OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 29 JUNE 1978

My Lords,

The applicant in this case, Mr Claude Jacquemart, is a former official of the Commission. He joined its service at grade A 3 in November 1966 and was promoted to grade A 2 in March 1972. By letter dated 25 March 1976 (Annex 1 to the Defence) he asked the Commission, pursuant to Article 48 of the Staff Regulations, to accept his resignation as from 1 September 1976. It appears that he did so because he wished, for personal reasons, to return to the civil service of his own country, the French Republic. He is now at the Direction Générale des Douanes in Paris.

Article 48 provides, so far as material:

"An official who wishes to resign shall state unequivocally in writing his intention to leave the service of the institution definitively.

The *ppointing authority shall take its decision confirming the resignation within one month of receiving the letter of resignation . . .

Resignation shall take effect on the date specified by the appointing authority; that date shall not be more than three months after the date proposed by the official in his letter of resignation . . ."

By decision dated 29 April 1976 the Commission accepted Mr Jacquemart's resignation as from 1 September 1976, the date he had proposed (Annex 2 to the Defence). He was informed of the decision by a letter dated 25 May 1976 (Annex 3 to the Defence).

There is a pension scheme for Community officials, the provisions of which are contained in Annex VIII to the Staff Regulations. Article 12 of that Annex provides for certain payments to be made to an official in the position in which Mr Jacquemart found himself, i.e. an official aged less than 60, whose service terminates otherwise than by reason of death or invalidity, who is not entitled to a retirement pension, and who cannot benefit from any arrangement for the transfer of pension rights. The payments for which Article 12 provides include, by virtue of paragraph (c) of that Article, in the case of an official who "has not been removed from his post", "a severance grant proportionate to his actual length of service since the Staff Regulations entered into force, calculated on the basis of one and a half months for each year of service of the last basic salary before deductions . . ."

At the time when Mr Jacquemart's resignation was tendered and accepted, the basic salaries of Community officials were those fixed by Article 66 of the Staff Regulations as last amended by Council Regulation (EEC, Euratom, ECSC) No 3191/74 of 17 December 1974. At the same time there were in force "weightings" fixed or purportedly fixed by the Council pursuant to Article 65 (2) of those Regulations. The weighting for Belgium, where Mr Jacquemart served, was 148.7% — see Council Regulation (Euratom, ECSC, EEC) No 2998/75 of 17 November 1975. That situation was in accord with the well-known "system" adopted by the Council on 21 March 1972 for an experimental period of three years, the system that fell to be considered by the Court in Case 81/72 *Commission* v *Council* [1973] 1 ECR 575 and again in Case 70/74 *Same* v *Same* [1975] 1 ECR 795. Under that system, adjustments in the emoluments of Community officials to take account of general increases in the level of real incomes in the Community (and in particular of the

purchasing power of civil servants in the Member States) were effected by means of improvements of the basic salaries, whilst adjustments to take account of changes in the cost of living were effected by means of alterations of the weightings.

On 29 June 1976, following a review of the working of that experimental system, the Council adopted a new method of adjusting the emoluments of officials. Details of that method were published in a special "inter-institutional" issue of the Commission's "Staff Courier" (Annex 7 to the Application). So far as relevant for present purposes, the essentials of the new method were that each annual review prescribed by Article 65 (1) of the Staff Regulations should result in a Council decision modifying the basic salaries laid down in Article 66 in such a way that the weighting for Belgium and Luxembourg should be 100% and that the weightings for other countries should be such as to reflect the ratio between the cost-of-living indices in those countries and the cost-of-living index in Brussels — see paragraph II (6) (c) of the publication in question. Paragraph II (6) (d) provided that the Council decision should "take effect on 1 July of the year in which the end of the reference period used for the pay review falls". Paragraphs III and IV were in the following terms:

"III. Interim adjustment of remuneration (Article 65 (2) of the Staff Regulations)

Should the Council, acting on a proposal from the Commission based on Article 65 (2) of the Staff Regulations, decide to adjust pay in view of a substantial rise in the cost of living in one or more countries, this shall be done by adjusting the relevant weighting(s). Allowance will be made for such adjustments when a decision is reached at the following annual review.

IV. Transitional and final provisions

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."

On the same day, 29 June 1976, the Council adopted Regulation (ECSC, EEC, Euratom) No 1592/76, adjusting the weightings with effect from 1 January 1976. The weighting for Belgium and Luxembourg was thereby increased, retrospectively, to 157.8%.

