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

Hartmut Luhleich
v Commission of the European Atomic Energy Community[2]

Case 68/63

1. Officials — Integration — Integration procedure — Duty of the administration to investigate all sources of information favourable to the person concerned
(Staff Regulations of officials of the EEC and EAEC, Article 102)

2. Officials — Integration — Establishment report — Powers of the Establishment Board
(Staff Regulations of officials of the EEC and EAEC, Article 102)

1. In cases of integration under the Staff Regulations, the appointing authority and the Establishment Board are obliged to investigate all the reliable information favourable to the person concerned.

2. The Establishment Board is not bound by the establishment reports but is entitled to obtain further information, in particular by hearing any person capable of providing it with information helpful in making its assessment.

In Case 68/63

HARTMUT LUHLEICH, Doctor of natural sciences, residing at 6, via Brugnoni, Travedona (Province of Varese), 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 Mr Arendt, 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 Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

1 — Language of the Case: French.
2 — CMLR.

Applications for the reversal or, alternatively, the annulment of the decision of the defendant to dismiss the applicant, against the failure of the defendant to take action over the administrative complaint lodged by the applicant on 30 August 1962 and for 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 — Facts

The facts may be summarized as follows:

(1) On 1 November 1960 the applicant took up his duties at the Research Centre at Ispra (hereinafter referred to as the 'Centre') as a scientific research worker.

He was classified in Grade A6 and first appointed to the Chemistry Department, directed by Mr Laurent.

(2) Shortly afterwards the applicant was transferred to the Physical Chemistry Department, directed by Mr Gillot who was replaced by Mr Marchetti in July 1961.

(3) Relations between Mr Marchetti and certain research workers including the applicant became strained, and on 29 August 1961 the applicant and four of his colleagues sent a highly critical note to Mr Marchetti. On 6 December 1961 the Director of the Centre informed the applicant in writing that he would be transferred to the Chemistry Department. The transfer was confirmed by a formal decision notified to the applicant on 8 March 1962.

(4) On 16 May 1962 Mr Laurent, the applicant's immediate superior, signed his probation report. This report assesses the applicant's knowledge, ability, character and efficiency as 'good' or 'satisfactory'; only the applicant's 'adaptability' and 'ability to work in a team' were described as 'insufficient'. Under the heading, 'special factors which may directly influence the above comments' Mr Laurent wrote: 'Mr Luhleich's recent return to the Chemistry group . . . prevents me from forming an accurate idea of the quantity of work carried out'.

(5) On 30 August 1962, the applicant addressed a very detailed complaint to the defendant, referring in particular to the following:

— failure to carry out the promise given before his appointment that he would be put in charge of a group under the immediate authority of the Directorate of the Centre;
— classification in too low a grade;

— failures in administration which had deprived him of possibilities of developing and completing his scientific training, and which had forced him to work in unsatisfactory conditions;
— unfair and damaging assessment of his abilities, coupled with discriminatory treatment.

In order to examine these complaints, the defendant set up a Committee of Inquiry, consisting of Messrs Consolo, Euler and Lacroix (hereinafter referred to as the 'Consolo Committee'). The defendant has placed the written conclusions of this Committee on the file. The defendant took no further action on the applicant's complaint and admits that it was rejected by implication.

(6) On 21 May 1962, Mr Ritter, the Director of the Centre, signed the applicant's 'establishment report' which

— assesses the applicant's ability, efficiency and conduct as 'good' and 'satisfactory';
— gives a negative reply to the question whether the Director, 'by virtue of this report', considers the applicant to be capable of carrying out the tasks at present entrusted to him;
— replies to the question whether the Director considers the applicant to be capable of carrying out other activities, if necessary in a lower rank, in the following manner: 'We suggest that the question of integration should be deferred and that an offer of a two-year contract should be made'. The reasons for this suggestion were as follows: 'Owing to outside circumstances, the work (of the applicant) has not reached a point from which it might be judged definitively; Mr Luhleich is not responsible for this delay'.

(7) On 19 February 1963, the Establishment Board:

— considering 'that the applicant's conduct, involving repeated claims for independence within the Centre and autonomy in research, has exhibited, in connexion with the various opportunities afforded to him to put his abilities at the disposal of the institution, an inability to adapt himself to the obligations of the service and, hence, has seriously affected the efficiency which the institution was entitled to expect of him, whatever may have been the inherent difficulties in setting up the Centre';
— forms the opinion that the applicant 'is not suited to carrying out the duties assigned to him.'

(8) The defendant terminated the applicant contract by decision of 20 March 1963 notified to the applicant on 13 May 1963.

(9) The applicant lodged the present application on 13 June 1963.

II — Conclusions of the parties

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

I — Declare that it has jurisdiction to hear the present action;

II — Declare admissible the present application against:

(a) the failure of the administration to give any reply to the formal complaint made by the applicant to the Commission of the EAEC on 30 August 1962;
(b) the express decision of 20 March 1963 refusing to integrate the applicant, notified to him on 13 May 1963 by letter dated 3 May 1963;

III — *On the substance of the case*

Principally:

1. *On the request for reversal or annulment*:

reverse the contested decisions on the grounds of infringement of the rules of law applicable, infringement of an essential procedural requirement, misuse of

powers and abuse of procedure:
consequently:

(a) state that the grounds of complaint set out by the applicant in his complaint of 30 August 1962, in particular as regards the systematic and intentional paralysis of all scientific activity by the Directors of the [Centre] and the Director-General of Research, are well founded;

