JUDGMENT OF THE COURT (FIRST CHAMBER)
19 JANUARY 1984 [1]

Ivar Andersen and Others v Council of the European Communities

(Official — Revision of salary scales)

Case 260/80

1. *Officials — Action — Interest in taking action — Action for annulment directed against both the decision rejecting the complaint and the measure adversely affecting the applicant — Admissibility*
   (Staff Regulations, Arts 90 and 91)

2. *Officials — Remuneration — New method of adjustment — Incorporation of weightings in the salary scales — Rectification of distortions resulting from such incorporation — Council Regulation No 160/80 — Objection of illegality — Dismissal*

In Case 260/80

IVAR ANDERSEN AND OTHERS, officials of the General Secretariat of the Council of the European Communities, represented by Georges Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Janine Biver, 2 Rue Goethe,

applicants,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by R. O. Dalcq and M. Grossmann, of the Brussels Bar, with an address for service in Luxembourg at the office of H. J. Babbruwe, Director of the Legal Affairs Department of the European Investment Bank, 100 Boulevard Konrad-Adenauer,

defendant,

1 — Language of the Case: French.

APPLICATION for the annulment of the decision of the General Secretariat of the Council of the European Communities of 7 October 1980 expressly rejecting the applicants' complaint against the Council's decision to pay their remuneration on the basis of Council Regulation No 160/80 of 21 January 1980 amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (Official Journal L 20, p. 1),

THE COURT (First Chamber)

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

Advocate General: S. Rozès
Registrar: A. W. H. Meij, Legal Secretary

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

1. Article 65 (1) of the Staff Regulations provides that the Council is each year to review the remuneration of the officials and other servants of the Communities and to determine any adjustment thereof.

Article 64 of the Staff Regulations provides that the remuneration should be weighted in accordance with the living conditions in the various places of employment. Article 65 (2) provides that in the event of a substantial change in the cost of living, the Council is to decide, within two months, what adjustment should be made to the weightings.

At its meeting on 29 June 1976 the Council adopted a new method for

adjusting the remuneration of officials and other servants of the Communities.

It appears from the file that the adoption of that new method of adjustment was intended, *inter alia*, to incorporate the weighting, which amounted at the time to 148.7 as regards Belgium and Luxembourg, into the basic salary scales. Without concomitant measures such incorporation would have involved a reduction in net remuneration since the basic salaries as increased are also the basis for the Community tax and other mandatory deductions.

To remedy that situation the staff representatives in the course of meetings with the Council preceding the adoption of the new method had proposed to weight the portions of remuneration liable to tax and other deductions not only with the new weighting to be decided but also with the weighting incorporated. Moreover, they had drawn attention to the risk of distortion arising from the incorporation of weightings if the least advantageous situation, for example that of an unmarried official not receiving any of the various allowances, were taken as a basis. Nevertheless the Council took a different course to avoid a reduction in net remuneration without providing for adjustment of the portions liable to Community tax along with the increase in basic salaries.

The new method of adjustment adopted on 29 June 1976 provided that the Council was to decide on remuneration adjustments in net terms and that the net rate thus fixed was to be incorporated, in accordance with the following method, in the salary scales given in Article 66 of the Staff Regulations and in Article 63 of the Conditions of Employment of Other Servants:

"The rate of adjustment decided shall be applied to the amount of the net salary for each step of each grade of official and for each class in every group of other servants.

The new scale in gross terms shall be drawn up by calculating for each step or class the gross amount which, after deduction of tax and compulsory contributions, gives the new net amount referred to above.

This conversion of net amounts into gross amounts shall be based on the situation of an unmarried official who does not receive the various allowances.

The incorporation of the net rate into the salary scale shall result in the weighting for Belgium and Luxembourg being fixed at 100% and the weightings for other countries of employment being adjusted on the basis of the ratio between the cost-of-living indices in these countries and the cost-of-living index in Brussels, expressed in each case by joint indices."

In consequence the new method provides that:

Allowance is to be made within the framework of the subsequent annual review for any interim adjustment of remuneration decided pursuant to Article

65 (2) of the Staff Regulations and made by adjusting the relevant weightings;

The current weighting for Belgium and Luxembourg is to be incorporated into the salary scales in accordance with the aforesaid conditions; the weighting for Belgium and Luxembourg thus becomes 100% and the weightings for the other countries of employment are to be adjusted accordingly.

There is also a review clause "with a view in particular to determining possible further improvements and rectifying any distortions."

