In Joined Cases 19 and 65/63

SATYA PRAKASH, Doctor of natural sciences, Master of Science, residing at 7a, Via Italia, Cardana di Besozzo (Italy), assisted by Ernest Arendt, Advocate of the Cour Supérieure de Justice of the Grand Duchy of Luxembourg, with an address for service in Luxembourg at the Chambers of the abovementioned Advocate, 6 rue Willy-Goergen,

applicant,

v

COMMISSION OF THE EUROPEAN ATOMIC ENERGY COMMUNITY (Euratom), Brussels, represented by its Legal Adviser, Jan Gijssels, acting as Agent, with an address for service in Luxembourg at the offices of Mr Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

Application:

— in Case 19/63: for the reversal of the refusal to reimburse removal expenses and to pay the installation allowance;

— in Case 65/63: for the reversal or, alternatively, the annulment of the decision against integration, and the payment of damages,

THE COURT (First Chamber)

composed of: L. Delvaux, acting President of Chamber, A. Trabucchi and W. Strauß (Rapporteur), Judges,

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of the facts

The facts may be summarized as follows:

The applicant was engaged by the defendant with effect from 1 October 1961. Since that date he has been assigned to the Physical Chemistry Department of the Ispra Research Centre (hereinafter referred to as 'the Centre'), directed by Mr Marchetti.

1. *Removal expenses and installation allowance (Case 19/63, Case 65/63, fifth head of the conclusions)*

A. By letter dated 12 April 1962 the applicant sent the Head of the Personnel and Social Department of the Centre the estimates of two removal firms concerning his proposed removal to Italy, at the same time asking the said Department 'to take a decision as regards the choice of a firm for my removal which is to take place later'.

By letter dated 18 October 1962, the said Department informed the applicant that it had approved the estimate of the firm of Schrooten, Duisburg, amounting to DM 3 472.65.

B. On 30 August 1962 the applicant sent a request to the administration asking for approval of his removal and installation. For this purpose he used a printed form which included, among other matters, the following:

'Seen and forwarded. Removal and/or installation approved. I consider the servant capable of performing his duties and suitable for employment by the Commission . . . (Signature of the Head of Department)'.

On the same date, Mr Marchetti signed the form. However he crossed out the sentence beginning with the words 'I consider . . .' and replaced it by the words: 'I do not at present wish to commit myself about this'. The form was returned to the applicant in this condition.

C. On 27 September 1962 the applicant submitted another request of like nature to the said Department. This was made in duplicate and the same sort of form was used. On 1 October 1962 Mr Marchetti signed one of these without making any deletions and gave it back to the applicant who personally took it to the administration. On the other copy, which Mr Marchetti retained, the printed text 'Removal approved . . . employment by the Commission' (cf. B, above) was later crossed out. This copy was sent to the administration in this form.

D. Subsequently the applicant was told that the Directorate of the Centre had refused to give the approval in question.

E. During the period between November 1962 and March 1963 the applicant lodged a series of complaints against this refusal both with a number of the defendant's departments and with the Commission itself.

Since the applicant did not receive any express decision from the Commission he made Application 19/63 to the Court on 27 March 1963.

F. By an express decision dated 18 April 1963 the Commission rejected the applicant's complaints.

On 27 May 1963 the applicant made Application 65/63 directed against the said decision *inter alia*.

2. *Non-integration (Case 65/63, first to fourth heads of the conclusions)*

A. On 31 August 1962 Mr Marchetti drew up and signed the probation report on the applicant, and concluded in the following terms:

'This man does not lack culture or intelligence. Unfortunately so far as I know he does nothing or almost nothing. Therefore in my opinion Mr Prakash is useless to the Physical Chemistry Department.'

In his written comments on this the applicant said that he did not agree with what had been said and asserted that the probation report had been made outside the prescribed time-limit.

B. On 31 August 1962 Mr Marchetti also signed the applicant's establishment report. This report.

— states in particular:

'I have not . . . been able to get any sort of work out of him. This shows that there is an insufficient sense of responsibility and an absence of devotion to the task which . . . has been entrusted [to the applicant]. Therefore I cannot assess the quality of non-existent work.

I thought it right to delay Mr Prakash's probation report in the hope of seeing him apply himself to his work. After a year I do not think it possible for me to keep him in my department;'

— contains the following observation made by Mr Ritter, Director of the Centre:

'I do not think that Mr Prakash is able usefully to work at Ispra.'

In his written comments the applicant disagrees with these assessments, alleging factual inaccuracies and procedural irregularities.

C. On 16 January 1963, Mr Marchetti sent the applicant a memorandum worded as follows:

'As no work has been carried out in respect of the task entrusted to you, all the equipment which you have bought is to be handed over to Mr Kelly who will use it for his research on re-entry. Please show him where every piece of equipment is.'

The applicant protested in vain against this decision.

D. By letter dated 25 April 1963, and received on 29 April, the administration department of the defendant told the applicant:

— that on 20 March 1963 the Commission of the EAEC had decided to terminate his contract in accordance with Article 102 of the Staff Regulations of officials of the EEC and EAEC;

— that this decision was based on the unfavourable opinion of the Establishment Board, worded as follows:

'The Establishment Board . . . considers that this servant, by his tendency towards excess in planning programmes and in calculating resources, has not, despite the instructions given to him, managed to exploit the resources placed at his disposal so as to provide the scientific contribution to the Department which it was entitled to expect of him'.

E. On 27 May 1963 the applicant made Application 65/63 which is directed essentially against the abovementioned decision.

II — Conclusions of the parties

1. *Case 19/63*

In his application in Case 19/63 the applicant claims that the Court should:

'1. declare that the application is admissible by virtue of Article 192 of the Euratom Treaty, and Articles 90 and 91 of the Staff Regulations; in addition declare that the application is presented in due form;

2. rule that the application is justified as to the substance and accordingly reverse the contested decisions whereby the defendant has refused to reimburse the applicant's removal expenses and to grant him the installation allowance;

therefore order the Commission of the European Atomic Energy Community to pay to the applicant:

(a) the sum of 3 472.65 DM in respect of reimbursement of removal expenses;

(b) a sum equivalent to one month's salary in respect of the installation allowance;

should it be necessary: order preparatory inquiries with a view to discovering why the form of the applicant's original request, dated 27 September 1962, for the reimbursement of his removal expenses and the payment of the installation allowance as transmitted to higher authority is not the same as the copy addressed to the applicant, to discovering in what circumstances this happened, who was responsible and why and, further, to ascertaining whether the deletions in the original constitute a punishable offence;

3. as to costs: order the EAEC to pay the costs and expenses of the proceedings, or, should the applicant be granted legal aid, order sums equal to the amounts paid out as legal aid to be paid over to the Cashier of the Court in accordance with Article 76 (5) of the Rules of Procedure'.