(b) rule that the applicant be integrated under the Staff Regulations [as] a principal scientific officer, in either Category A3 or A4 with effect from 1 January 1962, with all the consequences that this entails in fact and in law;

alternatively:

annul the contested decisions with all the consequences that this entails in law, rule that this annulment applies to the proceedings which have already taken place and that the applicant's case shall be submitted again to the Establishment Board after a new report has been drawn up based on factual and objective evidence from both sides;

irrespective of the above:

rule that the Commission of the EAEC shall compensate the applicant for the damage suffered as a result of the illegality of the contested decisions and shall pay the applicant such damages as the Court shall see fit;

alternatively:

2. *On the claim for damages for wrongful acts or omissions*:

rule that, quite apart from the legality of the decision on the integration of the applicant under the Staff Regulations, in the conclusion, implementation, performance and termination on the contract of employment the defendant was responsible for wrongful acts or omissions incurring its contractual liability;

rule that the defendant's refusal to deal with the formal complaint of 30 August 1962 constitutes a wrongful act or omission;

consequently:

order the defendant to pay 3 million Belgian francs to the applicant by way of compensation for material damage and 7 million Belgian francs by way of compensation for non-material damage;

IV — .....

V — Order the defendant to pay all the costs and, if legal aid is granted, order that the sums so advanced be paid over to the Cashier of the Court of Justice'.

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

'declare the application unfounded under all its heads;

consequently, dismiss the application;

order the applicant to pay the costs'.

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

'I — .....

II — *On the substance of the case*:

A — *On the application for the reversal or, alternatively, the annulment of the contested decisions and for damages*

1. *Implied decision of rejection* based on the failure of the Commission to give any reply to the formal administrative complaint submitted on 30 August 1962 . . .:

rule that the defendant was bound to take a decision on this complaint and had no right, having carried out an inquiry, to join this complaint to the integration procedure and that, by doing so and by failing to inform the Establishment Board of the outcome of the inquiry, the defendant acted illegally and misused its powers, infringed the rights of the applicant to defend himself and was responsible for a wrongful act or omission, giving rise to liability for damages;

2. *Express decision* of the Euratom Commission of 20 March 1963 refusing to integrate the applicant under the Staff Regulations of officials of the EAEC and terminating his contract of employment:

(a) rule that the integration procedure applied to the applicant is void by reason of:
   — factual and procedural irregularities;
   — infringement of the rights of the applicant to defend himself;
   — its punitive nature which constitutes a misuse of powers;
(b) rule that, having followed on irregular procedure, the contested decision is void by reason of:
   — the insufficient and contradictory nature of the reasons given;
   — the factual inaccuracies contained therein;
   — the misuse of powers by which it is vitiated;
(c) rule that the contested decision infringes the principle of good faith ('Treu und Glauben') and is incompatible with the applicant's right to security of employment and his eligibility for integration;

.....

refer the matter back to the defendant in order that it may take a decision in accordance with the terms of the Court's judgment;

3. *Compensation for damage suffered as a result of the contested decisions*:

rule that the defendant is bound to make good both the material and non-material damage suffered by the applicant as a result of its wrongful acts or omissions occurring before, during and after the procedures and decisions impugned;
appoint one or more experts to determine the material and non-material damage suffered by the applicant or, alternatively, determine of its own motion the amount of the damages to be paid to the applicant;

B—*On the alternative application for damages*:

rule that the dismissal of the applicant is void;
rule that in the conclusion, implementation and termination of the contract of employment, the defendant was responsible for wrongful acts or omissions giving rise to its contractual liability;
rule that the conduct of the defendant after the dismissal took effect is wrongful and gives rise to its quasi-delictual liability;
rule that the refusal to deal with the formal complaint of 30 August 1962 constitutes a wrongful act or omission on the part of the defendant;

consequently:
order the defendant to pay such damages to the applicant as the Court shall assess, either of its own motion or following a report drawn up by such experts as it shall appoint;
rule that the assessment of the damage made by the applicant in his application instituting the proceedings and set out again in the present reply is not definitive;

C—*Provisional application*:

if an expert assessment is made, order the defendant to pay an advance of 300 000 Belgian francs to the applicant to be set against the material and non-material damage which he has suffered;

III — *Alternatively*:

take note that the applicant offers the evidence of witnesses as to the following facts:

.....

IV — *Further in the alternative and irrespective of the above*:

order the defendant to pay to the applicant:

(a) the sum of 25 706 Belgian francs by way of the cost of living allowance which was an integral part of the salary of the applicant during the period before the entry into force of the Staff Regulations and which was improperly deducted from the compensation for dismissal payable under Article 102 of the Staff Regulations;

(b) the sum of 1 698.35 DM by way of reimbursement of personal expenses incurred by the applicant during his employment at the [Centre];

V — *Costs*:

order the defendant to pay all the costs of the action and that such costs shall be paid over to the Cashier of the Court of Justice'.

In its rejoinder, the defendant contends that the Court should:

'accept the conclusions of the Commission set out in its statement of defence, which it maintains;

.....

authorize the Commission to introduce any evidence necessary to refute the disputed allegations made by the applicant'.

III — Submissions and arguments of the parties

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

1. *Application for the decision of dismissal to be reversed or, alternatively, annulled*

A — 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. He had been expressly informed that the stipulation in the said contract allowing for its termination on short notice 'only had the force of a mere stock phrase'. This being so, the manner in which the defendant terminated the applicant's appointment must be considered illegal.

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.

B — 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 secure the participation of the Staff Committee and the Staff Regulations Committee 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 and of a notification to him of the minutes of the meeting at which his superiors were heard.

In addition, the Establishment Board did not communicate to the applicant the report drawn up by the Consolo Committee, although at least one of the members of the Establishment Board was aware of this report. The failure of this member to inform his colleagues of the content of the report constitutes a further irregularity.

Finally, the Board heard only those of the applicant's superiors with whom his relations had been strained and not Mr Gillot, his superior from December 1960 to July 1961, with whom his relations were always excellent.

