Community pension scheme by way of the contribution referred to in Article 83(2) of the Staff Regulations and that he repay to the institution the employer's share of the social security contributions paid to the national pension scheme under Article 70 of the Conditions of Employment of Other Servants.

2. The duty of assistance laid down in Article 24 of the Staff Regulations is concerned with the defence of officials against the acts of third parties and not against the acts of the Administration itself, the review of which is governed by other provisions of the Staff Regulations.

3. Article 39 of the Conditions of Employment of Other Servants, concerning the severance grant, cannot be interpreted as meaning that, apart from payments made in pursuance of Article 42 thereof, no other amounts may be deducted from the grant. Accordingly, that provision does not prevent the grant paid to an auxiliary servant who has become a temporary servant and who leaves the service of the Communities in that capacity from being reduced by both the amount of the contributions which the person concerned would have had to pay to the Community pension scheme if he had been immediately employed as a temporary servant and the amount of the employer's contributions paid by the institution to the national pension scheme.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)

30 June 1992 *

In Case T-25/91,

Pilar Arto Hijos, a former member of the temporary staff of the Council of the European Communities, residing at Jaca (Spain), represented by Thierry Demaseure, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson SARL, 1 Rue Glesener,

applicant,

* Language of the case: French.

Council of the European Communities, represented by Moyra Sims, of its Legal Service, acting as Agent, with an address for service at the office of Xavier Herlin, Director of the Directorate for Legal Affairs at the European Investment Bank, 100, Boulevard Konrad-Adenauer,

defendant,

APPLICATION for the annulment of the decision of the Council of the European Communities of 27 July 1990 to deduct, in the calculation of the applicants' severance grants, both the contributions to the Community pension scheme which they paid as members of the temporary staff and the employer's contribution paid by the Council to the Belgian social security scheme,

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

composed of R. García-Valdecasas, President of the Chamber, R. Schintgen and C. P. Briët, judges,

Registrar: B. Pastor, Administrator,

having regard to the written procedure and further to the hearing on 15 January 1992

gives the following

Judgment

1 The applicant, Mrs Pilar Arto Hijos, was engaged as a member of the auxiliary staff by the General Secretariat of the Council on 16 June 1986 to perform the duties of

a Spanish language translator. She continued to be employed on the basis of a number of successive contracts, the last of which ended on 31 March 1989. Subsequently the applicant received a temporary staff contract for the period 1 April 1989 to 31 July 1990. She was not appointed as an official on the expiry of that contract.

2 By a letter of 24 November 1989 addressed to the Council's pensions service, the applicant submitted the following request: 'In accordance with Staff Note No 210/83, I hereby request that my former auxiliary staff contract be recognized as a temporary staff contract for the purposes of acquiring pension rights, in particular according to the criteria set out in paragraph 4 of that note.'

3 By a decision of 27 July 1990, the Director for Personnel and Administration of the General Secretariat of the Council granted the applicant's request in the following terms:

'Re: Article 39 of the Conditions of Employment

In reply to your request for your auxiliary staff contract to be made equivalent to a temporary staff contract, I am pleased to inform you that I have decided to grant your request; accordingly, the amounts payable to you will be calculated as from the date on which your auxiliary staff contract took effect.

The contributions which you would have paid as a member of the temporary staff and the employer's contribution paid to the ONSS, 6, 75% and 8, 87% respectively of the basic salary received, will be deducted from the net amount payable.'

4 Pursuant to that decision, the Administration calculated the balance of the severance grant payable to Mrs Arto Hijos. The method used in the calculation was set

out in a letter sent on 30 July by the Principal Administrator concerned in the Directorate for Personnel and Administration of the General Secretariat of the Council to the Head of the unit dealing with 'Pensions and relations with former officials' at the Commission, as follows:

'On the basis of the basic (auxiliary) salary actually paid, the following amounts must be calculated:

1. the personal contribution of 6, 75% provided for in Article 41 of the Conditions of Employment;

2. the employer's contribution paid to the national social security, in this case 8, 87% for the Belgian social security.