The weightings were incorporated into the salary scales for the first time by Council Regulation No 3177/76 of 21 December 1976 adjusting the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto (Official Journal L 359, p. 1). That regulation reduced the weighting for Belgium and Luxembourg, fixed at 157.8 from 1 July 1976, to 100 with effect from 1 January 1977 at the same time as new scales were introduced with effect from the same date.

troduced by Regulation No 2859/77 of 19 December 1977 adjusting the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto (Official Journal L 330, p. 1) an amendment to Regulation No 260/68 of the Council of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities (Official Journal, English Special Edition 1968 (I) p. 37). The amendment subjected the amounts liable to Community tax, for the period from 1 July 1977 to 30 June 1978, to a weighting of 106.084.

Subsequently, by a decision dated 26 June 1978 the Council amended the method of adjustment adopted on 29 June 1976 and introduced a formula for correcting the amounts liable for tax as provided in the aforesaid Regulation No 260/68 of the Council.

Although the Council thus avoided a repetition of the distortion which appeared in applying Regulation No 3177/76 in the period from 1 January to 30 June 1977, nevertheless since subsequent adjustments of remuneration were based on the scale adopted in that regulation, the distortion to which that led was repeated from year to year.

2. Those measures caused distortion in the remuneration of officials to the advantage of those receiving allowances on their taxable income or an expatriation allowance or both. In view of such distortions and in order to avoid their repetition in future the Council in-

Since it was found that unintended increases in remuneration resulted from the manner in which the 157.8 weighting was incorporated in the basic salary scales, as decided in December 1976, with effect from 1 January 1977, the Council determined to put an end to that

situation and on 21 January 1980 adopted Regulation No 160/80 amending the Staff Regulations (Official Journal L 20, p. 1). That regulation lays down a new table of gross monthly salaries and abolished the distortions in question. It entered into force on 27 January 1980 with effect from 1 July 1979. It provides however that no part of the salaries paid between 1 July 1979 and the date on which the regulation entered into force should be required to be repaid. On the other hand it lays down a transitional scheme for the benefit of officials who might suffer a loss of income on application of the new scale. So long as the new scale would involve them in a loss of income the regulation provides that they are to continue to enjoy the benefit of the former scheme.

Except for certain special cases the reduction in basic salaries resulting from the adjustment of the scale were reabsorbed following the adjustment made on the same day by Council Regulation No 161/80 effecting the annual adjustment of remuneration on the basis of the revised scales (Official Journal, L 20, p. 5) which also applied as from 1 July 1979.

3. On 8 February 1980 in application of Regulations Nos 160 and 161/80 the General Secretariat of the Council paid the arrears of remuneration for the period from 1 January 1979 to 31 January 1980. The first monthly remuneration calculated according to the revised scales fixed by Regulation No 160/80 and adjusted by Regulation No 161/80 was paid in February 1980.

Between the end of April and the end of May 1980 the applicants lodged complaints based on a common model under Article 90 (2) of the Staff Regulations directed both against the salary statements for February and the statements of payment of arrears of remuneration and claiming that their remuneration and the arrears in question should be calculated without regard to Regulation No 160/80.

The Council rejected those complaints in a memorandum of 7 October 1980 from its Secretary General and the applicants brought the present joint action on 25 November 1980.

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.

However, at the request of the applicants the President of the First Chamber adjourned the opening of the oral procedure until after the judgment of the Court in Case 59/81 *Commission* v *Council,* which was given on 6 October 1982.

II — Conclusions of the parties

The *applicants* claim that the Court should:

"Declare that the application is admissible and well founded;

Order the defendant to pay the costs."

The *Council* contends that the Court should:

"Declare the applications inadmissible at least in part and in any event unfounded;

Order the defendants to pay the costs."

III — Submissions and arguments of the parties

Admissibility

The *applicants* state that the application is directed against the statements of arrears and salary statements for February 1980, the annulment of which is sought in so far as they reflect the application of the revised scales introduced by Regulation No 160/80. The claim is therefore for annulment of individual measures and is accompanied by an objection of illegality as regards Council Regulation No 160/80.

The *Council* considers that the application is inadmissible for want of an interest on the part of the applicants in so far as it is directed against the decision rejecting the complaints. The annulment of that decision would not affect either Regulation No 160/80, which is objected to as unlawful, or the salary statements the amount of which is challenged.

