JUDGMENT OF THE COURT (FIRST CHAMBER)
OF 13 JULY 1978 [1]

Claude Jacquemart
v Commission of the European Communities

"Severance grant"

Case 114/77

1. *Officials — Remuneration — Annual adjustment — Method — Application of weighting to amounts referred to in Article 66 of the Staff Regulations — Permissibility — Conditions*
   (Staff Regulations of Officicials, Arts. 65 and 66)

2. *Officials — Remuneration — Basic salary — Concept*
   (Staff Regulations of Officials, Art. 66)

1. Although any adjustment of remuneration by the adjustment of the basic salaries in the table contained in Article 66 would appear to be more consistent with the procedure laid down in Articles 64 and 65, the Council is nevertheless at liberty to raise the level of remuneration by applying a weighting to the amounts in the table in Article 66, providing always that as regards the pecuniary rights of officials such method does not lead to results which are incompatible with those intended by the procedure laid down in Article 65. This would be the case if the application of weightings under the terms of Article 65 (1) were to lead, as regards those pecuniary rights, to results different from those flowing from an increase in the amounts shown in the table in Article 66 of the Staff Regulations.

2. The basic salary as referred to in Article 66 of the Staff Regulations comprises the amounts included in the table contained in that article, subject, where appropriate, to the weighting adopted for the provisional seats by the Council following the annual review provided for in Article 65 (1).

In Case 114/77

CLAUDE JACQUEMART, a former official of the Commision of the European Communities, residing at 7 Place Pinel, Paris 75013, assisted and represented by Ernest Arendt, Avocat-Avoué, residing at 34b Rue Philippe II, Luxembourg, with an address for service in Luxembourg at the Chambers of the said Ernest Arendt,

applicant,

1 — Language of the case: French.

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Joseph Griesmar, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION substantially for a declaration that the applicant is entitled to the difference between the severance grant paid and a severance grant calculated in such a way as to take account of a weighting of 157.8

THE COURT (First Chamber)

composed of: G. Bosco, President, J. Mertens de Wilmars and A. O'Keeffe, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts and the arguments developed by the parties during the written procedure may be summarized as follows:

I — Facts and procedure

After joining the Commission on 7 November 1966 as an official in Grade A 3 and subsequently being promoted to Grade A 2, the applicant, by letter dated 25 March 1976, asked the Commission to accept his resignation, which was done with effect from 1 September 1976. Since he was under 60 years of age and had less than ten years' service, the applicant was not entitled to a retirement pension within the meaning of Article 77 of the Staff Regulations but had a right to the severance grant provided for in Article 12 (c) of Annex VIII to the said Regulations "calculated on the basis of one and a half months for each year of service of the last basic salary before deductions".

In its deliberations of 29 June 1976, published in the Staff Courier of 16 July 1976, the Council, in connexion with the annual review of the remunerations of officials and other servants provided for by Article 65 of the Staff Regulations, decided in Section IV, "Transitional and Final Provisions", that: "When the annual pay review for the reference period from 1 July 1975 to 30 June 1976 is held, the current weighting for Belgium and Luxembourg shall be incorporated into the salary scales in accordance with the procedure set out in Section II (6) (c), the weighting for Belgium and Luxembourg thus becoming 100% and the weightings for other countries of employment being adjusted accordingly."

Section II (6) (c) of that publication set out the procedure to which reference was made in the Transitional and Final Provisions, whereas Section II (6) (d) provided that "The Council's decision shall take effect on 1 July of the year in which the end of the reference period used for the pay review falls", which meant 1 July 1976.

That decision was implemented by Council Regulation No 3177/76 of 21 December 1976 (Official Journal L 359, p. 1), one of the recitals of the preamble to which states that "the Council, in its decision of 29 June 1976, fixed the method of calculation to be used in the periodical reviews of the remuneration of officials and other servants of the Communities".