In its statement of defence in Case 19/63 the defendant contends that the Court should:

'declare the application to be inadmissible;
alternatively, declare it to be unfounded;
accordingly, and in either event, dismiss the application;
order the applicant to pay the costs.'

In his reply in Case 19/63 the applicant claims that the Court should:

'dismiss the submissions as to inadmissibility and substance raised by the defendant;
therefore: rule that the application is admissible and that it is justified as to substance, and allow the applicant's conclusions contained in his application instituting the action, dated 27 March 1963;
order such preparatory inquiries to be carried out as may be judged necessary.'

In its rejoinder in Cases 19 and 65/63 the defendant contends that the Court should:

'declare that Application 19/63 is inadmissible;

.....

accept the conclusions set out by the Commission in its statements of defence, to which it still adheres;
order the applicant to pay the costs in Cases

.....19/63.....'

2. *Case 65/63*

In his application in Case 65/63 the applicant claims that the Court should:

'I — declare that it has jurisdiction to take cognizance of the present dispute;

II — state that this application is admissible against:

(a) the express decision of 20 March 1963 refusing to grant integration;

(b) the silence observed by the administration as regards [the complaints made by the applicant] on 11 December 1962, 8 January 1963, 17 January 1963 and 19 February 1963;

(c) the express and implied decision dated [18 April 1963];

III — *As to the substance of the case principally*:

1. *as to the request that certain decisions be reversed or annulled*:

reverse the contested decisions for infringement of the rules of

law applicable, infringement of essential procedural requirements and misuse of powers;
therefore:

(a) order that the applicant be integrated under the Staff Regulations as an official and as a Principal Scientific Officer with all the practical and legal consequences arising therefrom, and that he be graded in Category A4;

(b) declare that the applicant's claims that all scientific activity was systematically paralysed by his immediate superior, Mr Cesare Marchetti, are substantiated;

alternatively:

annul the contested decisions with all the legal consequences arising therefrom, rule that such annulment extends to the preliminary procedure and that in particular the applicant's case must be submitted to the Establishment Board again after a new report made on sound and objective data has been drawn up;

in any event:

declare that the Commission of the EAEC must make good the loss suffered by the applicant arising from the illegality of the contested decisions and order the said Commission to pay such damages with interest as it shall please the Court to assess;

secondarily

2. *as to the request for damages in respect of a wrongful act or omission*:

hold that, independently of the legality of the decision concerning the integration of the applicant under the Staff Regulations, there have been wrongful acts or omissions on the part of the defendant, for which it is contractually liable, in concluding, applying, carrying out and terminating the contract of employment;

hold also that the inefficient functioning of the Physical Chemistry Department constitutes a wrongful act or omission for which the defendant is liable;

therefore:

order the defendant to pay to the applicant the sum of two million Belgian francs by way of compensation for material damage and the sum of six million Belgian francs by way of compensation for non-material damage;

IV — *Measures of inquiry*

.....

V — reverse the defendant's express decision of (18 April 1963) in so far as it refuses reimbursement of the applicant's removal expenses and refuses to grant him the installation allowance;

.....

VI — order the defendant to pay all costs and expenses and order appropriate sums to be paid over to the Cashier of the Court of Justice in accordance with the provisions concerning legal aid.'

In its statement of defence in Case 65/63 the defendant contends that the Court should:

'declare that the application is unfounded under all heads of claim;
dismiss it accordingly;
order the applicant to pay the costs.'

In his reply in Cases 19 and 65/63 the applicant claims that the Court should:

I —'.....

II — .....

III — *as to the substance of the case*:

.....

A — .....

B — *as to the request for the contested decisions to be reversed or annulled and for damages and interest*:

(a) allow the applicant's conclusions in his application instituting the action;

(b) hold that the defendant must compensate the applicant for both the material and the non-material damage suffered by him as a result of the wrongful acts or omissions on its part before, during and after the procedure and the contested decisions;

appoint one or more experts with the task of assessing the material and non-material damage suffered by the applicant or, alternatively, assess of its own motion the amount of damages and interest payable to the applicant;

C — *as to the request for damages and interest submitted on a secondary basis*:

rule that the notice of dismissal given to the applicant is void;

rule that there have been wrongful acts or omissions on the part of the defendant, for which it is contractually liable, in concluding, applying and terminating the contract of employment;

hold that the conduct of the defendant after giving notice of dismissal was wrongful and that it is therefore liable for such conduct in tort;

therefore:

order the defendant to pay to the applicant damages and interest to be assessed by the Court, either of its own motion or upon reading an expert's report ordered by it; allow the applicant's computation of damages contained in his application instituting the action and adhered to in this reply to be taken as a guide;

D — *interim request*:

in the event of recourse to an expert, order the defendant to pay the applicant a provisional sum of 200 000 Belgian francs in respect of material and non-material damage;

E — order the defendant to pay to the applicant the amount of his removal expenses from his place of origin to the place of employment and the installation allowance;

IV — *alternatively*:

take note that the applicant offers to prove the following facts by means of witnesses:

.....

V — *in the further alternative and in any event*:

order the defendant to pay to the applicant the sum of 23 428 Belgian francs in respect of his cost of living allowance, which formed an integral part of his salary during the period before the entry into force of the Staff Regulations and which was improperly withheld from the compensation due to him by virtue of Article 102 of the Staff Regulations;

rule that the defendant must pay for the removal costs from the place of employment to the place of origin;

VI — *as to costs*:

order the defendant to pay all costs and expenses and order appropriate sums to be paid over to the Cashier of the Court.'

In its rejoinder in Cases 19 and 65/63 the defendant contends that the Court should:

'.....

declare that Case 65/63 is unfounded;

.....

accept the conclusions of the Commission set out in its statements of defence, being conclusions to which it still adheres;

order the applicant to pay the costs in Cases . . . and 65/63 . . .;

alternatively, authorize the Commission, in so far as may be necessary, to bring proof in Case 65/63 contradicting the disputed allegations of the applicant.'

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

1. *Removel expenses and installation allowance*

A — Admissibility of Application 19/63

The defendant asserts that the application is inadmissible. However *both parties* effectively agree that dispute as to this has ceased to be relevant, since the defendant agrees that Application 65/63, which covers the same ground as Application 19/63, is admissible.

B — Basis of the applicant's request

The applicant relies on the Staff Regulations of officials and on Circular Notice No 50 of 25 February 1959, issued by the defendant, for the conclusion that he had a right to the emoluments in question. Furthermore, the administration had already approved the removal by letter dated 18 October 1962. Finally, the justification for this request follows from the requirement of servants to reside at the place to which they are posted.

The applicant is in possession of two copies of his request for authorization of 27 September 1962. On the one which Mr Marchetti gave back to him the sentences concerning his ability are not crossed out. If the said sentences on the copy retained by Mr Marchetti were crossed out after that date, this shows that the procedure was illegal.

