In Joined Cases 198 to 202/81

1. FERNANDO MICHELI, residing at 40 Avenue du Renouveau, Brussels,

2. WALTER PARLANTE, residing at 19 Rue des Lilas, Enghien,

3. ANDRÉ BROCCART, residing at 31 Chausée de Huy, Chaumont-Gistoux,

4. FERNANDO LATTANZIO, residing at 52 Rue Stevin, Brussels,

5. MARIO LABATE, residing at 69 Rue d'Alvau, Hevillers,

officials of the Commission of the European Communities, assisted and represented by Jacques Putzeys and Xavier Leurquin, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of G. Nickts, Huissier de Justice, 17 Boulevard Royal,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Jacques Delmoly, a member of its Legal Department, acting as Agent, assisted by Daniel Jacob of the Brussels Bar, with an address for service in Luxembourg at the office of O. Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the defendant's decisions dated 8 April 1981, whereby it refused to award the applicants a differential or compensatory allowance to be calculated as the difference between the remuneration actually received and the remuneration due for the performance of the duties of an operator of interpretation equipment, from the day on which they entered the service of the defendant, or at least from the date on which they were appointed as officials, plus interest on the arrears at the rate of 8%,

THE COURT (First Chamber)

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

Advocate General: G. Reischl
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

From their entry into the service of the Commission as temporary or auxiliary staff, in 1977 and 1978, the applicants all performed the duties of operators of interpretation equipment in the Conference Services Division of the Directorate for Interpreters and Conference Services (Directorate-General IX).

Having been successful in Internal Competition No COM/C/4/78, based on tests and organized by the Commission for the purpose of drawing up a reserve list for the recruitment of clerical assistants (Career Bracket C 4 / C 5) required to perform the duties of operators of interpretation equipment, they were recruited as probationary officials in Grade C 5 or C 4, following the publication of Vacancy Notices Nos COM/231 and 232/77, COM/665/77 and COM/129 to 131/78, by decisions of the Head of the Division for Recruiting, Appointments and Promotion, of 23 August 1979. By the latter's decisions of 24 March 1980, which took effect on 1 March 1980, Messrs Parlante, Broccart and Lattanzio were established in Grade C 5, and Messrs Micheli and Labate in Grade C 4. By decision of 6 October 1980, which took effect on 1 September 1980, Mr Broccart was promoted to Grade C 4.

By complaints dated 19 and 22 November 1979, the applicants asked to be reclassified in Grade C 3, so that their grade and basic post — that of clerical officer — would then correspond to the duties actually being performed. The complaints were rejected on 9 April, 25 April and 17 July 1980, on the ground that the notices of competition had referred to the recruitment of clerical assistants and not of clerical officers. The applicants failed to bring an action within the period prescribed in the Staff Regulations, whereupon the decisions rejecting the complaints ceased to be subject to appeal.

On 25 April 1980, the applicants submitted a further request under Article 90 (1) of the Staff Regulations for the award of a differential allowance as provided in Article 7 (2) of those regulations. The request of Messrs Micheli and Broccart was rejected by decision of the Head of the Individual Rights and Privileges Division of 24 June 1980. On 14 July 1980, both parties repeated their request, the rejection of which was confirmed on 22 and on 29 July 1980. As to the requests of the other three applicants, they were rejected by implied decision on 25 August 1980.

On 14 and 15 October 1980, the applicants lodged a final complaint under Article 90 (2) of the Staff Regulations

against the rejection of the earlier complaint. On 8 April 1981, the Member of the Commission with responsibility for staff matters rejected that last complaint.

The applicants brought their actions on 2 July 1981. The applications were received by the Court on the following day.

By order of 17 September 1981, the Court (First Chamber) decided to join the cases for the purposes of the procedure and judgment.

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

II — Conclusions of the parties

Each of the *applicants* claims that the Court should:

Admit his application and declare it well founded;

Annul the contested decision taken by the defendant on 8 April 1981;

Order the Commission to pay the applicant a differential or compensatory allowance to be calculated as the difference between the remuneration received and the remuneration due for work performed as an operator of interpretation equipment since the date of his entry into the service of the Commission, or at any rate from the date on which he was established, plus interest on the arrears at the rate of 8%;

Order the defendant to pay all the costs.

