JUDGMENT OF THE COURT (FIRST CHAMBER)
8 JULY 1965[1]

Stefan Krawczynski
v Commission of the EAEC

Case 83/63

Summary

1. Procedure—Conclusions in the application—Amendment in the course of proceedings—Prohibited in principle—Permissibility in certain circumstances
(Rules of Procedure, Article 42 (2))

2. Officials—Disputes with the administration—Classification as the subject of an appeal—Disputes of a financial character within the meaning of Article 91 (1) of the Staff Regulations of Officials of the EEC-EAEC—Admissibility

1. Amendment of the conclusions of the application in the course of the proceedings is only permissible if such amendment is based on matters of law or of fact which come to light in the course of the written procedure.

2. An official is entitled to request the Court to give a ruling on the legality of his classification as such an appeal constitutes a dispute of a financial character, within the meaning of Article 91 (1) of the Staff Regulations of Officials.

In Case 83/63

STEFAN KRAWCZYNSKI, Doctor of natural sciences, graduate in physical science, an official of the Commission of the European Atomic Energy Community, resident at 33 Via Milano, Angera (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 his said counsel, 6 rue Willy-Goergen,

applicant,

v

COMMISSION OF THE EUROPEAN ATOMIC ENERGY COMMUNITY, Brussels, represented by its Legal Adviser, Jean-Pierre Delahousse, acting as Agent, with an address for service in Luxembourg at the Offices of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

1 — Language of the Case: French.

Application concerning the classification of the applicant, the lack of protection against the alleged animosity shown by a senior official and the alleged lack of organization at the Joint Nuclear Research Centre at Ispra;

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 — Facts

The facts may be summarized as follows:

(1) In 1955 the applicant obtained a degree in physical science at the University of Munich with the mention 'very good'. In 1957 he obtained a doctorate in natural sciences with the mention 'summa cum laude'.

(2) On 1 April 1961, he entered the service of the Joint Nuclear Research Centre at Ispra (hereinafter referred to as the 'Centre'), an organization controlled by the defendant, where he was first of all given responsibility for problems concerning reprocessing.

(3) On 17 May 1962, the Director of the Centre and the Head of the Directorate-General for Research and Education sent a memorandum to the heads of department of the Centre on the reorganization of the Chemistry Department, by which from 1 June 1962 the applicant became responsible for the direction of the section concerned with decontamination and processing of effluents.

(4) On 15 October 1962 the applicant studied his establishment report. This report defined the duties of the applicant with the words 'responsible for directing the reprocessing department'. It rated the efficiency, ability and conduct of the applicant generally as 'Good', sometimes as 'Very good' or 'Satisfactory'; it confirmed that the applicant was 'capable of carrying out the duties at present entrusted to him' and contained an assessment by Mr Ritter, Director of the Centre, which on the whole was very flattering.

At the end of this report Mr Gueron, Director-General for Research, added: 'In my opinion Mr Krawczynski has not yet demonstrated his abilities. A contract as a temporary servant will give him an opportunity to do so without unreasonably binding the Commission'.

(5) On 16 October 1962 the applicant submitted a complaint to the Commission:

— protesting against the abovementioned assessment made by Mr Gueron;
— protesting against a succession of measures or omissions for which Mr

Gueron was responsible, which had hindered his work and, in particular, against his dismissal from his position as Head of the Reprocessing Department;

— criticizing alleged defects of organization and urging the defendant to 'carry out a fundamental reorganization'.

By letter of 11 December 1962 the defendant informed the applicant that his complaint had been rejected.

(6) By a decision of the defendant of 25 April 1963 the applicant was established in Grade A5.

(7) On 28 April, following an incident which occurred at Brussels during an official meeting held on 25 April 1963, the applicant submitted a complaint to the defendant in which he describes the events which took place as follows:

'I entered ... the conference room ... where I ... met Messrs ... who were engaged in conversation before the meeting began. I approached Mr Gueron and, greeting him respectfully, I offered him my hand. Mr Gueron did not reply to my greeting. On the contrary, he left me standing there with my right hand held out for a long and embrassing moment before turning brusquely away without a word ...'.

He maintains that this incident had 'greatly offended and deeply wounded' him.

He adds:

'As Mr Gueron's behaviour has removed all the confidence and respect which was the basis of our relationship I am obliged to approach you as the appointing authority, requesting you to assist me in every possible way.'

The applicant received no reply to this complaint.

(8) On 17 May 1963, the applicant made a reasoned 'request pursuant to Article 90 of the Staff Regulations' to the defendant for classification in career bracket A3 or, alternatively, in career bracket A4.

The applicant was informed by letter of 23 July 1963 that the defendant had rejected this request.

(9) On 7 August 1963 the applicant made the present application.