The defendant replies that the position of contractual servants was governed solely by Circular Notice No 50. In this case, one of the conditions laid down by this Notice was not fulfilled, namely the favourable opinion of the immediate superior on the ability of the servant to carry out the duties entrusted to him. As regards the letter of 18 August 1962, it approved the estimate of the removel firm and not the question whether the applicant should move.

The only decision which mattered was the decision not to make the payments concerned taken by Mr Mercereau, Assistant-Director of the Centre, on 7 November 1962. Mr Marchetti had the right to change his mind so long as this decision had not been taken.

2. *Non-integration and related matters*

A — Application for the decision to be reversed or, alternatively, annulled

1. *Submission that the decision was* ultra vires

The applicant considers that he had a permanent post and that therefore he was 'eligible for establishment'. Contrary to the provisions of Article 214 of the Treaty his contract had been drawn up for an unlimited period. 'By abruptly and wrongly terminating the contract' the defendant has failed to exercise 'that good faith which should govern the contract'. The applicant had been 'expressly and emphatically told' that the stipulation in the contract allowing for its termination on short

notice 'only had the force of a mere stock phrase'.

The defendant replies that where a contract does not include a clause limiting its duration this certainly does not mean that it can be considered as a contract of unlimited duration. The utmost limit of such a contract is the date when a decision on establishment is taken.

The applicant was indeed eligible for establishment. But in accordance with the terms of Article 102 of the Staff Regulations establishment is subject to the favourable opinion of the Establishment Board.

2. *Submission based on infringement of essential procedural requirements*

(a) Irregularities as to form

According to *the applicant*, the defendant has infringed Article 110 of the Staff Regulations of officials in failing to get the Staff Committee and the Staff Regulations Committee to take part in the drawing up of rules concerning the procedures for the probationary period and for integration.

Furthermore the integration procedure is invalidated for want of the applicant's being confronted with his immediate superiors, Messrs Marchetti and Ritter. It is also invalidated because his request to see the minutes of the hearing given to them was refused.

Since the Establishment Board did not include any experimental scientist, it had to rely entirely on Mr Marchetti and it 'adopted his unfavourable report in its entirety'.

The defendant replies:

Article 102 of the Staff Regulations of officials is sufficiently clear and therefore it was not necessary to supplement it with general provisions for giving effect to it.

The applicant had the opportunity to submit his comments on all the reports made about him by his immediate superiors, both in writing in the establishment report and orally before the Establishment Board. He did in fact make use of this opportunity. Furthermore, it was not for this Board, which is an administrative body having an advisory rôle, 'to arbitrate between the interests of the institution and its servants which might conflict with each other . . . therefore it should not physically confront the parties with each other . . . nor should it even reveal the minutes of the hearing since . . . whatever else may be the case, the parties have had the opportunity of explaining themselves very thoroughly . . .'

(b) Irregularities as to substance

The applicant states:

His probation report was conspicuously late in being made. This was 11 months after he entered the service.

The procedure at the end of the probationary period was merged with the integration procedure, which is improper.

The applicant's personal file was improperly kept. Certain documents were missing, and others were in it which should not have been.

Mr Marchetti committed 'a particularly serious breach of practice' in dating his supplementary remarks on the establishment report as of 5 November 1962 when in fact he made these observations later, at a time when he was no longer officially in possession of the said report. It can be seen from the original that Mr Marchetti first put 11 November 1962 as the date, and that this was then rubbed out and replaced by 5 November.

The defendant replies:

The late drawing up of the probationary report did not adversely affect the applicant. The probationary period was laid down as a measure of an internal nature, and it should be noted that there was no stipulation for it in the letter offering employment. 'Neither the probationary period nor its expiry

could give rise to rights or obligations on the part of servants whose contracts could be terminated, both before and after this period, on one month's notice'.

The procedure concerning the probationary period and the integration procedure were not merged. The fact that both took place simultaneously did not prejudice the applicant and was not, in this case, improper.

As for the criticism concerning the keeping of the personal file, the defendant refers to a letter dated 29 January 1963 addressed to the applicant by its administration. The applicant was able to see the whole file; he looked at and made summaries of all the documents appearing therein.

It is not true to say that the schedule to the Establishment Report was antedated, and there is no trace on the document of any erasure. But even supposing that the allegation were correct, 'this would still not be grounds for discarding any part of the contents of this schedule which is in any event corroborated by other documents on the file'.

(c) Insufficient reasons given; contradiction tantamount to lack of reasons

The applicant refers to certain notes to be seen on the respective reports concerning the probationary period and establishment, and deduces from them that they contradict each other, notwithstanding the fact that the said reports were drawn up on the same date and by the same person, namely Mr Marchetti.

Furthermore the reasons given by the Establishment Board are worded 'in a vague and imprecise way' and 'are based only on the subjective and adverse assertions' made by Mr Marchetti.

The defendant replies that the passages complained of are far from being contradictory, and enable the general conclusion to be drawn that the applicant 'did not devote the intellectual ability which he possesses to the work which was expected of him'.

The defendant points out the 'temerity' with which the applicant labels the nine senior officials who made up the Establishment Board as biased. 'It seems useful to draw attention to the fact' that, of thirty servants who were given an unfavourable report by their departmental head, eighteen were nevertheless established. The truth is that the explanations given by the applicant 'were not enough to outweigh the unanimously unfavourable opinions of all the persons heard' by the said Board.

(d) Material inaccuracies in the facts alleged

The arguments of the parties turn on whether the applicant had sufficient funds and equipment to carry out the tasks with which he was entrusted. With this in mind, the parties describe in detail the history of events since the applicant joined the service.

The applicant asserts in particular:

— that at no time did he have enough funds or equipment;

— that in March 1962 Mr Marchetti poured scorn on the applicant's programme at a meeting of the local Programmes Committee although he had accepted it;

— that apart from a memorandum of 4 June 1962 Mr Marchetti never gave the applicant any precise instructions and that therefore the applicant can hardly be blamed for preparing an initial programme requiring more than the funds available;

— that, furthermore, the instructions given in the above-mentioned memorandum could not be carried out because the funds granted to the applicant had already been exhausted on purchases that Mr Marchetti had approved;

— that the defendant overlooks the time factor, forgetting that necessary pieces of equipment were a long

time in being delivered and that some of them were only delivered on the day before 16 January 1963, the date on which Mr Marchetti required the applicant to hand over the equipment in his laboratory to another research worker;

— that at no time did he have the use of a laboratory worthy of the name, nor did he have the services of a technician or any other sort of help;

— that in general the complaints made about the applicant are based on the systematic animosity directed against him by Mr Marchetti and on the inefficient functioning of the Physical Chemistry Department.

