

condition is not satisfied, the arrears of salary do not have to bear default interest if they are paid without undue delay after the adoption of the said regulation.

2. It follows from Article 65(2) of the Staff Regulations that decisions adjusting the weightings applicable to remuneration must be taken without unjustifiable delay. Accordingly, any inexcusable delay in enacting the regulations in that area must be regarded as constituting a fault. In considering the question whether a delay is unjustified, account must be taken of the fact that the institutions must have a reasonable period, depending on the circumstances

of the particular case and the complexity of the matter, in which to finalize their proposals or decisions.

When a regulation concerning the adjustment of weightings is adopted upon the termination of an exceedingly long and unjustified preparatory procedure, its retroactive application cannot make good the damage resulting, for those concerned, from the loss of purchasing power of the arrears of remuneration paid with several years' delay. Such damage, occasioned by the wrongful delay on the part of the administration, gives rise to a right to the payment of compensation.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)  
26 February 1992 \*

In Joined Cases T-17/89, T-21/89 and T-25/89,

**Augusto Brazzelli Lualdi and Others,**

**Cleto Bertolo and Others,**

**Helga Alex and Others,**

\* Language of the case: Italian.

officials and other servants of the Commission of the European Communities, represented by Guiseppe Marchesini, Avvocato with a right of audience before the Corte di Cassazione of Italy with an address for service in Luxembourg at the Chambers of Ernest Arendt, 4 Avenue Marie-Thérèse,

applicants,

v

Commission of the European Communities, represented initially by Sergio Fabro, and subsequently by Lucio Gussetti and Guido Berardis, members of its Legal Service, acting as Agents, with an address for service in Luxembourg at the Office of Roberto Hayder, a representative of its Legal Service, Wagner Centre, Kirchberg,

defendants,

APPLICATION for default interest and compensatory interest in respect of the damage that the applicants claim to have suffered as a result of the delay, following the 1981 five-yearly verification, in adjusting the weightings applicable to their remuneration,

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES  
(Second Chamber),

composed of: A. Saggio, President, C. Yeraris, C. P. Briët, D. Barrington, B. Vesterdorf, Judges,

Registrar: B. Pastor, Administrator,

having regard to the written procedure and further to the hearing on 29 May 1991,

gives the following

## Judgment

### The facts giving rise to the proceedings

- 1 By applications lodged at the Registry of the Court of Justice on 23 December 1986, 1 October 1987 and 10 February 1988, Augusto Brazzelli Lualdi, Cleto Bertolo, Helga Alex and a number of officials and other servants of the Commission of the European Communities, assigned to the Joint Research Centre at Ispra (Varese, Italy) brought an action, after they had exhausted the prior pre-litigation procedure, seeking, first, the annulment of a number of their salary statements drawn up in 1986 and 1987, in so far as they were subject to the application of Council Regulation (EEC, Euratom, ECSC) No 3619/86 of 26 November 1986 correcting the weightings applicable in Denmark, Germany, Greece, France, Ireland, Italy, the Netherlands and the United Kingdom of the remuneration and pensions of Officials and Other Servants of the European Communities (Official Journal 1986 L 336, p. 1, hereinafter referred to as 'Regulation No 3619/86') and, secondly, payment of default interest and compensatory interest for pecuniary loss which they consider they suffered as a result of the delay which, according to them, occurred following the 1981 five-yearly verification in adjusting the weightings applying to their remuneration.

Since the Community legislation relating to the periodic adjustments of officials' remuneration are complex, it is appropriate to set out the contents of the applicable provisions before describing the various procedures which preceded the five-yearly adjustment in question.

### *The legal background to the case*

- 2 Articles 64 and 65 of the Staff Regulations of Officials of the European Communities (hereinafter referred to as 'the Staff Regulations') provide for a periodic adjustment of the remuneration of officials. Those provisions apply to members of the auxiliary and temporary staff by virtue of Articles 20 and 64 of the Conditions of Employment of Other Servants of the European Communities.