In reply the *applicants* state that the statements of salary and arrears constitute measures adversely affecting them within the meaning of Article 90 (2) of the Staff Regulations. However, they also have an interest in seeking the annulment of the decision rejecting the complaint because it confirms expressly and with a due statement of reasons the validity of the contested measures.

The procedure

In the rejoinder the *Council* observes that the applicants have annexed to their reply certain internal documens of the Council. Pursuant to Article 18 of the Rules of Procedure of the Council (Official Journal 1979 L 268 p. 1) such documents are "covered by the obligation of professional secrecy" and cannot be produced except with the authorization of the Council. Since that authorization was not requested the documents in question must be excluded from the file.

Substance

The *applicants* put forward six submissions in support of their objection that Regulation No 160/80 is unlawful.

In the first place Regulation No 160/80 is based on an erroneous statement of reasons. Contrary to what is stated in the second recital in the preamble thereto it cannot be claimed that the regulation was adopted to correct "unintended increases" in remuneration resulting from the incorporation of the weighting into the salary scales.

It was in spite of an opinion to the contrary by the Commission, the staff representatives and the Working Party on the Staff Regulations and after staff representatives expressly drew attention to the problem of distortions that the Council adopted Regulation No 3177/76 which was to be at the origin of the increases in salary corrected by Regulation No 160/80. Moreover the Council has already in the past tried on two occasions the same method, which produced the same effects. In the applicants' view the Council was fully alerted to the risks of distortion inherent in the course of action contemplated.

By the same line of argument the applicants in their third submission allege that the Council, in adopting Regulation No 3177/76 in spite of the warnings given to it, failed to exercise due care in administration. After thus knowingly

running the risk of accepting all the consequences arising from Regulation No 3177/76 it cannot subsequently justify its attitude by an alleged error.

The applicants' second submission is that the adoption of Regulation No 160/80 is incompatible with Article 65 of the Staff Regulations and with the new method of adjustment established in 1976. According to the judgment of 5 June 1973 (Case 81/72, *Commission* v *Council* [1973] ECR 575) on the annual adjustment of salaries for 1979 the Council was bound to observe the criteria which it established itself in adopting the new method of adjustment. That method does not allow the Council to re-open the issue of the salaries during the reference period, in the present case the period from 1 July 1978 to 30 June 1979. The Council was not therefore empowered to make the adjustment for 1979 on the basis of amended scales. The only ground capable of justifying in the present case a derogation from the method of adjustment would be an error previously made in drawing up the scales. In adopting Regulation No 160/80 the Council was however in no way correcting an error; on the contrary it had gone back on its assessment of salary policy as determined in 1976.

In those circumstances the applicants in their fourth and fifth submissions also rely on the principle of the protection of legitimate expectation and vested rights.

The review clause provided by the new method of adjustment would have allowed the Council, first on the adoption of Regulation No 2859/77 and then in 1978, to alter for the future the method of incorporating the weightings into the scale by inserting a formula for adjusting the taxable portions of remuneration in accordance with the view expressed by the staff representatives in 1976. The Council however frustrated the applicants' legitimate expectation of the observance of the established method by using the review clause to re-open the issue of the incorporation of the weightings into the scale.

Further, Regulation No 3177/76 gave the applicants vested rights in the maintenance of the salary scales arising from the application of the method of incorporating the weightings in force at the time for the purpose of the subsequent annual adjustments of their remuneration.

The applicants' sixth submission is that Regulation No 160/80 was adopted in breach of essential procedural requirements. The Council formed an intention to adopt the regulation before the opinion of the European Parliament, which was unfavourable, was known. Furthermore the Council observed neither the conciliation procedure demanded by Parliament pursuant to the Joint Declaration of 4 March 1975 (Official Journal C 89, p. 1) nor the procedure for consultation with the staff which the Council terminated before the opinion of the Parliament was given.

In its defence the *Council* rejects the various submissions made by the applicants.

Although, just like the staff representatives, the Council was not unaware of

the technical difficulties connected with the incorporation of the weightings into the scale of remuneration it cannot be accused of having intended the increases in pay. On the contrary the fact that the decision of 29 June 1976 contained a Section V headed "Review Clause" shows its intention to rectify any distortion. The rectification of the scales by Regulation No 160/80 was justified by the occurrence of distortions in remuneration of an unforseeable extent.

In the Council's view the submission of infringement of the principle of due care is directed against Regulation No 3177/76. Moreover that principle does not apply to the Council's power to make regulations but applies only at the subordinate level of the power to make administrative decisions.