The said regulation effected the adjustment in two stages. The first, laid down in Article 1 (1) and taking effect from *1 July 1976*, altered the basic monthly salaries in the table in Article 66 of the Staff Regulations to the amounts laid down in the table contained in Article 1 (1), in the present case Bfrs 107 412 per month for officials in Grade A 2, step 3 (the applicant's grade). Under Article 5 of the said regulation that basic salary was to be adjusted by the weightings laid down therein, in the present case 157.8 as regards the salary of officials whose place of employment was Brussels, as was the case with the applicant.

A second adjustment taking effect from *1 January 1977* was contained in Article 1 (2) and provided for a second increase, which in the present case brought the amount of the basic monthly salary of officials in Grade A 2, step 3 to Bfrs 182 735, and Article 5 (2) provieded that from that date the weightings for Belgium and Luxembourg were to be reduced from 157.8 to 100 and those of other places of employment were to be reduced in similar proportions.

In view of those provisions the Commission calculated the applicant's severance grant on the basis of the basic salary as fixed with effect from 1 July 1976 but without application of the weighting, since in the Commission's view Article 12 (c) of Annex VIII to the Staff Regulations excluded the application of that weighting in calculating the severance grant. A statement on this basis was forwarded to the applicant on 27 January 1977. The applicant took the view that by not applying the weighting the decision adversely affected him and on 22 February 1977 submitted a complaint within the meaning of Article 90 of the Staff Regulations to which he received no reply within the period of four months. Not until 12 July 1977 was a letter sent to the applicant refusing his request.

On 25 February 1977 the applicant also submitted a complaint to the President of the Council. Referring to the decision of the Council of 29 June 1976 he gave notice of his intention of bringing an application for annulment of Regulation No 3177/76 unless the Council amended it or informed the Commission that Article 12 of Annex

VIII to the Staff Regulations should be interpreted as involving the application of the weighting to the severance grant. By letter dated 15 March 1977 the Council stated that it had no power in the matter.

On 22 September the applicant brought an action against the Commission and, in so far as necessary, against the Council of Ministers, claiming in substance a declaration that in calculating his severance grant the weighting of 157.8 should be included in his basic salary.

By application dated 17 October 1977 under Article 91 (1) of the Rules of Procedure the Council claimed that the action was inadmissible in so far as it was directed against it and sought a ruling to this effect without entering into the substance of the case.

By order dated 18 January 1978 the Court (First Chamber) upheld the application and ruled that the action was inadmissible in so far as it was brought against the Council and ordered the parties to bear their own costs.

II — Conclusions of the parties

The *applicant* claims that the Court should:

(1) —Declare that this application is admissible;

(2) As to its substance:

(a) rule that the applicant is entitled to the difference between the severance grant paid and such a grant based on calculations taking into account the weighting of 157.8, by application of that weighting either to the remuneration forming the basis of the calculations or to the severance grant itself;

(b) rule that that amount, to be calculated by the appointing authority in accordance with the foregoing subparagraph, shall bear default interest at 6% per annum as from 21 January 1977, the date of the disputed calculation;

(c) refer the case back to the appointing authority for implementation;

(3) Order the defendant to bear the costs.

The *Commission* contends that the Court should:

(1) Dismiss the application as unfounded;

(2) Order the applicant to bear the costs.

III — Submissions and arguments of the parties

Admissibility

The admissibility of the application is not contested.

Substance

A — The application

The applicant states that the Council has on several occasions and in particular in July 1976 infringed Article 65 of the Staff Regulations.

Instead of reviewing and where necessary adjusting the scale of basic salaries contained in the table in Article 66 of the Staff Regulations each year, as required by Article 65 of the Staff Regulations, the Council, in order to make the adjustments considered necessary, has confined itself to applying to such salaries the weightings provided for in Article 64 of the Staff Regulations. This procedure does not meet the requirements of the Staff Regulations because the weightings are not part of

