OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 6 MAY 1976

My Lords,

The Staff Regulations of the European Investment Bank provide, by Article 41, that 'Disputes, of any nature, between the Bank and individual members of staff, shall be brought before the Court of Justice of the European Communities'. Article 44 of those Regulations provides that 'The general principles common to the laws of the Member States of the Bank shall apply to individual contracts concluded under these Regulations in conformity with Article 13'. Article 13 provides: 'Relations between the Bank and the members of its staff shall, in principle, be governed by individual contracts in conjunction with these Staff Regulations. The Staff Regulations shall be an integral part of these contracts'.

This is the first case ever to have been brought before this Court pursuant to those provisions. It is brought by Mr J. R. Mills, who is an Englishman and who was formerly a translator in the English section of the Bank's translation service. He entered that service pursuant to a contract constituted by his acceptance on 18 June 1973 of the terms offered to him in a letter dated 30 May 1973 addressed to him by the President of the Bank (Annex 1 to the defence). That letter expressly stated that the provisions of the Staff Regulations of the Bank, with a copy of which Mr Mills was supplied, should form an integral part of the contract.

Mr Mills was discharged, or purportedly discharged, from the service of the Bank by notice contained in a letter dated 29 July 1975 addressed to him by the President of the Bank (Annex 1 to the application).

In these proceedings Mr Mills claims a declaration that that notice was void and, in the alternative, damages for unfair dismissal.

Article 95 (2) of the Rules of Procedure of the Court provides that, in general, proceedings commenced by an official or other servant of an institution against the institution shall be tried by a Chamber. By virtue of Article 1 of those Rules the European Investment Bank is, for their purposes, an 'institution'. So Mr Mills's application came before the First Chamber. That Chamber, however, felt that the application raised novel and important questions as to the jurisdiction of the Court, and by Order dated 19 February 1976, referred the case to the full Court under Article 95 (3).

Following that reference the full Court ordered that two points should be set down for argument as preliminary points, namely:

(1) Whether the Court had jurisdiction to entertain the application at all — in other words, whether Article 41 of the Staff Regulations of the Bank was valid; and

(2) Whether, if so, the Court had jurisdiction to declare void the notice terminating Mr Mills's contract.

Wrapped up in the latter point was the question whether the Court, if it found that that notice was unlawful, would have jurisdiction to order his reinstatement, or jurisdiction only to award him damages or compensation.

Those two points were argued before us on 1 April 1976 and I apprehend that it is on them, and them only, that I am now called upon to express my opinion.

On the first point the parties were at one. They both submitted that the Court did have jurisdiction, though they both accepted that the point was not free from difficulty.

The difficulty is this.

Article 179 of the EEC Treaty provides:

'The Court of Justice shall have jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment.'

It has been suggested that the reference there to 'the Staff Regulations or the Conditions of Employment' is a reference exclusively to the 'Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the Community' which were, under Article 212 of the Treaty (since replaced by Article 24 of the Merger Treaty) to be laid down by the Council. On this view, of course, the jurisdiction of the Court under Article 179 could not extend to disputes arising under the Staff Regulations of the Bank, for these were made by the Board of Directors of the Bank pursuant to Article 29 of the Rules of Procedure of the Bank, which were themselves made by the Board of Governors of the Bank under Article 9 (3) (h) of the Protocol on the Statute of the Bank annexed to the Treaty.

In my opinion, however, that view is too narrow. It is to be observed that the rather precise reference in the authentic English text of Article 179 to 'the Staff Regulations or the Conditions of Employment' is not matched in the other authentic texts of the Treaty. For instance the French text states in general terms:

'La Cour de Justice est compétente pour statuer sur tout litige entre la Communauté et ses agents dans les limites et conditions déterminées au statut ou résultant du régime applicable à ces derniers.'

In Cases 43, 45 and 48/59 *Von Lachmüller and Others* v *Commission* (Rec. 1960 (2) at pp. 952-953) it was held that those words were wide enough to cover disputes between the Commission and its staff arising before the adoption of the Staff Regulations and Conditions of Employment provided for by Article 212, when such staff were recruited under individual contracts pursuant to Article 246 (3) of the Treaty.