As regards the compatibility of Regulation No 160/80 with the Staff Regulations the Council observes that the objective pursued by the incorporation of the weightings into the scale was to bring the weightings for Belgium and Luxembourg back to 100% and thus to give back to the weightings, which have been used for several years as a technical instrument for adjusting remuneration, their true function consistent with Article 64 of the Staff Regulations, namely to compensate for the differences in the cost of living in the various places of employment. If that aspect of the new method of adjustment thus falls clearly within the limits of Articles 64 and 65 of the Staff Regulations such is even more the case for the correction of distortions caused thereby, first in 1977 and 1978 by the indexation of tax grades for the future, and then in 1980 by the elimination of the repercussions of past distortions in the scales. In that respect the Council stated when adopting the decision of 29 June 1976 that it did not intend "to restrict its discretion beyond what was necessary in applying Article 65 of the Staff Regulations" and that it reserved its right to improve the system and "rectify any distortions". In that respect the applicants have not shown how the Council has gone back on its previous appraisal of policy.

Since the Council has always emphasized its intention to avoid distortions and to review Regulation No 3177/76 if it was the cause thereof, the submission of breach of the principle of the protection of legitimate expectation cannot be accepted either.

Moreover since Regulation No 160/80 excluded repayment of amounts already paid and a reduction in net remuneration, neither its object nor its effect was to call in question the applicants' vested rights as regards the past. In fact the simultaneous entry into force of Regulation No 161/80 even involved an increase in remuneration in the large majority of cases. Moreover the principle cited in no way excludes alteration in future of established positions especially if they are incompatible with the remuneration policy pursued. The sole objective of Regulation No 160/80 was to re-establish equality between the remuneration of officials for the future.

Finally there has been no infringement of essential procedural requirements. On the one hand the regulation was adopted after the Parliament had given its opinion and on the other the application does not specify the obligations which were disregarded in respect of the two other procedures mentioned.

In their reply the *applicants* set forth at greater length their arguments in respect of certain submissions.

In support of their claim that the Council could not but be aware of the distortions which Regulation No 3177/76 would cause they refer to two additional documents.

The statement of reasons contained in the proposal to amend Regulation No 3177/76 presented by the Commission to the Council on 18 July 1977 runs as follows:

"This manner of incorporating the weighting has in some cases involved considerable increments for officials in employment and also considerable reductions for quite a high number of those in receipt of pensions or the allowance payable on termination of employment under special measures adopted under Regulations Nos 259/68, 2530/72 and 1543/73.

The Working Party of National Experts (the Working Party on the Staff Regulations) considered the distortion giving rise to increments.

On the other hand it was not foreseen that the incorporation would involve losses in a certain number of cases."

In a memorandum of 8 November 1977 from the Directorate General for Personnel and Administration of the Commission containing the minutes of the conciliation meeting of 28 October 1977 on the 1977 report for the annual review of remuneration it is stated in relation to the method of incorporating weightings:

"Although the delegations from the Council were well aware of the fact that the operation could not be completely neutral they were surprised at the increases found in very many cases."

In the applicant's opinion however the Council could not have been mistaken about the quantitative effect of incorporating the weightings, since in 1972 a weighting of some 128 had similarly been incorporated and the extent of its effect had been very pronounced.

All that shows that when incorporating the weightings on the basis of the case of an "unmarried official not in receipt of the various allowances" the Council, with full knowledge of the position, adopted a salary policy favouring heads of family and those in receipt of the expatriation allowance. The statement of the reasons on which Regulation No 160/80 is based is therefore inaccurate in so far as the regulation was intended to reverse the effects of a method, deliberately selected, of incorporating the weightings.

In the context of the submissions relating to disregard of legitimate expectations and vested rights the applicants state that the transitional measures to exclude repayment of amounts actually received

in the past and to maintain the net remuneration of 30 June 1979 for the future are a matter of complete indifference to them. What is relevant is that remuneration has been frozen at the rate fixed on 30 June 1979 and will remain so until the remuneration calculated on the basis of the readjusted scales reaches the level of remuneration calculated on the basis of the scales in force on 30 June 1979. The transitional measures are incapable of protecting the applicants' legitimate expectation in the increase in the scales existing on 30 June 1979 on the basis of the rate of change determined according to the method of adjustment agreed in 1976.

