cost of transfers effected on the basis of Regulations Nos 3085/78 and 3086/78 as well as the amount and the date of application of the weighting adopted by Regulation No 3087/78.

19 By an order of 10 November 1981 ([1981] ECR 2569), the Court (First Chamber) held these actions to be inadmissible in so far as they were directed against the Council.

Admissibility

20 The Commission has argued that the applications, to the extent to which they are directed against the application of Regulation No 3087/78, are inadmissible. In its view the complaints of 26 March 1979, relating to Regulation No 3087/78, concern the extension of retroactivity but contain no allegation relating to the method of calculating variations in living costs or, as a result, in the amount of the increase in the weighting. Those complaints were, it claims, made too late to challenge the non-payment of arrears in respect of 1976 and 1977. The payment in January 1979 of the amount of the arrears relating solely to the period subsequent to 1 January 1978 confirms the monthly payments made prior to that date and may therefore be analysed as a measure confirmatory of previous decisions, not capable of founding an independent right of action.

21 The Commission has not extended its objection of inadmissibility to the head of claim relating to the problem of the transfer abroad of a part of remuneration corresponding to the complaints of June 1979.

22 In reply to the objection of inadmissibility the applicants argue that only a decision by the institution on the applicants' complaint can cause the period for bringing an action to start to run.

23 Although the applicants' argument cannot be accepted, nevertheless, regard being had to the circumstances of the case, the Commission's objection cannot be upheld. In fact, although it is important to safeguard the application of the rule contained in the Staff Regulations which provides for a prior complaint through administrative channels within a relatively short period, it should not be overlooked that since negotiations had been going on for some months between the Council, the Commission and the representative bodies, the applicants could legitimately await the outcome of those negotiations before concerning themselves about their possibly negative effect on their salaries. In fact Council regulations adjusting the weightings are adopted subject to a certain delay and normally therefore are retroactive in their application for a period the length of which is hardly foreseeable. In the recitals in the preamble to Regulation No 1461/78 the Council moreover itself acknowledged that the adjustment of the weighting provided for by that regulation for three countries of employment was not definitive.

24 The Commission's argument, if it were accepted, would mean that an official who considered himself injured by the Council's delay in adjusting the weighting would have had not merely to submit a series of complaints possibly stretching over several years, but also to bring a series of actions before the Court, or risk being time-barred. That argument cannot be upheld. The facts of Case 15/73 *(Kortner* [1974] ECR 177) on which the Commission founds its argument are in no way similar to those of the present case.

25 As regards the contents of the applicants' complaints it is true that the complaint of 26 March 1979 merely requested "that the Commission immediately adopt the necessary measures to compensate for the losses in purchasing power in respect of 1976 and 1977 which have been duly recorded" without expressly mentioning the inadequacy of the weighting fixed as from 1 January 1978 by Regulation No 3087/78 and the complaint of 5 April 1979 is worded in similar terms. It should however be observed that the Commission's replies by way of circular letters dated 12 July and 26 September 1979 make no distinction between the complaints of the various officials complaining both of the amount of the adjustment to the weighting

and of the date to which it was made retroactive or merely of one or other of the two aspects of the problem. In fact those replies merely reject all complaints.

26 In its judgment of 1 July 1976 in Case 58/75 *Sergy* v *Commission* [1976] ECR 1139, the Court (First Chamber) held that under Article 91 of the Staff Regulations an appeal to the Court of Justice lies only if the appointing authority has previously had a complaint submitted to it and the complaint has been rejected by a decision. The object of that provision is to permit and encourage an amicable settlement of the dispute which has arisen between officials or other employees and the administration. In order to comply with that requirement it is essential that the administration should be in a position to know the complaints or requests of the person concerned.

27 The fact that the Commission replied in an identical manner by way of a circular letter to all the complaints shows that it was aware of the officials' complaints not merely regarding the date of application of Regulation No 3087/78 but also regarding the amount of the adjustment to the weighting. It cannot therefore be heard to say that the complaints were not specific.