The defendant replies first of all that 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 and did in fact make use of this opportunity. Moreover, it was not for the Establishment Board, which is an administrative body having an advisory rôle, to arrange for such a confrontation to take place.

The Consolo report, which was unfavourable to the applicant, was not communicated to the Board so as not to influence it.

Mr Gillot was present at the hearing of the applicant as his adviser; he had, therefore, every opportunity to provide the Board with information favourable to the applicant.

(b) *Irregularities of substance*

The applicant maintains that, although his probationary period came to an end on 30 April 1961, the probation report was only drawn up in May 1962 and then by Mr Laurent who was at that time his immediate superior. It was only submitted to the applicant for his comments in September 1962. Had it been drawn up at the correct time, it would have had to be signed by Mr Gillot; in this case it would have been more objective and there would have been no doubt as to the 'quantity of work carried out'.

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

In addition, the applicant particularly emphasizes the fact

— that his file was improperly kept since certain documents were missing and others appeared there wrongly;

— that the Establishment Board did not form its own opinion, but 'relied blindly on the adverse statements' of certain superiors;

— that the member of the Board who was aware of the Console report (cf. (a) above), which was indispensable in making an assessment of the

applicant, was evidently unable to disregard this knowledge and, therefore, unknown to his colleagues inevitably 'led his questions . . . in a particular direction'.

The defendant replies first of all that the belated preparation of the probation report does not adversely affect the applicant. The probationary period, which moreover was not provided for in the letter of appointment, was adopted as an internal measure. Neither the probationary period nor its expiry could give rise to rights or obligations for servants whose contracts could be terminated on one month's notice either before or after this period.

The respective procedures involved in the probationary period and integration were not merged. The fact that both took place simultaneously did not prejudice the applicant.

As for the criticism concerning the manner in which the personal file was kept, the defendant observes that the applicant was able to examine the complete file and that he had signed and initialled all the documents therein.

The defendant protests against the insinuations made against the member of the Establishment Board singled out by the applicant. This member simply acted as secretary of the Board and thus was not an 'inquisitor'.

(c) *Insufficient and contradictory nature of the reasons given*

The applicant emphasizes in particular the contradiction between, first, the establishment report and, secondly, the opinion of the Establishment Board. In fact, the vaguely worded conclusions of the Board contrast with the assertion of Mr Ritter that the applicant was not responsible for the difficulties which he encountered in his work. Finally, the complaints made against him do not appappear in the probation or establishment report.

The defendant observes in particular that the assessment of the applicant made by Mr Ritter in the establishment report is more favourable than the assessment which he gave to the Establishment Board because at that time Mr Ritter was unaware of both the incident of 29 August 1961 and the 'total failure of the applicant in the Chemistry Department'.

(d) *Material inaccuracies in the facts alleged*

The *applicant* states that he has never disputed the principle of the authority of the administrative structure. As a research worker, however, he did not 'merely carry out instructions' and 'could expect his directors, who are also scientists, to discuss the ideas which he put forward'; in fact, there was never any discussion of the numerous proposals submitted by the applicant although they were evidence of his interest in the efficient performance of the work.

The fact that the applicant was transferred several times demonstrates the inefficient functioning of the Centre and arises from the fact that from the time of his appointment he was 'persona non grata'. In support of his statement that he was of use to the Centre, he claims that the ideas which he outlined in his programmes were later put into practice, although—and this is his complaint—by other research workers, and that the Centre published a scientific document which he had written.

The group directed by Mr Gillot of which the applicant was a member from December 1960 to July 1961 'worked together in perfect harmony'; relations between the applicant and his superior were excellent. In 1962, the establishment report acknowledged that the applicant's relations with his colleagues and his subordinates were good and that those with his superiors were satisfactory. 'This being so, must it not be presumed that the difficulties which arose between the applicant and his superiors owe as much to the ineffi-

ciency of the latter as to the incompetence of the former?'.

Other colleagues, whose names are given by the applicant and who were more severely assessed in their respective establishment reports, were nonetheless integrated under the Staff Regulations.

Moreover, the criticisms made by the Establishment Board are unimportant in the light of the defendant's own view of the attempts to create a structure at Ispra merely as rough outlines with no legal value, reflecting at the most the opinion of those who had prepared them.

If the defendant regards the note of 29 August 1961—which was moreover confidential—as insubordination, the question then arises why

— sole responsibility for this note is attributed to the applicant;

— the defendant did not immediately reprimand the signatories;

— it did not ask Mr Marchetti for his reasons for not producing this note until one and a half years after receiving it.

As regards the claim that he misused a chromatograph, the applicant asserts that he never used such apparatus and that the claim is based on the misleading way in which the quarterly report of October 1962 was drawn up by the colleague who did use it.

Moreover, the applicant gives particular attention thoroughly to refuting the specific complaints made against him in the defendant's statements of case.

The *defendant* also sets out in detail, with comments, the events giving rise to the action. In particular it declares that 'the basis of the present action' is a failure to appreciate the principles behind any administrative structure.

Apart from Mr Gillot, the applicant has never recognized the authority of his immediate superiors. The applicant here cites numerous examples such as

— the applicant's refusal to work in an establishment of Grenoble and to go on a mission to Freiburg as proposed by Mr Laurent;

— the applicant's absence in Cologne from mid-December 1960 to mid-January 1961 and his failure to inform Mr Laurent thereof;

— the letter of 29 August 1961 which was 'an extremely serious act of insubordination'; Mr Marchetti did not inform his superiors of the incident at that time because he hoped to settle the matter amicably; contrary to the applicant's assertion, this letter was taken into account when considering the case of each of its signatories.