The defendant replies in particular:

— that the applicant was given a wide freedom of choice in selecting a subject for research, on condition that it could be integrated with the Department's programme;

— that three and a half months after taking up his duties, the applicant furnished his first programme of work in a memorandum of less than two pages;

— that this programme 'was far and away too ambitious and presupposed apparatus and equipment worth more than 100 000 units of account and a team estimated by the applicant (in fact under-estimated) at four research workers in Category A and four technicians in Category B'; however 'the sums granted to the whole of the Physical Chemistry Department in 1962 were in fact limited to 200 000 units of account for about fifty servants and the 'quota' for the Department stood at about 1 500 units of account per servant in Categories A and B';

— that Mr Marchetti immediately advised the applicant to show a greater sense of proportion and gave him instructions as a first step to refine the method of measuring the quantity of molecules adsorbed on aluminium by infra-red adsorption, which instructions were confirmed by the memorandum of 4 June 1962;

— that it is not true to say that Mr Marchetti poured scorn on a proposal which he put forward on his own responsibility; it is only true that he had little hope of obtaining the sums required 'before even the slightest experiment had been attempted with the means available';

— that, in spite of the refusal of the Programme Committee and the aforementioned instructions, the applicant persisted in drawing up vast programmes and in making excessive demands;

— that for this reason Mr Marchetti decided to put his previous instructions in writing and, with this in mind, wrote the memorandum of 4 June;

— that nevertheless even these instructions 'did not move the applicant to do any work' nor did they discourage him from putting forward demands which had nothing to do with the short-term programme defined in the said memorandum;

— that, in taking stock of the means at his disposal, the applicant forgets that there should be taken into consideration not only the means allocated to him personally but also particularly the general equipment which was for the use of all the research workers; he further forgets that with these resources as a whole he could have made a useful start on his work;

— that, although it is true, as regards laboratories, that the Centre suffered from a lack of space at that time, nevertheless it is equally true that the vast majority of the research workers adapted themselves to this fact and worked as well as possible in the circumstances; furthermore the applicant had more laboratory space at his disposal than did his colleagues on average.

3. *Submission based on misuse of powers and misuse of procedure*

The applicant deduces from the allegations reproduced above at 2 (b) and (d) that Mr Marchetti used his powers with a view to getting rid of him.

The defendant replies that to accept this submission would amount to agreeing that not only did Mr Marchetti show personal animosity, but so too did all the members of the Establishment Board and even of the EAEC Commission.

Furthermore the documents referred to by the applicant themselves show that Mr Marchetti expressed himself in measured and frequently diplomatic terms and that he showed himself to be patient to a praiseworthy extent.

B — Action for damages

The applicant states that he makes this claim because the decision to dismiss him was illegal and 'as an issue separate from any decision as to integration'.

He asserts in particular:

— that to annul the disputed decision 'is not in itself adequate reparation';

— that quite apart from the illegality of that decision the defendant committed wrongful acts or omissions 'in making, applying and terminating the contract';

— that in particular the defendant should have given longer notice of dismissal;

— that, furthermore, the applicant was the victim both of the disorganization of the Centre and of mistakes committed by his superiors.

The defendant replies in particular:

— that since the illegality of the disputed decision has not been demonstrated it cannot give rise to damages;

— that the notice given to the applicant is in accordance with the conditions of his contract.

C — Weighting and repatriation expenses

The applicant states that the defendant deducted the sum of 23 428 BF from the emoluments paid to him upon his leaving the service. The reason given was that this sum represented the cost of living weighting which was only granted to integrated servants. This is not true. The said weighting is an integral part of the salary and is payable to all the servants who lived at Ispra in 1962.

Furthermore the applicant has the right to the reimbursement of his costs of removal from the place where he was employed to the place of origin. Up to the present the defendant has refused to make this reimbursement.

The defendant replies that the grant of a weighting results from a provision in the Staff Regulations. Therefore only integrated servants have a right to it. The payment of 23 428 BF made to the applicant was accompanied (as was the case for all the servants working at Ispra) by a letter making it clear that 'the grant of this advance does not affect the result of the integration procedure in any way' and that 'this advance may be recovered from any sums which may for any reason be owing to the person concerned by the Commission'.

IV — Procedure

By order of 14 June 1963 the First Chamber of the Court joined Cases 19/63 and 65/63 for the purposes of the procedure and of the judgment.

By order of 25 June 1963 the President of the Court dismissed the application for the adoption of an interim measure directed at obtaining the suspension of the implementation of the decisions impugned in Case 65/63, and also for the production of certain documents.

By order of 5 July 1963 the First

Chamber of the Court accepted in part the applicant's request for the grant of legal aid and decided that the Cashier of the Court should make the applicant a recoverable advance of 25 000 BF.

On 12 July 1963 the applicant made an application under Article 91 of the Rules of Procedure for an order that certain documents be lodged with the Court prior to any further move in the proceedings.

By order of 28 October 1963 the First Chamber of the Court decided that there was no reason to grant an oral hearing in the matter and joined the said application to the substance of the case.

By orders of 15 October and 13 November 1964 the First Chamber of the Court decided to proceed to the verification of certain facts by means of witnesses and to hear Messrs Gillot, Höpper, Kosiba, Marchetti, Mercereau, Ritter and Sünner.

The said Chamber heard these witnesses at the hearing on 9 December 1964, except for Mr Kosiba who did not appear. Mr Kosiba, who was living in the United States, sent a letter in which he furnished a reply to the questions which had been put to him. At the hearing on 9 December 1964 the First Chamber of the Court decided to dispense with oral testimony from Mr Kosiba and to add his letter to the file.

The oral submissions of the parties were heard by the First Chamber of the Court on 11 February 1965.

The Advocate-General delivered his opinion at the hearing on 17 March 1965.

Grounds of judgment

I — As to Case 19/63

The applicant contests a series of measures express or implied, emanating either from the authorities at the Ispra Centre or from the administration at the Euratom Headquarters, entailing a refusal to reimburse he removal expenses and to pay him the installation allowance.

On 18 April 1963, after the commencement of the present application, the Commission itself took an express decision to that effect.

The applicant has contested this decision under the fifth head of his conclusions in Case 65/63. The defendant, in its statement of defence in Case 65/63, stated that it did not challenge the admissibility of the said head, and there is no reason for the Court to raise the matter of its own motion.

Furthermore, the decision of 18 April 1963 marked the end of the administrative procedure and therefore constitutes in effect the act adversely affecting the applicant. In these circumstances Application 19/63 has become pointless.

II — As to Application 65/63

Basically, the applicant requests the following relief:

— the reversal, or at least the annulment, of the defendant's decision of 20 March 1963, terminating his contract and refusing to integrate him, together with the implied decisions rejecting the applicant's claims against certain actions taken by his Head of Department, Mr Marchetti, namely, the report at the end of the probationary period, the establishment report and the order given to the applicant on 16 January 1963 to transfer his laboratory equipment to another research worker;

— a declaration by the Court that he should be appointed as an official in Grade A/4;

— an order that the defendant pay to him damages both because of the illegality of the said decisions and also 'as an independant matter quite apart from the legality' of the decision not to integrate him;

— the reversal of the defendant's decision of 18 April 1963 refusing to reimburse the applicant's removal expenses from his place of origin to the place where he was employed, and to grant him the installation allowance;

— an order for the defendant to pay to the applicant the sum of 23 428 BF by way of cost of living allowance;

— a declaration by the Court that the defendant must assume responsibility for the expenses of the applicant's removal from the place where he was employed to his place of origin.