In that connection the applicants observe that the review clause in the decision of 29 June 1976 was never conceived as a precaution against legitimate expectation of the maintenance of the effects of a decision once adopted. The clause allows the Council only to decide upon any improvements in the system established and to correct any distortions solely for the future. In that light the introduction in 1978 of a formula for adjusting the taxable portions for the future was indeed regarded as a definitive solution to the problem of distortions resulting from the incorporation of the weightings.

Finally, as regards the infringement of essential procedural requirements the applicants point out that it was on 17 January 1980, before the Parliament's opinion was known, that the Council informed the staff that it had decided to adjust Regulation No 160/80 and that is the date which must be taken into account in appraising the disregard by the Council of the procedure for consulting Parliament. In any event the fact that the regulation is dated 21 January, that is three days, including a Saturday and a Sunday, after the European Parliament gave its opinion, shows that the Council paid no attention to it. Moreover, in view of the undertakings in relation to the inter-institutional conciliation and negotiations with staff representatives it is not for the Council to determine unilaterally the course of those procedures.

In its rejoinder the *Council* refers to the opinion of Mr Advocate General Reischl in Case 64/80 *Giuffrida and Campogrande* v *Council* [1981] ECR at p. 710 to the effect that it has not been proved that the Council in adopting the measure of 29 June 1976 and the implementing regulation of 21 December 1976 was wholly aware of the full extent of the advantages which would arise. The first submission which was made on the supposition rejected in that case is therefore unfounded.

In relation to the protection of legitimate expectation and vested rights the Council adds that there might have been a claim for the method of adjustment of 29 June 1976 to be maintained if it had been adopted for a specific period without a review clause, as was the case with the method adopted in 1972. That however is not the case with a decision in which the possibility of review was made clear from the outset. Moreover Council Regulation No 160/80 did not amend the objectives of the method adopted on 29 June 1976 and did not reverse the system then established but was confined to rectifying for the future what had then been done.

As regards the infringement of essential procedural requirements the Council observes finally that Regulation No 160/80 is dated 21 January 1980 and is therefore subsequent to the Parliament's opinion even if drafts and intentions may have been put forward or declared before that date. The conciliation procedure with the Parliament to which the applicants refer is not mandatory and in any event applies only on the adoption of measures of a general scope concerned with fundamental choices of Community policy and having appreciable financial implications, conditions which are not satisfied by the contested measure. Finally the Council is in no way bound to initiate the procedure of discussions with staff representatives until after receipt of the Parliament's opinion.

IV — Oral procedure

The parties presented oral argument at the sitting on 15 September 1983.

The Advocate General delivered her opinion at the sitting on 10 November 1983.

Decision

1 By application lodged at the Court Registry on 25 November 1980 Ivar Andersen and 173 other officials of the Council of the European Communities brought an action under Article 179 of the EEC Treaty for the annulment of the decision of the Secretary General of the Council of 7 October 1980 rejecting the complaint which the applicants had jointly made against the decision of the Secretary General to calculate their salary statements for February 1980 and the statements of payment of the arrears on the basis of Council Regulation No 160/80 of 21 January 1980 amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (Official Journal L 20, p. 1).

2 The applicants have stated that the application, like the complaint, is directed against the salary statements in so far as they reflect the application of Regulation No 160/80, the validity of which they challenge by way of an objection of illegality.

3 The Council contests the admissibility of the application in so far as it is directed against the decision rejecting the complaint. The applicants have no

interest in taking action against that decision since its annulment would in no way affect the salary statements calculated pursuant to the contested regulation.

4 That objection must be dismissed. In staff cases where it is a rule that a complaint must necessarily be made before an action is brought the applicants' interest in seeking annulment of the decision rejecting their complaint at the same time as the measure adversely affecting them cannot be denied whatever the specific effect of the annulment of such a decision in a given case.

5 During the proceedings the Council objected to the production by the applicants of certain documents annexed to their reply relating to the negotiations between the Council and the staff representatives. They are, it stated, internal documents of the Council which may not be produced in court without the authorization of the Council pursuant to Article 18 of its Rules of Procedure of 24 July 1979 (Official Journal L 268, p. 1). In the absence of such authorization it is claimed that those documents should be removed from the file.

6 Since the Council has however not put forward any argument to justify the removal of the documents in question from the file by reason of their nature or content, its objection must be dismissed. It may however be noted that the documents do not add anything new to the other matters in the file to assist a decision on the substance of the action.