In so far as they are relevant to the outcome of the present proceedings, Articles 64 and 65, are worded as follows:

*'Article 64*

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.

...

*Article 65*

1. The Council shall each year review the remunerations of the officials and other servants of the Communities. This review shall take place in September in the light of a joint report by the Commission based on a joint index prepared by the Statistical Office of the European Communities in agreement with the national statistical offices of the Member States; the index shall reflect the situation as at 1 July in each of the countries of the Communities.

During this review the Council shall consider whether, as part of economic and social policy of the Communities, remuneration should be adjusted. Particular account shall be taken of any increases in salaries in the public service and the needs of recruitment.

2. 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.

3. ...'

In order to give effect to those rules in practice, the Council adopted a method of adjustment. The details of the method were laid down for the period 1 July 1981 to 30 June 1991 in Council Decision (81/1061/Euratom, ECSC, EEC) of 15 December 1981 amending the method of adjusting the remuneration of officials and other servants of the Communities (Official Journal 1981 L 386, p. 6, hereinafter referred to as the '1981 decision'). According to that decision, the weightings for countries of employment other than Belgium and Luxembourg were

to be periodically adjusted taking into account trends in the cost of living in the different Member States (last indent paragraph 4(c) of Section II of the Annex to the Decision). It follows from the 1981 decision that it is necessary to make a distinction between annual and five-yearly adjustments. According to those rules, the Council makes annual adjustments on the basis of Commission proposals based on data obtained from the national statistical offices. The data reflect consumer habits of the general population and prices applying in the capitals of each Member State. However, since the method sometimes creates distortions in comparison with the actual living conditions of European officials at their places of employment, the decision provides, in order to remedy them, that every five years the Commission is to conduct an enquiry into the consumer habits of European officials and the prices that they pay, in order to determine, as required by Article 64 of the Staff Regulations, the 'living conditions in the various places of employment' (second sub-paragraph of paragraph 1.1 of point 1 of Section II of the Annex). On the basis of a Commission proposal based on the results of those investigations, the Council then proceeds to make the appropriate five-yearly adjustment to the weightings.

*The administrative, legislative and judicial procedures prior to the present actions*

- 4 On 26 November 1986, the Council adopted Regulation No 3619/86 which departed in two respects from the proposal which had been submitted to it by the Commission under the procedure described above (see paragraph 3). On 15 January 1987 the Commission brought an action, registered under No 7/87, against the Council before the Court of Justice seeking the annulment of the abovementioned regulation.
  
- 5 The background to the proceedings, and more particularly the administrative procedure which led to the adoption of that regulation, was summarized in the Report for the Hearing presented by the Judge-Rapporteur as follows (see the judgment of the Court of Justice in Case 7/87 *Commission v Council* [1988] ECR 3401, at p. 3403):
  - (a) When verifying the weightings at the end of the period from 1 January 1976 to 31 December 1980 the Commission conducted surveys in 1980 and 1981. In respect of all the factors except the accommodation factor, the surveys were concerned with the prices charged in the capital cities for goods and services reflecting the consumer habits of European officials. As regards the accommodation item, since there were no figures available for rent, paid in

the capital cities by European officials, it was assessed according to the average rent, paid in the Member States as a whole by the population at large. That procedure had already been adopted in previous verifications.