The *Commission* claims that the Court should:

Dismiss the applications as unfounded;

Order the applicants to pay the costs.

III — Submissions and arguments of the parties

1. Applications

In support of the request for an annulment contained in their applications, the *applicants* put forward three arguments. The first alleges infringement of Article 5 (3) of the Staff Regulations, breach of the principle of equal treatment and misuse of powers. That situation results from the fact that the applicants perform duties of operators of interpretation equipment but receive the remuneration of clerical assistants, whereas officials performing the same duties elsewhere in the Commission or in other Community institutions are entitled to the remuneration of clerical officers. The defendant thus applies different conditions of remuneration to officials belonging to the same category and performing the same duties.

The second argument alleges misapplication of Article 5 (4) of the Staff Regulations and of the general implementing provisions contained in Annex I A thereto, an incorrect statement of reasons and misuse of powers. That situation results from the fact that the reason given for refusing to grant the applicants a differential allowance is that a clerical assistant may be called upon to perform the duties of an operator of interpretation equipment, whereas the defendant itself has included

such duties amongst those which may be entrusted only to a clerical officer.

The third argument alleges infringement of Article 7 (2) of the Staff Regulations and breach of the principle of fairness, of the duty of the administration to assist its officials and misuse of powers. The argument is based on the fact that the applicants were refused a differential allowance even though they had been performing, on a permanent basis and for a long period of time, duties of a higher level of responsibility than those corresponding to the career bracket of clerical assistant. In the first place, an official who temporarily occupies a post in a career bracket within his category but ranking above the career bracket to which he is assigned ought to receive a differential allowance; in the second place, fairness dictates that an official who permanently performs duties which may not normally be required of an official of that grade ought to be remunerated in the same way as an official performing identical duties, and the duty of the administration to assist its officials requires that they be remunerated for the services they provide and the responsibilities they assume.

In support of the claim for compensation contained in their applications, the applicants argue that the Commission made the mistake of underestimating the extent of the duties and responsibilities entrusted to them and of organizing its staff in such a way that clerical assistants permanently perform duties of clerical officers and are directly answerable to a principal clerical officer whereas, by their very nature, the duties of a clerical assistant should be supervised by a clerical officer. The damage thereby suffered is equivalent to the difference in remuneration between Grade C 3 and the grades assigned to the applicants. Furthermore, the allowances to be awarded should be calculated from the time when the applicants entered the service of the Commission.

2. Defence

As regards the first argument, the *Commission* replies that, in the first place, it has no factual basis since the defendants have failed to furnish any information to support the comparison which they attempt to draw between their situation and that of other officials performing the same duties who nevertheless receive the remuneration of a clerical officer. The argument has no legal basis either, since any comparison with the situation of officials employed by other institutions is irrelevant inasmuch as every institution is free, within the limits fixed by Articles 5 and 7 of the Staff Regulations and Annexes I A and I B thereto, to define the duties and powers attaching to each basic post. As far as the situation in other places of employment within the Commission is concerned, the applicants do not state whether the comparison which they draw relates to officials holding the basic post of clerical officer or to those holding that of clerical assistant.

The situation of clerical officers performing the duties of an operator of interpretation equipment cannot be compared to that of the applicants, who hold the post of clerical assistant, because, as Mr Advocate General Mayras said in his opinion in Case 50/74 *Asmussen* v *Commission* [1975] ECR 1018, "Whilst the principle of equality of treatment is ... a rule of a general nature, which is applicable to Community administrative law, for there to

be discrimination it is still necessary that unequal treatment should be applied to identical or comparable situations". It is undeniable that access to the basic posts of clerical officer and clerical assistant is subject to different criteria which are laid down in broad, objective terms; furthermore, the applicants decided against contesting the merits of their assignment to the post of clerical assistant. Consequently, the comparison they attempt to draw fails to disclose any infringement of Article 5 (3) of the Staff Regulations or any breach of the principle of equality of treatment.