7 In those circumstances it is necessary to consider the substance of the application. The six submissions put forward by the applicants all challenge the validity of Regulation No 160/80.

8 The first submission alleges an inaccurate statement of reasons in the regulation. The recitals in the preamble thereto refer to the need to correct "unintended" increases in remuneration resulting from the incorporation of the weighting into the salary scales of officials, whereas in fact, it is claimed, the Council had been alerted to the risks inherent in the manner in which the incorporation was effected and the distortions which would result therefrom; in nevertheless proceeding therewith the Council thus acted with full knowledge of the situation.

9 The incorporation of the weighting into the basic salary scales laid down by the Staff Regulations was decided upon by the Council on 29 June 1976 as part of a new method of adjusting the remuneration of officials. The incorporation was effected by Council Regulation No 3177/76 of 21 December 1976 adjusting the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto (Official Journal L 359 p. 1). The regulation introduced new scales with effect from 1 January 1977 and reduced the weighting for Belgium and Luxembourg, which had been 157.8 from 1 July 1976, to 100.

10 The Council recognizes that it was not unaware of the technical difficulties and drawbacks which might be involved in the method adopted for the incorporation of the weighting into the scales of basic salary. For that reason the decision of 29 June 1976 laying down the method provided a review clause for determining possible subsequent improvements and "rectifying any distortions". However, the Council was unable to foresee the extent of the increases in remuneration which certain officials received. Regulation No 160/80 does not seek to alter a salary policy in favour of certain officials which was accepted on the adoption of the method of incorporation but its sole objective in accordance with the statement of reasons on which it was based is to rectify the distortions which occurred.

11 It must be observed that the recitals in the preamble to Regulation No 160/80 expressly mention "that unintended increases in remuneration resulted from the manner in which the 157.8% weighting was incorporated in the basic salary scales" and for that reason "this situation should be rectified by adjusting the basic salary scales". Thus the regulation itself states in the recitals thereto that it is intended to correct a situation which appeared following the reform of 1976 and in which increases in remuneration were revealed which did not relate to that reform.

12 Those considerations constitute a sufficient statement of reasons on which to base the operating of revising the salary scales. In particular it by no means appears from the decisions and regulations prior to Regulation No 160/80 that the Council, as part of the method for adjusting the remuneration adopted in 1976, intended to favour certain officials as against others rather than to arrange for the incorporation of the weighting into the scale in a manner which would necessitate subsequent correction of certain distortions the importance of which, moreover, it under-estimated at the time.

13 The second submission alleges infringement of rules of law inasmuch as the Council did not observe the criteria which it had itself laid down in adopting the decision of 1976 in relation to the method for adjusting remuneration. Whereas Regulation No 3177/76 constituted a correct application of the method of adjustment defined by that decision Regulation No 160/80 was intended to call that application in question, it is claimed, by readjusting the basic salaries and thus undertakings entered into in relation to the adjustment of remuneration.

14 According to the Council, the objective pursued by the incorporation of the weightings into the salary scales was to reduce the weighting for Belgium and Luxembourg to 100 in order to give the weightings back their true function in accordance with Article 64 of the Staff Regulations, namely to compensate for the difference in the cost of living in the various places of employment. Since that incorporation, by Regulation No 3177/76, was based on Articles 64 and 65 of the Staff Regulations the rectification of the distortions caused by the method of incorporation was effected pursuant to the same provisions by Regulation No 160/80 and in accordance with the review clause provided for that purpose.

15 The submission must be dismissed. On the one hand it overlooks the fact that the Council in the decision of 1976 had inserted a review clause relating in particular to distortions which might arise from the incorporation of the weighting into the scale. On the other hand the method adopted by the said decision was intended to implement Article 65 of the Staff Regulations;

although it might thus result in circumscribing the exercise by the Council of the discretion conferred upon it by Article 65 in adjusting remuneration, it does not affect Regulation No 160/80, which is a regulation amending the Staff Regulations pursuant to Article 24 of the Treaty Establishing a Single Council and a Single Commission of the European Communities and adopted according to the procedures and with the guarantees involved in such an amendment.

16 In their third submission the applicants maintain that the Council has infringed the principle of due care inasmuch as the distortions which it sought to remove by Regulation No 160/80 were the actual results of the implementation of Regulation No 3177/76. The Council could have avoided the occurrence of distortions if it had postponed the incorporation of the weighting into the salary scale as the staff representatives proposed in order to carry out the necessary calculations for a correct assessment of possible distortions.