the remuneration and their use is contemplated only for correcting the differences in living conditions in the various places of employment. This method does not adversely affect officials in active employment but on the other hand it prejudices officials who resign voluntarily without being entitled to a retirement pension, since the severance grant which they can claim under Article 12 (c) of Annex VIII to the Staff Regulations is calculated on the basic salary excluding the weighting. On 29 June 1976 the Council decided to abandon its previous incorrect practice and in future to apply Article 65 correctly, but it disregarded its own decision when on adopting Regulation No 3177/76 it omitted to include the weighting in the basic salary for the second half of 1976. The applicant refers to the judgment of 5 June 1973 in Case 81/72 *Commission* v *Council* ([1973] ECR 575) as authority for the proposition that the decision of 29 June 1976 — which has direct effect — gives him a right to have the weighting (in the present case 157.8) included in the calculation of the basic salary which in turn is the basis for the calculation of the severance grant as at 1 September 1976 and that in any event he is entitled to allege in support of his claim that the said regulation is unlawful on the ground of the alleged omission. In support of his claim he makes two submissions of substance:

(a) Infringement (first head) both by the contested decision and by Regulation No 3177/76 of the Council's decision of 29 June 1976. The decision of 29 June 1976 contains an undertaking which was not respected and at all events created legitimate expectations which the Council must honour having regard to the principle that legitimate expectations should be respected;

and/or infringement (second head) by the Council in Regulation No 3177/76 and consequently infringement by the Commission in the contested decision of the obligation arising from Article 65 of the Staff Regulations to adjust salaries by amending the basic salary scale.

(b) Infringement of Article 12 (c) of Annex VIII to the Staff Regulations, in that that provision must be interpreted as including the weighting in the concept of the basic salary, otherwise the principle of non-discrimination would be infringed. If this were not so officials who voluntarily left the Commission before 1 January 1977 would of necessity be at a serious disadvantage in relation to those leaving after that date, although the date of the termination of employment is a merely circumstantial factor.

B — Defence

In the Commission's view, consideration of the submissions made by the applicant leads to the conclusion that they must be dismissed and that the application accordingly appears unfounded.

First submission

The applicant's claims regarding the way in which the Council has applied Article 65 of the Staff Regulations are based in the first place on a mistaken conception of remuneration as referred to therein. A basic salary to which a weighting applies must, contrary to what the applicant says, be considered as a whole as remuneration within the meaning of Article 62 of the Staff Regulations and it follows that adjustment of the salaries by means of the weightings provided for in Article 65 (2) of the Staff Regulations is a legitimate method of adjustment and amendment of salaries, in the same way as a review of the scale of basic salaries. There is no textual authority for the applicant's contention to the contrary and the

Community legislature has a wide discretion in this respect. No doubt by its decision of 29 June 1976 the Council restricted its freedom of choice with regard to the methods which might be used but Regulation No 3177/76 in no way conflicts with that decision, for the decision involves two different operations which it is necessary to distinguish one from the other and this the applicant has failed to do.

Section II provides, by way of a first operation of a general nature, that in future a net rate of adjustment of remunerations will be made which must be incorporated into the salary scales contained in Article 66 of the Staff Regulations, with the result (fifth paragraph of Section II (c)) that the weighting for Belgium and Luxembourg is fixed at 100% and the weightings for the other countries of employment are adjusted so as to reflect the ratio between the cost of living indices in the various places and that of Brussels. Section II (d) provides that the adjustment is to take effect on 1 July of the year in which the end of the reference period used for the pay review falls.

In the second operation described in Section IV of the same decision under the heading "Transitional and Final Provisions" the Council adopted a transitional procedure applying solely to the pay review for the reference period extending from 1 July 1975 to 30 June 1976; in other words, applying solely to remuneration for the period from 1 July 1976 to 30 June 1977. For that year the weighting, which had been fixed at 157.8 by Council Regulation No 1529/76 of 29 June 1976 (Official Journal L 177 of 2 July 1976, p. 1), that is to say adopted on the same day as the decision referred to by the applicant, was to be incorporated into the basic salary scale when the annual pay review was held in accordance with the procedure set out in Section II (6) (c), but not on that first occasion automatically on 1 July, according to the procedure provided for by letter (d) of that section. The review period on which the incorporation was to be based did not end until December 1976 and it was accordingly "quite proper" for the Council to decide that the incorporation of the weighting 157.8 would not take effect until 1 January 1977.

