OPINION OF MR ADVOCATE-GENERAL LAGRANGE DELIVERED ON 10 JUNE 1964[1]

Mr President,
Members of the Court,

Miss Georges is appealing against the decision dated 20 March 1963, notified by a letter of the following 3 July, by which the Commission of the European Atomic Energy Community, in accordance with the unfavourable opinion expressed by the Establishment Board, refused to integrate her in the circumstances provided for in Article 102 of the Staff Regulations and dismissed her. She asks you in addition for compensation of 50000 FB for non-material damage and, alternatively, should the decision not be annulled, compensation of 150000 FB for material damage plus 60000 FB in respect of the extra notice which she would have been given.

Apart from the different facts, this case is very similar in respect of its legal framework to several of those with which you have had or will have to deal, particularly the Vos case.

I—Conclusions concerning annulment

Two grounds of complaints are raised:

1. The irregularity of the integration procedure;
2. The inaccuracy or irrelevance of the grounds of the decision.

First ground of complaint: irregularity of the integration procedure

The applicant's complaint in essence is is that the *exact facts* on which the Establishment Board actually relied were not brought to her knowledge in such a manner as to allow her to make an explanation.

The establishment report was based on the personal and purely subjective opinions of her superiors without taking into account the exact facts which appeared later as having settled the opinion of the Board. It was in fact a disciplinary or quasi-disciplinary procedure, which ought to have been subject to the guarantees required in such cases, that is to say, by the prior notification of complaints and the possibility of exercising rights of defence, particularly those of proving the contrary. However, the file which was sent was incomplete; the minutes of the first meetings of the Board, namely, those which took place before the meeting during which the final opinion was expressed, were not sent.

As in the actions to which I have alluded, the applicant seeks to transfer to a disciplinary plane a procedure which should not have such a character. It is a matter, let me say again, of a general appraisal of the conduct of the person concerned with a view to making a value judgment on her ability to carry out on a permanent basis the duties relating to her classification in the hierarchy. It stands to reason that infringements of disciplinary rules, either by reason of their gravity or above all by reason of their *repetition*, constitute one of the important factors in evaluating conduct, even if they have not been penalized individually. It is necessary only to make sure of the correctness of the facts on which this evaluation was based (which I will examine in connexion with the second ground of complaint) and to make sure that the Board had sufficient knowledge of it to check the opinion of the heads of department. In fact, as you know, it is customary to show to the person concerned the establishment report, as well as his personal file, and to obtain his written comments. In the present case, the Board has, in

1—Translated from the French.

addition, heard the heads of department and the applicant in turn, without however bringing them face to face, which, in my opinion, as you know, is not necessary in a procedure of this type. There is no doubt that when it expressed its final opinion, the Board was able to decide with full knowledge of the case. In respect of the passing over of the file, the applicant (who could have obtained information concerning it from the Court Registry during the present proceedings) does not indicate in what respect it is incomplete. If she means by this that nothing is shown there on the subject of the shortcomings of which she is accused, there is nothing unusual in this, since as a matter of fact she was the subject only of verbal warnings which, by their nature, *ought not* to appear in her file. In so far as the minutes of meetings of the Board are concerned, they did not form part of her file as a servant under contract, since they related to the integration procedure. We should remember that during the course of this procedure, if the Board did not give to the applicant the minutes of the meetings during which certain officials were heard, it did, on the other hand, inform her each time of the contents of the observations made concerning her by those officials and has called upon her to give explanations in this respect.
The first ground of complaint ought therefore, in my opinion, to be set aside.

Second ground of complaint: inaccuracy and irrelevance of the grounds of the decision

(a) Concerning the *relevance of the facts*, there is no dispute as to the facts of the use by the applicant of the facilities of the department (office and telephone) for private purposes. On the other hand, the applicant denies that *verbal warnings* were given to her in this connexion.
That is a serious denial for it directly contradicts the formal and concurring evidence provided in this respect by the heads of department during the integration procedure. Moreover, though it is even a little surprising that the administration could maintain such a tolerant attitude over such a long period in respect of the applicant's conduct in the department, it would be highly unlikely that it did not even react by means of verbal remarks and warnings. The substantial inaccuracy of the allegations on this point has not been established.
In respect of the disturbance to the department caused by the applicant's conduct, we are in an area of opinion rather than of fact. It is certain that such behaviour *was itself of such a nature* as to disturb the functioning of the department; it is thus difficult to contradict the assertion of the administration that the department was *actually* disturbed. The allegations of the applicant that she was left without work do not seem sufficiently relevant in this respect.
(b) As to the *relevance of the reasons for the decision*, this is not really disputed. It appears, in any case, that the reasons given by the Establishment Board are certainly of such a nature as legally to justify the unfavourable opinion of the applicant's conduct in respect of her ability to carry out her duties under a permanent appointment.

II—Conclusions in respect of compensation

These conclusions are founded:
1. On the insufficient notice;
2. On wrongful acts or omissions.

I can only refer on these two points to the comments which I made in Case 84/63, de Vos: the person concerned received compensation of one month's salary as provided by the contract and, in addition, compensation of two months' salary provided for in Article 34 of the Staff Regulations, to which Article 102 refers. The mandatory provisions of the Regulations in this respect appear to stand in the way of an

individual assessment by the Court in each particular case.
As to the conclusions based on wrongful acts or omissions, they cannot be accepted, according to your judgment in the Leroy case, since the disputed decision is not annulled and, furthermore, contains no 'superfluous criticism' in relation to the person concerned.

I am of the opinion:

— that the application should be dismissed; and

— that the costs should be borne by the applicant, except those which have been incurred by the Commission of the European Atomic Energy Community, which should be borne by the latter in application of Article 70 of the Rules of Procedure.