- (b) On 17 July 1984, that is to say, three-and-a-half years after the expiry of the five-year period which the verification covered, the Commission submitted to the Council a proposal for the adjustment of the weightings.
- (c) In setting out the reasons for making its proposal, the Commission explained that the figures yielded by the surveys appeared not to reflect properly the actual changes in the cost of living for European officials, in particular because of the method employed for the calculation of the accommodation item. The Commission's misgivings were due to the fact that, in the case of several Member States, the results obtained differed appreciably from those which would have been arrived at if the accommodation item had been disregarded altogether or if building costs had been substituted for rents.
- (d) However, the Commission considered that in view of the importance of the accommodation factor in the consumer profile of European officials (in which it accounted for 20% of expenditure), that factor could not be omitted from its proposal.
- (e) The Commission therefore decided to base itself on the figures obtained by taking into consideration the average rents paid by the population as a whole in the various Member States, in spite of the unsatisfactory nature of those statistics. Since the results thereby obtained were necessarily inadequate, it proposed that the Council should not make any upward or downward adjustment of weightings except for those where the change exceeded 2.5%.
- (f) The Council did not accept the Commission's proposal. It contended that the introduction of an adjustment threshold was not in conformity with Article 64 of the Staff Regulations because that article required any change in living conditions, however minimal and whether involving an increase or a decrease, to be taken into consideration.
- (g) The Commission thereupon decided to undertake a survey of the rents paid by European officials for standard types of accommodation in the capital

cities. For that purpose, it questioned state agencies in late 1984 and early 1985. From the figures obtained from 1984 and 1985 it extrapolated the rents which had been charged in the capital cities as at 1 January 1981. In order to do so it reduced the figures corresponding to the rents prevailing in 1984 and 1985 by reference to the changes that had occurred in the price-index for rents since 1 January 1981.

- (h) The Commission considered that the weightings calculated in that way corresponded satisfactorily with those obtained by disregarding the accommodation factor altogether or by substituting building costs for rents.
- (i) Accordingly, on 23 December 1985 the Commission submitted a new proposal to the Council which took account of the survey of rents and appointed 1 January 1981 as the date from which the weightings should take effect.
- (j) On 26 November 1986, almost six years after the end of the five-year period to which the verification related, the Council adopted the contested regulation. It differs from the Commission's proposal in two respects.
- (k) In the first place, the Council adopts 1 July 1986 and not 1 January 1981 as the date on which the new weightings are to take effect. It justifies its choice by reciting in the preamble: "... owing to the dates on which the original and the amended proposals were submitted and the difficulties which have arisen in regard to the exact calculation of the rent item, it is no longer possible to determine with sufficient accuracy the situation which obtained at 1 January 1981; ... it would therefore be advisable to select the first suitable date after the submission of the amended proposal, in this case 1 July 1986".
- (l) The report submitted by the Council's Working Party on the Staff Regulations to the Permanent Representatives' Committee on 30 June 1986 shows that the reason for the choice of 1 July 1986 as the date is that the 1981 decision entered into force on 1 July 1981 and envisages a five-yearly verification of the weightings. 1 July 1986 was therefore the expiry date of the first five-year period provided for by the 1981 decision. The contested regulation, however, does not contain that explanation.

(m) In the second place, the Council rejects the results of the rent survey on the grounds that "it failed, in particular, to deal with a truly representative sample of accommodation; ... furthermore, this survey should have been conducted, pursuant to the second paragraph of point II.1.1 of the Annex to Decision 81/1061/Euratom, ECSC, EEC, in agreement with the national statistical departments". The Council therefore decided "to continue to apply the old method using national rent averages resulting from the national accounting data pending a Commission study on the possibility of improving the method to be used".

6 In the course of the procedure in Case 7/87 *Commission v Council*, cited above, the Court of Justice requested the Commission to reply to two questions.

The first question put to the Commission was as follows:

'Why was the first proposal for the adjustment of the weightings on the basis of the situation as at 1 January 1981 not presented to the Council until 17 July 1984?'

In its reply, the Commission explained that the results of the surveys conducted by its officials in 1980 and 1981 had been released in January 1982, which represents a normal time-span for the transmission and evaluation of results. Representatives of the staff had considered the figures used to show changes in the rent item to be misleading because they were not in keeping with general trends in prices. It was only at the end of a long series of meetings with staff representatives that it had been possible to reach agreement over the figures which the Commission ultimately adopted in its first proposal.