1. *As to the admissibility of the application and of certain pleadings*

(a) The admissibility of the application as such is not challenged and there is no reason for the Court to raise the matter of its own motion.

(b) However, the parties to the present dispute have, on occasions, referred to the respective pleadings of the parties in another case, registered under the number 68/63.

To conduct a case in this way makes it impossible for the Court to check the exact content and significance of the submissions and arguments put forward on each side. Therefore only the submissions and arguments which do not contain such references may be taken into consideration.

(c) The applicant requests that the file of correspondence exchanged between his former employer and his Head of Department at Ispra be withdrawn. This file was produced by the defendant in order to demonstrate the correctness of its assessment of the applicant.

The applicant also requests that the passages in the defendant's statement of defence relating to the said correspondence be struck out. Finally, he asks the Court to find that the copy of the letter addressed by his Head of Department to his former employer, and produced by the defendant, is not in conformity with the original.

The other documents on the file are sufficient for a judgment to be given in this case as will appear from the grounds hereinafter set out. In these circumstances, the applicant's request is without object.

(d) The defendant contends that the Court should order the exclusion from the oral proceedings of certain papers described by the applicant as 'Gedächtnisprotokolle' ('notes for refreshing the memory'), and taking the form of notes which the applicant had drafted at the time for his own personal use. The applicant has stated that he does not intend to treat these notes, which were drafted by himself alone, as evidence. In these circumstance, there is nothing to prevent the production of the notes by way of factual argument, subject to the Court's examination in the same way as any other argument put forward by a party.

It follows from all these considerations that the application is admissible, subject to the reservations indicated above.

2. *As to the substances of the case*

A — Non-integration and dismissal

(a) The first submission

The applicant points out that he had a permanent post, and held a contract for an indefinite period, and that he was therefore 'entitled to security of employment'. He argues that the defendant violated the principle of good faith by dismissing him 'in an abrupt and improper manner' when it had been 'expressly emphasized' that the clause in his contract of employment allowing for its termination at short notice 'only had the force of a mere stock phrase'.

The applicant's argument would result in destroying the whole legal effect of the clear and precise terms of a contract accepted unconditionally by the party to whom it was offered. Whatever the prospects held out by certain persons, the applicant should have understood at the outset that his *de facto* security of employment was subject in law to the condition that his work should be satisfactory. Failing that, Article 102 of the Staff Regulations enabled the Communities to put an end to his employment.

It follows that the defendant's right to dismiss the applicant was essentially dependent on whether the opinion of the Establishment Board was properly formed, a question which will be examined in connexion with the second submission. The present submission is therefore unfounded.

(*b*) *The second submission*

1. The applicant asserts that the defendant infringed Article 110 of the Staff Regulations by failing to hold consultations with the Staff Committee and the Staff Regulations Committee before drawing up the rules applicable to the probation and integration procedures.

The procedure for the probationary period applied to the applicant must be considered in the context of the contractual conditions for servants existing before the Staff Regulations came into force. Therefore the abovementioned Article 110 cannot apply to that procedure.

As regards the integration procedure the phrase 'general provisions for giving effect to the Staff Regulations' appearing in Article 110 refers, first of all, to the provisions which each institution must adopt in order to give effect to certain mandatory provisions in the Staff Regulations, such as the first paragraph of Article 2 and the second subparagraph of Article 5 (4).

Apart from such rules, the obligation to adopt 'general provisions for giving effect to the Staff Regulations' can only be recognized where the provisions of the Staff Regulations are not by themselves sufficiently clear.

None of the provisions in the Staff Regulations concerning the integration procedure imposes an obligation on the institutions to adopt general provisions for giving effect to the Regulations. Moreover, those provisions are sufficiently precise to be applied consistently even in the absence of formal provisions for giving effect to them. In these circumstances, the rules of procedure which were in fact adopted by the defendant with regard to integration were not subject to the formalities laid down by Article 110 of the Staff Regulations.

It follows from the foregoing that this ground of complaint must be dismissed.

2. The applicant criticizes the fact that the Establishment Board did not confront him with his superiors who had passed unfavourable judgments on him, both in the establishment report and also before the Establishment Board.

In integration cases, there is no provision requiring the parties to be confronted with each other. Such an obligation could only be recognized if it were clear that the absence of such a meeting would make it impossible for the Establishment Board to clarify the facts in dispute to an extent sufficient in law. This does not apply in the present case, as will be seen from the considerations discussed below (paragraph 10). This ground of complaint is therefore unfounded.

3. The applicant asserts that the Establishment Board failed to show him the minutes of the evidence given by his superiors.

It emerges from the pleadings that the Establishment Board informed the applicant orally of the comments made about him by the superiors in question. The applicant himself asserts that he succeeded in 'refuting' all the complaints made against him by those officials. Since the applicant was able to present his defence to the extent required by law, the present ground of complaint must be dismissed.

4. The applicant alleges that the Establishment Board did not include any scientific research worker and was therefore not in a position to reach a firm conclusion on matters of pure science.

As will be seen from the considerations discussed later (paragraph 10), the evidence given by each of the applicant's superiors was enough, in the present case, to provide the Establishment Board with sufficiently precise grounds for its opinion. This ground of complaint must therefore be dismissed.

5. The applicant alleges that the report on his probationary period was drawn up considerably later than it should have been and that the different procedures for probation and integration were 'merged'.

Although it may be agreed that the delay in question constitutes an irregularity, nevertheless no causal link exists between the irregularity and the decision not to integrate the applicant. It appears from the file that a probation report drawn up at the right time would not have been written in terms more

favourable to the applicant. On the contrary the items in the file confirm the defendant's argument that the Head of Department postponed writing the probation report with the sole object of giving the applicant a chance.

As regards the alleged merger of the procedures, it is true that they took place more or less simultaneously, but it has not been shown in any way that this simultaneity, which is not in itself irregular, adversely affected the applicant.

It follows from the foregoing that the present ground of complaint is unfounded.

6. The applicant asserts that his personal file was not kept as it should have been. In particular, he alleges that certain documents were missing from it, and that others were improperly included.

The fact that a personal file may not have been kept as it should have been cannot invalidate a decision against integration unless the defects were such as to influence the opinion of the Establishment Board. Even supposing that the applicant's allegations were proved, they would not justify the presumption that any such causal link existed. As a result, the present ground of complaint cannot be accepted.