28 The applications must therefore be adjudged admissible.

The substance

29 As regards the problem of the applicants' remuneration for April 1979 and its alleged diminution as a result of the higher cost of partial transfers made by the applicants to other countries, stemming from the provisions of Regulations Nos 3085 and 3086/78, the applicants first raise certain submissions relating to the infringement of essential procedural requirements. They claim that Regulation No 3085/78 was adopted without due prior consultation with the European Parliament and the Court of Justice as provided for by Article 24 of the Merger Treaty of 8 April 1965. The only consultation with those institutions was on the basis of a proposal substantially different from the provisions of the regulations as adopted by the Council. Nor was the Staff Regulations Committee consulted on that proposal.

30 The applicants then argue that the reform of the system contained in Article 63 of the Staff Regulations for payment of remuneration and the transfer of the part thereof mentioned in Article 17 of Annex VII to the Staff Regulations is in breach of the principle of equal treatment. In their view, the Community must ensure that an official employed in Italy does not incur any disadvantage as compared with an official employed for example in Karlsruhe "when both seek to satisfy the same needs" and therefore to benefit from the same services in one or the other country.

31 The applicants claim finally that the contested regulation prejudices the maintenance of their economic situation and ought therefore to be considered invalid because it is contrary to the legal principle of the maintenance of acquired rights. Furthermore, the Commission has failed in its duty of assistance towards its officials and ought to have provided for a transitional period such as that laid down in favour of pensioners by Article 4 of Regulation No 3085/78.

32 It should be remembered that the Court, by judgments dated 4 February 1982 in Cases 817/79 *Buyl* [1982] ECR 245; 828/79 *Adam* [1982] ECR 269 and 1253/79 *Battaglia* [1982] ECR 297 rejected submissions similar to those put forward by the applicant. It is sufficient to refer to those judgments to find that those allegations are unfounded.

33 As regards the weighting applied to officials employed in Ispra, the applicants are pursuing two objectives. First, they seek to obtain a revision of the amount of the weighting which, in their view, ought to be calculated on the basis of the cost of living at the officials' exact place of employment, in this case in the Province of Varese, and not automatically in the capital of the country in question. In these cases, the applicants maintain that the cost of living in the Province of Varese was, during the years 1976 to 1978 substantially higher than in Rome. Secondly, the applicants request that the weighting for Italy, fixed at 146.4 by Regulation No 3087/78, be applied retroactively to 1 January 1976.

34 In particular the applicants challenge their salary statements for January 1979 calculated on the basis of Regulation No 3087/78 which, in their view, is in

breach of Articles 64 and 65 of the Staff Regulations relating to the weighting. Article 24 of the Staff Regulations relating to the Commission's duty of assistance towards its officials and the principle of non-discrimination and the rules which require respect for essential procedural requirements.

35 The applicants thus first put forward the argument that Regulation No 3087/78 infringes Article 64 of the Staff Regulations inasmuch as the surveys of the Statistical Office of the Communities for determining the weighting were carried out with reference to living conditions in the capital and not at the place of employment, situated in the Province of Varese.

36 It should be noted that in the past the Council has interpreted Article 64 of the Staff Regulations as pointing not necessarily to the capital of the country of employment as the place of employment but, according to the circumstances of the case, the precise place of employment. Thus Regulation No 1/67/ECSC, 988/67/EEC and 9/67/EAEC of the Council of 12 December 1967 provided two weightings both for France (130.5% for Paris and for certain departments and 122.5% for the rest of the country) and for Italy (114% for Ispra and 114.5% for the rest of the country). It was only later that the Council decided to use a single weighting for each Member State.

37 That new system in reality confers in most cases a benefit on officials not resident in the capital since the cost of living there is generally higher than in the provinces. However, it seems that that is not the case specifically in Italy where the survey by the Statistical Office and the information supplied by the Italian Institute of Statistics show that the cost of living in Varese is higher than that in Rome.

38 In fact it is clear from the figures communicated by the Commission on the basis of the results of the survey carried out by the Statistical Office in Varese in May 1976 taking into consideration 230 items of expenditure (excluding rent, heating and electricity which were the subject of a later investigation) that the cost of living in that province was 7.66% higher than in Rome. After the result of the investigation carried out in Varese on the

level of rents had been taken into account, the difference was reduced to 2.76% which still represented a substantial difference within the meaning of Article 65 (2) of the Staff Regulations. Moreover it is clear from the reasons accompanying the Commission's proposal which led to Regulation No 3087/78 that the Commission itself entertained doubts as to whether the sole reference to the cost of living in Rome was well founded since it stated that "the use of a single weighting for each country of employment, worked out for the capital, places staff working in Ispra at a slight disadvantage. The statistics available show that the cost of living in Rome has risen less rapidly than in the Varese area, from which it may reasonably be assumed that prices in Rome are now lower than in Varese. This existence of lower prices in the capital than elsewhere is the exception rather than the rule in the Nine. In view of the number of staff employed in Ispra a special local price survey would appear justified. However, the Commission feels that it would be wiser not to innovate in this direction and to abide by the Council Decision of 1968, which provides specifically for the use of the price indexes relating to the capital".