II — Conclusions of the parties

In his application, the *applicant* claims that the Court should:

'I — Declare that it has *jurisdiction* to hear this dispute;

II — Declare that this application is *admissible;*

III — *On the substance*: state that the present application is *well founded;*

and consequently:

1. Rule that the duties of the applicant as Head of the section dealing with decontamination and processing of effluents, under the direct authority of the Head of Department, correspond to those of Head of Division, as described in the detailed list of posts of 11 July 1963;

rule that these duties correspond to a salary in Grade A3, to be paid as from 1 January 1962, with seniority in that grade as from 1 April 1962;

alternatively and at all events:

rule that the applicant performs the duties of a Principal Scientific Officer and is thus entitled to a salary corresponding to Grade A4 as from 1 January 1962, with seniority in that grade as from 1 April 1961;

rule that the fact that the applicant was maintained in Grade A5/1 from his entry into the service of the JNRC at Ispra constitutes discriminatory treat-

ment in comparison to that enjoyed by his colleagues of the same rank and seniority and that such discrimination is illegal and unjustified;

2. (a) *Principally*:

rule that the defendant's refusal to assist and protect the applicant, as provided in Article 24 of the Staff Regulations, against the animosity shown by the Director-General for Research ... constitutes a wrongful act or omission giving rise to a claim for damages;

in particular, rule that the defendant was obliged to reprimand the Director-General for Research ... for his insulting behaviour towards the applicant at a departmental meeting in Brussels on 25 April 1963 and to ensure that such incidents do not recur;

rule that the defendant's failure to take action on the applicant's formal request constitutes wrongful behaviour on the part of that institution;

order the defendant to pay such damages to the applicant as the Court shall see fit;

(b) *In the alternative*:

take note that the applicant *offers to prove* by any means open to him in law, and in particular by the evidence of witnesses, the following facts:

(1) that he was appointed at the JNRC at Ispra on the express understanding that he was to devise, establish and direct the Reprocessing Department;

(2) that the refusal to acknowledge the applicant's right to remuneration corresponding to Grade A3 or, alternatively, A4 is a result solely of the animosity [of Mr Gueron] who was opposed to the establishment of the applicant;

(3) that on the handing over of the document of establishment which took place at Brussels on 25 April 1963, the Director-General for Research [Mr Gueron] refused to shake the applicant's hand when proffered and abruptly turned his back on him without speaking to him; this occurred in the presence of several of the applicant's colleagues, Heads of Department and Directors of Euratom;

(4) that the Director-General for Research ... belittled and disregarded the authority of the applicant as head of the section concerned with decontamination and processing of effluents by ignoring him and giving direct orders and instructions to his subordinates and colleagues without observing the normal administrative channels;

that, in this way, he seriously damaged the authority and respect due to the applicant and made it impossible for him to comply with the provisions of Article 21 of the Staff Regulations;

(5) that the instructions given by the Director-General for Research ... conflict with those of the Director-General of the JNRC at Ispra ... which results in the Centre's complete lack of administrative and scientific organization and order which increases daily;

that the applicant is a victim of this misunder-

standing between the two Directors-General and that his right to regular, useful scientific employment corresponding to his training has been permanently and irrevocably affected;
rule that this evidence is relevant and decisive and therefore accept it;

IV — Take note that the applicant reserves the right to claim in the course of the proceedings that the defendant be ordered to pay damages by virtue of the damage suffered as a result of the above;

V — Order the defendant to pay all the costs of the action'.

In its statement of defence, the *defendant* contends that the Court should:

'declare that the application is inadmissible or, alternatively, dismiss it as unfounded; order the applicant to pay the costs'.

In his reply, the applicant claims that the Court should:

'I — Dismiss the two objections of inadmissibility raised by the defendant as unfounded;

II — *On the substance, principally*:

A — 1. Accept the conclusions of the applicant set out in his originating application;
consequently, rule that the applicant's claim for classification in Grade A3 or, alternatively, in Grade A4 as from 1 January 1962, with seniority in the grade as from 1 April 1961, is justified both on the basis of his position as Director of the Reprocessing Department from 1 April 1961 to the beginning of 1962 and as Head of the section for decontamination and processing of effluents;

2. Rule that the fact that the applicant was maintained in Grade A5/1 represents discrimination as compared with his non-German colleagues, is *ultra vires* and constitutes a misuse of powers;

3. Order the defendant to pay such damages as the Court shall see fit for the damage suffered by the applicant as a result of the reduction in grade and discrimination which he has suffered;

B — 1. Rule that the defendant has failed in its obligation of assistance and protection provided for in Article 24 of the Staff Regulations;
rule that the defendant's attitude is incorrect and it is therefore liable to pay the applicant such damages as the Court shall see fit;