It is these two different operations which are contained in the tables making up respectively Article 1 (1) and Article 1 (2) of Regulation No 3177/76.

There is thus no infringement of the decision of 29 June 1976 and the applicant, to whom the provisions with reference to the transitional period from 1 July to 31 December 1976 are applicable, cannot complain that his rights have been disregarded or his legitimate expectations frustrated.

Second submission

In the defendant's view, consideration of the wording alone shows that the Council in adopting the Staff Regulations deliberately intended not to include the weightings in the severance grant. According to Article 64 of the Staff Regulations weightings are applied to remuneration alone and it would require a formal provision to extend their application to other pecuniary rights. These observations are confirmed both by the Council's refusal when adopting Regulation No 1473/72 of 30 June 1972 (Official Journal L 160, p. 1) to follow the Commission's proposal of 28 March 1969 that severance grants should be weighted, and by the fact that *exceptionally* Article 9 of Regulation No 259/68 of 29 February 1968 (Official Journal, English Special Edition 1968 (I), p. 30) on that one occasion provided for the application of a weighting to the severance grant. The defendant also cites numerous other provisions concerning the pecuniary rights of oficials and servants in support of the proposition that in the absence of

express provision by the "legislature" pecuniary rights other than remuneration cannot be increased by means of a weighting. Finally, the Commission adds that the regulation in question cannot be regarded as being contrary to natural justice.

The claim for default interest

The Commission contests this claim. It cites the judgment of the Court of Justice of 26 February 1976 in Case 101/74 *Kurrer* v *Council* ([1976] ECR at p. 269, paragraph 31) according to which payment of interest intended to compensate for delay causing loss in the settlement of pecuniary rights may be contemplated where the institution in question has been guilty of "a wrongful act or omission" which has caused the applicant damage. In this respect the Commission maintains that it has committed no wrongful act or omission in not complying immediately with the applicant's claims. In the event of its being judged that the Commission's view in regard to the pecuniary rights of the applicant is not sound, it would follow at most that the Commission has committed an error in the interpretation of the Staff Regulations and it has often been ruled (judgments of 9 July 1970 in Case 23/69 *Anneliese Fiehn* v *Commission [1970] ECR 547 and 13 July 1972 in Case 79/71 Heinemann* v *Commission* [1972] ECR 579) that such an error is not a wrongful act or omission.

C — Reply

In the applicant's view there is no ambiguity in Articles 62 to 66 of the Staff Regulations:

— Remuneration comprises only "basic salary, family allowances and other allowances" (Article 62, second paragraph);

— Those elements are reviewed each year (Article 65 (1)).

On the basis of that definition, the first and second paragraphs of Article 64 provide that the remuneration shall be weighted at a rate "depending on living conditions in the various places of employment". There would have been no reason for that provision if all officials had the same place of employment. The Commission's view therefore has no legal basis and is contrary to the doctrine of the "acte clair" (unambiguous measure).

The argument which the Commission claims to adduce from the precedents cited amounts to justifying what would be contrary to the wording of the Staff Regulations, whereas it is quite clear that measures implementing the Staff Regulations cannot amend the wording thereof. The Council therefore has no discretion in interpreting those unambiguous and precise rules but only, to the extent necessary, in assessing certain matters of fact determining the adjustment of salaries.

As regards the first submission, the applicant rejects the argument that the Transitional and Final Provisions of the decision of 29 June 1976 were precisely designed to avoid re-incorporating the weighting in the basic salaries applicable in Brussels and Luxembourg with effect from 1 July 1976. The Commission is wrong in claiming that the consultation procedure which preceded the decision of 29 June 1976 was concerned with that objective and led to the formula previously adopted for an experimental period being prolonged for six months. In the applicant's view that consultation related only to the factors involved in assessing the net rate of increase listed in Section II of the decision. If it had had the objective indicated by the Commission it would have been unlawful as being incompatible with the clear wording of Article 65 of the Staff Regulations. In the second place, an analysis of the transitional provisions in question and the circumstances in which they were adopted shows that the

Council intended by its decision of 29 June 1976 that the application of the weighting in force at that date to basic salaries should take place immediately, that is to say on 1 July 1976.