The second question put to the Commission was as follows:

'Is it essential to set 1 January 1981 as the date on which the new weightings are to take effect when the Council decision of 15 December 1981 was not applicable until after that date and the method then in force (under the Council Decision of 26 June 1976) merely envisaged a "periodical" revision and not a five-yearly one?'

The Commission replied that although the method in force prior to the adoption of the 1981 decision had envisaged only a 'periodical' revision, in practice that revision took place at intervals of five years. The 1981 decision merely endorsed a practice whose mandatory character had been recognized by the Council itself in its submissions.

7 By judgment of 28 June 1988 in Case 7/87 *Commission v Council*, cited above, the Court of Justice annulled Council Regulation No 3619/86, which was held to be contrary to the provisions of Article 64 of the Staff Regulations,

(a) in so far as it fixed the weightings, as far as the 'accommodation' item was concerned, by reference to the costs thereof for the general population in each Member State as a whole, instead of measuring it by reference to the cost of accommodation borne solely by European officials,

and

(b) in so far as it fixed 1 July 1986 as the date on which the new weightings were to take effect instead of 1 January 1981, the date to which the verification referred.

8 The Council adopted the measures required to implement the judgment by adopting, following a Commission proposal of 5 July 1988, Council Regulation (ECSC, EEC, Euratom) No 3294/88 of 24 October 1988 correcting the weightings applicable in Denmark, Germany, Greece, France, Ireland, Italy, the Netherlands and the United Kingdom of the remuneration and pensions of officials and other servants of the European Communities (Official Journal 1988 L 293, p. 1, hereinafter referred to as 'Regulation No 3294/88'). By Council Regulation (ECSC, EEC, Euratom) No 3295/88 of the same date, the Council also amended, with effect from 1 January 1986, the weightings applicable to the subsequent five-year period (Official Journal 1988 L 293, p. 5, hereinafter referred to as 'Regulation No 3295/88').

9 Following the adoption by the Council of those two regulations, the Commission calculated and paid in November 1988 the arrears of remuneration due under

them. In the context of amicable settlements which took place in a series of cases similar to the present ones, the Commission agreed to pay officials interest on arrears for the period from December 1986 to the date of actual payment of the arrears, but solely as regards the arrears due under Regulation No 3294/88 arising from the five-yearly verification undertaken in 1981.

At the hearing in the present cases, the applicants lodged a summary table setting out in particular the steps in the administrative and legislative procedures which led to the adoption of the regulations adjusting the weightings following the five-yearly verifications of weightings undertaken in 1976 and 1981 and the judicial proceedings to which the said regulations were or are subject. It is apparent from that table that, as regards the 1976 verification, a period of seven years and eleven months elapsed between the date on which the relevant regulation (Council Regulation (EEC, Euratom, ECSC) No 3681/83 of 19 December 1983 (Official Journal 1983 L 368, p. 1)) was adopted and the date on which it took effect (1 January 1976). During that period, the purchasing power of the lira diminished by 30.1%. On that subject, the applicants stated that the Court of Justice upheld claims for interest on arrears made by a number of officials, and awarded such interest at the rate of 6% per annum from the date of their complaint through administrative channels, but on the other hand it dismissed their claims for compensatory interest as inadmissible (judgment in Case 158/79 *Roumengous Carpentier v Commission* [1985] ECR 39; judgment in Joined Cases 532/79, 534/79, 567/79, 600/79, 618/79, 660/79 and 543/79 *Amesz v Commission* [1985] ECR 55; judgment in Case 737/79 *Battaglia v Commission* [1985] ECR 71). As regards the 1981 verification, it appears from the abovementioned table that between the date on which the relevant regulation was adopted (24 October 1988) and that on which it took effect (1 January 1981), a period of seven years and nine months elapsed, during which the purchasing power of the lira diminished by 48.5%. It is to that period that the present proceedings relate.