2. Rule that the lack of organization at the JNRC adversely affects the applicant's right to and interest in a career in particular by depriving him both of any opportunity to carry out scientifically useful work and of his eligibility for promotion under Article 45 of the Staff Regulations;
rule that the defendant is bound to make good the resulting material and non-material damage suffered by the applicant and, therefore, order it to pay such damages as the Court shall see fit;

In the alternative:

take note that the applicant *supplements* the offer of proof made in his application by the following points:

(1) that on taking up his duties he was informed by [the Director of the Centre] that, however important their

duties at the JNRC, the salary paid to German officials could not exceed by more than 20% the salary formerly paid in Germany; that this discrimination was, however, only of a temporary nature and that an adjustment would be made at the end of the probationary period (6 months);

(2) that [the Director of the Centre] informed the applicant that as long as [Mr Gueron] was Director-General for Research, he had no chance of improving his classification and salary since [Mr Gueron] was basically hostile towards him;

(3) that all the applicant's German colleagues even those who entered the service of the JNRC after his appointment, had advanced to higher grades and that the applicant had alone been passed over for promotion;

(4) that on 17 December 1963 the applicant received oral notification that the number of his colleagues was to be appreciably reduced;

rule that this offer of proof is relevant and decisive and therefore accept it and declare that the following witnesses shall be heard:

.....

III — Order the defendant to pay all the costs of the action'.

In its rejoinder, the *defendant* sets out its earlier conclusions and contends in addition that the Court should:

'declare that the defendant is authorized, as far as is necessary to bring evidence to refute the allegations of the applicant.'

III — Submissions and arguments of the parties

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

1. *Admissibility of the application*

The defendant maintains that the application is inadmissible on the ground that it is time-barred. In fact, since his complaint of 16 October 1962, the applicant has raised grounds of complaint which he now hopes to resolve by legal proceedings. The rejection of his complaint by letter of the Commission of 12 December 1962 caused the period for bringing an appeal laid down in Article 91 of the Staff Regulations of Officials to start to run.

The *applicant* replies that his right of action only arose on 25 April 1963 when the Staff Regulations were first applied to him.

2. *The substance of the application*

A — The classification of the applicant

The *applicant* points out that he gave up his employment at Karlsruhe only on the basis of a promise by Mr Ritter that at Ispra he would be made responsible for the organization and direction of the Reprocessing Department.

The establishment report confirms the fact that from his entry into the service at Ispra he performed duties in line with this promise. In fact, the applicant's projects for the setting up of a reprocessing plant were not approved by Mr Gueron.

Moreover, Mr Ritter informed the applicant at that time that the emoluments paid to servants at Ispra were fixed on the basis of the emoluments paid to them in their State of origin and that, by virtue of an agreement between Germany and the Commission, the salaries of German scientists could not exceed by more than 20% those paid before their employment with the Centre. The applicant was, however,

assured by Mr Ritter that at the end of the probationary period his salary would be adjusted to correspond to the duties actually performed. In fact, this was never done.

The reprocessing activities were carried out in a division (at that time called a department). Acording to the detailed list of posts then in force, the Centre was subdivided in descending order of importance into larger or smaller departments (known as 'départements' and 'services' respectively), sections and groups; the heads of the smaller departments ('services') were classified in career bracket A3 or, at the least, in career bracket A4.

In the absence of the head of the Materials Department, the applicant was directly subordinate to Mr Ritter. At that time this department was administered by a committee which was composed of heads of smaller departments and heads of section and which included the applicant. With the exception of the applicant and one of his colleagues, all the members were classified in Grade A3 or A4.

Contrary to the argument put forward by the Commission, the measures adopted on 17 May 1962 marked, for the applicant, a reduction in grade from the position of head of department ('service') to that of head of section. If the defendant's argument were correct, the effect of these measures on the classification of the applicant would have been favourable.

On 11 July 1963 the defendant brought into force a new detailed list of posts which shows the following modifications of the former list:

— the department remains the most important unit;
— the former smaller 'department' ('service') now corresponds to the 'division' (classification of its head: A3);
— the former 'section' now corresponds to the smaller 'department' ('service') (classification of its head: A4);
— the former 'group' corresponds to the 'section or the 'group' (classification of its head: A5).

According to this scheme the applicant holds at least the position of Principal Scientific Officer and must therefore be classified in Grade A4.

As regards the nature of their employment, it is clear that the activities of the applicant correspond to those of a head of division and, thus, to a post in Grade A3. The unit directed by the applicant is 'totally independent'; it constitutes a 'scientific unit in a specialized field' as the applicant is the only research worker at Euratom to deal with decontamination. Until 11 July 1963 he was directly subordinate to Mr Ritter; at present he is responsible to Mr Lindner who is in Grade A2.