As to the second argument, the Commission contends that its decision "describing the basic posts ... and the duties they involve" (Staff Courier No 272 of 4 September 1973, pages 37 to 43), adopted pursuant to Article 5 (4) of the Staff Regulations and Annex I A thereto, demonstrates that an official in Career Bracket C 2 / C 3 who holds the basic post of clerical officer must be engaged either in administrative work or else "in the execution of work of a technical nature necessitating a vocational background and qualification supported in principle by a certificate of vocational aptitude or acquired through practical experience". On the other hand, an official holding the basic post of clerical assistant is defined as carrying out "office or technical work necessitating only vocational specialization or basic skills". In accordance with the latter description of duties, the defendant organized Internal Competition No COM/C/4/78 for the recruitment of clerical assistants, which laid down admission requirements consistent with the description quoted above.

The Commission submits that both the text of its decision and that of the Notice of Competition show that the duties of an operator of interpretation equipment may be performed either by clerical officers or by clerical assistants. In this connection, regard is had to the official's qualifications, the extent of his experience and the degree of responsibility involved in those duties, account being taken of the position of the administrative unit concerned in the hierarchy of the institution. Hence it is irrelevant to point out that the Commission's decision quoted above uses the title "Operator of interpretation equipment" only with regard to the basic post of "Clerical Officer" (and not to that of "Clerical Assistant"). It should in fact be made clear that the titles of the posts appearing in that decision are illustrative rather than limitative in character, as is demonstrated by the words "In particular" inserted above the list of titles of posts for each career bracket.

As to the third argument, the Commission considers that it has no factual basis since, as it has pointed out, the duties of an operator of interpretation equipment may be entrusted to officials holding the post of clerical assistant. In any case, the argument has no legal basis. It is necessary, in the first place, to disregard the concept of fairness, since the Court has applied it in proceedings involving employees of the Community in only two cases, relating to

the problem of an action brought out of time, which the Court none the less declared to be admissible for reasons of fairness. Secondly, there can be no question of a "general principle" of fairness, since that elusive concept constitutes, at most, a secondary source of law designed to fill lacunae in the positive law, of which there are none in this case. Nor may the applicants seek to rely upon the duty of the administration to assist officials. That concept has, admittedly, been approved by the Court (Joined Cases 33 and 75/79 *Kuhner* v *Commission* [1980] ECR 1677) but, as Mr Advocate General Mayras has stressed, "... in accordance with the maxim *specialia generalibus derogant*, it seems that because the obligation is of a general nature it can only be usefully invoked when there are no specific provisions" (opinion in the *Kuhner* case cited above). In this case, however, the grant of a differential allowance is the subject of an *ad hoc* provision; namely Article 7 (2) of the Staff Regulations. Lastly, in the Commission's view, there are no grounds for the allegation that the latter provision has been infringed. Besides the fact that the duties performed by the applicants were not of a higher level of responsibility than those which may be entrusted to a clerical assistant, it should be recalled that, according to well-established case-law of the Court, "Since the decision to call upon an official to occupy temporarily a post arises from an assessment of the interests of the service, the party involved cannot, by reason only of the fact that he is performing the functions of the post in question, claim a right to obtain the benefit of this temporary posting" (Case 23/74, *Küster* v *Parliament* [1975] ECR 353).

As regards their claim for compensation, the applicants decided against contesting their classification as clerical assistants. Furthermore, the defendant contends that it has demonstrated that the duties performed by the applicants were in keeping with their grade and that, in any event, they were not entitled to the allowance provided by Article 7 (2) of the Staff Regulations. In the circumstances, the applicants were wrong to conclude that their duties and responsibilities had been "underestimated". Equally groundless is the allegation that the tasks of a clerical assistant had, in essence, to be performed under the supervision of a clerical officer. It is fruitless, the Commission contends, to seek confirmation of that view in the Staff Regulations or the provisions deriving from them such as the decision of the Commission referred to by the applicants. In fact, officials and other employees perform their duties within a complex hierarchical system which seldom involves any interrelated duties. As a matter of merely secondary importance, the Commission wishes to point out that if an error on its part is held to have occurred, the damage should be assessed by reference not to the date of the applicants' entry into service but to the date on which they submitted their request in accordance with Article 90 of the Staff Regulations. Finally, there are in any case no grounds for awarding interest on the arrears of the allowance, if it is awarded, because "rectifications effected as a result of a complaint or an application to the Court do not differ from current rectifications unless there are exceptional circum-

stances" (Case 106/76 *Gelders (née Deboeck)* v *Commission* [1977] ECR 1623).