From taking up his appointment the applicant claimed to determine for himself, in line with his earlier work, his area of activity and the research he would undertake. He carried out his own research 'with the means at his disposal for the realization of the programme of his department, thus creating, first, an overlap between the work of his colleagues and work carried out by him (which he had not been requested to do) and, secondly, necessitating the assistance of an outside research Centre in the work he was vainly expected to do'. 'Even if it is accepted in academic institutions, the undertaking of research freely chosen by the researchers themselves is incompatible ..... with the realization of a programme fixed in advance on the basis of both the scientific and industrial needs of the Community'.

In particular, the applicant did not use the chromatograph for the purposes for which it was allotted to him but for unnecessary work. 'At this point the obstinacy of the applicant exhausted the patience of his Head of Department who sent his superiors a report on the shortcomings of the applicant'. The defendant 'is surprised at the attempt of Mr Luhleich to avoid responsibility for the misuse of this apparatus, which he ascribes to one of his colleagues, since

he always considered himself to be "head of the group" and insisted on being allocated the apparatus in question'.

C — Submission based on misuse of powers and abuse of procedure

To a large extent the arguments of the parties under this heading overlap those concerning the second submission (cf. under B above).

Moreover, the applicant complains in particular that he was the victim of the 'unflagging' animosity of the Director-General of Research. This animosity explains the failure to keep the promise made to the applicant by Mr Ritter during the negotiations for his appointment to entrust him with research work in accordance with his experience. This animosity spread to the other Heads of Department.

In addition, the applicant criticizes the procedure followed by the defendant following his complaint of 30 August 1962: the applicant was informed on several occasions that the complaint was under consideration and that a decision would be taken towards the middle of November 1962. On 14 March 1963 the applicant was informed that the Commission of the EAEC would take no decision on his complaint until a decision was given on his integration. On 20 March 1963, however, the applicant was dismissed by the defendant, an irregular procedure in that a reply should have been given independently of the integration decision and before such a decision was taken.

One must therefore conclude that he was dismissed for reasons outside the interests of the department and in particular to enable the defendant to avoid giving a decision on the complaint in question. Moreover, the arbitrary nature of the integration procedure is shown by the fact that Mr Kuhlboersch was integrated although his experiences had been the same as those of the applicant (transfers, difficulties with superiors, etc.) and although the assessment of him in the integration report was even less favourable than that of the applicant. The only difference between the two cases is that Mr Kuhlboersch submitted no formal complaint to the defendant.

The *defendant* replies first that the applicant was not promised freedom to continue with earlier research work. Power to organize the departments rests with the Directorate alone; servants have no right to request to be entrusted with the research work of their choice. The events which occurred during the applicant's period of employment (cf. under B (d) above) justify the opinion of the Establishment Board; thus it is idle to refer to the alleged animosity of the Director for Research.

'The institution has the right to reject a complaint by implication. The present application is made against this implied decision of rejection'. Moreover, the file shows that the applicant agreed that no decision should be given on the complaint until after the decision on integration was made. It is for this reason that the defendant made no objection to the admissibility of the application against the implied rejection of the complaint. Furthermore, since the Consolo report was unfavourable to the applicant, the defendant 'had no reason for not dealing with the subject-matter of the complaint'.

2. *Application for damages*

The *applicant* states that this application is made both as a subsidiary plea to (a) the application for annulment and independently of (b) the illegality of the dismissal.

As to (a) Since the applicant has found a new post, beginning on 1 February 1964, *restitutio in integrum* is no longer possible. On the other hand, if annulment is 'a means of re-establishment', it does not constitute sufficient reparation for the material and non-material damage suffered in particular as a result of the following facts:

— serious disturbance of his professional and family life (the applicant has two children);
— lack of income and social security since his dismissal;
— hesitation on the part of many potential employers who are financially dependent on Euratom to engage a research worker dismissed by the Community;
— housing difficulties in Germany which oblige the applicant to live apart from his family; as regards the maintenance of his family, he has to face the cost of living in Italy with a lower salary and without receiving any compensation for dismissal or weighting.

As to (b) The applicant imputes to the defendant wrongful acts or omissions in the conclusion, implementation and termination of the contract of employment and in its conduct after termination. He states that he has assessed the resulting loss on the basis of his age, his professional experience and the services rendered by him to the Centre.

The *defendant* replies that, as the illegality of the contested decision has not been shown, the applicant's request must be dismissed *a limine*.

It firmly refutes the applicant's assertion that the facts raised constitute wrongful acts or omissions.

Finally, it emphasizes that the applicant submits no calculations allowing the estimated total damage to be reviewed.

3. *Weighting; reimbursement of personal expenses*

The *applicant* asserts that the defendant deducted 25 706 Belgian francs from his compensation for dismissal. This deduction is unjustified since the applicant had the same right to have the weighting added to his salary as any other servant, whether or not the Staff Regulations are applied to him.

Moreover, the applicant claims reimbursement of 1 698.35 DM paid out of his personal funds to acquire laboratory equipment.

The *defendant* replies that the grant of weighting arises from a provision of the Staff Regulations. Thus, only established servants have the right to it; the payment to the applicant of 25 706 Belgian francs (as was the case for all the servants at Ispra) was accompanied by a letter specifying that 'payment of this advance is without prejudice to the outcome of the integration procedure' and that 'this advance may be recovered for sums payable by the Commission for any reason to the person concerned'.

As to the 'reimbursement of personal expenses' the defendant 'disputes . . . that the work requested of Mr Luhleich necessitated the purchase of laboratory equipment out of his own funds. It is in no way obliged to bear the expenses incurred by Mr Luhleich in carrying out his personal research work. All the equipment bought for this purpose has been returned to him'.

IV — Procedure

By order of 11 July 1963 the First Chamber of the Court accepted in part the application of the applicant for legal aid and ruled that the Cashier of the Court should make the applicant a recoverable advance of 25 000 Belgian francs.