Those two amounts must be deducted from the net amount payable under Article 39 of the Conditions of Employment.'

5 In reply, the Head of Unit, in a letter of the same date, confirmed those methods, which, he believed, were intended 'to regularize, in the Community scheme, the period of service completed by a member of the auxiliary staff who has become a member of the temporary staff and whose contract expires while he has the latter status'. He added: 'The severance grant payable to him will include the period on the auxiliary staff adjusted as though it had been completed by a member of the temporary staff, provided that the person concerned pays to the Communities the total of the personal contributions payable under the Community scheme and the employer's contributions under the national scheme in respect of that period on the auxiliary staff.'

6 The Administration therefore deducted a total of BFR 639 247 from the net amount of the applicant's severance grant, which came to BFR 1 240 387; the applicant received the balance of BFR 601 140.

7 By a letter dated 23 September 1990 Mrs Arto Hijos the applicants submitted a complaint against the decision of 27 July 1990. She claims that the decision adversely affects her

'because it unlawfully reduces my severance grant and also other indemnities and benefits to which I believe I am entitled.

The decision is unlawful because:

— there is no reference in either Article 39 of the Conditions of Employment of Article 12 of Annex VIII to the Staff Regulations to the deductions which the Administration intends to make;

— the Administration cannot withhold sums which were not allocated because it would thereby infringe both the principle of good administration and Article 28(1)(a) and (b) of the Financial Regulation of May 1990'.

8 By a note dated 18 January 1991 the complaints were dismissed by the Secretary-General of the Council in the following terms:

'The possibility of making a period of service on the auxiliary staff equivalent to a contract as a member of the temporary staff for the purposes of the Community pension scheme, as happens when a servant has been appointed an official, can be applied only by analogy to a member of the temporary staff who leaves the service of the institution concerned without being appointed an official.

It is not possible to require a commitment from him whereby he subrogates the institution in his pension rights for the period during which he had a contract as a member of the auxiliary staff, in respect of which that institution paid the personal contributions to the national social security scheme and also its employer's share.

It follows that:

— the institution will not be in a position to recover the contributions for the pension, as is its practice with regard to officials following the case-law of the Court by means of Article 11(2) of Annex VIII to the Staff Regulations;

— the former member of the auxiliary staff will maintain his pension rights in a national scheme which, when the time comes, will be combined with other rights acquired subsequently.'

Procedure

9 It was in those conditions that, by an application lodged at the Registry of the Court of First Instance on 21 April 1991, the applicant brought these proceedings for the annulment of the decision of 27 July 1990.

10 After the statement of defence had been lodged, the applicant declined to lodge a statement in reply. The defendant likewise declined to lodge a statement of rejoinder.

11 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance decided to request the parties to produce various documents and to open the oral procedure without any preparatory inquiry.

12 The hearing took place on 15 January 1992. The representatives of the parties presented oral argument and gave answers to the questions put by the Court.

13 By order of 7 February 1992, the Court of First Instance re-opened the oral procedure and requested the parties to comment on the effect of the Belgian law of 21 May 1991 establishing certain relations between the Belgian pension schemes and those of institutions governed by public international law.

14 The defendant lodged its observations on 27 February 1992 and the applicant lodged hers on 5 March 1992.

15 By decision of 23 March 1992 the President of the Fourth Chamber declared the oral procedure closed.

16 The applicant claims that the Court of First Instance should:

— annul the decision of 27 July 1990 of the Director of Personnel and Administration of the General Secretariat of the Council;

— order to Council to pay her the amounts unlawfully deducted, together with interest calculated at 8% per annum since 27 October 1990;

— order the Council to pay the costs.

17 The defendant contends that Court should:

— dismiss the application as unfounded;

— order the applicant to pay the costs.