3. Reply

The *applicants* rely upon the principle of equality of treatment underlying Article 5 (3) of the Staff Regulations, which provides as follows "Identical conditions of recruitment and service career shall apply to all officials belonging to the same category or the same service". In this case, the applicants' first argument is factually well founded since officials performing exactly the same duties as the applicants in the Commission's translation department in Luxembourg and in the departments of the other European institutions in Luxembourg, Strasbourg and Brussels, are all graded in Career Bracket C 2/C 3. If the Commission persists in its attitude, it will be necessary for a preparatory inquiry to to be ordered for the purpose of ascertaining what treatment is accorded to the various operators of equipment. The comparison must relate to the duties actually performed and not to the basic posts of clerical officer and clerical assistant. In spite of an investigation conducted by the Commission in the department to which the applicants are attached, it had had to admit that the duties actually performed were those of an operator of interpretation equipment and not those of an assistant operator. Furthermore, the Commission acknowledges that fact, by implication but irrefutably, in so far as it confines itself to asserting, as a matter of law, that the duties of operators of interpretation equipment may be performed either by clerical officers or by clerical assistants, which is not the case. The applicants request the Court to hear witness evidence from Mr Schmitt-Horst, an official in Grade B 1 at the Commission who, as head of the technical department in which they perform their duties, is capable of shedding light on the importance of those duties, which go far beyond mere basic skills.

Turning to the second argument, the applicants point out that the Commission's decision referred to above includes in particular, amongst the titles corresponding to the post of clerical officer, the entry "Operator of interpretation equipment". In Career Bracket C 4/C 5 on the other hand, the description of duties for the basic post of clerical assistant refers to the execution of "office or technical work necessitating only vocational specialization or basic skills". Amongst the titles corresponding to those duties there is no mention of operator, or even of assistant operator, of interpretation equipment.

According to the Staff Regulations and to consistent case-law of the Court, there must be a correlation between the career brackets and the basic posts (see Article 5 (4) of the Staff Regulations and the judgments in Cases 46/69 *Reinarz* v *Commission* [1970] ECR 275 and 14/79 *Loebisch* v *Council* [1979] ECR 3679) and an official in a given grade is entitled to occupy a basic post and to perform duties which in both cases correspond to that grade. In that respect, the applicants maintain, the Commission has no margin of discretion. That indeed accounts for the importance of the Commission's decision describing the basic posts figuring in Annex I A to the Staff Regulations and the duties they involve, which has the status of a regulation. The applicants do not dispute that the list of the titles of posts is not

limitative in character — it would be within the Commission's powers to adopt a new decision adding further titles differing from those already on the list. However, the titles listed are mutually exclusive and no one title may appear against several different basic posts. The applicants do not claim that, since they were clerical assistants, the Commission was not entitled to assign to them duties corresponding to a higher post, namely that of clerical officer, but they argue that by performing tasks appropriate to a higher grade they have become entitled to the same remuneration as that received by those who perform the same tasks.

As far as the third argument is concerned, the applicants point out that, as a matter of law, it is incorrect to contend that, in the absence of a favourable decision on the part of the appointing authority, they are precluded from claiming a differential allowance. Since, in the administrative phase before bringing an action, they asked to be awarded that allowance, the Court is competent to review the lawfulness of the refusal. As regards the basis of the argument, they point out that the case-law dealing with the right to be reclassified in a higher grade is not relevant in the circumstances, since this action is not concerned with that right. Furthermore, according to the Court, the decision to call upon an official to occupy a post temporarily must be based on an assessment of the interests of the service but such an assessment must not be arbitrary or unlimited. Hence, the exercise of the administration's discretionary powers is subject to review by the Court and must be confined to giving legal effect to the concept of the interests of the service. In this case, however, the only reasons for refusing to grant the applicants the differential allowance are of a budgetary nature. As to observance of the principle of fairness, it is sufficient to say that, if it were tolerated, the Commission's conduct would result in a downgrading of the duties and tasks performed in order to reduce the basic salaries payable therefor. As regards the duty of the administration to assist its officials, it is relied upon only to the extent to which there is considered to be no specific provision to justify the payment of such an allowance. In Cases 33 and 75/79 cited above, the Court held that the administration, when making a dicision regarding the status of an official, was required to take account of the interests not only of the service but also of the official himself. In this case, it is beyond doubt that the applicants' interests were not taken into consideration.