In addition the applicant refers to his professional qualifications; he also makes the following observations:

— that on several occasions Mr Gueron refused to comply with recommendations for promotion made by Mr Ritter without indicating the reasons for this refusal; that the applicant was informed by the latter that he could count on no improvement in his position as long as Mr Gueron was in office;
— that, when the report was given on the applicant, Mr Lindner agreed with Mr Ritter that he should be promoted to Grade A4; the applicant does not agree, however, with the use of the word 'promotion', but requests a *reclassification* corresponding to his activities;
— that Mr Laurent and Mr Hannaert, the heads of the two other sections in the Chemistry Department, are classified in Grade A4;
— that several of the applicant's subordinates receive the same remuneration as he does;
— that several of Mr Laurent's subordinates are classified in Grade A4;
— that until 17 May 1962 the applicant was also a member of the local

Programmes Committee, the members of which are all classified in Grade A3 or in Grade A4, as well as the Classification and Promotions Committee, which was composed of the Director-General and the heads of the larger and smaller departments ('départements' and 'services').

The *defendant* replies:

(a) On admissibility: The applicant's request is inadmissible. It is doubtful whether an official has the power to refer the question of his classification to the Court, unless he can show that his request is based on various specific and weighty elements of fact which together are evidence of an infringement of his rights and interests. In this case the submissions of the applicant are clearly irrelevant; the defendant sets out this argument in detail.

(b) On the substance: Having given details of the development of the Centre, in particular in the area of 'hot chemistry' (the chemistry of radioactive materials) and reprocessing, the defendant puts forward the following arguments:

It is not correct to say that promises were made to the applicant regarding his post in the field of reprocessing. As regards the rights and obligations of the parties, only the offer of employment made on 7 January 1961 is of importance and this was accepted by the applicant without reserve. It is true only that the applicant was appointed on the basis of his experience in the respective fields of decontamination and 'hot chemistry', that he was first of all placed at the disposal of the reprocessing section and that he was given the task of participating in the planning of hot laboratories. It is also incorrect to say that the applicant was made responsible for the creation at Ispra of a reprocessing plant of the same type as that which he had planned for the research centre at Karlsruhe. Moreover, the applicant's present employment, which is by no means unacceptable to him, is fully in line with his scientific qualifications.

The applicant is wrong in concluding from the establishment report that he had been accorded the position of 'head of department', since such a position cannot be conferred by this report. When the report was drafted, the preliminary work on the definitions of duties and powers provided for in Article 5 (4) of the Staff Regulations of Officials had only just begun. The observation in question in no way uses binding legal terminology; in particular, it omits to take into account the 'basic posts' fixed in Annex I B to the Staff Regulations which does not contain such concepts as 'responsible for the direction of a department' or 'head of department'.

The references by the applicant to the 'detailed list of posts in force' are also incorrect. No legally binding detailed list of posts existed at that time, nor does one exist now. It would be ill-advised to allow the Centre to stagnate 'in the first stage of its development, when the structure is very uncertain and the outline dependent on imporant contingencies'. The applicant appears to be alluding to schemes of organization which the Directorate of the Centre prepared at regular intervals and which only represented the opinion of their authors. According to the Treaty, the Commission is alone empowered to determine the structure of working units.

The reorganization undertaken in May 1962 did not reduce the applicant's status. In fact the result was rather the contrary, since the applicant was made responsible for specific tasks and the direction of a rather important team of fellow-workers. However, the applicant exaggerates the independent nature of his post. Both from the scientific and from the administrative and financial points of view he is obliged to follow the directives of his superiors and is no more independent than the other heads of section.

It is also incorrect to claim that the classification of an official must be determined on the basis of that of his immediate superior.

The applicant's position corresponds to Grade A5 ('head of a specialized section'). Moreover, there must be no misunderstanding of the scope of the measures of 17 May 1962. These constituted a first attempt to organize the field of work in question and to determine the responsibilities of the servants; they were not taken by the appointing authority.

It is at the least premature to maintain that 'heads of department' are generally classified in Grade A3 or in Grade A4. Several examples could be given of officials performing duties similar to those of the applicant, who were referred to in one of the abovementioned schemes of organization as 'responsible for a department' and were classified in Grade A5.

In order the refute the conclusions drawn by the applicant from a comparison of his own position with that of certain of his colleagues, the defendant relies on criteria based on age, seniority, experience in employment and scientific qualifications. In fact, in the light of the developing nature of the research programmes and the uncertainties as regards their future trend, these criteria have alone proved suitable in classifying this category of officials.

