verify. That a real incompatibility, no doubt due to difference of background and character, existed between the two men is certain; such differences exist in human relationships between a superior and his subordinate. But it still remains to be proved that the real cause of the decision was personal authority resulting from this incompatibility and not behaviour by the applicant which, considered objectively, justifies the unfavourable recommendation. No such proof has been brought.

No doubt it is true that the applicant's services were considered satisfactory at the beginning of his employment. It is equally true that the position began to deteriorate when the applicant put himself forward as a candidate for post No 31, placed a step above post No 30, which he then held (the latter post had not been thrown open to competition, for reasons which have never been explained). In such a situation it was quite natural that the applicant should put himself forward as a candidate for post No 31, since his own had never been opened to competition and he had held it on a temporary basis for more than a year which was contrary to the regulations in force. You know that in fact it was a Dutch official, originally classed beneath the applicant, who was appointed to post No 31. Finally, after rejection of the applicant, post No 30 was opened to competition on 18 April 1963. Here beyond doubt is a series of facts which suggest that the administration was seeking by different means to avoid the establishment of Mr Leroy.

However, only the refusal to integrate the applicant under Article 93 of the Staff Regulations is being contested before the Court. As regards this, it is only necessary to establish whether facts on which the Board based its unfavourable recommendation are the real reason for the decision. There is nothing to suggest that this is not so. Indeed, it appears that the various circumstances which I have just outlined attracted the attention of the Board which, as a result, undertook a particularly thorough examination of the situation—deciding, for example, to hear the Director-General and then the applicant himself instead of merely adopting the clearly unfavourable report of the applicant's immediate superior. It does appear, therefore, that the Board decided not to integrate the applicant only after it had made quite sure that he was not capable of performing the duties which were entrusted to him, following the reorganization of his department.

To sum up, there appears to be no evidence of misuse of powers.

I am therefore of the opinion that:

— both applications should be dismissed; and
— that the costs of Application 35/62 should be borne by the High Authority.

ORDER OF THE PRESIDENT OF THE COURT 16 JULY 1963[1]

In Cases 35/62 and 16/63 R

ANDRÉ LEROY, former member of the auxiliary staff and of the temporary staff in the service of the European Coal and Steel Community, residing at 20 Rue

1 — Language of the Case: French.

Astrid, Luxembourg, represented by Paul-François Ryziger, advocate of the Conseil d'Etat and the Cour de Cassation, 64 Rue de Longchamp, Paris 16, with an address for service in Luxembourg at the Chambers of Mr Arendt, advocate of the Luxembourg Cour d'Appel, 6 Rue Willy-Goergen,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Guy Sautter, appointed to this intent as Agent by the High Authority under Article 20 of the Protocol on the Statute of the Court of Justice, assisted by Jean Coutard, advocate of the French Conseil d'Etat and Cour de Cassation, 58 Rue de Lisbonne, Paris, with an address for service in Luxembourg at its offices, 2 Place de Metz,

defendant,

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

On the Facts

Whereas by applications lodged at the Court Registry on 5 December 1962 and 5 March 1963 the applicant has made two applications for the annulment of a refusal to integrate him;

and whereas in his application lodged at the Court Registry on 22 June 1963, the applicant claimed that the Court should:

'Order the implementation of the decisions contested in Joined Cases 35/62 and 16/63 to be suspended;

in doing so,

order that no established official be recruited to fill the position recently held by Mr Leroy until judgment is given in the applications made by him against the refusal to integrate him;

order that as the position of the applicant as a member of the auxiliary staff of the European Coal and Steel Community is the result of the refusal to integrate him, Article 52 of the Conditions of employment of other servants of the Communities cannot be applied;

order that the costs be reserved.'

On 3 July 1963 the defendant lodged its observations on the application for the adoption of the above interim measure, in which it contends that the Court should:

'Dismiss all the pleas and conclusions of the application made by Mr Leroy as inadmissible or, in any event, unfounded;

Make the appropriate order as to costs.'

Whereas the parties on being duly summoned put in an appearance before the President on 10 July 1963 and presented their oral observations;

On the Law

Whereas under the terms of Article 83 (1) of the Rules of Procedure an application to suspend the operation of any measure shall be admissible only if the applicant is challenging that measure in proceedings before the Court;

Whereas the applicant, considering that the announcement of the competition for the post formerly held by him and the expiry of his contract as an auxiliary are the direct results of the refusal to integrate him which he is challenging in the main action, maintains that his request is admissible;

Whereas the view of the applicant on this point cannot be upheld;

Whereas had the applicant been integrated he would have had the right to establishment (under Article 93 of the Staff Regulations of officials of the ECSC) in a grade and step of the scale of remuneration fixed by the Staff Regulations, but he had no right to a specific post;

Whereas, moreover, it has not been shown that, had the applicant been integrated, he would have held the post which the competition in question is designed to fill;

Whereas in these circumstances there is no reason to believe that the announcement of a competition for this post is the direct result of the decision contested in the main action;

Whereas therefore the first head of this application for suspension of the decision is inadmissible;

Whereas secondly the applicant requests that a provision of the Staff Regulations be declared inapplicable;

Whereas Article 83 (1) of the Rules of Procedure only refers to suspension of the operation of measures;

Whereas there is no reason to treat the effect of a provision of the Staff Regulations as a measure within the meaning of Article 83 (1) of the Rules of Procedure; and whereas this effect could be foreseen from the moment when the applicant was appointed as a member of the auxiliary staff;

Whereas, moreover, even the annulment of the measure contested in the main action could not result in the applicant's maintaining his position as a member of the auxiliary staff;

Whereas the second head of this application for suspension of the measure is therefore inadmissible;

On those grounds,

Upon reading the pleadings;
Upon hearing the parties;
Having regard to Article 39 of the Treaty establishing the European Coal and Steel Community and Article 33 of the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Staff Regulations of officials of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

hereby orders:

1. **That the application be dismissed as inadmissible;**

2. **That costs be reserved.**

Luxembourg, 16 July 1963

A. Van Houtte
Registrar

A. M. Donner
President