On 21 December 1976, following the annual review based on the reference period 1 July 1975 to 30 June 1976, the Council adopted Regulation (ECSC, EEC, Euratom) No 3177/76 "adjusting the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto". Contrary to what one might have expected from paragraph IV of the publication setting out the "new method", Regulation No 3177/76 had the effect of incorporating the weighting for Belgium and Luxembourg into the salary scales, not as from 1 July 1976, but only as from 1 January 1977. For the period 1 July 1976 to 31 December 1976 new salary scales were introduced but the weightings for Belgium and Luxembourg remained at 157.8%. Those salary scales were superseded, as from 1 January 1977, by new ones again which did incorporate the weighting for Belgium and Luxembourg, that weighting being then, accordingly, reduced to 100%. This of course resulted in a dramatic increase in basic salaries. Thus the basic monthly salary of an official of grade A 2, Step 3, such as Mr Jacquemart was, rose from Bfrs 107 412 to Bfrs 182 735.

On 13 January 1977 Mr Jacquemart wrote to the Commission pointing out that the outcome would be from his point of view inequitable if his severance grant were calculated on the basis of his last basic salary without any weighting being applied. Nonetheless the Commission's final computation of his severance grant, contained in a document dated 27 January 1977 (Annex 6 to the Application), was made on the basis of his last basic salary of Bfrs 107 412 a month, without weighting. By letter dated 14 February 1977 the Member of the Commission responsible for personnel matters wrote to Mr Jacquemart saying that, since the Staff Regulations did not provide for the application of any weighting in the calculation of a severance grant, the Commission's computation must stand.

On 22 February 1977 Mr Jacquemart submitted a formal complaint to the Commission under Article 90 (2) of the Staff Regulations against the manner in which his severance grant had been computed (Annex 2 to the Application).

On 25 February 1977 he wrote to the President of the Council asking that the Council should either amend Regulation No 3177/76 or indicate to the Commission that, having regard to the "decision" of 29 June 1976, Article 12 (c) of Annex VIII to the Staff Regulations should be interpreted as entailing, for the period 1 July 1976 to 1 January 1977, the application of the weighting of 157.8% to the relevant basic salary for the purpose of calculating a severance grant (Annex 3 to the Application). To this letter the Secretary General of the Council replied on 15 March 1977 to the effect, putting it shortly, that the matter was, in the circumstances, one entirely for the Commission (Annex 4 to the Application).

On 12 July 1977 (that is, after the end of the four-month period prescribed by Article 90 (2) of the Staff Regulations) the Commission sent to Mr Jacquemart a reasoned reply to his complaint, rejecting it (Annex 1 to the Application).

On 22 September 1977 Mr Jacquemart commenced the present action against both the Commission and (so far as might be necessary) the Council. By Order dated 18 January 1978 the Court declared the action inadmissible in so far as it was brought against the Council. It continues against the Commission alone.

The substantive relief claimed by Mr Jacquemart is:

(a) a declaration that he is entitled to the difference between the severance grant paid to him and one calculated so as to take into account the weighting of 157.8%, by applying that weighting either to his last basic salary or to the severance grant itself;

(b) a declaration that the amount to be determined by the appointing authority (i.e. the Commission) in accordance with the first declaration should carry default interest at the rate of 6% per annum from 21 January 1977 (the date of the disputed computation); and

(c) an order that the case be remitted to the appointing authority to give effect to those declarations.

In support of his claim Mr Jacquemart puts forward two main contentions.

First he contends that he is entitled to rely on the Council's decision of 29 June 1976, either as conferring rights directly upon him or as rendering Regulation No 3177/76 unlawful in so far as its provisions are inconsistent with the terms of that decision. The authority on which this contention is founded is the Judgment of the Court in Case 81/72 (already cited).

Alternatively Mr Jacquemart contends that, independently of the decision of 29 June 1976, the Staff Regulations should be interpreted as requiring that, in a case such as his, account should be taken of the weighting for Belgium and Luxembourg in computing the severance grant.

It appears to me that, having regard to the course the argument took, there arises at the outset a fundamental question of interpretation of Articles 64 and 65 of the Staff Regulations. That question is whether those Articles confer on the Council, as the Commission submits, a complete discretion to allow for changes in the cost of living in Belgium and Luxembourg either by altering the basic salaries or by altering the weighting for those countries or, as Mr Jacquemart submits, bind the Council annually to adjust the basic salaries in such a way as to leave the weighting for Belgium and Luxembourg at 100%, that weighting being permitted to differ from 100% only, pursuant to Article 65 (2), for periods of less than a year falling between two annual reviews. The questions is, in other words, whether the experimental system instituted by the Council's decision of 21 March 1972 and the new method instituted by its decision of 29 June 1976 were equally lawful or whether, on the contrary, the latter decision constituted a return to compliance with the law.

