3. Orders the Commission to pay the costs.

Galmot Everling Kakouris

Delivered in open court in Luxembourg on 5 July 1984.

J. A. Pompe
Deputy Registrar

Y. Galmot
President of the Third Chamber

OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 30 MAY 1984 [1]

Mr President,
Members of the Court,

1. The Court is called upon to interpret the concept of "basic salary", used in Article 72 (3) of the Staff Regulations and in Article 8 (2) of the Rules on Sickness Insurance for Officials of the European Communities. The problem arises with regard to the calculation of the "special reimbursement" of medical expenditure provided for in those provisions. The question which must be decided is essentially whether, in calculating the amount of the basic salary, account must be taken of the effect of weighting on the amounts set out in the table contained in Article 66 of the Staff Regulations.

It should be noted at once that, according to Article 72, the employees of the Community, their families and other dependants are insured against sickness for up to 80% of the expenditure incurred and up to 100% in cases of particularly serious illness. In practice, however, reimbursement is made in accordance with certain upper limits so that certain benefits awarded by the sickness insurance scheme amount to less than 80% of the actual cost of treatment. To prevent the portion borne by the employee from placing too heavy a burden on his income, the Staff Regulations provide for the possibility of his obtaining a "special reimbursement". According to Article 72 (3), in fact: "Where the total expenditure not

1 — Translated from the Italian.

reimbursed for any period of 12 months exceeds half the official's basic monthly salary or pension special reimbursement shall be allowed by the appointing authority, account being taken of the family circumstances of the person concerned."

Article 8 (2) of the Rules on Sickness Insurance provides: "The non-reimbursed portion of the actual expenses which is in excess of half the average basic monthly salary ... shall be reimbursed at the following rates:

90% in the case of a member by whose insurance no other person is covered;

100% in other cases."

In this case, Marinus C. Ooms, an official of the Commission working at Ispra, applied on 27 May 1982 for a special reimbursement and asked that it be calculated on the basis of his basic salary adjusted by the weighting applied to employees working at Ispra. By a letter of 11 June 1982, however, the office responsible for settling claims refused to take account of that weighting because the provisions regarding special reimbursement mentioned only the basic salary and it was therefore on that basis that the medical expenditure was reimbursed (21. 7. 1982). At that point, having worked out that this method of calculation caused him to lose the equivalent of DM 450, Mr Ooms submitted a complaint through official channels pursuant to Article 90 (2) of the Staff Regulations (21. 9. 1982).

On 1 December 1982, the Management Committee for the joint sickness insurance scheme, whose opinion on the question had been sought by the Commission, approved the decision of the office responsible for settling claims. On the basis of that opinion, the Commission rejected the complaint (9. 3. 1983). On 14 June 1983, Mr Ooms brought an action before the Court seeking:

(a) the annulment of the decision, endorsed by the Commission, by which the office responsible for settling claims at Ispra had made the special reimbursement of medical expenditure without taking account of the weighting;

(b) a declaration that the basic salary referred to in Article 72 (3) of the Staff Regulations and Article 8 (2) of the Rules on Sickness Insurance, is that referred to in the table contained in Article 66 of the Staff Regulations, as adjusted by the weighting provided for in Article 64 of the Staff Regulations;

(c) an order to the Commission to adjust the amount of the reimbursement and pay the applicant the amount due on the basis of the new calculation.

The applicant makes two submissions in support of those claims; infringement of Article 72 (3) of the Staff Regulations and Article 8 (2) of the Rules on Sickness Insurance and breach of the principle of equal treatment.

2. The Staff Regulations deal with basic salary in Article 62, which is the first article in Title V, Chapter 1, Section 1, but which states merely that basic salary is one of the three components of remuneration (the others being family allowances and other allowances). A table of basic monthly salaries for each grade and step is to be found in Article 66.

Weighting is mentioned in the first and second paragraph of Article 64 and in Article 65 (2). The first paragraph of Article 64 provides that: "An official's remuneration expressed in Belgian francs shall ... be weighted at a rate above,

below or equal to 100%, depending on living conditions in the various places of employment", and the last sentence of the second paragraph provides that: "The weighting applicable to the remuneration of officials employed at the provisional seats of the Communities shall be equal to 100% as at 1 January 1962." Article 65 provides for an annual review of remuneration by the Council and for the possibility of adjustment. Paragraph (2) provides that: "In the event of a substantial change in the cost of living, the Council shall decide, within two months, what adjustments should be made to the weightings and if appropriate to apply them retrospectively."

There is a clear difference between the role of the weightings provided for in Article 64 and that assigned to them in Article 65. Article 64 is intended to guarantee for all officials, regardless of the place in which they are employed, remuneration providing the same purchasing power. To that end, before the remuneration expressed in Belgian francs is converted into the currency of the place of employment other than Belgium or Luxembourg, a weighting is applied to it which takes account of the living conditions in the various places of employment. The weighting therefore performs a purely equalizing function and is completely independent of variations in salary. That is true to such an extent that the remuneration of officials employed at the provisional seats (which serve as points of reference) may remain unchanged whilst fluctuations in the cost of living on other countries involve modifications in the "geographical" weightings.