7. The applicant points out that his Head of Department committed 'a particularly serious irregularity' in putting the date 5 November 1962 on his supplementary comments on the establishment report when, in fact, he made those observations after the Director of the Centre had made his assessment on 6 or 11 November. According to the applicant, it appears from the original of the report that Mr Marchetti's comments were originally dated 11 November, but that the figure was subsequently erased and replaced by the figure 5.

The photo-copy of the document in question, which appears in the applicent's personal file, does not confirm this allegation. Besides, in so far as the present ground of complaint would lead to the supposition that the comments by the Head of Department had been influenced by those which the Director of the Centre is said to have made at an earlier date, it is contradicted by the applicant's allegation to the effect that the Director did no more than ratify the opinion of the Head of Department.

The applicant further alleges that the comments in dispute were added in order to meet the criticisms made against the Head of Department by the

administration, for having delayed his report on the applicant's probationary period. But this allegation does not prove in any way that the Head of Department would have passed a more favourable judgment on the applicant if the delay had not occurred.

8. The applicant claims that certain comments appearing in the probation and establishment reports respectively contradict each other, namely the 'excellent relations within the Department' as against his 'insufficient ability to work in a team', and his 'difficulty in clearly defining the methods of carrying out his projects' as against his 'great capacity of self-expression'.

The ground of complaint is irrelevant. A man may have excellent personal relations, without necessarily being able to fit his work into a wider setting. Furthermore, it appears from the context of the documents in question that the comment about 'means of carrying out his projects' refers to the applicant's ability to undertake a programme of research; and it is possible to lack such an ability while still possessing a certain verbal fluency.

9. The applicant criticizes the 'vague and imprecise' drafting of the reasons given by the Establishment Board.

This ground of complaint is unfounded. Placed beside the minutes of the Establishment Board and the documents in the applicant's personal file, these make sufficiently clear the criticisms made concerning the applicant.

10. The applicant asserts that the opinion of the Establishment Board is based on allegations of fact which are materially inaccurate.

According to that opinion, the applicant is accused of a 'tendency towards excess in preparing programmes and in calculating resources'. Secondly, because of that tendency, it is said that the applicant has not, despite the instructions given to him, managed to exploit the resources placed at his disposal so as to provide the scientific contribution to the Department, which it was entitled to expect of him.

These remarks constitute a general value-judgment, for which the Court cannot substitute its own assessment. On the other hand, it is for the Court to check whether the facts taken into account by the Establishment Board are materially accurate and logically compatible with that judgment. This examination can conveniently be undertaken separately for each of the two complaints made about the applicant, namely (aa) his tendency towards excess, and (bb) the insufficient work resulting from that tendency.

(aa) The defendant's main allegations are as follows:

On 15 January 1962 (that is, three and a half months after he took up his duties) the applicant furnished his first programme which was barely two pages long. This programme 'was far and away too ambitious and presupposed apparatus and equipment worth more than 100 000 units of account and a team estimated by Mr Prakash (in fact underestimated) at four research workers in Category A and four technicians in Category B . . .'. This programme was incapable of fulfilment: the credits allotted to the whole of the Physical Chemistry Department in 1962 were in fact limited to 200 000 units of account for about 50 servants, whilst the 'quota' for the Department amounted to about 1 500 units of account for each servant in Categories A and B';

— 'Straightaway', the Head of Department advised the applicant to show a greater sense of proportion in drawing up his plans, and instructed him to start by setting up as a first step a method of measuring the quantity of molecules adsorbed on aluminium by infra-red adsorption; this instruction was confirmed in writing by a memorandum dated 4 June 1962;

— In spite of these oral instructions, and instead of embarking upon the preliminary experiments thus defined, the applicant continued to prepare extremely far-reaching programmes which he outlined in notes made between mid-January and 4 June 1962 which have been lodged in the file;

— In March 1962 the applicant presented his Head of Department with a list headed 'initial equipment . . .', consisting of apparatus and accessories to a total value of 55 000 units of account; after reducing the applicant's requirements, with his agreement, to 15 000 units of account, the Head of the Department submitted the request to the local Programmes Committee which, however, rejected it.

The applicant does not dispute these facts, except in so far as he claims not to have received any instructions from his Head of Department prior to the memorandum of 4 June 1962. This allegation is contradicted by a letter which the applicant sent to his Head of Department on 14 May 1962, in which he wrote, *inter alia*: 'I submitted a programme to you in mid-January 1962. Thereafter you expressed the wish that it should be modified to take account of the fact that I could not expect to lead a research group at the start, and that I ought to plan a project on a one-man scale'.

The applicant asserts that he was not aware of the resources at the Department's disposal, so that he cannot be blamed for the disproportion existing between those resources and the equipment which he requested.

This argument is erroneous. It is reasonable to require a research worker to obtain the most precise information available about existing resources before suggesting any programmes, in order not to harm his department by delaying the start of his work.

Even if it is admitted in the applicant's favour that a certain margin of error may have been inevitable at a time when he was settling in and when the Centre was just starting up, and even taking into consideration the fact that legitimate ambitions may lead a research worker to try to obtain as many responsibilities for himself as possible, the fact remains that the applicant's requirements, which were constantly reiterated, were of an order of magnitude totally different from what could have appeared reasonable.

Moreover, the programmes presented by the applicant after 15 January and prior to 4 June 1962 went far beyond the range of short-term work fixed by the Head of Department.

The preparation of large-scale programmes is not in itself open to criticism, but it becomes so if it is not coupled with any serious attempt by the person concerned to make a start at the same time on the more modest programme which has in fact been assigned to him.

It follows from these considerations taken as a whole that when accusing the applicant of a tendency towards excess the Establishment Board did not form an opinion which was logically incompatible either with the undisputed facts or with the ones taken as proven.

(bb) However, the Establishment Board did not rely on that tendency as an independent ground of complaint, but only to the extent that it resulted in an inadequate output of work on the part of the applicant.

The applicant does not deny that he did not really begin the experiments which he was asked to carry out but claims that the resources at his disposal, particularly apparatus and laboratory space, were insufficient for the purpose. He also refers generally to the inefficient functioning of the Physical Chemistry Department.

The defendant states that the resources were sufficient to begin experiments for the short-term programme set out and confirmed in the note of 4 June 1962, and that the complaint against the applicant is precisely that he did not even begin those experiments.

In questions of nuclear research, it is not for the Court to decide whether or not a particular set of apparatus is sufficient for undertaking a given piece of research. If necessary, it would have to appoint an expert for that purpose. However, such a step would only be justified if the facts already proved raised a presumption in favour of the applicant's argument, since the burden of proof rests, generally speaking, on him. It is therefore necessary to consider whether this is the case.

In his evidence, Mr Marchetti, the applicant's Head of Department, stated in particular:

— that 'the equipment already purchased provided the applicant with plenty of possibilities for starting work';

— that 'Mr Prakash has never been blamed for not having produced results, but rather for not having started work';

— that the applicant neither tested nor adapted the new apparatus at his disposal, although such action was indispensable.