There was no reason to prolong on a provisional basis the experimental system established in 1972 which, since it was to last for only three years, had in any event expired. Moreover, the wording of Section IV shows that the whole of Section II applies to Section IV without its being necessary to specify this.

The reason for that transitional provision is clear. The date on which the Council decision took effect was, by reason of Article 65 of the Staff Regulations, related to a reference period. It was necessary to specify that reference period clearly because it might have been possible to think that the decision adopted on 29 June 1976 and the new system which it established would not apply until the end of the *future* reference period, that is to say, that extending from 1 July 1976 to 30 June 1977, so that only as from 1 July 1977 would the new system affect the basic salary scales. That is why in Section IV of its decision the Council took care to specify that the incorporation should be undertaken "when the annual pay review for the reference period from 1 July 1975 to 30 June 1976 is held", from which it follows that its decision was to take effect from 1 July 1976.

The applicant then challenges seriatim the arguments which the Commission founds on the precedents which it cites, and in particular the rejection by the Council of its proposal of 28 March 1969.

Finally, he submits an additional argument. When the Staff Regulations were adopted in 1962 there was a logical connexion and a recognized proportion between the basic salary scales established on a weighting of 100% for Brussels and Luxembourg and the weightings adopted for the other places of employment. Officials are entitled to the maintenance of that proportion in respect of all pecuniary rights arising by reference to the basic salary. That proportion has been completely upset as regards the severance grant in particular, as appears from the chart annexed by the applicant to his reply. The applicant maintains his claim for default interest.

D — Rejoinder

The first submission

To justify the Council's right to adapt remuneration annually by means of weightings, the Commission takes up again the argument that the said weightings are part of remuneration, and adds that the concept of remuneration is to be derived from a reading of Articles 62 and 64 of the Staff Regulations together. Article 62 cannot therefore be interpreted as meaning that remuneration comprises only (a word which the article does not use) basic salary, family allowances and other allowances. Nowhere in the Staff Regulations is it specified that the annual adjustment of remuneration must be achieved solely by recasting the basic salary scales, and the reason why the Council in its decision of 29 June 1976 restricted its discretionary power was that it was expedient to do so on grounds of policy and not because it was necessary to return within the law. It is not open to question that when the basic salary is weighted in accordance with Article 65 (2) of the Staff Regulations (difference in places of employment) the weighting is part of the remuneration. It is accordingly logical that the same should be true when the annual adjustment is made by means of the weighting. As for the additional argument to the effect that when the Staff Regulations were adopted in 1962 the basic salaries were established at 100% for Brussels and

Luxembourg in relation to the other places of employment and that that relationship must be maintained, the Commission observes that the fact that the weighting was fixed at 100% on 1 January 1962 in no way implies that in future it must regularly be brought to that value once a year. Moreover, the different places of employment referred to in Article 65 (2) include Brussels and Luxembourg.

The Commission does not accept the applicant's analysis of Section IV of the decision of 29 June 1976. The reference therein to Section II (6) (c) and not Section II (6) (d) shows that the Council did not intend that the current weighting (157.8) should be incorporated in accordance with the procedure provided for in Section II (6) (d). It is therefore wrong to state that the whole of Section II applies to Section IV. The Council's deliberate intention not to incorporate "the current weighting" (157.8) with effect from 1 July 1976 is apparent from a comparison of the wording of Section IV of the decision of 29 June 1976 with the "Report of the Working Party on Staff Regulations to the Committee of Permanent Representatives" of 29 September 1975, annexed to the rejoinder. That draft contained, in addition to the actual wording of Section IV, the following sentence: "The scales and weightings so determined shall be the basis for the application, in accordance with the procedure provided for in paragraph 1 (5),[1] of the Council decision following the said review of remuneration". The final version adopted by the Council did not include that last sentence and that omission shows that the Council did not intend to require the immediate application (on 1 July 1976) of the weightings to the basic salaries.