39 Under those conditions, in order that the rule contained in Article 64 of the Staff Regulations to the effect that account must be taken of living conditions in the various "places of employment" may be observed, that expression must be understood as meaning not only the capitals of the Member States but the exact places where the duties of a sufficiently large number of officials and other employees of the Communities are performed.

40 Therefore it is for the Community institutions in cases in which the cost of living in such a place of employment undergoes fluctuations greater than those occurring in the capital of the State in question to determine separate weightings. Hence the applicants' submission relating to the calculation of the weighting affecting their salary on the basis of the cost of living in the Province of Varese must be considered well founded.

41 As regards the retroactivity of Regulation No 3087/78 the applicants claim that that regulation ought to have been applied as from 1 January 1976 since substantial increases in the cost of living had occurred as from that year.

42 In fact it is clear from the reports of the Statistical Office of 17 and 29 June 1976 and from its memorandum of 17 August 1976 that changes of more than 2% in the cost of living as against that at Brussels had occurred in 1976 both in Rome and, to a greater extent, in Varese.

43 The Commission states in that connection that Article 65 (2) of the Staff Regulations, which provides that "in the event of a substantial change in the cost of living, the Council shall decide, within two months, what adjustments should be made to the weightings and if appropriate to apply them retrospectively", must be understood as giving the Council discretionary power to decide whether measures adjusting weightings should be retroactive or not.

44 That argument cannot be upheld. In fact the wording of Article 65 (2) precludes any interpretation to the effect that the Council is not obliged to adjust the weightings within a period of two months following any substantial change in the cost of living. It should be remembered that the Court in its judgment of 6 October 1982 in Case 59/81 *Commission* v *Council* [1982] ECR 3329 held that the Council's power in this respect was to decide whether or not there had been a substantial increase in the cost of living and, if there had, to draw the appropriate conclusions. Any other interpretation would run counter to the objective of the provision in question which is to guarantee to all officials the same purchasing power whatever their place of employment.

45 That submission therefore is well founded.

46 Consequently it is not necessary to examine the other submissions put forward by the applicants which were put only in the alternative.

47 The applicants' salary statements for the month of January 1979 must therefore be annulled, in so far as they are restricted to giving effect to Council Regulation No 3087/78, both as to the amount of the adjustment of the weighting and as to the retroactive effect of that adjustment, together with the decisions rejecting the applicants' complaints. Regulation No 3087/78 is not applicable to the applicants in so far as it takes no account of the cost of living in Varese and limits the retroactive effect of the adjustment of the weighting to 1 January 1978.

48 Since it may be expected that the competent institutions will take the measures necessary to comply with this judgment, examination of the claim for compensation for the pecuniary damage suffered by the applicants is deferred to a date to be fixed later, if necessary.

49 Before 15 July 1983 the Commission shall report to the Court on the measures taken to compensate the applicants; the applicants will be given an opportunity to reply.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the applications in so far as they are founded on the alleged illegality of Council Regulations Nos 3085/78 and 3086/78;**

2. **Annuls the applicants' salary statements for January 1979, in so far as they are restricted to giving effect to Council Regulation No 3087/78, both as to the amount of the adjustment of the weighting and as to the retroactive effect of that adjustment, together with the decisions rejecting the applicants' complaints; declares Regulation No 3087/78 not applicable to the applicants in so far as it takes no account of the cost of living in Varese and limits the retroactive effect of the adjustment of the weighting to 1 January 1978;**

3. **Orders the Commission to report to the Court before 15 July 1983 on the measures taken to comply with this judgment;**

4. **Defers examination of the claim for compensation for the pecuniary damage suffered by the applicants to a date to be fixed later if necessary;**

5. **Reserves the costs.**

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 15 December 1982.

J. A. Pompe
Deputy Registrar

A. O'Keeffe
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI

(see Case 158/79, p. 4404)