The defendant sets out in detail the reasons for its opinion that the applicant's arguments based on his participation in the work of certain committees are without foundation. It also gives reasons for its view that the applicant was unjustified in believing that the classification in question was the result of the alleged animosity shown by Mr Gueron.

Finally, the defendant protests vigorously against the applicant's allegation that agreements had been made between Euratom and Germany which implied a discriminatory classification of German research workers. The indefensible nature of these allegations is shown by the case of the applicant himself. In fact, a comparison of the net salary received by the applicant in his former post with the emoluments received at the first step in career bracket A5 shows an immediate improvement of 40%.

The *applicant* replies, as to admissibility, that in matters of classification the defendant is bound by the Staff Regulations of Officials. Moreover, the objections raised by the defendant are irrelevant, if only because the applicant also puts forward the submission of misuse of powers.

B — The defendant's refusal to assist the applicant against the alleged animosity shown by Mr Gueron

The *applicant* refers to a series of facts which, in his opinion, demonstrate that Mr Gueron showed systematic animosity towards him. These are, first, the facts which were the subject of the complaints submitted by the applicant in 1962 and, in particular, the incident of 25 April 1963. The applicant maintains that the defendants' refusal to assist him constitutes a wrongful act or omission which has prejudiced his scientific activities and financial position and which, therefore, entitles him to damages.

Under Article 24 of the Staff Regulations of Officials the institutions of the Community are obliged to assist their officials in proceedings against any person perpetrating insulting or defamatory acts, etc. This obligation also applies where the perpetrators are themselves officials of the Community.

In particular, as regards the incident of 25 April 1963, Mr Gueron's behaviour was rendered even more offensive by the fact that he is a very senior official. It is useless for the defendant to seek to excuse this behaviour by referring to the applicant's complaint of 16 October 1962, since the tone of this document was perfectly correct and

had not resulted in any disciplinary measure being taken.

The *defendant* considers that the present request is inadmissible, since the statements made by the applicant are clearly irrelevant.

As regards the substance of the application, the defendant sets out detailed arguments to refute the applicant's allegations. In particular, it considers that the incident of 25 April 1963 must be seen in the light of the fact that for several months Mr Gueron had been the target of violent criticism on the part of the applicant. Furthermore, convention requires a subordinate to wait for his superior to take the initiative in offering his hand. This being so, the applicant's behaviour might have appeared to be provocation.

The *applicant* replies, as regards admissibility, that the defendant's allegations are irrelevant, if only because he also puts forward the submission of misuse of powers.

C — On the alleged disorganization of of the Centre

The *applicant* sets out in detail the facts which, in his opinion, demonstrate the lack of organization at the Centre and the damage which he suffered as a result both on the scientific level and as regards his classification. He maintains in particular that 'at no time in his career did the Commission provide him with work or research which would have enabled him to demonstrate his scientific knowledge and experience'.

The *defendant* sets out detailed arguments to refute the applicant's allegations.

As regards admissibility, the *parties* put forward submissions and arguments similar to those set out above under 1 and 2, A and B.

IV — Procedure

By orders of 15 October and 13 November 1964 the First Chamber of the Court decided to order certain facts to be proved by the evidence of witnesses and, for this purpose, to hear Mr Hubert, Mr Ritter and Mr Lindner. These witnesses were heard by the Chamber at the hearing on 11 December 1964.

The parties presented oral argument to 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 — Admissibility

1. The defendant maintains that, as the subject of this application is the same as that of the applicant's complaint of 16 October 1962 through official channels and as the rejection of that complaint was not contested within the prescribed period, the application is inadmissible.

The present application is based on three issues, namely: the classification of the applicant, the failure to protect him against the alleged animosity of Mr Gueron and the alleged lack of organization at the Ispra Centre.

The abovementioned complaint through official channels, which was in fact formulated before the applicant was established, did not refer to his classification.

In respect of the other two issues of the present application, the applicant relies on a fact which arose after the dismissal of this complaint, namely the incident of 25 April 1963.

Therefore, to the extent to which the applicant bases his application on this incident, the objection must be dismissed.

2. The Court finds of its own motion that the reply sets out the conclusions of the application in an amended form without giving the factors which might have justified such an amendment.

Although, according to Article 42 (2) of the Rules of Procedure, no fresh issue may be raised in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the written procedure, this condition governs *a fortiori* any amendment to the conclusions.

Thus, only the conclusions set out in the originating application may be taken into consideration.

It follows from all these factors that the application is admissible subject to the abovementioned reservations.

The defendant contests the admissibility of the first submission, on the ground that an official is not entitled to request the Court to give a ruling on the legality of his classification.

This objection is unfounded, since Article 91 (1) of the Staff Regulations of Officials refers expressly to 'disputes of a financial character between one of the Communities and any person to whom these Staff Regulations apply.