The real difficulty in my opinion lies in the fact that Article 179 refers to disputes between 'the Community' and its servants. Article 210 of the Treaty provides that 'The Community shall have legal personality' and Article 4 that 'The tasks entrusted to the Community shall be carried out by' the Parliament, the Council, the Commission and the Court, the Council and the Commission being 'assisted by' the Economic and Social Committee. The Bank was on the other hand established by Article 129 which provides that 'it shall have legal personality'. The Bank is thus a separate legal person from 'the Community'. This suggests that references in the Treaty to 'the Community' should be construed as excluding the Bank.

On that view, however, there is no provision whatever in the Treaty dealing with disputes between the Bank and its staff. Article 180 expressly confers jurisdiction on the Court in certain disputes involving the Bank, but these do not include disputes between the Bank and its staff. Article 29 of the Protocol on the Statute of the Bank provides:

'Disputes between the Bank on the one hand, and its creditors, debtors or any other person on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred on the Court of Justice.'

Here again the authentic English text is misleading. One might think that 'any other person' included the Bank's staff. But the other authentic texts seem to me to make it clear that that is not so. The Danish, instead of 'any other person', has 'tredjemand', the Dutch has 'derden', the French 'des tiers', the German 'dritten Personen' and the Italian 'terzi'. These expressions are not, I believe, apt to include the Bank's own staff. In any case Article 29 does not itself answer the question whether jurisdiction is conferred on this Court by some other provision, so as to exclude the application of that Article.

Reference was also made during the course of the argument to Article 183 of the Treaty. This provides:

'Save where jurisdiction is conferred on the Court by this Treaty, disputes to which the Community is party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.'

That Article does not, however, seem to me to be in point, since it refers to 'disputes to which the Community is a party'. If 'the Community' does not include the Bank, Article 183 is irrelevant for that reason. If on the other hand 'the Community' does include the Bank, it must do so for the purposes of Article 179 also, so that the application of Article 183 is excluded.

Another provision of the Treaty that was referred to in argument is Article 181. This provides:

'The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Community, whether that contract be governed by public or private law.'

It was submitted that, if Article 179 did not confer jurisdiction on the Court in disputes between the Bank and members of its staff, Article 181, in conjunction with Article 41 of the Staff Regulations of the Bank, would do so. But it seems to me that there is here the same dilemma. If 'the Community' does not include the Bank, Article 181 can no more apply than can Article 179. If on the other hand 'the Community' does include the Bank, Article 179 applies and there is no need to resort to Article 181.

Article 181 is however, in my opinion, indirectly of great significance.

The question, as I have indicated, is whether for the purposes of, at all events, the Articles of the Treaty conferring jurisdiction on the Court (Article 164 *et seq.*), the references in it to 'the Community' were intended to include the Bank.

In approaching that question it is, I think, right to have in mind the following general consideration.

Article 3 (j) of the Treaty provides that, for the purposes set out in Article 2, which are of course those of the Community, the activities of the Community shall include 'the establishment of a European Investment Bank to facilitate the economic expansion of the Community...' and Article 1 of the Protocol on the Statute of the Bank provides that the Bank 'shall perform its functions and carry on its activities in accordance with the provisions of this Treaty and of this Statute'. It is thus clear that the Bank is, if not a Community 'Institution' in the strict sense, at least an organ of the Community and that everything it does is in application of the Treaty. Its activities are therefore within the general field in which, by virtue of Article 164, the Court is to ensure that the law is observed.

Among the Articles specifically conferring jurisdiction on the Court is one, Article 180 (which I have already mentioned), relating expressly to the Bank. This is to be found sandwiched

between Articles 179 and 181, which, as we have seen, refer in general to 'the Community'. If the Bank was intended to be regarded for the purposes of those Articles as being distinct from the Community, one would have expected Article 180 to be placed elsewhere, perhaps at or towards the end of the group of Articles dealing with the Court's jurisdiction. Of even more significance, I think, is a consideration of the relationship between Article 181 and Article 29 of the Protocol on the Statute of the Bank. The latter, Your Lordships remember, expressly envisages that jurisdiction may be conferred on this Court in disputes between the Bank and, among others, its creditors or debtors. I can see no means by which such jurisdiction could be conferred on the Court other than an arbitration clause to which Article 181 applied. It must follow that, in the contemplation of the authors of the Treaty, the reference in Article 181 to 'the Community' included the Bank. If that is so, the same must be true of the reference to 'the Community' in Article 179.

I conclude that, on the true interpretation of the EEC Treaty taken alone, Article 179 applies to the servants of the Bank as much as to the servants of the 'Institutions'.