17 In the Council's view that submission is in fact directed against Regulation No 3177/76.

18 It must be observed that the submission overlooks the fact that the objective of Regulation No 3177/76 differs from that of Regulation No 160/80. Whereas the former is intended to implement the Council decision of 29 June 1976 by incorporating the weighting into the scale subject to subsequent review, especially as regards possible distortion, the latter is precisely intended to put an end to such distortion. It was in fact the Council's task to remove as soon as possible distortion consisting in a favourable treatment of certain officials as against others as regards their pecuniary entitlements. The submission must therefore be rejected.

19 The fourth and fifth submissions complain that in adopting Regulation No 160/80 the Council infringed the principle of the protection of legitimate expectation and the vested rights of the applicants.

20 Those submissions are first of all based on the argument that Regulation No 160/80 substantially departs from the method which the Council had selected in June 1976. It nevertheless appears from the previous considerations that the regulation is outside the field of application of the method adopted for implementing Article 65 of the Staff Regulations.

21 The two submissions are also based on a slightly different argument, namely that the rights acquired by officials under Regulation No 3177/76 cannot be called in question by the Council save in the event of the adoption of a new method for adjusting remuneration.

22 In that respect it must be remembered that Regulation No 160/80, which has retroactive effect from 1 July 1979, provides that no part of the amounts paid between that date and the date of its entry into force, namely 27 January 1980, is to be required to be repaid. Furthermore, it provides transitional measures intended progressively to re-absorb the distortions without bringing about a reduction in the amounts actually paid. Moreover the effect of Council Regulation No 161/80 of 21 January 1980 effecting the annual review of remuneration under the revised scales (Official Journal L 20, p. 5) was to increase, also from 1 July 1979, the remuneration resulting from the application of Regulation No 160/80 in such a way that, apart from certain special cases, the reductions in basic salaries resulting from the revision of the scale were immediately re-absorbed.

23 In those circumstances there has been disregard neither of legitimate expectations nor of vested rights. The applicants' argument to the effect that to determine whether there has been such disregard it is necessary to ascertain, not whether or not there has been a reduction in the amounts actually paid but whether the rate of remuneration has been frozen for a certain period, must be rejected in circumstances such as the present, in which the regulation at issue is intended precisely to put an end to unjustified increases such as those resulting from the scale previously applicable.

24 The sixth submission alleges infringement of essential procedural requirements. In adopting Regulation No 160/80 of 21 January 1980, whereas the opinion of the European Parliament was not given until 18 January 1980, the Council, it is claimed, failed in its duty to take account of that opinion; in

doing so it also disregarded the rules governing negotiations between the Council and staff which assume that all the facts of the problem are known. Finally, the Council disregarded the Joint Declaration on inter-institutional conciliation since the Parliament had in vain requested that the conciliation procedure be initiated in the present case.

25 The complaint that the opinion of the European Parliament was not taken into account has no factual basis. It is apparent from the documents prepared by the secretariat of the Council and included in the file that after being informed that the opinion adopted by the Parliament at the sitting on 18 January 1980 did not depart from the draft opinion of which it had cognizance the Permanent Representatives Committee decided on 18 January 1980 to resume consideration of the problem of staff remuneration and to recommend to the Council the adoption of two regulations and certain declarations to be included in the minutes of the Council sitting. It thus appears that the opinion of the Parliament was properly taken into account by the Council.

26 As regards inter-institutional conciliation, the applicants have referred to the Joint Declaration of the European Parliament, the Council and the Commission of 4 March 1975 (Official Journal C 89, p. 1). That declaration provides that the conciliation procedure which it lays down may be followed for Community measures of general application which have appreciable financial implications, and of which the adoption is not required by virtue of existing measures.

27 The Council has claimed that the conditions for applying that procedure were not satisfied in this case since Regulation No 160/80 is not a measure with appreciable financial implications. The applicants have not challenged that contention. In those circumstances the fact that the Parliament had requested the initiation of the conciliation procedure is not capable of affecting the legality of the regulation at issue. That complaint also must therefore be rejected.

28 It follows from all the foregoing that the action must be dismissed in its entirety.

Costs

29 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of the Rules of Procedure in proceedings brought by servants of the Communities the institutions are to bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

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

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 19 January 1984.

J. A. Pompe
Deputy Registrar

T. Koopmans
President of the First Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS

(see Case 211/80, p. 147)