OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 26 JUNE 1975 [1]

Mr President,
Members of the Court,

The staff of the Joint Nuclear Research Centre, which carries out its work at four different establishments, may be divided for the most part into three different categories:

— officials, who have permanent posts to which they are appointed by a unilateral decision of the institution and whose position is governed by rules having the force of law; their rights and obligations are set out in the Staff Regulations and their remuneration is determined in accordance with Articles 62 to 70 thereof.

— establishment staff, who also have permanent posts included in the budget of the Joint Nuclear Research Centre but whose position is governed by contract. Although the provisions of Articles 11 to 26 of the Staff Regulations concerning the rights and obligations of officials are applicable to them by analogy, the conditions relating to their remuneration are determined by the Council, for each place of employment, taking into account local practice, as is provided by Article 94 of the Conditions of Employment of Other Servants of the Communities.

— finally local staff, whose posts are not set out in the list of staff in the budget and whose remuneration is made from general credits contained in the budget. The conditions relating to their remuneration are determined in accordance with Article 79 of the Conditions of Employment of Other Servants of the Communities by each institution in accordance with current rules and practice in the place where are to perform their duties.

Thus the remuneration of the officials working in the Nuclear Research Centres is determined — apart from the application of a weighting factor which varies according to the country to which they are posted — in accordance with the general scale of payment set out in the Staff Regulations, whilst the remuneration of establishment staff and of local staff is determined solely according to the particular conditions of the place of their posting.

In practice, for three of the Euratom Centres, those of Karlsruhe in the Federal Republic of Germany, of Mol in Belgium and of Petten in the Netherlands, all States where there are national nuclear research centres, the Council took the remuneration scales applicable to officials employed in those national centres as the basis for fixing their remuneration.

The position of the officials employed at the centre at Ispra is exceptional. As there is in fact no Italian research centre, in order to determine the basis of the remuneration of the staff, the Council referred to the collective agreement of the 'Metalmeccanici' which is applicable in the area, as provided by Regulation No 9 of the Council of 18 December 1963.

Under Article 3 of that regulation the monthly basic salary for these officials was determined according to a scale annexed to the regulation. Article 17 provides 'In the case of an increase in salaries for the activities covered by the Italian collective agreement Metalmeccanici, a revision of the scale shall be made . . .'.

1 — Translated from the French.

Naturally after a few years distortion occurred between the financial position of the officials and that of the establishment and local staff. This distortion was all the less acceptable because the same tasks were performed equally by people belonging to these different categories, leading to disparity of treatment.

Moreover, the classification of such agents and in particular that of the local staff had not always been made according to objective criteria and this gave rise to additional discrimination.

Therefore, in the absence of a general re-organization based on making all the schemes applicable to the establishment staff subject to Community provisions as the Commission unsuccessfully proposed in 1971, the Council tried by the application of practical measures to correct these examples of discrimination where they appeared most obvious, that is, at Ispra. On 20 July 1972 it made available to the Commission a budget allocation of 600 000 units of account in order to enable it to improve the position of local staff at this centre without thereby altering their legal status. In addition it gave the Commission a mandate to propose, within the limit of the credits available, improvements in the financial position of certain establishment staff, on condition that serious divergences of position were removed and that there were no repercussions in other establishments of the Joint Research Centre.

The Committee of Permanent Representatives examined the proposals of the Commission on 31 January 1973 and the Council adopted without discussion on the following 5 February the following division between local and establishment staff at Ispra of the amount of 600 000 units of account to be paid as a differential allowance:

1. 150 000 units of account for a certain number of local staff and 20 000 units of account for certain establishment staff who were placed in grades which did not correspond to their duties;
2. 42 000 units of account for both local and establishment staff performing secretarial tasks;
3. finally 388 000 units of account to finance an average increase of 7 to 8 % in the remuneration of all the local and establishment staff of the research centre at Ispra.

When they were informed of the grant of this financial increase, 59 members of the establishment staff of the research centre at Karlsruhe brought, on 3 April 1973, an application to the Commission that the increase in wages thus granted should be extended to all the establishment staff of the other research centres.

Their application was rejected in a decision of 8 August of that year, whereupon the applicants, pursuant to Article 90 (2) of the Staff Regulations, lodged a complaint which was rejected by the Commission on 1 April 1974.