That that is the correct interpretation of the Treaty is, I think, confirmed by a consideration of the Merger Treaty and, in particular, of certain provisions of the Protocol on the Privileges and Immunities of the European Community annexed to that Treaty.

The first paragraph of Article 28 of the Merger Treaty provides:

'The European Communities shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks, under the conditions laid down in the Protocol annexed to this Treaty. The same shall apply to the European Investment Bank.'

Article 12 of that Protocol provides, so far as material:

'In the territory of each Member State and whatever their nationality, officials and other servants of the Communities shall:

(a) subject to the provisions of the Treaties relating ... to the jurisdiction of the Court in disputes between the Communities and their officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity... They shall continue to enjoy this immunity after they have ceased to hold office.'

Article 22 provides, so far as material:

'This Protocol shall also apply to the European Investment Bank, to the members of its organs, to its staff and to the representatives of the Member States taking part in its activities...'

I am therefore of the opinion that this Court has jurisdiction to entertain this action.

I confess that I am glad to have reached that conclusion. The practical difficulties to which the opposite conclusion would lead were perhaps slightly exaggerated by Counsel for the Bank at the hearing. It is none the less true that it would be no easy task for a national Court to ascertain 'the general principles common to the laws of the Member States' which, by virtue of Article 44 of the Staff Regulations of the Bank, apply to the contracts concluded between the Bank and its staff.

That indeed is what this Court must do in order to reach a decision on the second question on which argument has been heard in this case.

In order to explain how that question arises, I must first refer to certain additional provisions of the Staff Regulations of the Bank and to certain additional facts.

Your Lordships will remember that, by virtue of Article 13 of those Regulations, relations between the Bank and the members of its staff are governed by individual contracts, incorporating in effect the provisions of the Regulations.

Article 15 provides:

'Individual contracts between the Bank and the members of its staff shall take the form of letters of appointment. Staff engaged by the Bank shall countersign the letter of appointment and a copy of these Staff Regulations.

The letter of appointment shall specify remuneration, length of contract and other terms of employment.'

Article 16 provides that 'Contracts are to be concluded for a definite or an indefinite period' and that 'Contracts for an indefinite period may be terminated by due notice given by one party to the other'. Article 17 provides that 'Due notice by the Bank shall be three months for each completed period of five years' service and any fraction of such period' and that 'The notice required of members of staff shall be defined in individual contracts'.

Mr Mills's contract accorded with those provisions. His 'letter of appointment', which, as I have mentioned, was dated 30 May 1973, began by saying: 'We are pleased to confirm that the European Investment Bank has agreed to employ you, from 1 July 1973, on the following terms'. It then set out what his salary was to be and continued:

'Your appointment is for a probationary period of six months, during which time either side may cancel the contract by giving 15 days' notice. Upon expiry of this probationary period, your appointment will be deemed to be renewed for an indefinite period. In accordance with ... Article 17 of the Staff Regulations, due notice on your side for cancellation of this contract is three months.

We have pleasure in enclosing two copies of the Staff Regulations. The conditions of these Regulations are an integral part of this contract.

In certifying your agreement to the terms of this contract, would you please return the copy of this contract and one copy of the enclosed Staff Regulations both signed, dated and bearing the words: 'Read and approved.'

These requirements Mr Mills complied with on, as I have said, 18 June 1973.

He duly entered the service of the Bank on 1 July 1973 and completed his probationary period on 31 December of that year. Thereafter his appointment was, in the terms of his letter of appointment, 'deemed to be renewed for an indefinite period'.

As I have already mentioned, Mr Mills was, by a letter dated 29 July 1975 signed by the President of the Bank, given notice terminating his contract. That notice was expressed to be given pursuant to Articles 16 and 17 of the Staff Regulations. It complied with the provisions of those Articles inasmuch as it fixed the date of the termination of the contract at 31 October 1975, thereby giving Mr Mills the three months notice to which he was entitled. The notice also detailed the payments that were to be made to Mr Mills in connexion with the termination of his contract. These included a 'severance grant' under Article 34 of the Staff Regulations, which provides:

'Upon termination of their contract with the Bank, apart from the case of dismissal for reasons of grave misconduct, members of staff shall, after two years in Bank service, be entitled to a severance grant ... equal to one half of the final month's remuneration for each completed year and any part of a year of service.'