By order of 17 July 1963, the President of the Court dismissed the application of the applicant for the suspension of the operation of the decision of dismissal and for the production of certain documents.

By an application under Article 91 of the Rules of Procedure the applicant requested an order that certain documents be placed on the file.

By order of 28 October 1963, the First Chamber of the Court decided not to hold oral proceedings on the issue and

to reserve its decision for the final judgment.

By order of 22 January 1964 the First Chamber of the Court dismissed the applicant's request that the costs of translating into French extracts from certain schedules to the reply be advanced by the Cashier of the Court.

By orders of 15 October and 13 November 1964 the First Chamber of the Court decided that certain facts should be proved by witnesses and that Messrs Euler, Gillot, Hannaert, Kuhlboersch, Lacroix, Laurent, Marchetti, Mercereau, Ritter and Van der Venne should be heard.

With the exception of Mr Hannaert who was heard on 11 February 1965, the Chamber heard these witnesses on 9 December 1964.

Mr Kuhlboersch was heard a second time on 11 February 1965.

The oral observations of the parties were heard by the First Chamber of the Court on 12 February 1965.

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

Grounds of judgment

I — On the submission that the decision of dismissal be reversed or, alternatively, annulled

The applicant requests the reversal or, alternatively, the annulment of the decision of 20 March 1963 by which the defendant terminated his contract.

This decision is based on the opinion of the Establishment Board according to which 'the conduct of the applicant, involving repeated claims for independence within the Centre and autonomy in research, has exhibited, in connexion with the various opportunities afforded to him to put his abilities at the disposal of the institution, an inability to adapt himself to the obligations of the service and hence has seriously affected the efficiency which the institution was entitled to expect of him, whatever may have been the inherent difficulties in setting up the Centre'.

In contesting the decision and opinion in question the applicant puts forward a series of complaints based in particular on the irregular nature of the integration procedure and the factual inaccuracy of the allegations made against him.

1. *On the submissions based on the irregularity of the procedure*

A — The delay in preparing the probation report and the failure of the Establishment Board to hear Mr Gillot

The applicant protests that his probation report was drawn up extremely belatedly.

Although the applicant's probationary period ended on 30 April 1961, the report was not drawn up until 17 May 1962 and then by Mr Laurent whose relations with the applicant had been strained.

Out of thirteen comments on the applicant in the report two are less than 'satisfactory', namely, those on his 'adaptability' and 'ability to work in a team'.

On the other hand, had the report in question been drawn up at the proper time, that is, in May 1961, it would have had to be drafted by the immediate superior under whom the applicant worked during that period.

The defendant has not disputed the applicant's allegation that in June 1961 the Director of the Centre 'had expressed his satisfaction and congratulated the group which, although the last to be set up, was the first to have succeeded in demonstrating its cohesion, from the point of view both of its research work and of its international character'.

When asked by the Court what he would have done as the applicant's superior, Mr Gillot assessed him in glowing terms without any reservations and stated: 'I would certainly have recommended him for integration'.

The applicant was able to refer, before the Establishment Board, to all the documents in his personal file which were favourable to him.

If he had been able to refer to a glowing report by Mr Gillot, this should logically have led the said Board to have reservations about the less favourable comments made by other superiors under whom the applicant had worked for shorter periods and, in particular, about those of Mr Marchetti, whose rôle will be examined below.

It was the duty of the defendant and the Establishment Board to investigate all sources of information favourable to the candidate.

The above facts therefore constitute an irregularity of procedure.

B — The defendant's failure to make available to the Establishment Board the report of the Consolo Committee

The applicant considers a further illegality to have existed in the fact that neither the majority of the members of the Establishment Board, nor he himself when he gave evidence before it, was aware of the report of the Com-

mittee presided over by Mr Consolo which was charged with inquiring into the applicant's complaint that the Ispra authorities had made it impossible for him to work in satisfactory conditions.

As has just been found, it was the duty of the defendant to make available to the Establishment Board every reliable piece of information capable of influencing its opinion.

The Court must therefore consider whether this applied to the report in question.

It appears from the file that there is a close connexion between certain of the complaints made by the applicant in the abovementioned complaint and those made against the applicant by the defendant. Indeed the disputes for which each side blames the other arise largely from the same set of facts.

This logical connexion is particularly well illustrated by the statement of the defendant that 'throughout his employment at the Centre' the applicant had 'considered the general difficulty and discomfort . . . as personal victimization'.

This being so, and in view of the complex and at times highly technical character of the mutual recriminations, it was very difficult to allot responsibility between the applicant and his superiors, without also examining whether the applicant's complaint was well-founded.

In this context, a knowledge of the contested report drawn up by persons who *a priori* offered better guarantees of impartiality than anyone else constituted an important source of information.

The conclusions of the Consolo report, while disapproving of certain of the applicant's actions, admit that he was hindered in his work and make certain criticisms of his superiors.

Moreover, the testimony of Messrs Euler and Lacroix, members of the Consolo Committee, showed with even greater clarity that the Committee had found a series of important facts militating in favour of the applicant.

Finally, the defendant has never given any express ruling on the complaint made by the applicant.

Although in the circumstances this atttude cannot be criticized in itself, the fact remains that the Establishment Board, unaware of the content of the Consolo report, might thus have had the impression that the applicant's com-

plaint was wholly unfounded, which was likely to confirm its opinion that the applicant had been unable to accommodate himself to the requirements of the department.

This being so, an examination of the criticism made by the applicant—which could equally well have taken the form of a hearing of the members of the Consolo Committee—would have done much to redress the balance.

It follows from all these considerations that the integration procedure was once more vitiated by a serious irregularity.