On the other hand, any use that is made of the weightings referred to in Article 65 affects primarily the rate fixed for the provisional seats of the institutions. In that case, in fact, the weightings constitute one of the two instruments which the Council may use to adjust the remuneration of all the officials and employees of the Community (the other instrument is a modification of the figures set out in the table contained in Article 66 and the Council has done this annually since 1. 1. 1977). The distinction between geographical weighting and that used to carry out a general adjustment of remuneration has been recognized by the Court in the judgment of 13 July 1978 (Case 114/77 *Jacquemart* v *Commission* [1978] ECR 1697), and in that of 19 November 1981 (Case 194/80 *Benassi* v *Commission* [1981] ECR 2815).

In contrast to those cases, however, the weightings at issue here are those referred to in Article 64. To understand that, it is sufficient to remember that the person who is seeking to have the weighting applied is an official working at Ispra, that is, in a place other than the provisional seats of the Community.

3. Let us now turn to the essential point of the case: is the concept of basis salary to be defined as including or excluding the weightings provided for in Article 64?

Regard being had to the fact that the function of this mechanism is, as the Court itself has said, "to ensure that the remuneration of all officials has the same purchasing power, whatever their place of employment" (see *Benassi* judgment, paragraph 5), it does not seem reasonable to treat in isolation the figures set out in the table to be found in Article 66, independently of the effect which the geographical weightings have

on them. Separated from the latter, in fact, those figures reflect only the purchasing power of the Belgian franc in Belgium and Luxembourg. Following upon the reform of remuneration carried out at the end of 1976 (Council Regulation No 3177/76 of 21. 12. 1976, Official Journal L 359, p. 1), the weightings provided for in Article 64 have been incorporated into the table of basic salaries. The latter are thus related to the cost of living in the places in which are fixed the provisional seats of the Community. Geographical weighting, at a rate above or below 100%, is still used in regard to the other seats so as to compensate for the differences in the cost of living.

In accordance with the principle of equal treatment therefore, I consider that, as regards staff employed in places other than Belgium and Luxembourg, the basic salary referred to in Article 72 (3) of the Staff Regulations and Article 8 (2) of the Rules on Sickness Insurance is to be defined as meaning the figures contained in Article 66 as modified by the geographical weighting.

4. The Commission, in its defence, opposes that argument primarily by a literal interpretation of the said provisions. It contends that Article 72 (3) of the Staff Regulations and Article 8 (2) of the Rules mention solely basic salary. The amount of the latter is independent of the weighting provided for in Article 64 which applies to officials' "remuneration", that is, to the sum of the basic salary, family allowances and other allowances.

I would point out however that such an interpretation has already been rejected by the Court in the aforementioned *Jacquemart* judgment. The problem in that case was to define the concept of basic salary for the purpose of calculating the severance grant provided for in Article 12 of Annex VIII and the Commission contended that that concept referred solely to the amounts indicated in the table in Article 66. The Court considered however that "the basic salary as referred to in Article 66 ... comprises the amounts included in the table contained in that article, subject, where appropriate, to the weighting adopted for the provisional seats ..." (paragraph 22).

It is also not possible to argue that the weighting referred to in the *Jacquemart* judgment is not that provided for in Article 64 but rather that referred to in Article 65 (1). As I have already said, in fact, the Court did not deal with geographical weighting in the *Jacquemart* and the *Benassi* cases because the two applicants were employed in the provisional seats of the Community, with regard to which the weightings were incorporated in the salary.

5. The Commission objects also that the expression "basic salary" may have different meanings according to the provision in which it is found. In particular, the defendant institution contends, with a view to excluding special reimbursements from the scope of geographical weighting, that the purpose of the sickness insurance scheme is merely to reimburse expenditure actually incurred. It is not intended to guarantee parity of the purchasing power of remuneration.

In my opinion, at least in a scheme such as ours, that argument also does not stand up. That is clearly shown by the

special reimbursement scheme itself, which is clearly designed to protect officials' incomes, that is, it is designed to avoid a situation in which employees' remuneration is reduced in real terms as a result of medical expenditure. It is for that reason that use should be made of a concept of basic salary which is not fictitious and is therefore related to the cost of living in the place of employment (the Commission recognizes, by the way, that the portion of medical expenditure to be paid by the insured represents a greater proportion of the remuneration of officials working in Member States in which the weighting is below that of Belgium and Luxembourg: see defence, p. 12). That reason is corroborated by the principle of logical consistency which requires that an expression used in several provisions from the same source be interpreted in the same way.

6. For the reasons set out above, I propose that the Court grant the relief sought by Marinus C. Ooms against the Commission of the European Communities by application of 14 June 1983 and therefore:

(a) declare that the applicant is entitled to receive from the defendant institution a special reimbursement in accordance with Article 72 (3) of the Staff Regulations of Officials of the European Communities and Article 8 (2) of the Rules on Sickness Insurance for Officials of the European Communities, calculated on the basis of the basic salary subject to geographical weighting;

(b) order the institution to pay the difference owing on the basis of that method of calculation.

The Commission, having failed in its submission, should be ordered to pay the costs.