Substance

18 It should first of all be pointed out that Staff Note No 210/83 from the General Secretariat of the Council of 29 November 1983 (hereinafter 'Staff Note No 210/83'), which concerns the 'Pension rights of officials who have held one or more auxiliary contracts before being appointed as temporary staff or officials', provides as follows:

'1. Following the recent decision of the Court of Justice on the nature of temporary staff and auxiliary staff contracts, the Administration has examined the possibility of recognizing certain (former) auxiliary staff contracts as having the status of a temporary staff contract (judgment of the Court in Joined Cases 225/81 and 241/81 [1983] ECR 347). Such recognition would, for the purposes of acquiring pension rights, serve to make a period of service in the Institutions of the Communities as an auxiliary employee equivalent to a corresponding period of service as a temporary employee.

In the operative part of the aforementioned judgment, the Court ruled that an auxiliary contract may be recognized as having the status of a temporary contract provided both that it was first proven that the posts corresponding to the duties carried out appeared in the establishment plan of the Institution and were available, and that the duties carried out as auxiliary employee were not of a transitory nature, i. e. they were permanent Community public service duties.

2. It should be remembered here that pension rights are acquired:

— in the case of auxiliary staff, by affiliation to a compulsory social security scheme, preferably that of the country to whose scheme they were last affiliated or that of their country of origin (see Article 70(1) of the Conditions of Employment of Other Servants);

— in the case of temporary staff, subsequently appointed as officials of the Community, by taking into account for the purpose of calculating years of pensionable service as provided for in Annex VIII to the Staff Regulations (see Article 40, second paragraph of the Conditions of Employment of Other Servants) the period of service as a temporary employee.

3. This means that should a period of service as an auxiliary employee be made equivalent to a corresponding period of service as a temporary employee, the official would have to undertake to pay to the Communities the contribution provided for the Article 41 of the Conditions of Employment of Other Servants, calculated according to the basic salary corresponding to his grade on the auxiliary staff.

In order to avoid any combining of the Community pension and the national pension for the period of service as auxiliary employee, the official will be requested to apply to the national scheme for reimbursement of the contributions paid during the period of service concerned, or, if he is already drawing a pension under that scheme, the latter must terminate payment of the part due for that period and pay to him the actuarial equivalent of his corresponding acquired rights.'

19 Next, a distinction must be drawn between, on the one hand, the pension scheme applicable to auxiliary staff and, on the other hand, the pension scheme applicable to temporary staff.

20 Article 70(1), in Title III, 'Auxiliary staff', of the Conditions of Employment of Other Servants (hereinafter 'Conditions of Employment'), provides:

'So that auxiliary staff are insured against sickness, accident, invalidity and death and can build up a retirement pension, they shall be affiliated to a compulsory social security scheme, preferably that of the country to whose scheme they were last affiliated or that of their country of origin.

The institution shall be responsible for the employer's contributions required under the legislation in force where the servant is compulsorily affiliated to such a social security scheme, or for two thirds of the servant's contribution where he remains voluntarily affiliated to the national social security scheme of which he was a member before he entered the service of the Communities or where he voluntarily joins a national social security scheme.'

In practice, an auxiliary employee's personal contributions to the national pension scheme are deducted from his basic salary, while the institution pays the compulsory employer's contributions to the national scheme. In this way the auxiliary employee acquires pension rights in this national scheme which may be combined with other rights acquired subsequently.

21 Pursuant to Article 41, in Title II, 'Temporary staff', of the Conditions of Employment, a member of the temporary staff, on the other hand, is subject to the Community pension scheme. That article provides: 'As regards the funding of the social security scheme provided for in sections B and C, the provisions of Article 83 of the Staff Regulations and Articles 36 and 38 of Annex VIII thereto shall apply by analogy.'

It should be noted that, pursuant to Article 83(2) of the Staff Regulations of Officials of the European Communities (hereinafter 'Staff Regulations'), the contribution payable by an official — to whom a temporary servant is assimilated in this respect — was, at the material time, fixed at 6, 75% of his basic salary.