C — The contradiction between the establishment report and the opinion of the Establishment Board

The applicant asserts that a contradiction exists between the establishment report drafted, on the whole, in favourable terms and the opinion of the Establishment Board.

In particular, he emphasizes that the former expressly exempts him from responsibility for certain difficulties which had affected his work and mentions none of the criticisms taken into account by the Establishment Board.

The form used by the Director of the Centre to assess the applicant's ability, efficiency and conduct provided for the following comments—'very good', 'good', 'satisfactory', 'needs improvement' and 'insufficient'.

Out of the sixteen comments made of the applicant ten are 'good' and six 'satisfactory' and none is below this level.

The significance of this assessment must be considered in the light of the instructions printed on the form in question according to which the author of the report was only obliged to add further details to those comments below the level 'satisfactory'.

This requirement shows that the defendant considered only the comments 'needs improvement' and 'insufficient' to be capable of jeopardizing the integration of a servant.

However, when filling in the relevant form, the Director of the Centre replied in the negative to the question whether the applicant was 'capable of carrying out the tasks at present entrusted to him'.

All the same, the reasons which he gave for this contain no criticism of the applicant and are couched as follows: 'Owing to outside circumstances, his work'—that is, the applicant's work—'has not reached a point from which it might be judged definitively. Mr Luhleich is not responsible for this delay. We suggest that his integration be deferred and that he be offered a contract for two years, during which time the question of integration can again be considered'.

This being so, the establishment report contains an intrinsic contradiction because it puts forward no factor justifying a negative answer to the question whether the applicant was suited to the performance of his duties.

Furthermore, and for the same reasons, this report is incompatible with the unfavourable opinion of the Establishment Board.

However, in order not to reduce the Establishment Board to the level of a mere cipher, it must be admitted that it was not bound by the report in dispute but was entitled to obtain further information, in particular by hearing any person capable of providing it with information helpful in making its assessment.

2. *The submissions based on the inaccuracy of the facts alleged against the applicant*

The arguments of the applicant tend to show that the basis on which the opinion of the Establishment Board was drawn up either does not correspond to the facts or else is incomplete.

This opinion does not indicate which of the acts or omissions imputed to the applicant by his superiors were finally taken into account by the Board.

It is reasonable to suppose that the relevant facts are those set out by the defendant in its statement of defence.

A — The note of 29 August 1961 addressed to Mr Marchetti by certain research workers

The defendant refers to 'serious incidents' which took place between the applicant and Mr Marchetti, Head of the Physical Chemistry Department, and 'in particular' a note dated 29 August 1961.

Since the defendant has not explained the nature of the other incidents, it is appropriate to restrict consideration to the note in question.

This note, drafted in English, was signed by five research workers, including the applicant, in the Physical Chemistry Department and was addressed in confidence to Mr Marchetti.

It was highly critical of Mr Marchetti, alleging in particular that he was incapable of 'understanding the human and scientific problems of our group'.

Its closing words were as follows: 'As there is no reason to hope that this situation will change in the future, we beg you whether you would consider (sic) the other openings available to you at Euratom of which you have often spoken to us'.

Mr Ritter, the Director of the Centre, stated before the Establishment Board, that the 'secret leader' of these research workers had been Mr Sundermann, who had subsequently resigned, and that it was he who had been 'primarily responsible' for the difficulties in question.

Mr Kuhlboersch, who also signed the note, agreed in his evidence that it had been drafted by Mr Sundermann and that the applicant's rôle in the matter had been 'quite insignificant'.

However, with the exception of Mr Sundermann and the applicant, all the signatories were integrated.

Moreover, it appears from the file that the attitude of Mr Marchetti before receiving the note in question had not shown the desired spirit of co-operation.

In particular, the evidence given by Mr Kuhlboersch shows that, while Mr Marchetti objected to the programme of work previously drawn up by the research workers in question, he had constantly refrained, despite their repeated requests, from giving them any precise instructions.

Furthermore, the Director of the Centre himself admitted before the Establishment Board that Mr Marchetti is harsh. He has no great experience of leadership and has certainly committed psychological errors, but he deserved support because his presence was essential to the management of that department'.

Finally, these facts should be contrasted with the excellent climate of work which had existed under Mr Marchetti's predecessor.

It spite of the special features of their work, it is true that research workers are, like everyone else, obliged to submit to the requirements of administrative discipline and, in particular, to respect their superiors.

However, in this instance, the unusual circumstances characterizing the period of adjustment through which the Ispra Centre was passing at that time, together with the attitude shown by the superior in question, justify the inference that the conduct of the applicant was not sufficiently open to criticism to jeopardize his integration.

B — The question of the chromatograph

According to the statement of defence, 'a chromatograph, placed at [the disposal of the applicant] for the sole purpose of checking the purity of polyphenyl, the physical constants of which had to be measured, . . . was used not for this increasingly urgent work but as an instrument of analysis . . .'.

The statement of defence goes on to state that this incident, characterized by the 'obstinacy of the applicant', had obliged the Head of his department to make a report to his superiors on the shortcomings of the applicant.

In reply to the argument of the applicant that the chromatograph had been used only by Mr Van Almkerk, one of his colleagues, the defendant 'is surprised at the attempt of Mr Luhleich to avoid responsibility for the misuse of this apparatus, which he ascribes to one of his colleagues, since he always considered himself to be 'head of the group' and insisted over a lengthy period on being allocated the apparatus in question'.

(a) These statements imply, first, that the applicant was personally responsible for the misuse of the apparatus.

The Court must therefore begin by examining whether or not the applicant used the chromatograph himself.

Mr Kuhlboersch, a member of the same working group as the applicant, testified that the chromatograph was used solely by Mr Van Almkerk, whose state of health prevented his appearance before the Court.

