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

# Michel Advernier and Others v Commission of the European Communities

(Official — Revision of salary scales)

Case 211/80

*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 211/80,

MICHEL ADVERNIER AND OTHERS, officials of the Commission 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, Luxembourg,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Raymond Baeyens, acting as Agent, assisted by Robert Andersen, of the Brussels Bar, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the Commission of the European Communities of 28 July 1980 expressly rejecting the applicants' complaint against the Commission's decision to pay their remuneration on the

1 — Language of the Case: French.

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 officials 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 consequence the new method provides that:

Allowance is to be made within the framwork 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.

2. Those measures caused distortion in the remuneration of officials to the advantage of those receiving allowances on their taxable income and an expatriation allowance or both. In view of such distortions and in order to avoid their repetition in future the Council introduced 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 280/68 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.

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 abolishes 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. In an administrative notice of 11 February 1980 the Commission informed its officials and other employees that remuneration for February 1980 would still be calculated on the basis of the previous scales and weightings and that arrears pursuant to the new scales and weightings would be paid separately.

All the applicants lodged complaints based on a common model under Article 90 (2) of the Staff Regulations directed against the salary statements for March 1980 and the statements of payment of arrears of remuneration for the period from 1 January 1979 to 29 February 1980. They claimed that the Commission decisions on which those statements were based were unlawful in so far as they applied Regulation No 160/80 which in their view was vitiated for illegality.

The Commission expressly rejected the complaints by letter dated 28 July 1980 and the applicants brought the present joint action on 27 October 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 *Commision* 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 *Commission* contends that the Court should:

"Dismiss the action as unfounded;

Order the applicants to pay the costs."

## III — Submissions and arguments of the parties

The *applicants* state first that the application is directed against the state-

ments of arrears and salary statements for March 1980, the annulment of which is sought in so far as the statements 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.

In support of that objection the applicants put forward six submissions.

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 reopen 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 grounds 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 reopen 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 the 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.

As regards the statement of the grounds on which Regulation No 160/80 was based, the *defendant Commission* states that the objective pursued by the incorporation of the weightings into the scale was to reduce the weighting for Belgium and Luxembourg to 100% and thus to give the weightings back their true function, namely to compensate for the differences in the cost of living in the various places of employment. The distortions which occurred were only secondary effects and it cannot be claimed that they were intended by the Council. Although the Council was not unaware that the incorporation of the weightings would involve certain distortions, it was however surprised both by the extent of the increases in the remuneration received by certain officials and by the losses suffered by others. In those circumstances the Council cannot be criticized for proceeding to remove those distortions especially as a review clause was expressly included in the decision of 29 June 1976 for that purpose.

As to the lack of due care alleged against the Council, the Commission answers that the existence of a different opinion is not capable of affecting the legality of a regulation. Moreover in its capacity as the competent authority for laying down the Staff Regulations the Council is entitled at any time to make such amendments thereto as it considers to be in the interests of the service.

Nor is the revision of the scale incompatible with Article 65 of the Staff Regulations or with the decision of 29 June 1976. The object of fixing new scales is only to remove the original cause of the distortions, repeated from year to year, and thus to prevent certain

officials from obtaining additional increases contrary to the salary policy as pursued by means of the new method of adjustment. Moreover Regulations Nos 160 and 161/80 do not derogate from the remuneration policy on which the decision of 29 June 1976 was based. That policy seeks to ensure in the medium term that the remuneration of European officials keeps pace with the average salaries of the various classes of national civil servants in the Member States.

Since the object of the review clause was precisely to allow the Council to improve the method of adjustment and thus to correct distortions likely to arise therefrom the applicants cannot rely on any legitimate expectation. The staff representatives ought to have expected that at some time in the future the Council would take all the necessary measures to remove any distortions.

The Commission then observes that Regulation No 160/80 has no retroactive effect to the detriment of staff. Although the revised scales were applicable from 1 July 1979 the regulation provides that in the case of officials and other servants whose entitlements are in consequence reduced, no part of the amounts paid during the period between 1 July 1979 and the date on which the regulation entered into force should be required to be repaid. It therefore does not adversely affect vested rights. On the contrary, by introducing a transitional scheme for the benefit of such employees the Council assured them that in future their previous net remuneration would be maintained. In consequence of the annual adjustment of remuneration for 1979 by Regulation No 161/80 it was moreover hardly necessary to apply the transitional system.

Finally there has been no infringement of essential procedural requirements. Before adopting Regulation No 160/80 on 21 January 1980 the Council waited to receive the Parliament's opinion, which was given on 18 January 1980, in order to take cognizance of it. Further the interinstitutional conciliation procedure provided for by the Joint Declaration of 4 March 1975 does not apply in the present case because there are no appreciable financial implications in the Commission proposal. Finally the negotiations with the Staff representatives followed their due course and moreover had no connection with whether or not the opinion of the Parliament was available.