The gist of Mr Jacquemart's argument is that the third paragraph of Article 62 of the Staff Regulations contains a definition of the term "remuneration" for the purposes of those Regulations. That paragraph provides:

"Remuneration shall comprise basic salary, family allowances and other allowances."

Thus, says Mr Jacquemart, "remuneration" *stricto sensu* does not include weightings, which are an additional element in an official's emoluments introduced by Article 64. It follows that Article 65 (1), which requires the Council each year to "review the remunerations of the officials and other servants of the Communities", relates only to basic salaries, family allowances and other allowances. The powers of the Council to adjust weightings are separate, and are to be found in Article 64 itself and in Article 65 (2).

The argument is attractive, not least because it would make the provisions of Article 12 (c) of Annex VIII, and also the similar provisions of Article 73 (2) of the Staff Regulations concerning death and invalidity benefits, sensible in their operation. An official's severance grant, or death or disability benefit, would be related to his last basic salary, which would be a salary reflecting the cost of living in Belgium and Luxembourg. A weighting reflecting the cost of living in the country where he had served would be inappropriate in the case of an official who had, *ex hypothesi*, left the Communities' service. Community pensions are (by virtue of Article 82 (1) of the Staff Regulations) weighted not for the country where the official concerned served but for the country where he, or such of his dependants as is entitled to the pension, declares his home to be. That is appropriate in the case of a continuing benefit such as a pension which is subject to indexation. But it would not be appropriate in the case of a once-for-all payment such as a severance grant, a death benefit or an invalidity benefit. The measure of such a benefit must necessarily be the same for all cases and to relate it to the cost of living in Belgium and Luxembourg, where the great majority of Community officials serve, would be reasonable enough. It may be observed that Mr Jacquemart does not ask that his severance grant be weighted for France, to which he returned when he left the Commission.

I have however come to the conclusion that to accede to Mr Jacquemart's argument would involve doing undue violence to the language of the Staff Regulations and in particular to that of Articles 62 to 70 thereof.

In the first place the Section consisting of those Articles is headed "Remuneration", which suggests that that term is a compendious one, including everything covered by those Articles.

Secondly, the third paragraph of Article 62 looks like an introductory clause rather than a definition clause: it says "Remuneration shall comprise basic salary, family allowances and other allowances" not "For the purposes of these Regulations 'remuneration' shall mean basic salary, etc.".

Thirdly, there are in Articles 62 to 70, a number of references to "remuneration" in contexts making it highly improbable that it was intended to mean only remuneration before the application of any weighting. Thus the second paragraph of Article 62 provides that an official "may not waive his entitlement to remuneration"; the second paragraph of Article 63 provides that an official's remuneration "shall be paid in the currency of the country in which the official performs his duties"; and the first paragraph of Article 70 provides that, in the event of an official's death, "the surviving spouse or dependent children shall receive the deceased's full remuneration until the end of the third month in which the death occurred".

Fourthly, the first paragraph of Article 64, where weightings are first mentioned, reads:

"An official's remuneration expressed in Belgian francs shall, after the compulsory deductions set out in these Staff Regulations or in any implementing regulations have been made, be weighted at a rate above, below or equal to 100%, depending on living conditions in the various places of employment."

That, apart from referring to Belgian francs as the currency of account (in which respect it merely reflects the first paragraph of Article 63, which provides that "An official's remuneration shall be expressed in Belgian francs"), does not accord to Belgium and Luxembourg any special position among "the various places of employment". Moreover, by providing that remuneration may be "weighted at a rate above, below or equal to 100%", it indicates that weighting, far from being, as Mr Jacquemart's argument imports, an additional element in an official's emoluments over and above his "remuneration", is in reality no more than a factor to be applied in the final computation of his remuneration.

Lastly, the second paragraph of Article 64, after conferring on the Council a power to "adopt" weightings that is not limited in any respect relevant to the present question, has a second sentence that says:

"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."

It does not go on to refer, as one would have expected it to do if Mr Jacquemart's argument had been right, to any obligation of the Council to return, annually or ever, to that starting point.

I therefore think that the Commission was right in saying that the Council was not subject to any such obligation.

The fact remains that, if that be so, Article 12 (c) is capable of operating in a highly arbitrary manner. (I leave aside now Article 73 (2), which is not directly in point and on which we had the benefit of only cursory argument). As this case illustrates, the amount of an official's severance grant may be very different according to whether his service terminates during a period for which the Council has opted to adjust

the remuneration of officials by altering the basic salaries or by altering the weightings. An official otherwise in every respect in the same position as Mr Jacquemart, but whose resignation had taken effect on or after 1 January 1977, would have had his severance grant computed on a far more generous basis than Article 12 (c), in the circumstances prevailing on 1 September 1976, accorded to Mr Jacquemart. It is of course in the nature of legislation that improves the lot of this or that category of persons that it favours those whose rights fall to be determined after it has been passed as compared with those whose rights fall to be determined earlier. However, the bias shown up in this case is not the result merely of amending legislation but the result of a flaw in the system itself.