Article 36 of Annex VIII to the Staff Regulations provides: 'Salaries shall in all cases be subject to deduction of the contribution to the pension scheme provided for in Articles 77 to 84 of the Staff Regulations.'

Article 38 of that Annex provides: 'Contributions properly deducted shall not be refunded. Contributions wrongly deducted shall not confer the right to receive a pension; they shall be reimbursed without interest at the request of the official or of those entitled under him.'

22 Pursuant to Article 39 of the Conditions of Employment, on leaving the service a temporary servant is to be entitled to a severance grant calculated in accordance with Article 12 of Annex VIII to the Staff Regulations. This grant is to be reduced by the amounts paid in pursuance of Article 42, these being the payments which the institution, where appropriate, has made at the servant's request in order to constitute or maintain his pension rights in his country of origin.

23 In support of her application for annulment, the applicant relies on four submissions, the first two of which are concerned with the unlawfulness of the deduction of social security contributions from their severance grants, which, she maintains, infringed Article 38 of Annex VIII to the Staff Regulations and the principle of equal treatment; the third with the infringement of the Council's duty to provide for the welfare of its officials, which is the responsibility of the Administration, and the fourth with the infringement of Article 39 of the Conditions of Employment as regards the severance grant.

The first two submissions, based on the infringement of Article 38 of Annex VIII to the Staff Regulations and the infringement of the principle of equal treatment

Arguments of the parties

24 In support of their first submission, the applicant puts forward three arguments.

First, she maintains that the social security contributions paid by the Council to the Belgian social security scheme were wrongly deducted from her remuneration, on the ground that the Administration had incorrectly ascribed to her the status of a member of the auxiliary staff.

25 Secondly, she explains that the employer's contributions paid to the Belgian social security scheme also constitute an incorrect payment for which she cannot be liable.

26 Thirdly, she explains that, even if she did have to pay the contribution of 6, 75% to the Community pension scheme in application of Article 83(2) of the Staff Regulations, that amount would have to be set off against the employee's social security contributions which she paid to the Belgian national scheme. To the extent to which these contributions were higher than the contribution to the Community scheme, not only would it be unnecessary to deduct the 6, 75%, but it would be necessary, pursuant to Article 38 of Annex VIII to the Staff Regulations, to repay her the difference.

27 The defendant disputes the relevance of the first argument. It maintains that, as the applicant accepted the auxiliary staff contract which she was offered for the period 1986 to 1989, she is now precluded from calling her administrative situation in question. The Council adds that, in accordance with both Staff Note No 210/83 and the applicant's express requests, the period of service as an auxiliary employee was made equivalent to a corresponding period of service as a temporary employee solely 'for the purposes of acquiring pension rights'. It follows that the legal effects of the decision of 27 July 1990 are restricted to the calculation of the pension, since the applicant obtained no retroactive change in her administrative situation. In those circumstances, Article 38 of Annex VIII to the Staff Regulations, which applies only to officials and members of the temporary staff, does not apply to the applicant, who continued to be subject to Article 70 of the Conditions of Employment, pursuant to which she had to pay the employee's contribution provided for in the Belgian scheme in order to build up a retirement pension.

28 With regard to the second argument, the defendant points out that, pursuant to Article 70 of the Conditions of Employment, the Council assumed responsibility for the employer's contributions to the Belgian social security scheme. The fact that the applicant was not appointed an official after her auxiliary staff contract had been made equivalent to temporary staff contracts meant that the Council was unable to be subrogated in her rights vis-à-vis the national pension fund and thus could not recover those contributions; it therefore decided to proceed by analogy and to deduct the corresponding amounts from her severance grant. In this way the Council also avoided discrimination in relation to other former members of the auxiliary staff who were subsequently appointed as officials and who, unlike the applicant, did not maintain their pension rights in the national scheme.