As regards the claim for compensation, the applicants maintain in their reply that the inquiry ordered by the Commission during these proceedings in order to establish the exact nature and extent of the duties entrusted to them demonstrated that it was ignorant of those duties, or at least that it underestimated their real extent. Such an attitude is tantamount to maladministration, which calls for compensation. The situation is aggravated by the fact that in the translation department in which the applicants work there is no clerical officer and that their immediate

superior is a principal clerical officer, in other words an official in Grade C 1. The applicants stress that, in its description of duties, the appointing authority has consistently applied the principle upheld by the Court in Case 15/65 (*Klaer* v *High Authority of the ECSC* [1965] ECR 1045), namely that the occupant of a post is to be placed under the authority of the official in the career bracket immediately superior to his own. Lastly, the applicants state that, for calculation of the compensation, reference should be made to the same step as that which they occupy as clerical assistants, in order to ensure that they obtain their full rights.

4. Rejoinder

With regard to the first argument, the *defendant* contends in its rejoinder that any reference to Article 5 (3) of the Staff Regulations should be disregarded, on the ground that the award of the allowance at issue falls outside the scope of that provision, which in no way constitutes implementation of the principle of equal pay for equal work embodied in Article 119 of the EEC Treaty. The argument is groundless inasmuch as the comparisons drawn by the applicants are quite irrelevant. Operators of interpretation equipment working in the Commission in Luxembourg are supervised by an official in Grade B 5 and are distributed as follows: two officials in Grade C 1, three officials in Grade C 3 and one official in Grade C 4 who took up his duties on 1 January 1982. Since the smallness of the team calls for a high degree of operational flexibility and does not allow for the effective supervision of the clerical assistants, the team has not so far included any officials in Career Bracket C 4/C 5. As regards the operators working at the Parliament, the comparison is irrelevant because they were recruited following a competition which prescribed, amongst the qualifications required, that the candidate should hold a "technical diploma in radio-electricity", whereas the applicants were recruited following the publication of a notice of internal competition requiring only a knowledge of radio technology. As to the inquiry to which the applicants allude, the Commission fails to see why, having full authority regarding its internal organization, it should have to resort to an inquiry in order to find out what duties are being performed by its officials and other employees. Contrary to the applicants' assertions, all the operators working in the Conference Services Division do not necessarily perform the same duties, do not have the same responsiblities and certainly cannot claim to have the same experience. As regards the specific nature of the duties, only the most senior operators are familiar with the Commission's interpretation equipment fitted with monitor lights. As far as experience is concerned, an examination of the list of posts shows that the average experience acquired during employment with the Commission is 18½ years for operators in Grade C 1, 18 years for operators in Grade C 2, six years for operators in Grade C 4 and five years for operators in Grade C 5.

As to the second argument, the Commission contends that it is founded neither on Article 5 (4) of the Staff Regulations nor on the general implementing provisions contained in Annex I A but rather on the provisions of Article 7 (2) of the Staff Regulations.

Moreover, the Commission's decision quoted by the applicants lays down binding rules only in so far as it describes the duties and powers attaching to each basic post. The fact that, whilst the titles of certain posts appear both in Career Bracket C 2/C 3 and in Career Bracket C 4/C 5, the post of operators of interpretation equipment appears in only one career bracket is not decisive in view of the non-limitative nature — noted above — of the titles appearing in the Commission decision. In that connection the Commission quotes the example of punch operators and checkers working on computers using punch cards and of data-entry operators working on computers using the screen system. The first post appears amongst the titles corresponding to Career Bracket C 2/C 3 whereas the second, which covers officials in Career Bracket C 4/C 5, does not appear at all amongst the titles of posts. In fact, there is no fundamental difference between the duties performed by the two categories of official; the first merely has wider experience. The Commission stresses that, as far as Category C is concerned, its policy is to offer every official a career structure extending over five grades. In pursuance of that policy, Grade C 1 is accessible to every official in Category C and, similarly, officials recruited into Category C in the recent past are assigned to Career Bracket C 4/C 5. That policy, which is consistent with the provisions of the Staff Regulations, with the Commission decision referred to above and with the interests of officials, would lose all coherence if a differential allowance were to be awarded to officials in Grades C 4 or C 5 when, in general, they have neither the same qualifications nor the same experience as their colleagues in Grade C 3 or C 2, even if in some cases they perform very similar duties.