I need not, at this stage of these proceedings, go into the details of the

events leading up to that notice. Suffice it to say that the case for the Bank is, in a nutshell, that experience had shown that the English section of its translation service was over-staffed, that Mr Mills was considered by his superiors to be the least satisfactory member of that section, and that the Bank was within its rights in giving him notice in accordance with the terms of his contract. The case for Mr Mills is that his dismissal was really in the nature of a disciplinary measure, that such a measure should not have been taken without a full enquiry into the allegations made against him by his superiors and, in particular, without giving him any opportunity of being heard in his own defence, and that his dismissal should therefore be declared void. Mr Mills relies on Articles 38 to 40 of the Staff Regulations of the Bank and on the general principles common to the laws of the Member States to which Article 44 refers.

Article 38 lists the disciplinary measures that may be taken against members of the staff of the Bank who 'fail to fulfil their obligations to the Bank'. These range from a 'written reprimand' to 'summary dismissal for grave misconduct with loss of severance grant and reduction of pension rights'. By the combined effect of that Article and of Article 40 'summary dismissal for grave misconduct', whether with or without loss of severance grant or reduction of pension rights, must, with an immaterial exception, be preceded by an enquiry before a Joint Committee, of which the constitution is laid down. The member of staff concerned is entitled to be heard by that Committee and to be represented before it by Counsel. The Committee must deliver a reasoned opinion adressed to the President of the Bank, with whom the decision lies.

The Bank of course contends that those provisions have no application here since Mr Mills was not summarily dismissed for grave misconduct, but simply had his contract terminated by due notice.

The question remains whether, if the Court found that Mr Mills was improperly or unfairly dismissed, it would have power to declare his dismissal void or to order his re-instatement, or would have power only to award him damages or compensation. This depends upon what are the relevant 'general principles common to the laws of the Member States'.

In the pleadings it was sought on behalf of Mr Mills to assimilate the position of servants of the Bank to that of Community officials. It was submitted on his behalf that the legal relationship between the Bank and its servants was statutory rather than contractual. Alternatively it was submitted that, if the relationship were contractual, the contracts were governed by 'public law' rather than 'private law'.

I think it right to deal with those submissions even though at the hearing Counsel for Mr Mills in effect abandoned them. He there argued that it was immaterial whether the relationship was statutory or contractual or, if it were contractual, whether the contracts were governed by 'public law' or by 'private law'; in any case, he submitted, the Court must have power to do whatever justice called for.

The submission that the relationship was not contractual but statutory was, it seems to me, plainly inconsistent with the facts, and in particular with the provisions of the Bank's Staff Regulations. An interesting document put in on behalf of the Bank was a Note (Annex 4 to the Defence) addressed by the Management Committee of the Bank to its Board of Directors in March 1960, when that Committee was submitting to that Board for approval the draft of what became the Staff Regulations. The purpose of the Note was to explain the considerations that the Committee had had in mind in preparing that draft. The Note was in French. I quote two passages from it which seem to me pertinent:

'Tous les frais de fonctionnement de la Banque sont couverts par les revenus de ses placements et non pas, comme pour d'autres institutions européennes, par des ressources de nature budgétaire; sans qu'il soit possible de le prévoir maintenant, le volume des affaires de la Banque peut varier, dans l'avenir, de façon importante, et, par conséquent, le volume de ses effectifs devra, dans une certaine mesure s'y adapter; enfin, l'administration d'un personnel de caractère bancaire doit être nécessairement souple: ces diverses raisons ont porté le Comité de Direction à choisir délibérément, après une étude approfondie, un régime contractuel pour l'ensemble de ses agents et employés. Il est apparu impossible en effet de prévoir pour eux un statut de fonctionnaire qui aurait eu comme conséquence principale d'organiser des carrières sur de longues années et sans offrir aucune possibilité pratique de faire varier les effectifs selon les besoins.

Il est donc prévu que le personnel est recruté au moyen de contrats de durée limitée ou indéterminée, selon les cas, et le présent règlement doit être considéré comme la partie générale commune à tous les contrats individuels.'

And:

'le correctif nécessaire entre le régime contractuel proposé pour la B.E.I. et le régime statutaire des agents de la C.E.E. se marque par l'institution, prévue dans le règlement, d'une indemnité de départ, destinée à compenser la relative précarité des contrats.'

The 'indemnité de départ' there referred to is of course the severance grant that Mr Mills received.

I confess to Your Lordships that, trained as I was in a system of law where the dichotomy between 'public law' and 'private law' is unknown, I approach the question of its relevance here with considerable diffidence, though, of course, I am tempted to say that, since English law does not recognize the dichotomy, it cannot form part of 'the general principles common to the laws of the Member States'. But, so it seems to me, it is not a consideration of English law alone that leads to that conclusion.