Mr Hannaert, who was at that time the applicant's immediate superior, stated that in evidence that he could not state that the applicant had used the chromatograph.

Finally, the statement that the chromatograph had been improperly used was based on a quarterly report signed in absence of the applicant by Messrs Kuhlboersch and Van Almkerk alone.

The defendant has not challenged the evidence of Mr Kuhlboersch to the effect that the passage in the report giving rise to the criticisms in question had been drafted by Mr Van Almkerk.

All these factors make it possible to determine that, since the applicant never used the apparatus in question, it could not have been misused by him.

(b) Secondly, the defendant's statements tend to show that, even supposing that the applicant did not personally misuse the chromatograph, he is nonetheless responsible, since he regarded himself as the 'head of the group'.

The important point is not whether the applicant attributed to himself the post 'head of the group', but whether he had been officially appointed to that position.

No such appointment appears in the file and it has not even been alleged by the defendant.

Moreover, the quarterly report in question refers to the applicant and his colleagues Kuhlboersch and Van Almkerk as 'specialists with responsibility' without suggesting any difference of rank. Furthermore, instructions for the use of the chromatograph were sometimes addressed to the applicant alone and sometimes to all three research workers.

Finally, the applicant was not classified in a higher grade than his two colleagues.

In the light of all these circumstances, it cannot even be claimed that, as regards Messrs Kuhlboersch and Van Almkerk, the applicant held *de facto* the position of superior.

It is therefore unfair to make a servant suffer the inconveniences of a higher rank without allowing him the corresponding advantages.

(c) Finally, the passages in the quarterly report in question which gave rise to the present allegation are worded as follows: 'A chromatograph . . . which *will be used* in the analysis of samples of polyphenyl has been delivered . . . We *will undertake* the chromatographic separation of mixtures of terphenyl with the aid [of the chromatograph]'.

The use of the future tense demonstrates that the authors of the report were merely referring to work which they *proposed* to undertake.

If Mr Hannaert, the immediate superior of the servants concerned, considered that as from 12 October 1962 the intentions thus revealed did not correspond to the instructions previously given to the servants, he had the right, and even the duty, to reprimand them at once instead of allowing the report, which in addition referred to him as the 'specialist responsible for the whole of the research', to go through.

However, he preferred to wait until 29 October 1962 when, without previously informing the research workers in question, he addressed a note to the responsible officials at Euratom, stating that 'the chromatograph . . . entrusted to Mr Luhleich has not been used for its proper purpose'.

It was only on 31 October 1962, during an interview which seems in other respects to have taken place in a friendly atmosphere, that he informed the applicant that the report in dispute had made a bad impression in Brussels and that he had had difficulty in defending its authors. This statement shows on the one hand that he regarded himself as justified in coming to their defence but on the other hand is in sharp contrast to his note of 29 October.

It does not appear that Mr Hannaert took advantage of the interview to give the applicant an express warning.

Nor does it appear that any other responsible official from Euratom approached the applicant and his colleagues at that time in order to ascertain either that the alleged misuse did not take place or to stop it immediately.

On the contrary, a teleprinter message of 27 November 1962 from the Director-General for Research ordered Mr Lindner, Mr Hannaert's superior, to decide how to make the most efficient use of the chromatograph while avoiding as regards the applicant 'any abruptness of manner capable of being interpreted as a discriminatory action'.

It was only on 24 January 1963 that Mr Lindner gave instructions for the future use of the chromatograph in a note, containing no reprimand, addressed to the applicant and the research workers Kuhlboersch and Van Almkerk.

The equivocal, hesitant and even contradictory attitude revealed by the actions and attitudes of the applicant's superiors is incompatible with the facts alleged by the defendant which, if true, would have necessitated immediate and drastic intervention in the interests of the department.

Moreover, assuming it to be justified, such intervention would have corresponded to the elementary duty of loyalty owed by the institution to its servant.

In fact, as soon as the superiors considered, rightly or wrongly, that the servant was acting improperly, they should have intervened firmly, instead of allowing him to believe that his conduct would in the last resort be tolerated and only raising the question again during the integration procedure, the outcome of which has a crucial effect on the professional future of a servant.

(d) The applicant also makes the general allegation that the chromatograph had never been misused and that this impression arose solely from the fact that Mr Van Almkerk had drafted the quarterly report in question in a manner open to misinterpretation.

This allegation was confirmed by the evidence of Mr Kuhlboersch, with the help of detailed scientific arguments.

It is necessary to call expert evidence on this point, since the considerations set out above show by themselves that the complaint against the applicant is based on inaccurate allegations of fact.

C — The applicant's relations with Mr Laurent, his first superior

The defendant contends that at the end of 1960 and the beginning of 1961 the applicant refused to go on scientific missions to Grenoble and Freiburg, as suggested by Mr Laurent.

In this context, the defendant itself speaks of 'suggestions'.

As long as the intentions of a superior are expressed as wishes and not as orders, the subordinate's duty of obedience is not at issue.

This is particularly true for research workers for whom it is normal for formal instructions to be preceded by a period of scientific discussion in which the different opinions are considered on an equal footing.

Furthermore, it does not appear that Mr Laurent insisted formally that his suggestions be carried out, or that he complained of any insubordination to the Directorate of the Centre.

Moreover the defendant claims that the applicant went on a mission to Germany from December 1960 to January 1961 without informing Mr Laurent.

On 5 December 1690 Mr Gillot, then Head of the Physical Chemistry Department, wrote to the applicant: 'Following a discussion with [Mr Laurent], it seems to be in everyone's interests that you leave the Chemistry group. I do not think you will have difficulty in finding interesting work with us in the Physical Chemistry group. Therefore, I suggest that you join us. Should you agree, I will set in motion the necessary formalities for your transfer'.