Mr Ritter, Director of the Ispra Centre, in his evidence, confirmed the substance of Mr Marchetti's statements. Whilst admitting that his duties did not enable him to have a detailed first-hand knowledge of the applicant's working conditions, he stated that his long experience had put him in a position to form an opinion on the basis of information received from Mr Marchetti. He also said that the applicant's former employer, from which he had requested information, substantially confirmed Mr Marchetti's opinion about certain shortcomings of the applicant. This testimony is such as to confirm the assessment made by the Establishment Board.

It is true that the applicant asserts that Mr Marchetti was inspired by a feeling of animosity towards him and had 'systematically paralysed' his work. However, as will be seen from an examination of the third submission, the applicant's arguments on this point cannot constitute valid *prima facie* evidence. Similarly, the Court cannot accept the applicant's subsidiary allegation to the effect that Mr Marchetti was incapable of judging the applicant's needs concerning apparatus, in spite of the fact that Mr Marchetti was clearly capable of suggesting that the applicant should carry out a particular task which the applicant was able to accept.

As regards the testimony of Mr Ritter, it is not rendered valueless simply because the witness was unaware of certain details of the applicant's work. Indeed, by virtue of his duties as Director of the Centre and his capacity

as a scientist, he was well placed to judge whether or not financial resources of a certain order of magnitude were sufficient to begin particular experiments. Moreover it is clear that Mr Ritter had several conversations with the applicant during which the applicant was able to explain his point of view. Besides, the fact that in another case brought before the Court Mr Ritter has described Mr Marchetti's attitude towards his subordinates as 'harsh' demonstrates that he was not at all inclined to approve Mr Marchetti's assessments blindly.

Other facts serve to corroborate the impression which emerges from the evidence mentioned above. In particular, the applicant has not seriously denied that he enjoyed laboratory space which was above the average for research workers at Ispra, or that the financial resources which he obtained in one way or another did not place him at a disadvantage in comparison with average standards. Neither has he been able to deny that the majority of the other research workers at the Centre succeeded in working well enough for the defendant to establish them in spite of the technical difficulties existing during the period in question.

Finally neither in his comments on the establishment report nor in the documents which he has submitted to the Court has the applicant furnished a full and clear explanation, supported by scientific arguments, demonstrating that the apparatus available to him was insufficient to embark upon 'the setting up of a technique for preparing aluminium pellets capable of being observed by transparency in infra-red rays' (this constituted the short-term work laid down in the aforementioned memorandum of 4 June 1962, and is the only work in question).

The statements of the witnesses called by the applicant are not such as to prove to the Court's satisfaction that the applicant had not been put in a position to begin his work. The witness Mr Gillot declared that he was not a specialist in the apparatus required by the applicant. The witness Mr Höpper stated that he did not know the applicant's research programme and therefore could not say whether the applicant was able to embark upon his research.

Mr Kosiba, by virtue of his residence in the United States, was unable to appear before the Court, but provided a written statement, not under oath, which the Court allowed to be used in the oral proceedings. It is true that he declared that, at the time when he and the applicant were in contact with each other, the applicant was not adequately equipped 'with the necessary apparatus for performing the research work with which he had been entrusted'. However, Mr Kosiba stated that his contacts with the staff of the Phy-

sical Chemistry Department had only been 'sporadic'. Besides, the context of the words quoted above does not show clearly whether Mr Kosiba thought that the apparatus at the applicant's disposal was not even enough to make a proper start on the short-term programme defined in Mr Marchetti's note of 4 June 1962.

(cc) The considerations set out at (aa) and (bb) show that the basic facts of the case are not such as to give rise to serious doubts about the accuracy of the assessment made by the Establishment Board. They also disprove the argument that the applicant's failure was the result of the inefficient functioning of the Physical Chemistry Department.

The fact that the applicant's practical abilities were judged against the background of a period marked by considerable genuine difficulties might be evidence that they were judged with some strictness. However the Court cannot, without breaking the rules concerning the separation of judicial and administrative powers, describe that strictness as illegal. Indeed, since value-judgments are within the exclusive jurisdiction of the Institution, it was in principle for the Institution to decide upon the degree of severity or indulgence with which it chose to assess any shortcomings of those concerned.

It must also be considered that by accepting a contract which provided for termination by one month's notice on either side the applicant placed himself in a position in which considerable latitude was given to the administration's discretionary power.

It follows from all these points that the Court must dismiss the present ground of complaint, without finding it necessary to appoint an expert.

It follows from the sum total of the considerations set out in 1 to 10 above that the applicant's second submission must be dismissed.

(*c*) *The third submission*

According to the applicant, Mr Marchetti exercised his powers with the object of obtaining his dismissal, so that there was a misuse of powers and a misuse of procedure.

Under this heading, the applicant refers to:

— the delay in drawing up the report at the end of his probationary period;

— the unfavourable assessment made in his establishment report;

— the fact that on 16 January 1963 Mr Machetti ordered the applicant to transfer his laboratory equipment to another research worker;

— the fact that from 28 January 1963 onwards, that is, prior to the decision not to integrate him, the applicant's name no longer appeared on the detailed list of posts of the Physical Chemistry Department.

It follows from the reasons given concerning the second submission that the applicant's output of work could be described as insufficient, and this fact is by itself enough to explain the assessments and actions in dispute. Besides, nothing in the written documents is capable of raising the suspicion that Mr Marchetti's attitude towards the applicant was dictated by improper motives. On the contrary, it appears, particularly from the establishment report, which is couched in favourable terms concerning certain aspects of the applicant's personality, that Mr Marchetti endeavoured in the present case to limit his criticisms to the absolute minimum.

These considerations also serve to refute the other grounds of complaint raised by the applicant as part of the present submission—grounds of complaint to the effect that both Mr Ritter and the Establishment Board deliberately or negligently confined themselves to ratifying Mr Marchetti's allegedly hostile assessments.

This submission is therefore unfounded.

It follows from the sum total of the considerations set out above at (a) to (c) that the applicant's conclusions concerning his dismissal and the decision not to integrate him are therefore unfounded.

B — Claim for damages

(a) The principal head of the applicant's claim concerns damage suffered as a result of the wrongful act or omission vitiating the disputed decision.

It follows from the considerations set out above that the decision does not appear to be vitiated by any of the defects alleged by the applicant.

A decision which has not been shown to be illegal cannot constitute a wrongful act or omission or cause illegal damage to the individual concerned unless it contains superfluous criticisms of him.

Such is not the case, the reasons for the disputed decision being limited to the absolute minimum.

Therefore the principal head of claim is unfounded.

(b) Alternatively, the applicant considers himself entitled to damages even in the event of the Court's not admitting the illegality of the decision impugned.