The application which has been made to the Court is for the annulment of that decision and the applicants further ask that the Commission should be ordered to pay them an allowance equal to the increase in remuneration granted to the establishment staff at Ispra.

It would be possible to challenge the admissibility of the application by pointing out that it is directed against a mere preparatory measure and not an executory decision.

In fact the Commission has no power to fix the remuneration of the establishment staff itself or to determine the amount of the increase. By Article 94 of the Conditions of Employment of Other Servants of the Communities only the Council has this power. The Commission's rôle is merely to make proposals. In this particular case it was on the invitation of the Council and on the basis of its first deliberations of 20

July 1972 that the Commission was, as we know, given the responsibility of making proposals for the distribution of the credit allocation of 600 000 units of account provided for in the budget.

The decisive measure is to be found in the decision of 5 February 1973, whereby on the advice of the Committee of Permanent Representatives the Council approved the proposal of the Commission.

It must also be observed that the decision in principle thus taken was only ordered in fact and made obligatory and directly applicable later by Regulations Nos 1618 and 3096 of the Council of 27 June 1974 and 3 December 1974 respectively.

It might therefore be maintained that the decision of 1973 was in itself only a preparatory act which was part of the internal decision procedure of the Council and that it is only the regulations which give rise to objections.

However neither of the defendants expressly raises this objection of inadmissibility. It therefore appears preferable to examine the substance of the case.

We should first of all dispose of the arguments presented in the initial request of the applicants which maintained that, in proposing an increase in remuneration for the benefit of all the establishment staff at Ispra, the Commission had exceeded the powers granted to it by the Council by its decision of 20 January 1972 which was merely to improve the position of certain staff who were suffering from serious disparity of treatment. Indeed, it is clear that the Council changed its position and went back on its first decision making a new decision which was substituted for the former. It is against this decision that the application is in fact directed and the only question is whether the Council in doing this was acting in conformity with the provisions of Article 94 of the Conditions of Employment of Other Servants of the Communities which state that it should fix the remuneration of establishment staff 'at each place of employment' and 'taking into account local practice'.

The applicants maintain that the latter expression refers solely to changes in the collective agreements or the public rules which are in force in the area and that only an alteration of one or other of these can justify a change in the conditions relating to the remuneration of establishment staff.

However, this view appears to me to rest on too narrow an interpretation of the reference to local practice and also ignores the principle whereby the Council has the power to determine the remuneration of establishment staff at each place of employment.

While it is true that the financial position of the establishment staff at Ispra is linked to the development of salaries provided by the collective agreement of the *Metalmeccanici*, no provision of Article 94 of the Conditions of Employment of Other Servants of the Communities prevents the Council, apart from mere reference to this agreement, from taking into account all the local circumstances which may justify such a increase in order to improve the remuneration of such staff. In particular there is nothing to prevent it from taking into account the general increase in salaries and the cost of living in Italy.

Such a decision does not involve illegal discrimination against staff of other Community research centres in that it is based on the consideration of local factors peculiar to the place of employment in question.

Whilst the principle of equality of treatment is indeed 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. The Court has stated this on various occasions and with particular regard to the Staff Regulations in the judgments of 12 July 1969 *(Pasetti* v *Commission,* Case 20/68, [1969] ECR 245) and of 16 June 1971 (Joined Cases 63 to 75/70, Rec. 1971, p. 555).

From the rule provided by Article 94 of the Conditions of Employment of Other Servants of the Communities whereby the remuneration of establishment staff is to be fixed 'at each place of employment' it is of course clear that servants employed in different research centres are not in a comparable position, since their financial position is fixed according to special criteria by reference to local practice.

Therefore, for each of these centres, the competent authority must make an appraisal of the circumstances which may justify an alteration in the remuneration of these servants.

Not only is the competent authority not obliged to give to the whole of this category of staff employed at each of the research centres identical or parallel increases in salaries, but if it did so, it would be acting illegally in failing to rely on grounds drawn from the particular circumstances of each place of employment.

The establishment staff of the centre at Karlsruhe therefore have no grounds for claiming the benefit of measures provided for their comparable colleagues at Ispra on the basis of conditions which are peculiar to the development of salaries and living conditions in Italy.

For these reasons I am of the opinion that the application should be dismissed and that, in accordance with the provisions of Article 70 of the Rules of Procedure, the parties should bear their own costs.