As regards the third argument, the Commission cites the example of secretaries/shorthand-typists, whose career structure is spread over five grades in Category C, although in many cases the duties themselves are not clearly differentiated. In those circumstances, it would be inconceivable for a shorthand-typist in Grade C 4, called upon to replace a colleague in Grade C 3, to be awarded a differential allowance. Furthermore, the defendant emphasizes that there is no budgetary reason underlying the decision at issue. As to the allusion to the duty of assistance, it adds that the interests of the official in question may not be specially favoured as compared with those of other officials recruited into the initial career bracket in Category C or with those of officials in Grades C 3 or C 2 who, although holding superior qualifications or having longer experience (or both), would not receive a higher basic salary than the applicants if the latter's request were granted. The Commission refers to the Court's judgment in Case 5/70 (*Prelle* v *Commission* [1970] ECR 1075), which states "To grant the same allowance to an official who temporarily occupies a post in a career bracket higher than his own, but who nevertheless does not carry out duties which are substantially different from those involved in his own post, would go beyond the scope of this

provision" (Article 7 (2) of the Staff Regulations).

As regards the claim for compensation, no "inquiry" of any kind whatsoever has been ordered by the defendant. The applicants are incorrect, the Commission contends, to maintain that the Conference Services Division does not include any clerical officers. In fact, the department in question includes seven clerical officers. Furthermore, the *Klaer* judgment hardly supports the applicants' view since in that case the Court criticized the decision to place the person concerned — an unclassified adviser in Grade A 1 — under the authority of a director-general, that is to say an official in the same grade. It does not support the inference that unless the occupant of a post is subject to the authority of the official in the career bracket immediately above his own, the situation constitutes an infringement. Even if that were the case, it would be fruitless to look for any connection between the alleged instance of maladministration and the alleged damage.

IV — Oral procedure

The parties presented oral argument at the sitting on 8 July 1982.

The Advocate General delivered his opinion at the sitting on 14 October 1982.

Decision

1 By applications lodged at the Court Registry on 3 July 1981, the applicants, who are officials of the Commission of the European Communities, brought an action under Article 91 of the Staff Regulations for annulment of the Commission's decisions of 8 April 1981 whereby it refused them a compensatory allowance representing the difference between the remuneration actually received and the remuneration due for the performance of the duties of an operator of interpretation equipment, from the day on which they entered the service of the defendant, or at least from the day on which they were appointed as officials, plus interest on the arrears at the rate of 8%.

2 The applicants were all successful in Internal Competition No COM/C/4/78, which was organized by the Commission with a view to drawing up a reserve list for the recruitment of clerical assistants in Career Bracket C 4/C 5 responsible for performing the duties of an operator of interpretation equipment and they were therefore recruited into those grades. By complaints of 19 and 22 November 1979, they sought to be reclassified in

Grade C 3 since, in their opinion, the duties which they were performing corresponded to the basic post of clerical officer and not to that of clerical assistant. The complaints were rejected by the defendant and the applicants did not contest that rejection within the prescribed period.

3 By a fresh complaint of 25 April 1980, the applicants submitted a request for the differential allowance provided by Article 7 (2) of the Staff Regulations. That request was also rejected. The applicants thereupon brought their action.

Application for annulment

4 The applicants put forward three arguments. The first is based upon infringement of Article 5 (3) of the Staff Regulations, breach of the principle of equality of treatment and misuse of powers, inasmuch as the applicants perform duties of operators of interpretation equipment but are remunerated as clerical assistants, whereas the remuneration of a clerical officer is payable for the same duties performed in other places of employment within the Commission or in other institutions of the Community. The defendant, it is claimed, thus applies different conditions of remuneration to officials belonging to the same category and performing the same duties.

5 It should, however, be recalled that the case-law of the Court shows that, although the principle of equality of treatment is a general rule forming part of the law applicable to the employees of the Communities, discrimination occurs only where identical or comparable situations are treated in an unequal way.