1. In this respect he asserts that, for various reasons, the defendant should have given him a longer period of notice.

The period of notice of one month which was given to the applicant is in accordance with the provisions of his contract of employment. Pursuant to Article 102 (2) of the Staff Regulations, the applicant received in addition the allowance of two months' salary laid down in Article 34 of the said Regulations.

In thus adhering strictly to the letter of the provisions governing the applicant's position, the defendant would only have committed a wrongful act or omission if it were established that those provisions were manifestly unjust or vexatious or that the consent of the applicant had not been freely given when the contract of employment was concluded.

As to the first point, the difficulties inherent in the setting up of a Community Research Centre justify the fact that during the period prior to the entry into force of the Staff Regulations the defendant reserved to itself a certain freedom of action.

As to the second point, the applicant has not even alleged that he was under any undue influence when he agreed to the period of one month's notice.

2. The applicant complains that he was not classified in a higher grade when the probationary period came to an end, and he refers in a general way to the 'responsibility of his superiors' for the 'non-functioning' of the department at Ispra.

As to the first point, the grading of the applicant was in accordance with the terms of his contract of employment. As to the second point, the above-mentioned allegations in fact tend to attribute his dismissal to factors for which he had no responsibility. This argument is refuted by the considerations set out above during the examination of the second submission.

It follows from what has been said above that the alternative claim for damages must be dismissed.

C — Removal expenses from place of origin to place of employment and installation allowance

The applicant challenges the legality of the decision taken by the defendant on 18 April 1963 refusing to reimburse the applicant's removal expenses and to pay him the installation allowance.

The applicant is wrong in thinking that these allowances were governed, as far as he was concerned, either by the Staff Regulations of officials of the EEC and EAEC, or by the former Staff Regulations of officials of the ECSC.

In fact the first of these Regulations does not apply to servants recruited under the so-called Brussels form of contract, in the absence of express provisions to the contrary.

The application by analogy of the second of the said Regulations to these servants was excluded to the extent that their position was governed by their contract or by general circulars drawn up by the institution.

The applicant's contract contained no reference to the questions at issue, but those questions were nevertheless covered by Circular No 50, issued by the defendant on 24 February 1959. Therefore it is on the basis of this circular that the present ground of complaint must be considered.

According to the said circular, the right of a servant to the allowances in dispute is subject, in particular, to a favourable report on the abilities of the servant made by the Head of Department.

In this case there is disagreement between the parties as to whether that condition was fulfilled. The applicant holds a copy of the request for authorization which he had presented to Mr Marchetti; this copy bears Mr Marchetti's signature, and the reference to the applicant's abilties is not deleted.

On the other hand, that sentence was crossed out on the original copy of the said request, which also bears Mr Marchetti's signature, and in addition the word 'refused' signed by the Assistant Director of the Centre, Mr Mercereau.

The Head of Department did not have the authority to take a decision himself on the request in dispute. Therefore the 'opinion' which he was called upon to form was not a decision, and could be altered as long as the decision had not been taken.

Furthermore, according to Circular No 50, the competent authority was not bound by a favourable opinion of the Head of Department. Thus the refusal given by Mr Mercereau, as well as the decision in dispute which confirmed it, do not in any way infringe the provisions in Circular No 50.

The applicant is wrong in raising the point that prior to the abovementioned refusal the Personnel Department has approved the estimate drawn up by a removal firm. In fact such an approval is only concerned with the sums which may become payable, and not with the principle of reimbursement.

It follows from all that has been said above that the present ground of complaint is unfounded.

D — Weighting

The applicant claims that the defendant should be ordered to pay him the sum of 23 428 BF, paid by way of advance in January 1963 and subsequently deducted from his compensation on dismissal.

According to the terms of a letter from the Director-General of Administration and Personnel produced for the Court file by the applicant himself, 'the grant of this advance shall not affect in any way the result of the integration procedure'. This letter also states: 'This advance will be brought into account at a later date, and if the amount thereof is more than the sums to which you are entitled, the excess may be recovered by deduction from monies due to you from the Commission under any head'.

The applicant has not denied that the advance was paid to him by way of weighting. The grant of such weighting is based on the provisions of the Staff Regulations of the EEC and EAEC and, where relevant, the Conditions of Employment of other servants of those Communities—provisions which have never applied to the applicant.

Furthermore the letter quoted above proves that the defendant reserved the right to recover the amount in dispute in the event of the benficiary's not being integrated under the Staff Regulations.

It follows that the defendant acted within its rights in retaining the abovementioned sum, and that therefore the applicant's claim is unfounded.

E — Offers of proof

As the Court is already in possession of all the facts needed to decide the present case, it does not appear necessary to examine the various offers of proof put forward by the parties, other than those which the Court has already dealt with, particularly the applications for preparatory enquiries lodged by the applicant on 12 July 1963 and 6 November 1964 respectively.

III — Costs

The applicant has failed in Application 65/63.

Although Application 19/63 has become pointless, it nevertheless follows from the reasons given by the Court for dismissing Application 65/63 that the conclusions in it were unfounded.

Under the terms of Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

However, under the terms of Article 70 of the said Rules, the costs incurred by institutions in cases brought by servants of the Communities shall be borne by the institutions.

The order of 25 June 1963 by which the President of the Court dismissed the application by the applicant for the adoption of an interim measure, as well as the order of the Court (First Chamber) of 13 November 1964 concerning the hearing of certain witnesses, reserved the decision as to costs.

The costs of the application for the adoption of an interim measure must be dealt with in the same way as the costs in the main action.

The costs involved in calling the witnesses must be borne by the defendant since the witnesses were heard in their capacity as officials.

By an order dated 5 July 1963 the Court (First Chamber) partly accepted the applicant's request for the grant of legal aid, and decided that the Cashier of the Court should make to the applicant a recoverable advance of 25 000 BF.

In accordance with Article 76 (5) of the Rules of Procedure the Court must now order the applicant to refund the said sum to the Cashier of the Court.

On those grounds,

Upon reading the pleadings,
Upon hearing the report of the Judge-Rapporteur,
Upon hearing the parties;
Upon hearing the evidence of the witnesses;
Upon hearing the opinion of the Advocate-General;
Having regard to the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community;
Having regard to the Staff Regulations of officials of the European Economic Community and the European Atomic Energy Community, especially Articles 102 and 110;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69, 70 and 76,

THE COURT (First Chamber)

hereby:

1. **Rules that no decision is required in Application 19/63;**

2. **Dismisses Application 65/63 as unfounded;**

3. **Orders the applicant to bear his own costs, including his costs in the application for the adoption of an interim measure;**

4. **Orders the applicant to pay over the sum of 25 000 BF to the Cashier of the Court;**

5. **Orders the defendant to bear its own costs, including its costs in the application for the adoption of an interim measure, and also the whole of the costs occasioned by the hearing of the witnesses.**

Delvaux Trabucchi Strauß

Delivered in open court in Luxembourg on 8 July 1965.

A. Van Houtte
Registrar

L. Delvaux
for the President of the First Chamber