The existence of that flaw was recognized by the Commission as long ago as 1969. On 28 March of that year the Commission made to the Council a proposal for a regulation amending the Staff Regulations, whereby, among other things, a paragraph would have been added to Article 12 of Annex VIII providing that there should be applied to severance grants the weighting "for Brussels" (see Official Journal C 83/4, 17 of 28 June 1969). That particular suggestion was not however adopted by the Council.

The question is whether it was within the powers of the Council to legislate so as to create that kind of unfairness.

The power for the Council to lay down the Staff Regulations is contained in Article 24 (1) of the Merger Treaty. That power must, in my opinion, be subject to the limits imposed by the general principles of Community law, including what is sometimes called "the principle of equality" or of "equal treatment". That that principle applies in staff matters as much as in other spheres is established — see for instance Case 48/70 *Bernardi* v *European Parliament* [1971] 1 ECR 175. In my opinion, the Staff Regulations, in so far as they give rise to the unfairness I have described, are incompatible with that principle.

That is enough to lead to the conclusion that Mr Jacquemart is entitled to succeed in this action. That being so, I do not find it necessary to express any decided view on his first contention, that resting upon the Council's decision of 29 June 1976 and the Court's Judgment in Case 81/72. I confess, however, that I would not have thought it an easy contention to sustain. The principle on which the Judgment of the Court in Case 81/72 was founded was the principle that the law protects "legitimate confidence" or "expectations" induced by the conduct of a public authority. It must, it seems to me, be inherent in that principle that a person cannot invoke it who has not acted in reliance on any expectation induced by such conduct. Here, Mr Jacquemart tendered his resignation in March 1976, long before the decision of the Council was made, let alone published. Nor was there any suggestion that he had subsequently acted in any way in reliance on that decision. Moreover, as the Commission pointed out, it is not altogether clear that the Council intended, by that decision, to bind itself to applying the "new method" as from 1 July 1976.

So I turn to the question whether Mr Jacquemart should be awarded any and, if so, what interest. His claim is, as I have mentioned, for default interest from the date of the Commission's "final" computation of his severance grant, i.e. 21 January 1977.

As to that Your Lordships have, by virtue of Article 91 of the Staff Regulations, "unlimited jurisdiction". That does not mean, of course, that Your Lordships have arbitrary powers. It means that Your Lordships have a discretion that is to be exercised

judicially — i.e. consistently with principles laid down by the Court itself.

The relevant principles appear to me to be these.

Default interest is a form of damages that may be awarded where there has been wrongful delay — consider Case 101/74 *Kurrer* v *Council* [1976] ECR 259 (paragraphs 31 and 32 of the Judgment) and Case 115/76 *Leonardini* v *Commission* (16 March 1978, not yet reported). A mere error of law on the part of an Institution in giving effect to the Staff Regulations is not however a wrong of a kind that can give rise to an award of damages — see Case 23/69 *Fiehn* v *Commission* [1970] 2 ECR 547 and Case 79/71 *Heinemann* v *Commission* [1972] 2 ECR 579. On the other hand, where the Court makes a pecuniary award to correct such an error, it may order ordinary interest to be paid on the sum so awarded. It will not normally do so in a case where the error has arisen in the routine computation of an official's monthly remuneration — see Case 106/76 *Gelders* v *Commission* [1977] ECR 1623. Nor is there any case in which ordinary interest has been ordered to run from a date earlier than that of the complaint made by the official concerned under Article 90 (2) of the Staff Regulations — see Case 11/63 *Lepape* v *High Authority* [1964] ECR 61, Case 58/75 *Sergy* v *Commission* [1976] ECR 1139 and *Leonardini* v *Commission* (already cited).

There was no wrongful delay on the part of the Commission in this case. So I think justice would be done if Your Lordships were to award Mr Jacquemart interest on the principal sum to which he is entitled from the date of his formal complaint, i.e. 22 February 1977 (which is in fact only a month and a day later than the date suggested by him). No question arises as to the rate of interest.

In the result I am of the opinion that Your Lordships should:

(1) order the Commission to pay to Mr Jacquemart a sum equal to the difference between the severance grant actually paid to him and one calculated by applying a weighting of 157.8% to his last basic salary;

(2) order that that sum shall carry interest at the rate of 6% per annum from 22 February 1977 until payment; and

(3) order the Commission to pay the costs of this action.