II — The substance of the application

1. *The first submission*

A — Preliminary considerations

1. The present application arises out of the express rejection on 23 July 1963 of the complaint submitted by the applicant through official channels on 17 May 1963 requesting a revision of the grade in which he had just been established.

Thus, in considering whether this complaint is well founded, the facts must be examined as they existed at 23 July 1963, excluding later events.

2. The defendant established the applicant in Grade A 5, which corresponds to the grade which he had been accorded before the Staff Regulations were applied to him.

As the Court has previously held, Article 102 of the Staff Regulations enabled the Institutions to proceed in this manner, although they were required to regularize the position of the person concerned if necessary under the principle of the correspondence between duties and grades.

Thus, it is necessary in this case to consider whether this principle obliged the defendant to classify the applicant in Grade A 3 or, alternatively, in Grade A 4.

In so doing, it is first necessary to take into consideration the position of the applicant at 1 January 1962, the date on which his establishment came into retroactive effect.

However, as the applicant was only informed of his establishment in 1963, it is necessary to discover whether the changes which occurred in his position between 1 January 1962 and 23 July 1963 lead to a different assessment.

3. The classification of officials of the scientific and technical services of the Joint Nuclear Research Centre is governed by Annex I B of the Staff Regulations and the table of the definitions of basic posts concerning these officials drawn up by the defendant under Article 5 of these Regulations (hereinafter referred to as the 'table of definitions').

This table lays down, in particular as regards career brackets A 3, A 4 and A 5 – A 8, two alternative criteria, one of which refers primarily to the rank in the service of the person concerned and the other to his designation and the scientific or technical nature of his duties.

It is therefore necessary to examine the applicant's complaint in the light of each of these criteria, hereinafter referred to as 'the criterion of rank' and 'the scientific and personal criterion'.

B — Application of the criterion of rank

(1) *Position of the applicant at 1 January 1962*

The applicant maintains that, in the establishment report and in a detailed list of posts of the Ispra Centre drawn up in January 1962, he was described respectively as 'entrusted with the direction of the reprocessing department' and 'responsible' for that 'department'.

He bases his claim to Grade A 3 on the fact that, according to the terminology in force at that time, the administrative unit described as a 'depart-

ment' ('service') corresponded to the unit described in the table of definitions as a 'division' and that both were directly responsible to the unit known as a 'department' (département') both before and after the entry into force of that table.

Alternatively, he claims that he should be classified in Grade A 4, on the ground that the table of definitions mentions this grade in relation to 'Heads of Department' ('chefs de service').

The defendant objects that as, at that time, the research programmes of Euratom and the details of their implementation were not yet crystallized, it had been impossible to give a final structure to the scientific services.

In addition, it maintains that the abovementioned detailed list of posts had been drawn up by the authorities at Ispra and had not been submitted for approval to the central administration of Euratom.

Finally, it observes that the terminology referred to by the applicant was in use at a time when its authors were inevitably unaware both of the wording of the Staff Regulations, which does not employ this terminology, and of the table of definitions.

The applicant has not seriously challenged the provisional and precarious nature of the structures in preparation or envisaged at that time.

This provisional and precarious nature has moreover been confirmed by the evidence of Mr Ritter, author or co-author of the expressions referred to by the applicant and whose goodwill towards him is not in doubt.

It is clear from this evidence in particular that the authors considered the word 'department' ('service') to refer to a sector of activity and not to an administrative unit.

However, the defendant's argument that the table of definitions was drawn up subsequently is not of final relevance.

In fact, being an implementing provision of the Staff Regulations, this table, like the Regulations themselves, is retroactive to 1 January 1962.

It adopts to a considerable extent the concepts of the abovementioned detailed list of posts, in particular by making the smaller 'department' ('service') rank below the larger 'department' ('département') and the 'sections' and 'groups' below the smaller 'department' ('service').

Finally, it seems to assume that normally the person responsible for a sector of activity which is controlled directly by a larger department (département') performs duties corresponding to Grade A 3 or, at least, to Grade A 4.

This being so, the problem is reduced to the question whether the duties performed by the applicant at 1 January 1962 were already sufficiently clearly defined to fall, from the point of view of the criterion of rank, within one of the concepts set out in the table of definitions.

It is clear from the allegations of the applicant himself that at this date his hopes and those of Mr Ritter that the 'reprocessing' activities would play a rôle of particular importance were already seriously threatened by the contrary intentions of the central administration of Euratom, which were to take shape a short time later.

Furthermore, the file shows that at this time the applicant's work had not really progressed from the stage of preparatory studies and abstract planning.

Although it is possible that the realization of earlier plans might have involved the applicant in responsibilities implying a higher classification, the Court cannot base its judgment on such hypotheses, which are by definition uncertain.