At the hearing the defendant lodged a summary table setting out the sequence of events regarding the 1981 five-yearly verification as follows:

18 January 1982	receipt by the Directorate General for Personnel and Administration of the documents from the Statistical Office of the European Communities (hereinafter referred to as 'the SOEC')
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- 10 February 1982      informal technical meeting of the trade union and professional organizations (hereinafter referred to as 'the TUPO') with the SOEC
- 23 February 1982      the results of the five-yearly verification officially sent to the TUPO
- 16 March 1982        informal technical meeting between the TUPO and the SOEC
- 18 June 1982         technical consultations
- 7 July 1982          working session
- 15 October 1982      technical consultations — establishment of a joint working party under the chairmanship of the SOEC (but to meet at the beginning of 1983 in view of the unavailability of the chairman) — awaiting delivery of the judgment of the Court of Justice in the Varese weighting case
- 8 February 1983      technical consultations (five-yearly verification and judgment of the Court of Justice of 15 December 1982) — establishment of a restricted joint group to examine the SOEC's report and to draw up a proposal to the Council
- 15 March 1983        meeting of the group
- 6 October 1983        technical consultations — Varese weighting
- 6 April 1984         technical consultations — agreement to propose to the Council that it amend the weightings applied in Denmark, Germany, Ireland and the United Kingdom
- 26 July 1984         transmission of the proposal to the Council

- 12 November 1984 negative opinion of the Council's Legal Service
- 13 November 1984 technical consultations — decision to conduct ad hoc accommodation enquiries
- 1985 verification by the SOEC of accommodation parities in the capitals
- 23 December 1985 transmission to the Council of the proposal adjusting the weightings applied in Denmark, Germany, Greece, France, Ireland, Italy, Netherlands and the United Kingdom.

### Procedure before the Court of Justice and the Court of First Instance

2 As soon as the actions were brought, the proceedings in the present three cases were stayed pending delivery of the judgment of the Court of Justice in Case 7/87 *Commission v Council*, cited above.

3 Since Regulation No 3294/88, adopted by the Council in implementation of the judgment of the Court of Justice, gave effect to some of the applicants' claims, the applicants withdrew their claims for the annulment of certain of their salary statements.

4 The written procedure took place entirely before the Court of Justice, which, by orders of 15 November 1989, referred the cases to the Court of First Instance pursuant to the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities.

5 By order of 2 April 1990 the Court of First Instance ordered that the cases be joined for the purposes of the oral procedure and the judgment.

- 16 Following a proposal by the Third Chamber, to which the case had been assigned, the Court of First Instance decided on 6 December 1990 to refer the case to a chamber composed of five judges and to assign it to the Second Chamber.
- 17 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure without any preparatory enquiry.
- 18 The parties presented oral argument at the hearing on 29 May 1991. At the end of the hearing the President declared the oral procedure closed.

#### **Forms of order sought by the parties**

- 19 The applicants claim that the Court should order the Commission:
- (a) to make compensation for the damage arising from the loss of purchasing power which affected the arrears of remuneration which were paid to them by virtue of Regulation No 3294/88;
  - (b) to pay default interest from the date when the said arrears fell due until the date of their actual payment;
  - (c) to pay the costs.

The Commission contends that the Court should:

- (a) dismiss the application;
- (b) make an order as to costs.

## The substance of the case

### *Default interest*

In support of their claim for default interest, the applicants put forward a single plea in law, based on the Commission's delay in paying them the arrears of remuneration due to them.