29 With regard to the third question, the defendant again denies that the contributions to the national scheme were wrongly deducted, in view of the binding nature of Article 70 of the Conditions of Employment. The Council then refers to Articles 2 and 3 of Annex VIII to the Staff Regulations, which provide that a retirement pension is to be payable only where the servant concerned has paid his share of the pension contribution in respect of the relevant periods of service. The defendant then points out that the severance grant is simply the refund of the employee's and employer's contributions to the pension scheme, so that the arrears of contributions must be the responsibility of the person who receives such a grant. The Council adds that the other former members of the auxiliary staff who in the meantime were appointed officials had to undertake, pursuant to paragraph 3, first subparagraph, of Staff Note No 210/83, to pay to the Communities the contribution provided for in Article 41 of the Conditions of Employment. In this case, the sole reason for allowing the applicant to be assimilated to temporary staff was to enable her to receive a higher severance grant (approximately BFR 600 000 instead of approximately BFR 400 000). In return, she was obliged to pay the necessary contributions. Finally, the Council points out that the applicant maintains her pension rights in the national scheme, since the contribution of 6, 75% enables her to acquire rights in the Community scheme and has nothing to do with the contribution to the national scheme.

30 In support of their second submission, based on the infringement of the principle of equal treatment, the applicant explains that, following the error — which she later described as a fault — on the part of the Administration in wrongly ascribing to them the status of auxiliary servants, her salary had to bear two deductions, one for the national social security scheme and one for the Community scheme, unlike the other members of the temporary staff who were immediately affiliated to the Community scheme.

31 The defendant replies that the general principle of equal treatment applies only to persons in identical or comparable situations, which was not so in this case. First, the status of auxiliary servant was not wrongly ascribed to the applicant, since she was treated as equivalent to a temporary servant solely for the purpose of the calculation of her pension rights. Secondly, supposing that the applicant should be exempted from contributing to the Community pension scheme, that would amount to reverse discrimination with regard to the other temporary servants who correctly paid their contributions to the Community scheme. Furthermore, unlike temporary servants, the applicant maintained rights in the national pension scheme.

Assessment of the Court

32 The Court notes at the outset that, following the questions put to the parties regarding the effect of the Belgian Law of 21 May 1991 establishing certain relations between Belgian pension schemes and those of institutions governed by public international law, the parties unanimously agreed that that law had no relevance to this case, since the applicants were unable to request that the amount of the retirement pension corresponding to the period of service in issue be paid to the Council.

33 The Court notes that the applicants essentially claim that the Council, in granting her request for assimilation 'for the purposes of acquiring pension rights', retroactively conferred full temporary staff status on her. She maintains that the Council was not empowered to confer a hybrid status on a temporary servant for a specific period of her employment. By retroactively re-classifying the auxiliary staff contract as a temporary staff contract the Council simply changed the legal nature of the applicant's status in order to remedy the error regarding the classification of her status for the period completed under an auxiliary staff contract. It is therefore the Council's responsibility to inform the competent Belgian social security authority that the applicant's status was incorrectly classified and to arrange for her erroneous affiliation to the national scheme to be cancelled in order to recover the contributions paid by itself and its servant. It is the Council that must, if necessary, bear the consequences of the failure to recover the contributions which are not refunded by the Belgian pension scheme.

34 In that respect, it must be observed that the applicant, in her letter of 24 November 1989, confined herself to requesting that her former auxiliary staff contract be assimilated to temporary staff contracts 'for the purposes of acquiring pension rights'. In granting that request, the Council had in mind only the payment of the severance grant provided for in Article 39 of the Conditions of Employment. The letter of 27 July 1990 clearly states: 'Re: Article 39 of the Conditions of Employment'. Furthermore, the complaint lodged against the decision in that letter expressly states that it is only the 'part of the decision' relating to the deduction of the Community contribution and the employer's and employee's contributions paid by the Council which 'gives cause for complaint' and which, therefore, is challenged.