The second submission

The Commission reconsiders the various precedents which it has cited in support of the alleged rule that express provision by the Council is required in order to extend the application of the weightings to pecuniary rights for which those weightings are not provided in the general rule contained in Article 64. Since the severance grant is related to the basic salary and not to remuneration it cannot be affected by the weighting.

Default interest

As for the claim for default interest, the Commission maintains its previous conclusions and refers in particular to the judgment of the Court of Justice of 13 October 1977 (Case 106/76 *Deboeck* v *Commission* [1977] ECR 1623).

The oapplicant, represented by E. Arendt, and the Commission of the European Communities, represented by its Agent, J. Griesmar, presented oral observations at the hearing on 1 June 1978.

The Advocate General delivered his opinion at the hearing on 29 June 1978.

1 — This became II (6) in the final version published in the Staff Courier.

Decision

1 The application, in so far as it is directed against the Commission, is based on Article 91 of the Staff Regulations of the European Communities and seeks in substance an order that the Community should pay the applicant the difference between the severance grant paid to him with effect from

1 September 1976 and a grant calculated by applying to his last basic salary as shown in the table of salaries contained in Article 66 of the said Staff Regulations a weighting of 157.8%, to which sum there should be added default interest of 6% from 21 January 1977.

2 In order to resume his employment in the administration of the Member State from which he originates, the applicant, an official of the Commission in Grade A 2, step 3, submitted his resignation, which was accepted, as requested, with effect from 1 September 1976.

3 At that date he did not satisfy the conditions necessary to entitle him to a retirement pension within the meaning of Article 77 of the Staff Regulations but was entitled to the severance grant referred to in Article 12 of Annex VIII to the Staff Regulations, which provides that an official resigning who is not entitled to a retirement pension shall be entitled on leaving the service to payment of a proportional severance grant "calculated on the basis of one and a half months for each year of service of the last basic salary before deductions".

4 According to Article 66 of the Staff Regulations basic monthly salaries are determined for each grade and step as provided in the table contained in that article, and for Grade A 2, step 3 the relevant figure appearing in the table applicable on 1 September 1976 was Bfrs 107 412.

5 That amount was taken as the basis for calculating the applicant's severance grant.

6 The applicant challenges this method of calculation, claiming that in order to satisfy the requirements of Article 65 of the Staff Regulations concerning the adjustment of remuneration for which provision is made in the said article the amounts in the above-mentioned table had been subject to a weighting of 157.8% in respect of the salaries of officials employed at the provisional seats of the Community and that the amounts resulting from such weighting should have been incorporated into the monthly basic salary in calculating the severance grant.

7 The Commission claims, on the other hand, that according to the express wording of Article 12 of Annex VIII to the Staff Regulations the severance

grant is calculated on the basis of the last basic salary and that that concept refers clearly to the amounts shown in the table contained in Article 66 of the Staff Regulations.

8 When, following the annual review of remuneration as required by Article 65, the Council decides to adjust the level of remuneration it is free to do so either by increasing the basic salaries or by leaving them unchanged and applying to them a weighting, in which case the basic salary remains unaltered with the result that it is on that salary that the severance grant must be calculated.

9 Having raised salaries for several years by means of the weightings the Council decided on 29 June 1976 to incorporate the weightings into the basic salaries, but Council Regulation No 3177/76 of 21 December 1976 (Official Journal L 359, p. 1) was intended to give effect to that decision only as from 1 January 1977, so that, in the Commission's view, the calculation of the applicant's severance grant on 1 September 1976 remained governed by the provisions previously in force.

10 The silence maintained by the legislature regarding the application of any weighting to the severance grant is said to show its intention to exclude any such application.

11 The determination of the amount of and procedure regarding the remuneration of officials is governed by Articles 62 to 70 of the Staff Regulations.

12 The final paragraph of Article 62 provides that remuneration shall comprise basic salary, family allowances and other allowances.