Irish law is, I believe, in this respect, the same as English law.

Then there is a group of countries where, although the dichotomy is recognized for certain purposes, it has no application in the sphere of contracts of employment. This group includes Denmark, Germany, Italy, Luxembourg, the Netherlands and Scotland. In each of those countries public servants are employed either under purely statutory provisions or under contract. Where they are employed under contract, those contracts are governed by ordinary 'private' law. There is no intermediate category of public servants employed under contracts governed by 'public' law.

It seems that in France the dichotomy between 'public' law and 'private' law is recognized as applicable to contracts of employment but only for the purposes of determining (1) the nature of the obligations of the employee — see as to this per Mr Advocate-General Lagrange in Case 10/55 *Mirossevich* v *High Authority* (Rec. 1955-56 at p. 400) — and (2) the identity of the Courts having jurisdiction in the case of a dispute concerning such a contract: if the contract is 'de droit public' the administrative Courts have jurisdiction, if it is 'de droit privé' jurisdiction lies with the ordinary Courts. In either case, however, the rights of the employee are the same. I do not overlook in this regard what was said by Mr Advocate-General Lagrange in the *Mirossevich* case at pp. 415-416, but he seems to have been stating there, in relation to contracts 'de droit public', not what he thought French law was, but what he thought Community law ought to be.

So it seems that it is only in Belgium that the dichotomy is of any substantial relevance to the rights of an employee. I refrain from attempting to describe in what ways it is so relevant there. Your Lordships will remember the answers that were given to me about that by Counsel for Mr Mills at the hearing (Transcript pp. 25-30).

I admit that, in view of what seems to be the law in the different Member States, I am puzzled by the reasoning of the Court in Case 1/55 *Kergall* v *Assembly* (Rec. 1955-56 p. 9), and in the *Von Lachmüller* case (already cited). The decision of the Court in each of those cases seems to me, with respect, to have been unexceptionable. What puzzles me is why the Court should have thought it appropriate, as part of its reasoning leading to that decision, to dub the contract in question one 'governed by public law'. That this was unnecessary is shown by the Judgment in the *Mirossevich* case, where the Court refrained from applying any such label to the contract, even though Mr Advocate-General Lagrange had invited it to do so.

This illustrates what in my opinion is an important point.

In the search for 'the general principles common to the laws of the Member States' it is to my mind unhelpful to use terms derived from particular national systems and unknown, or bearing different meanings, in others. Rather should one look for the reality behind the labels: seek to identify the substance of the legal rights, powers and obligations recognized and enforced in the different systems.

It seems to me that, if one does that in the present instance, the difficulties disappear. So far as I can ascertain all the legal systems of the Member States recognize the existence of a category of public servants whose rights, whether they be statutory or contractual, or partly the one and partly the other, are, in one way or another, protected by special rules belonging to administrative law rather than to the law of contract. Among these rules is for example that precluding an employing authority from dismissing such a servant without telling him the grounds of his proposed dismissal and giving him an opportunity of being heard. Any breach of such a rule entitles the public servant concerned to a declaration from the competent Court that his dismissal was void. This is certainly the law in England and in Scotland (see *Ridge* v *Baldwin* [1964] A. C. 40 and *Malloch* v *Aberdeen Corporation* [1971] 1 W. L. R. 1578) though of course the position in the United Kingdom is complicated by the rule that, in general, Crown servants hold office 'at Her Majesty's pleasure'.

So the real question here, in my opinion, is whether or not the members of the staff of the European Investment Bank belong to that privileged category of public servants.

I have come to the conclusion that they do not. A common element in the laws of the Member States seems to be that that privileged category can comprise only persons employed by public authorities properly so-called in the discharge of essentially public functions, e.g. administrators, policemen, teachers and the like, and that it does not include persons employed by bodies whose role is 'economic', even if publicly owned. A very good example of this is that of the nationalized French banks, the status of whose employees, it seems to be accepted, was not altered by nationalization (see Dalloz, Nouveau Répertoire de Droit, 2nd Ed., Tome Premier, p. 493). Similarly I understand it to be well-established that the employees of the Netherlands Bank are subject to the ordinary employment law of the Netherlands. And certainly, though I know of no direct authority on it, I should not expect the English Courts to hold that employees of the Bank of

England had any status differing from that of employees of any other English bank. The reason for this seems to me clear and is perhaps as well expressed as it could be in the Note from the Management Committee of the European Investment Bank to its Board of Directors to which I have referred. A bank, even if publicly owned and even if set up for a public purpose, is fundamentally a commercial undertaking, dependent on its earnings for its survival, and so different in nature from a public authority with a revenue derived from taxes or rates.