In support of that plea, the applicants claim that the said arrears should have been paid in 1981 and not in November 1988 and that therefore the Commission retained those amounts for a period of more than seven years, at a considerable profit to itself. Next, they allege that the only solution that can guarantee fairness in the relations between the parties is to require the Commission to pay interest from the date on which each principal debt fell due, until the date of payment. In that regard they rely on the judgment in Case 271/87 *Fedeli v Parliament* [1989] ECR 993, in which the Court of Justice allowed the applicant default interest 'in order to place the person concerned in the situation in which by law he should have been'. They maintain, furthermore, that the context, in which the Court of Justice was required to give judgment in Case 264/83 *Delhez and Others v Commission* [1986] ECR 2749 and in five other parallel cases, was radically different from that in the present cases. They state that the delay in paying their arrears of remuneration has reached a record of seven years. In their opinion, the present cases reproduce in a more extreme form the main features of *Roumengous v Commission* and the other parallel cases, cited above, in which the Court of Justice allowed the applicants default interest on the amount of their arrears of remuneration, from a date before that on which the Council adopted the relevant regulation.

The Commission contends, in its defence, that, according to the case-law of the Court of Justice default interest arises on arrears of remuneration only as from the time when the amount of those arrears is certain and due. In the present case that was so only as from the entry into force of Council Regulation No 3294/88 of 24 October 1988. The Commission maintains that after that date it rapidly paid the sums due by virtue of that regulation and there was therefore no delay on its part. It adds that, for its part, the Council complied with the judgment of the Court of Justice in Case 7/87 *Commission v Council* without delay by adopting the abovementioned regulation. The Commission refers to the judgment in *Delhez and*

*Others v Commission*, cited above, and concludes that the necessary conditions for allowing default interest are not satisfied in the present case. As regards the judgment in *Fedeli v Parliament*, cited above, the Commission is of the opinion that the solution given in that judgment is based on the fact that the institution in question had committed a fault with respect to the applicant official.

23 The Court of First Instance finds, first, that before 24 October 1988, the date the Council adopted Regulation No 3294/88, none of the Community institutions knew whether the weightings in force would be subject to an adjustment and, in the event that they would, what new weightings would apply. It follows that, before that date, the applicants did not have any vested right to receive payment of arrears of remuneration and, similarly, the Community institutions were under no obligation to pay such arrears, nor was it possible for them to do so. In those circumstances, up to that date, there could not be any delay in the payment of a debt due.

24 That line of reasoning finds support in the judgment of the Court of Justice in Case 174/83 *Ammann and Others v Council* [1986] ECR 2647. In that judgment, the Court of Justice, sitting in plenary session, held that an obligation to pay default interest can arise only where the amount of the principal sum is certain or can at least be ascertained on the basis of established objective factors. The Court of Justice held that since the powers conferred on the Council by Article 65 of the Staff Regulations for adjusting the remuneration and pensions of officials and other servants and for fixing the weightings applicable thereto involved the exercise of a discretion, no certainty existed as to the amount by which the remuneration and pensions would be adjusted or the manner in which the weightings would be fixed until the Council had exercised those powers and adopted the regulation on the matter. The Court of Justice also stated that although in a previous judgment (Case 59/81 *Commission v Council* [1982] ECR 3329), in which it had annulled an initial unlawful regulation of the Council, it had held that the Council had to take certain factors into consideration when exercising its discretion, it had nevertheless neither determined the amounts which would actually be paid to staff pursuant to Article 65 of the Staff Regulations nor established the objective factors enabling those amounts to be determined sufficiently precisely.

On the other hand, as regards the judgment of the Court of Justice in *Fedeli v Parliament*, cited above, referred to by the applicants, it must be observed that in that case, and unlike the situation in the present case, the amount of the principal sum due was certain and as such was not capable of being the subject of dispute.

The Court of First Instance finds, secondly, that after the Council adopted Regulation No 3294/88 on 24 October 1988, the Commission proceeded in November 1988 to calculate and pay the arrears of remuneration due under that regulation. Accordingly, starting from the time when it became certain that arrears had to be paid and the amount thereof was determined, the Commission diligently discharged its obligation to make payment. In that regard, no delay can be imputed to it.

It follows that the applicant's claims for the award of default interest must be dismissed.