35 It must be concluded that the complaint was not aimed at obtaining a general review and re-classification of the applicant's status. It follows that the decision rejecting the complaint refers exclusively to the effects of the substitution of the Community pension scheme for the Belgian pension scheme with regard to the calculation of the rights mentioned in Article 39 of the Conditions of Employment.

36 Since the subject-matter of the application to the Court is defined by that of the prior administrative procedure, it cannot, in this case, be extended to the more general question of whether or not the applicant's status was lawfully classified.

37 In granting the applicant's request that her period of employment as an auxiliary servant be made equivalent to a period completed as a temporary servant so that she might receive the severance grant, the Council made the benefit of that assimilation subject to a two-fold condition, first that the applicant should discharge the obligation to pay to the Council the contributions which she would have had to pay as a temporary servant and, secondly, that she should pay to the Council an amount equivalent to the employer's share which the Council had paid to the Belgian pension scheme. It is necessary, therefore, to examine the lawfulness of the impugned decision in that it makes assimilation subject to that two-fold condition.

38 With regard to the first condition, concerning the payment of the contribution to the Community pension scheme, it should be pointed out that, because the Community pension scheme was substituted for the Belgian pension scheme, the applicant was asked by the Council to regularize her position by actually paying to the Community pension scheme the contribution of 6, 75% provided for in Article 83(2) of the Staff Regulations, which represents the one-third share paid by officials and temporary staff towards the financing of the Community pension scheme.

39 That amount is, as a general rule, repaid in full, in accordance with Article 12(b) of Annex VIII to the Staff Regulations, at the same time as the proportionate severance grant referred to in Article 12(c). It should also be noted that the payment of the contribution to the Community pension scheme has the effect of increasing the proportionate severance grant, since the period of service taken into account in

calculating the grant is increased and the grant is calculated on the basis of one and a half months of the final basic salary from which contributions were deducted for each year of service.

40 Without disputing her obligation to contribute to the Community pension scheme, the applicant claims, in essence, that she is entitled to set off the employee's contributions which she has already paid to the Belgian pension scheme against the amounts which she has to pay to the Community pension scheme, with the understanding, moreover, that the Council must refund to her the difference between the social security contribution which she has actually paid under the Belgian pension scheme and the contribution which she has to pay under the Community pension scheme.

41 The Court considers that the applicant's claim against the Council, which forms the basis of her purported right of set-off, must be analysed as a claim for compensation for the damage represented by the employee's social security contributions which are not refunded by the Belgian pension scheme; the Council is to compensate her by paying to her an amount equivalent to those contributions. In order for the applicant to be able to claim compensation for the damage allegedly suffered, she 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 (see judgment of the Court of First Instance in Case T-20/89 *Moritz* v *Commission* [1990] ECR II-769, paragraph 19).

42 In the present case, however, it has not been established that the Council committed a fault giving the right to compensation when it proceeded, in accordance with Article 70 of the Conditions of Employment, to affiliate the applicant to the national pension scheme while she was in its service as a member of its auxiliary staff. Since she is unable to rely as against the Council on an existing and payable claim for compensation, the applicant is therefore not entitled to set off such a claim against the obligation imposed upon her by the Staff Regulations to pay the contribution to the Community pension scheme.

43 It follows that the applicant is wrong to dispute the deduction made from her severance compensation, corresponding to the amount that she would have had to pay to the Community pension scheme by way of the contribution referred to in Article 83(2) of the Staff Regulations. The first and second submissions of the applicant must therefore be rejected in so far as they concern that part of the impugned decision.

44 With regard to the second condition attached to that decision, namely that the applicant pay to the Council the employer's share which was not refunded by the Belgian pension scheme, it should be noted that the applicant sought the benefit of assimilation with express reference to Staff Note No 210/83. That note, intended for 'officials who have held one or more auxiliary contracts before being appointed as temporary staff or officials', is not aimed at temporary staff who, like the applicant, leave the service of the institution without being appointed officials.