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 referred 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 applicants' 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 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 reserve 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 the 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 interinstitutional conciliation and negotiations with staff representatives it is not for the Council to determine unilaterally the course of those procedures.

In its rejoinder the *Commission* observes that the additional documents submitted in the reply to the effect that the Council was surprised by the size of the distortions merely confirmed the correctness of the statement of reasons in Regulation No 160/80. Moreover if the Council had intended to favour certain employees it had simpler means at its disposal.

As regards legitimate expectation and vested rights the Commission observes that Regulation No 160/80 is based on Article 24 of the Treaty establishing a Single Council and a Single Commission of the European Communities and is a regulation amending the Staff Regulations. It is therefore outside the implementing provisions under Article 65 of the Staff Regulations and the method of adjustment of 29 June 1976. The latter were the basis for Regulation No 161/80. Further, altbough the review clause relates primarily to the method of adjustment itself there is nothing to show that it cannot be used to remove distortions to which the annual adjustments of remuneration made in application of that method may give rise. Moreover, Regulation No 160/80 was intended to reestablish for the future equality between officials and other servants without seeking repayment of any salary which was paid under the rules previously in force (cf. judgment of 19 March 1975 in Case 28/74 *Gillet* v *Commission* [1975] ECR at p. 473).

As regards disregard of essential procedural requirements the Commission 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.

## 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 27 October 1980 Michel Advernier and 291 other officials of the Commission of the European Communities brought an action under Article 179 of the EEC Treaty for the annulment of the Commission Decision of 28 July 1980 rejecting the complaint which the applicants had jointly made against the Commission decision to calculate their salary statements for March 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 six submissions put forward by the applicants all challenge the validity of Regulation No 160/80 against which an objection of illegality is raised.

3 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.

4 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.

5 The Commission infers from those circumstances that the Council intended at the time to reduce to 100 the weightings for Belgium and Luxembourg in order to give the weightings back their true function pursuant to Article 64 of the Staff Regulations, namely to compensate for the differences in the cost of living in the various places of employment. Although that operation gave rise to some distortions due in particular to the fact that the increase in the scale intended to neutralize the increase in tax resulting from the incorporation of the weighting was calculated on the basis of the position of an unmarried official not in receipt of the various allowances, the distortions were only secondary effects and not intended by the reform in question.

6 The Commission adds that the Council was aware of the risks involved in the new method; the decision of 29 June 1976 laying down the method includes a review clause for determining possible subsequent improvements and "rectifying any distortions". However, the Council was surprised by the extent of the increases received by certain officials. The Commission points out that Regulation No 160/80 rectified the distortions by amending the scale of remuneration and providing that the "revised" scale should henceforth serve as the basis for the calculation of adjustments in future remuneration.

7 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.

8 Those considerations constitute a sufficient statement of reasons on which to base the operation 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.

9 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 of 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 breaking undertakings entered into in relation to the adjustment of remuneration.

10 According to the Commission, the fixing of new scales of remuneration by Regulation No 160/80 is not contrary to the remuneration policy laid down by the Council decision of 29 June 1976, the purpose of which was to ensure, in the medium term, that the remuneration of European officials kept pace with the average salaries of the various classes of national civil servants in the Member States. The sole purpose of the fixing of new scales in 1980 was to prevent certain officials from obtaining additional increases contrary to the object of the reform of 1976.

11 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.

12 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.

13 The Commission answers that the alleged haste in the adoption of Regulation No 3177/76 cannot influence the validity of a subsequent regulation such as Regulation No 160/80.

14 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.

15 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.

16 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.

17 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.

18 In that respect it must be remembered that Regulation No 160/80, which has retroactive efect 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 reabsorb 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.

19 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.

20 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.

21 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.

22 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.

23 The Commission 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.

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

## Costs

25 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 DELIVERED ON 10 NOVEMBER 1983 [1]

*Mr President,*
*Members of the Court,*

The cases before the Court are brought by numerous officials against their institutions — the Commission,[2] the Council [3] and the Parliament [4] — seeking the challenge the lawfulness of Council Regulations 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 and No 161/80 of 21 January 1980 adjusting the re-

1 — Translated from the French.

2 — Case 211/80 *Michel Advernier and Others* and Joined Cases 219 to 228, 230 to 235, 237, 238 and 240 to 242/80 *Maurice André and Others.*

3 — Case 260/80 *Ivar Andersen and Others.*

4 — Case 262/80 *Kirsten Andersen and Others.*