#### *Damage resulting from the loss of purchasing power*

As regards the claim under this head, the applicants put forward two pleas in law based, first, on infringement of Articles 64 and 65 of the Staff Regulations and, secondly, on an incorrect implementation of the judgment of the Court of Justice in Case 7/87 *Commission v Council*, cited above.

As regards the first plea, the applicants maintain that the Staff Regulations, in particular Articles 64 and 65(2), guarantee that equivalent remuneration will be paid to the staff of the institutions in real terms and that by paying only the numerical sum corresponding to the calculation of the arrears of remuneration, and no more, the Commission infringed Articles 64 and 65 of the Staff Regulations because the said arrears were paid only according to nominal value, which does not make it possible to ensure equivalence of remuneration in terms of purchasing power.

- 30 In support of their allegation, the applicants rely on a calculation made on the basis of indexes calculated by the SOEC and claim that LIT 100 000 in January 1981 was equivalent to LIT 201 180 in November 1988 (when the arrears were calculated) or again — to reverse the example — that LIT 100 000 paid in November 1988 was equivalent to only LIT 48 500 in January 1981. Thus the arrears, which should have been paid to the applicants in 1981 but which were only paid to them in November 1988, had lost a part of the real value which they had in 1981 and that constituted for the applicants a loss which was not suffered by other officials as a whole. The applicants were therefore treated unequally.
- 31 According to the applicants, the period involved was the period during which the depreciation of the lire reached its maximum, when the national authorities were obliged to introduce certain special indexes which applied to salaries and debts expressed in Italian currency.
- 32 As regards the plea that the Commission did not correctly implement the judgment of the Court of Justice in Case 7/87 *Commission v Council*, the applicants rely in particular on paragraph 25 of the judgment in which the Court of Justice stated that it was necessary to make retroactive the date from which the new weightings took effect in order to prevent 'inequalities in the purchasing power of officials found to exist with respect to periods which may extend over several years [from never being] eliminated, which would be incompatible with the principle of equality of treatment'.
- 33 The applicants maintain that the principle in the Staff Regulations, which consists in preserving the purchasing power of officials' remuneration and guaranteeing its equivalence, is observed only if all loss of purchasing power is made good, which is not the situation in the present case. The Commission had therefore committed a fault.
- 34 The Commission contends, in response, that by taking account of currency depreciation the retroactive adjustment of the weightings settles all the problems inherent in that situation and takes account of the damage which may result from it. Article 64 of the Staff Regulations has therefore been complied with in the present case and, similarly, the judgment of the Court of Justice in Case 7/87 has been correctly implemented. The Commission adds that the fact that it was not

possible for the first regulation to be adopted until 26 November 1986 was the result of a series of abnormal circumstances for which it is in no way responsible.

As regards the applicants' claim to be awarded interest in compensation for the damage which they claim to have suffered by reason of the loss of purchasing power of the arrears of remuneration paid to them pursuant to Regulation No 3294/88, the Court would first point out that 'a dispute between an official and the institution to which he is answerable . . . is pursued, where it originates in the relationship of employment between the person concerned and the institution, under Article 179 of the EEC Treaty and Articles 90 and 91 of the Staff Regulations' (judgment of the Court of Justice in Case 9/75 *Meyer-Burckhardt v Commission* [1975] ECR 1171, at p. 1181). This Court has consistently held that, in order for the applicants to be able to claim an award of interest by way of compensation, they must demonstrate a fault committed by the institution, the unquestionable existence of quantifiable damage and a causal link between the fault and the alleged damage (judgment of the Court of First Instance in Case T-20/89 *Moritz v Commission* [1990] ECR II-769).

The Court observes that although the Council decision of 1981 did not fix a period within which the five-yearly adjustment for which it provided had to take place, Article 65(2) of the Staff Regulations, which lays down a maximum period of two months for adjustments to be made to the weightings, must be interpreted as expressing a general principle, according to which decisions in this sphere must be adopted without unjustifiable delay. Any inexcusable delay in enacting the regulations providing the legal basis for the adjustment of the remuneration of officials and other servants must therefore be regarded as constituting a fault.