45 It should be noted, on the one hand, that when it allowed the period of service completed by the applicant as a member of the auxiliary staff to be made equivalent to a corresponding period completed as a member of the temporary staff for the sole purposes of calculating her pension rights, the Council extended the application of Staff Note No 210/83 to a category which does not come within its scope.

46 In its note of 18 January 1991 rejecting the four complaints submitted against the decision of 27 July 1990, the Council makes it clear that it was considerations of analogy that led it to agree to extend the benefit of assimilation which forms the subject-matter of Staff Note No 210/83 to temporary staff leaving its service without being appointed officials. The Council observes that it was also by proceeding by analogy that it made the benefit of that assimilation subject to the condition that it could recover from the temporary staff a sum equivalent to the employer's share which the Council paid to the Belgian pension scheme.

47 It should be noted that, in accordance with paragraph 3 of Staff Note No 210/83, the institution makes the benefit of assimilation conditional upon the official applying to the national scheme for reimbursement of the contributions paid during the period of service concerned 'in order to avoid any combining of the Community pension and the national pension'. As regards a temporary servant who leaves the service, there is no provision which entitles him to apply for the rights acquired under a national pension scheme to be transferred to the Community pension scheme. The defendant was therefore not in a position to make the grant of the benefit of assimilation conditional upon an undertaking from the applicant to apply to the national pension scheme for reimbursement of the contributions paid.

48 It should also be stated, on the other hand, that the applicant cannot exercise the option reserved for officials in Article 11(2) of Annex VIII to the Staff Regulations to pay to the Communities either the actuarial equivalent of the pension rights acquired or the sums repaid to her, at the date of her leaving, from the pension fund to which she belonged before entering into the service of the Communities.

49 It is therefore necessary to examine whether, being unable to rely on subrogation, the Council could lawfully make the benefit of assimilation conditional upon the applicant compensating it for the employer's contribution which was not repaid by the Belgian pension scheme by paying an equivalent amount to the Council.

50 The Court declares that the Council, in proceeding in this way, had the objective, *inter alia*, of avoiding discrimination between temporary staff who leave the Council after being appointed officials and temporary staff who leave without being appointed officials. An official who leaves the Council and subrogates it to his rights via-à-vis the pension fund to which he formerly belonged does not maintain any right whatsoever in the national pension scheme, while a member of the temporary staff in the applicants' position who leaves the institution maintains his rights in the national pension scheme, since he is unable to agree to the institution's being subrogated to his rights in this way.

51 When it asked the applicant to pay it the employer's share of the social security contributions paid to the Belgian pension scheme, the defendant was anxious to ensure that she did not obtain double benefits. That approach cannot be regarded as contrary to either the rules of the Staff Regulations or the principle of equal treatment for officials. Furthermore, the Council could not be required, in respect of one and the same period of service completed by a servant, to contribute to both the national pension scheme and the Community pension scheme.

52 The Court therefore considers that, by proceeding to recover from the applicants the employer's share which it paid to the Belgian pension scheme, the Council did not ignore any provision of the Staff Regulations. It did not commit an error, since the amount recovered did not constitute an incorrect payment, and it did not infringe the principle of equal treatment for officials and servants.

53 The applicant's first and second submissions must therefore also be rejected in so far as they concern that part of the impugned decision.

54 It follows from those developments that the first and second submissions must be rejected.

The third submission based on the infringement of Article 24 of the Staff Regulations

Arguments of the parties

55 In relying on the argument that the Council was wrong to pay social security contributions to the Belgian pension scheme, the applicant contends that, once her position under the Staff Regulations had been regularized by the decision of 27 July 1990, it was the defendant's responsibility to take steps to recover the amounts

incorrectly paid from the competent authorities. In any event, even if it was the applicant's responsibility to take such steps, the Administration was under an obligation to provide its assistance so that she might achieve a satisfactory outcome.

56 The defendant again denies that the contributions in issue were incorrectly paid and that the applicant's position under the Staff Regulations was 'regularized', so that there were in fact no incorrect payments to recover. In any event, Article 24 of the Staff Regulations is not applicable in this case in the absence of any acts by third parties against the applicant, since the steps which the applicant had to take were the result of an alleged failure on the part of the Council itself.