That, however, is not quite the end of the matter. It leads only to the conclusion that the rights of members of the staff of the European Investment Bank cannot be assimilated to those of public servants, in the narrow sense that I have described. It means that those rights have to be ascertained by reference to the general principles common to the laws of the Member States relating to ordinary contracts of employment. The question thus becomes whether there is any general principle, common to the laws of the Member States, conferring on a Court power, in the case of such a contract, to declare a dismissal void or to order the reinstatement of an employee who has been improperly or unfairly dismissed.

I say 'improperly or unfairly' because I find that in most, at all events, of the Member States, the concept of 'unfair dismissal' has been introduced by modern statutes as applicable even in a case where a person has been given due notice terminating his contract — where, in other words, the dismissal involves no breach of contract on the part of the employer. This accords with Recommendation 119 of the General Conference of the International Labour Organization of 5 June 1963, paragraph 2 (1) of which states:

'Termination of employment should not take place unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service'.

I find that in only two Member States, Germany and Italy, do the competent Courts have power to declare a dismissal void or to order reinstatement. In Germany the power derives from the Kündigungsschutzgesetz of 25 August 1969. In Italy it is conferred by the combined effect of a statute of 15 July 1966 and of a statute of 20 May 1970.

In France and Great Britain (i.e. England and Scotland, there seems to be no relevant legislation applicable in Northern Ireland) the competent Tribunals have power to recommend the reinstatement of an employee who has been dismissed, but no power to enforce their recommendation: if it is not followed, they may only award the employee compensation. In France these powers are conferred by a statute of 13 July 1973 (Art. L. 122-14-4). In Great Britain they were first enacted by the Industrial Relations Act 1971. They are now contained in the Trade Union and Labour Relations Act 1974 (Sch. I, Pt. III) and will be strengthened by the Employment Protection Act 1975 when it is brought into force, probably in June of this year. Under the Act of 1975 the term 'recommend' is replaced by the term 'order', but without, it seems, this making any material difference. More important, the Tribunals will under that Act, have power to order either 'reinstatement', meaning that the employee is to be treated in all respects as if he had not been dismissed, or 're-engagement', meaning that he is to be granted a new contract. For present purposes I will continue to use the term 'reinstatement' as covering both remedies.

The position in the Netherlands seems to be analogous to that in France and Great Britain. Article 1639 (t) of the Burgerlijk Wetboek empowers a competent Court to order reinstatement,

but the only sanction, if the order is not complied with, is, I understand, pecuniary.

In Ireland the Industrial Relations Act 1946 (s. 66 *et seq.)* as amended by the Industrial Relations Act 1969 (ss. 19 and 20) empowers the Labour Court to investigate a trade dispute and to recommend the terms on which it should be settled. Such terms can include the reinstatement of a dismissed employee.

It seems that in Belgium and Denmark the Courts may order reinstatement only in the case of employees' representatives, whilst in Luxembourg there is no legislation enabling reinstatement to be ordered or recommended.

I conclude that there is no general principle common to the laws of the Member States conferring on a Court, in the case of a person serving under an ordinary contract of employment, power to declare his dismissal void or to order his reinstatement. Indeed Recommendation 119 of the General Conference of the I. L. O. does not go so far as to call for the existence of such a power. Paragraph 4 of that Recommendation states that a worker who feels that his employment has been unjustifiably terminated should be entitled to appeal to a neutral body such as a court and paragraph 6 states that that body should be empowered, if it finds that the termination of employment was unjustified, 'to order that the worker concerned, unless reinstated, where appropriate with payment of unpaid wages, should be paid adequate compensation' or afforded other relief.

It follows, in my opinion, that this Court has no jurisdiction, in the case of a member of the staff of the European Investment Bank who has been dismissed, to declare his dismissal void or to order his reinstatement. That is not to say that in my opinion the Court could not, if it thought fit, in a proper case, recommend his reinstatement and wait to see whether its recommendation was followed before deciding on the amount of any damages or compensation to be awarded to him.

In the result I think that Your Lordships should declare Mr Mills's Application admissible except in so far as he claims a declaration that his dismissal was void.