13 Article 64 of the Staff Regulations provides that officials' remuneration shall be weighted at a rate depending on living conditions in the various places of employment.

14 The weightings do not constitute an additional element of remuneration but are a means of calculating the amounts of the various elements making up that remuneration.

15 It follows that Article 64 does not govern the level of remuneration but rather its geographical weighting depending on living conditions in the various places of employment by providing that in relation to the remuneration of officials of the Communities employed at the provisional seats, the remuneration in other places shall be adjusted by the application of a weighting bringing the remuneration, as appropriate, to a figure above, below or equal to that applicable to officials employed at the provisional seats.

16 Article 65, on the other hand, relates to the level of remuneration and lays down in paragraph (1) the procedure for the annual review as at 1 July each year of that level and, where appropriate, for its adjustment.

17 Article 65 (2) provides that in the event of a substantial change in the cost of living during the year, the Council shall decide, within a maximum period of two months, what adjustments should be made to the weightings and if appropriate to apply them retrospectively.

18 Article 65 leaves to the Council the choice of the most appropriate means and forms for the implementation of a policy with regard to remuneration which is in accordance with the criteria laid down by that article.

19 Although any adjustment of remuneration by the adjustment of the basic salaries in the table contained in Article 66 would appear to be more consistent with the procedure laid down in Articles 64 and 65, the Council is nevertheless at liberty to raise the level of remuneration by applying a weighting to the amounts in the table in Article 66, providing always that as regards the pecuniary rights of officials such method does not lead to results which are incompatible with those intended by the procedure laid down in Article 65.

20 This would be the case if the application of weightings under the terms of Article 65 (1) were to lead, as regards those pecuniary rights, to results different from those flowing from an increase in the amounts shown in the table in Article 66 of the Staff Regulations.

21 It is therefore proper to distinguish the geographical weightings referred to in Article 64 from those which the Council is at liberty to apply in the

context of the implementation of Article 65 (1) for the purpose of determining the level of the different elements of remuneration (including the basic salary) of officials employed at the provisional seats, from which level the remuneration at the other places of employment is then derived.

22 It follows from these considerations that the basic salary as referred to in Article 66 of the Staff Regulations comprises the amounts included in the table contained in that article, subject, where appropriate, to the weighting adopted for the provisional seats by the Council following the annual review provided for in Article 65 (1).

23 It is accordingly not possible to interpret Article 12 (c) of Annex VIII to the Staff Regulations as expressing the Council's intention to calculate the severance grant on a basis different from that of the monthly basic salary as intended and established by the Council pursuant to the methods for the adjustment of the level of remuneration referred to in Article 65.

24 Any other interpretation would lead to the conclusion that Article 12 (c) of Annex VIII to the Staff Regulations is unlawful as being incompatible with the principle of the equality of officials in that two different concepts of basic salary would be applied, in Article 66 of the Staff Regulations and Article 12 of Annex VIII respectively, without there being any objective consideration to justify such a difference.

25 Accordingly, in determining the severance grant as on 1 September 1976 the Commission was required to calculate it on the basis of the monthly salary shown in the table contained in Article 66 of the Staff Regulations, subject to the weighting of 157.8%.

26 It is therefore appropriate to order the Commission to pay the difference between the amount actually paid and the amount of a severance grant calculated as on 1 September 1976 by the application of the aforementioned weighting of 157.8%, increased by default interest of 6% from 22 February 1977, the date of the complaint sent by the applicant to the Commission.

Costs

27 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to bear the costs.

28 Since the defendant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Orders the Commission to pay the difference between the amount actually paid and the amount of a severance grant calculated as on 1 September 1976 by the application of the aforementioned weighting of 157.8%, increased by default interest of 6% from 22 February 1977, the date of the complaint sent by the applicant to the Commission.**

2. **Orders the Commission to pay the costs.**

Bosco Mertens de Wilmars O'Keeffe

Delivered in open court in Luxembourg on 13 July 1978.

A. Van Houtte
Registrar

G. Bosco
President of the First Chamber