This being so, the applicant's statement that Mr Ritter had promised to entrust to him certain projects in the field of reprocessing is irrelevant.

Although it may be accepted that these were the prospects held out by Mr Ritter to his future colleague, any legal obligation to that effect is excluded by the fact that the contract of employment, signed without reservation by the applicant, contains no reference to them.

However regrettable it may be that the applicant's professional hopes should have been disappointed, they cannot be likened to hard facts when considering classification.

In these circumstances the participation of the applicant in the work of certain committees, which, moreover, had no defined structure, is no more conclusive.

In short, from the point of view of the criterion of rank considered at 1 January 1962, the applicant's claims are unfounded.

(2) *Position of the applicant at 23 July 1963*

By a decision of Mr Gueron and Mr Ritter taking effect on 1 June 1962, the applicant was given the duties of 'head of the section concerned with decontamination and processing of effluents'; he still had this designation and was still performing these duties at 23 July 1963.

According to the table of definitions, the duties of head of section correspond to career bracket A5–A8.

However, as the defendant admits by implication, this argument alone is not capable of refuting the applicant's claims.

In fact, even after publication of the table of definitions, and at least as regards the department to which the applicant belongs, the defendant continued to use the term 'sections' in relation to units directly responsible, in the same way as the unit directed by the applicant, to this department, whilst according to the abovementioned table the duties of head of such a unit normally correspond to Grade A3 or A4.

Moreover, the defendant entrusted responsibility for the majority of these 'sections' to officials established in Grade A4, certain of whom direct groups containing numbers equal to or even smaller than the 'section' of the applicant.

The rather incoherent and confusing way in which the defendant has applied the criteria of rank contained in the table of definitions is shown by the fact that, when heard by the Court, Mr Ritter referred to the applicant as an 'Abteilungsleiter', which is equivalent to a 'Head of Division' in the German version of Annex I B to the Staff Regulations.

In short, as regards the table of definitions, the position of the applicant with regard to rank is, to say the least, ambiguous.

It is, however, unnecessary to consider this question in greater depth.

In fact, as publication of the table of definitions took place only a short time before the rejection of the applicant's complaint, the defendant, finding it impossible to adapt the concepts of the table of definitions quickly to the still precarious structure of the scientific services, was able to rely in the first place on the scientific and personal criterion.

It is therefore essentially this criterion which must be taken into consideration in giving a decision on the present submission.

C — Application of the scientific and personal criterion

1. In the initial constitution of teams of research workers, the defendant rightly attached the greatest importance to criteria based on university education, experience in employment and age, which enabled the most objective classification to be made.

(a) As regards the applicant's university education it is clear that he possesses the very highest degrees which are awarded in his country of origin.

From this point of view, therefore, he may certainly claim the best classification which is legally compatible with his duties.

This view is confirmed by the applicant's membership of certain scientific bodies of the greatest importance.

(b) However, the criteria based on age and, in particular, on experience in employment take on greater importance when it is necessary to determine the classification of a research worker whose duties involve management.

At 23 July 1963, the applicant was scarcely 34 years old.

Among the heads of the 'sections' within the same department, only one, Mr Laurent, obtained Grade A4 before he had reached the age of 34.

As regards the effect of the criterion of age, the Court has examined the documents supplied by the defendant, the content of which has not been contested by the applicant, and the evidence of Mr Hubert.

It is clear from these two sources that even assuming the applicant to have been recruited with prospect of a 'brilliant' career he suffered no discrimination from the point of view of age.

At 23 July 1963, the applicant had approximately seven years' experience in employment.

Among the heads of 'section' within the same department, only one, Mr Hannaert, obtained Grade A4 with less than 7 years' experience.

Moreover, it is clear from one of the abovementioned documents that normally advancement into Grade A4, even by a 'brilliant' research worker, is only envisaged after he has acquired 9 years' experience in employment.

This is largely confirmed by the information concerning the heads of 'section' within the department in question.

Thus it is clear that, as regards experience in employment, the applicant suffered no discrimination.

2. The applicant claims to have suffered discrimination inasmuch as, by an agreement made with the Federal Republic of Germany, the defendant is alleged to have undertaken not to pay to German research workers, during the probationary period, a salary which exceeded by more than 20% that previously paid in Germany. The defendant categorically denies this statement.

In fact, it appears most improbable that a Member State and an institution of the Communities should have undertaken obligations of such manifest illegality.

Quite another question is whether the defendant of its own accord took into account the salary previously paid in Germany in fixing the initial classification of research workers.

Whatever the answer may be, it appears to be impossible that at 23 July 1963 the applicant's classification, already justified by the criteria of age and experience in employment, could have been influenced by such distortions.