6 Contrary to the view put forward by the applicants, a breach of the prohibition of discrimination occurs only in cases of unequal treatment where the discrimination is not objectively justified. In this case, however, as the defendant contends, the classification in Career Bracket C 2/C 3 of the Commission's operators of interpretation equipment in Luxembourg is warranted by the fact that they are few in number and hence are better able to replace one another, whereas the applicants belong to a department which has a larger number of operators. In addition, it should be recalled that every

institution is responsible, within the limits laid down in Articles 5 and 7 of the Staff Regulations and in Annexes I A and I B thereto, for defining the duties and powers attaching to every basic post.

7 As regards the technicians employed by the Parliament, to whose situation the applicants compare their own, it is sufficient to observe that in Notice of Competition No COM/C/4/78 the Commission called only for a knowledge of radio technology, whereas the Parliament, in a similar notice of open competition in the same year, called for a "technical diploma in radio-electricity" for technicians in Grade C 3.

8 Moreover, seniority, age and the resultant experience are objective criteria which, as in this case, enable technicians such as operators of interpretation equipment to be classified in different ways.

9 It follows from the foregoing that the applicants' first argument must be rejected.

10 In the second place, the applicants claim that, contrary to Article 5 (4) of the Staff Regulations and to the general implementing provisions of Annex I A thereto, the defendant refused to grant a differential allowance on the ground that a clerical assistant may be called upon to perform duties of an operator of interpretation equipment, whereas the Commission itself has classified those duties amongst those which may be entrusted only to a clerical officer.

11 They base their argument on the description of the duties and powers attaching to the basic posts, which was adopted pursuant to Article 5 (4) of the Staff Regulations and published in "Staff Courier" No 272 of 4 September 1973, from which it is apparent that the duties of an operator of interpretation equipment may be performed only by a clerical officer in Career Bracket C 2/C 3 and not by a clerical assistant in Career Bracket C 4/C 5.

12 However, the Commission correctly points out that the titles of the posts appearing in that decision are illustrative and not limitative in character, a

fact which is especially apparent from the words "In particular", inserted above the list of titles of the posts relating to each career bracket.

13 Thus the second argument put forward by the applicants must also be rejected.

14 Lastly, the applicants maintain that contrary to Article 7 (2) of the Staff Regulations and in breach of the principle of fairness and of the duty of the administration to assist its officials, they were refused a differential allowance even though they were performing, on a permanent basis and for a long period of time, duties of a higher level of responsibility than those corresponding to the career bracket of clerical assistant.

15 As the Court held in its judgment of 12 March 1975 in Case 23/74 *Küster* v *Parliament* [1975] ECR 353, the application of Article 7 (2), which provides for a temporary posting allowance, requires an express decision of the appointing authority, which is lacking in this case. Furthermore, it appears from the discussion of the previous argument that the applicants do not perform duties of a higher level of responsibility than those which may be assigned to officials of their grade. Furthermore, as the concept of a temporary posting normally implies, the duties which they perform are no different from those which are inherent in their own posts.

16 The third argument, whereby the applicants seek the annulment of the Commission's decisions to refuse them a differential allowance, must therefore be rejected as unfounded.

Claim for compensation

17 The applicants allege that the Commission was guilty of maladministration inasmuch as it underestimated the importance of the duties and responsibilities entrusted to them and organized its administration in such a way that clerical assistants permanently perform the duties of clerical officers and are directly answerable to a principal clerical officer, whereas the duties of a clerical assistant should essentially be performed under the supervision of a clerical officer.

18 None the less, according to well-established case-law each institution draws up its list of posts independently and enjoys wide discretionary powers in the organization of its departments. Since the applicants have failed to demonstrate that their present duties are not in keeping with those of a clerical assistant in Grade C 5 or C 4, the Commission cannot be held to have misused its powers.

19 The argument must therefore be rejected.

Costs

20 Article 69 (2) of the Rules of Procedure provides that the unsuccesful party is to be ordered to pay the costs. However, Article 70 of the Rules of Procedure provides that, in proceedings brought by employees of the Communities, institutions are to bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the applicants and the Commission to bear their own costs.**

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 2 December 1982.

For the Registrar

H. A. Rühl

Principal Administrator

A. O'Keeffe

President of the First Chamber