Assessment of the Court

57 The Court declares that, as explained above, the Council, in paying the social security contributions provided for by the Belgian social security scheme, merely applied the relevant statutory provision, namely Article 70 of the Conditions of Employment, so that the question of recovering incorrectly-paid amounts does not arise. It follows that the Administration can be under no obligation, pursuant to Article 24 of the Staff Regulations, to take steps or bring proceedings for that purpose.

58 Moreover, consistent case-law has established that the obligation to assist officials laid down in Article 24 of the Staff Regulations is concerned with the defence of officials against the acts of third parties and not against acts emanating from the institution itself, the review of which is governed by other provisions of the Staff Regulations (see judgments of the Court in Case 178/80 *Bellardi-Ricci* v *Commission* [1981] ECR 3187; Case 98/81 *Munk* v *Commission* [1982] ECR 1155 and Case 191/81 *Plug* v *Commission* [1982] ECR 4229). In this case, the applicant relies only on an alleged fault on the part of the Administration, consisting in wrongly paying social security contributions to the national pension scheme, to seek the application of Article 24 of the Staff Regulations to her advantage.

59 It follows from those developments that the applicant's third submission must also be rejected.

The fourth submission, based on the infringement of Article 39 of the Conditions of Employment

Arguments of the parties

60 The applicant first of all contends that the Administration failed to base its decision on a statutory provision and to state the grounds on which it is based in accordance with Article 25 of the Staff Regulations. Secondly, she argues that, in the words of Article 39 of the Conditions of Employment, the severance grant can be reduced only by the amounts paid, at the servant's express request, in pursuance of Article 42 of the Conditions of Employment.

61 The defendant replies that although Article 39 of the Conditions of Employment requires that the severance grant is to be reduced by the amounts paid in pursuance of Article 42, it does not preclude the deduction of other amounts from the grant. As the present case concerned an exception, the Council had to look for a practical solution in order to ensure that the applicant did not receive unjustified advantages. Furthermore, the solution adopted takes account of the purpose of the severance grant, which is solely to repay the employee's and employer's contributions paid to the pension scheme.

Assessment of the Court

62 With regard to the argument based on the infringement of the obligation to state the reasons laid down in Article 25 of the Staff Regulations, the Court considers that the reasons stated for the impugned decision provided the applicant with sufficient details to allow her to ascertain whether or not the decision was well-founded and also enable the Court to review that decision. That argument must therefore be rejected.

63 With regard to the argument based on the infringement of Article 39 of the Conditions of Employment, the Court finds that, contrary to what the applicant claims, that article does not provide that, apart from the deductions made in pursuance of Article 42, no other amounts may be deducted.

64 As explained above, the defendant was actually a creditor of the applicant, first in respect of the contributions which she would have had to pay during her period of service if she had been employed as a member of the temporary staff, and secondly in respect of the employer's share paid by the Council to the Belgian pension scheme during the same period.

65 There was nothing in either the Staff Regulations or elsewhere to prevent the Administration from setting off the two debts in question against the debts which it owed to the applicant, each of which was certain, payable and liquid.

66 As the Council therefore acted in accordance with the applicable provisions when it deducted the debt owed to it from the severance grant payable to the applicant, the fourth submission must also be rejected.

67 It follows from all the foregoing considerations that the applicant's application must be declared unfounded.

Costs

68 Pursuant to Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs, if these have been asked for in the successful party's pleadings. However, pursuant to Article 88 of those Rules, the costs incurred by the institutions in proceedings brought by officials of the Communities are to be borne by those institutions.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Dismisses the application.

2. Orders the parties to bear their own costs.

García-Valdecasas Schintgen Briët

Delivered in open court in Luxembourg on 30 June 1992.

H. Jung R. García-Valdecasas

Registrar President