3. It follows from all these factors that, from the point of view of the scientific and personal criterion considered at 23 July 1963, the defendant was entitled to continue to classify the applicant in Grade A5.

Since the disputed classification is thus objectively justified, the applicant's allegation that it was the result of Mr Gueron's animosity is shown logically to be without foundation.

It follows from all these considerations that the present submission must be rejected.

However, this decision in no way prejudices an assessment of the applicant's position at a date subsequent to 23 July 1963, particularly in the light of the developing nature of the criteria of age and experience in employment and of the need to adapt the administrative structure of the services at Ispra to the concepts and the spirit of the table of definitions, whatever the difficulties inherent in the establishment of such a structure for scientific work.

2. *The second submission*

This submission follows the implied rejection of the complaint of 28 April 1963, by which the applicant requested the defendant to assist him against the attitude adopted by Mr Gueron.

Without being contradicted by the defendant on the facts, the applicant describes the incident in question in the following terms: 'I entered the conference room . . . where I . . . met Messrs . . . who were engaged in conversation before the meeting began. I approached . . . Mr Gueron and, greeting him respectfully, I offered him my hand. Mr Gueron did not reply to my greeting. On the contrary he left me standing there with my right hand held out for a long and embarrassing moment before turning away brusquely without a word.' The applicant bases his claim on the first paragraph of Article 24 of the Staff Regulations of Officials which obliges the Community to assist an official who is the victim of certain types of wrongful behaviour.

Mr Gueron's behaviour was all the more offensive as it occurred in the presence of numerous other people and was perpetrated by a senior official who should have known, better than any other, how to master his irritation, however justified.

Such behaviour is not, however, sufficiently serious to justify recourse to Article 24 of the Staff Regulations of Officials.

The present conclusions must therefore be dismissed.

3. *The third submission*

By this submission the applicant maintains that he has been adversely affected by the alleged lack of organization at the Ispra Centre.

Although this ground of complaint is set out in the originating application, it is repeated in the conclusions only in the form of an offer of proof and is, moreover, submitted 'in the alternative'.

A conclusion to this effect was only set out in the reply.

Such a method of proceeding is incompatible with the requirement of Article 38 (1) (d) of the Rules of Procedure, according to which the submissions of the applicant ('les conclusions du requérant') must be contained in the application.

In the absence of any reason justifying the delay, conclusions submitted in the reply are inadmissible.

4. *Offers of proof*

As the Court now has all the information necessary to settle this dispute, it seems unnecessary to admit the offers of proof made by the parties, apart from that already admitted by the Court, in particular that set out in the 'request for the communication of additional information and amplification of evidence', filed by the applicant on 17 December 1964.

III — Costs

The applicant has failed in all the heads of his application.

Therefore, under the terms of the combined provisions of Article 69 (2) and Article 70 of the Rules of Procedure, the applicant must be ordered to pay the costs of the action, with the exception of those incurred by the defendant.

In this case, however, it is necessary to apply Article 69 (3) of those Rules according to which, where the circumstances are exceptional, the Court may order that the parties bear their own costs in whole or in part.

In fact, the inaccuracies practised or tolerated by the defendant in the designation of the administrative units and the contradictions appearing in the implementation of the table of definitions may have been contributory factors in the applicant's decision to claim a more favourable classification.

Moreover, the applicant may have regarded as offensive the attitude shown by Mr Gueron, a senior official employed by the defendant, during the meeting of 25 April 1963.

Thus there is reason to divide the costs as appears in the operative part of the judgment.

As the witnesses were heard in their capacity as officials, their travel expenses must be borne by the defendant.

In its order of 20 January 1965 the First Chamber of the Court reserved the costs relating to the 'request for the communication of additional information and amplification of evidence', filed by the applicant on 17 December 1964.

These costs must be borne in the same way as the costs in the main action.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing 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 of the European Atomic Energy Community, in particular Articles 24 and 91 and Annex I B;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, in particular Articles 38, 42, 69 and 70;

THE COURT (First Chamber)

hereby:

1. **Dismisses the conclusions of the applicant directed to securing an amendment of his classification as unfounded;**
2. **Dismisses the conclusions of the applicant directed to obtaining a finding that the defendant failed in its duty of assistance and protection as unfounded;**
3. **Dismisses the conclusions of the applicant concerning the alleged lack of organization at the Centre at Ispra as inadmissible;**
4. (a) **Orders the defendant to bear its own costs and two fifths of the costs of the applicant in the main action incurred in respect of the 'request for the communication of additional information and amplification of evidence', filed by the applicant on 17 December 1964;**

   (b) **Orders the defendant to bear the costs incurred in connexion with the travelling expenses 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