As regards the question when there is delay and whether such delay is unjustified, account must be taken of the fact that the institutions must have a reasonable period, depending on the circumstances of the particular case and the complexity of the matter, in which to finalize their proposals or decisions. It follows that it is not possible to fix, in a general manner, a period within which rules such as those in question have to be adopted.

38 In the present case the Court points out that the legal basis for the five-yearly adjustment should have been established by 1986 at the latest, having regard to the fact that at that time the Council possessed all the information needed to adopt a regulation in accordance with the requirements of the Staff Regulations.

39 However, the Court considers that even if the Council had adopted such a regulation by 1986, the procedure which led to the various Commission proposals to the Council had already been excessively long. Although that delay can be partially explained by the many technical consultations between the Commission's officials and the trade union and professional organizations, as well as by the complexity of the matter in question, it was also due to the Council's conduct. An examination of the circumstances surrounding the adoption of the legislation in question — in particular, the fact that in January 1982 the Commission already possessed the relevant documents of the SOEC and the fact that lengthy delays occurred between certain of the preparatory meetings, thereby contributing to extending the length of that stage of the procedure — shows that the said legislation could, in fact, — and therefore should — have been adopted from 1 January 1984. The fact that a valid regulation was not adopted until October 1988, at the end of a preparatory procedure of excessive and unjustified length, must therefore be regarded as constituting a fault.

40 The Court regards it as established that, by virtue of that wrongful delay, the applicants suffered damage consisting in the loss of purchasing power of the arrears of remuneration which should have been calculated during the first quarter of 1984 and which were not calculated until several years later. In those circumstances, it must be observed that it would be impossible, except in particular circumstances, to establish how the applicants would have spent the arrears of remuneration which were due to them if the arrears had been paid to them in good time. However, in the present cases it is not a question of seeking evidence of individual losses, but of verifying whether facts exist which can be objectively proved on the basis of precise data which have been made public. By producing relevant statistics, which have not been contested by the defendant, the applicants have thus proved to the requisite legal standard the deterioration in purchasing power which affected their arrears of remuneration during the period in question.

41 In contrast, the Commission's argument, according to which the new weightings, fixed by Regulation No 3294/88 and applied retroactively from 1 January 1981, took account of the harm that could result from such a depreciation, cannot be accepted, since it does not take account of the fact that it is only the nominal value of the arrears of remuneration due to the applicants which was paid to them several years late.

42 It follows from the foregoing that the applicants' claims for the award of compensatory interest must be upheld, in so far as they relate to the period after 1 January 1984. The parties must have the possibility of determining, by agreement, on the basis of the Community's official statistics, the exact amount to be paid to the applicants and, in the absence of such agreement, they must provide the Court, by 1 June 1992 at the latest, with the information needed for it to determine the sums in question.

#### Costs

43 According to the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the defendant has been unsuccessful in its main pleas, it must be ordered to pay its own costs and three-quarters of the costs of the applicants, who were unsuccessful with respect to only one of their claims.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. Orders the Commission to pay to the applicants compensatory interest for the damage suffered by them, when their arrears of remuneration were calculated, as a result of the loss of purchasing power of those arrears between 1 January 1984 and November 1988;

2. Orders that the amount of compensatory interest be calculated on the basis of the official statistics of the Community concerning changes in purchasing power in the various Member States and that the said amount be determined by agreement between the parties;
3. In default of such agreement, orders the parties to provide it, no later than 1 June 1992, with the information needed for it to determine the amount of interest to be paid;
4. For the rest, dismisses the applications;
5. Orders the Commission to bear its own costs and to pay three-quarters of the applicants' costs.

Saggio

Yeraris

Briët

Barrington

Vesterdorf

Delivered in open court in Luxembourg on 26 February 1992.

H. Jung

Registrar

A. Saggio

President