On 12 December 1960 the applicant expressed his agreement and requested Mr Gillot to authorize the mission in question which had moreover already been approved by the Director of the Centre.

Although it is true that in a strictly administrative sense this correspondence did not imply a transfer at that point, the letter of 5 December nevertheless gave the impression that the two Heads of Department concerned were in agreement over the applicant's new posting.

Furthermore, during this initial period marked by the absence of well-defined programmes of a precise structure, it appears that the Director of the Centre usually allowed the Heads of Department considerable liberty in the choice of their colleagues.

This is shown in particular by the fact that the applicant's move to the Physical Chemistry Department was never the subject of a written decision and that the exact date cannot even be established from the documents in his file, copious though they are.

In view of such an unorthodox practice the applicant cannot be criticized for addressing his request for authorization to the person whom he was justified in the circumstances in regarding *de facto* as his immediate superior.

Moreover the defendant has not challenged the applicant's statement that Mr Laurent was also aware of the mission in question.

This being so, it is clear, that the facts referred to by the defendant are incapable of supporting the complaints made against the applicant.

D — The applicant's delay in carrying out work on the determination of certain physical constants

Although the applicant's probationary period ended on 30 April 1961, the report was not drawn up until 17 May 1962 and then by Mr Laurent whose relations with the applicant had been strained.

Out of thirteen comments on the applicant in the report two are less than 'satisfactory', namely, those on his 'adaptability' and 'ability to work in a team'.

On the other hand, had the report in question been drawn up at the proper time, that is, in May 1961, it would have had to be drafted by the immediate superior under whom the applicant worked during that period.

The defendant has not disputed the applicant's allegation that in June 1961 the Director of the Centre 'had expressed his satisfaction and congratulated the group which, although the last to be set up, was the first to have succeeded in demonstrating its cohesion, from the point of view both of its research work and of its international character'.

When asked by the Court what he would have done as the applicant's superior, Mr Gillot assessed him in glowing terms without any reservations and stated: 'I would certainly have recommended him for integration'.

The applicant was able to refer, before the Establishment Board, to all the documents in his personal file which were favourable to him.

If he had been able to refer to a glowing report by Mr Gillot, this should logically have led the said Board to have reservations about the less favourable comments made by other superiors under whom the applicant had worked for shorter periods and, in particular, about those of Mr Marchetti, whose rôle will be examined below.

It was the duty of the defendant and the Establishment Board to investigate all sources of information favourable to the candidate.

The above facts therefore constitute an irregularity of procedure.

B — The defendant's failure to make available to the Establishment Board the report of the Consolo Committee

The applicant considers a further illegality to have existed in the fact that neither the majority of the members of the Establishment Board, nor he himself when he gave evidence before it, was aware of the report of the Com-

The Court must merely consider it likely that in those circumstances the Establishment Board would have reached a different conclusion.

Taken together, the considerations set out above render it superfluous to examine the other complaints raised by the applicant or to carry out the measures of inquiry requested by him.

At the hearing counsel for the applicant formally stated in the applicant's presence and without being contradicted by him that, even if he won his case, the applicant had no intention of re-entering the defendant's employment.

This being so, there is no reason either to annul the contested decision or to refer the matter back to the defendant but rather to hold that, since the circumstances in which the decision was made were irregular, it constitutes a wrongful act giving rise to the liability of the Community and that damages should be awarded to the applicant.

II — The submissions that the rejection of the applicant's complaint be reversed or, alternatively, annulled

The applicant requests the Court to reverse or, alternatively, annul the implied decision by which the defendant rejected his complaint of 30 August 1962 and to award him damages for the injury suffered as a result of the illegality of that decision.

This complaint referred, first, to the classification of the applicant and, secondly, to his working conditions at Ispra.

Since the applicant has formally declared that he does not intend to re-enter the defendant's employment, his complaint has become pointless.

It is therefore unnecessary to rule on his conclusions concerning that complaint.

III — On the claim for damages

(1) The applicant claims that the Court should order the defendant to pay him damages by reason of the irregular nature of the decision of dismissal. He leaves the amount of damages to the discretion of the Court. It follows from the considerations set out above under I (3) that these conclusions are well founded.

In the circumstances of the case, it is reasonable to assess the amount of the damage at a sum equivalent to nine months of the net emoluments received by the applicant at the moment when his dismissal took effect.

(2) In addition, the applicant maintains that, regardless of the legality of the decision of dismissal, he has suffered damage.

He requests the Court to order the defendant to pay him three million Belgian francs by way of compensation for material damage suffered and seven million Belgian francs by way of compensation for non-material damage.

As regards the assessment of these sums, the application instituting the proceedings merely states that they are justified by virtue of the applicant's age, professional experience and the services which he rendered to the Ispra Centre.

In view of the size of the sums claimed such general allegations conform neither with the requirements of Article 18 of the Protocol on the Statute of the Court of Justice of the EAEC nor with Article 38 (1) (c) of the Rules of Procedure, according to which the application must contain at least a brief statement of the grounds on which the application is based.

The present conclusions must therefore be declared inadmissible, without its being necessary to examine whether the alleged wrongful acts or omissions actually exist.

IV — The claim for repayment of the sum deducted from the weighting

The applicant claims that the defendant should be ordered to pay him the sum of 25 706 Belgian francs, previously paid as an advance and later deducted from the compensation payable on termination of the contract.

The applicant has not denied that this sum was paid as a weighting and that the payment was accompanied by a letter providing 'that the payment of this advance is without prejudice to the outcome of the integration procedure', and that the advance 'may be recovered from any sums which might be payable by the Commission for any reason to the person concerned'.

Payment of the weighting arises from the provisions of the Staff Regulations of officials of the EEC and EAEC and, where appropriate, from the Conditions of Employment of Other Servants of the Communities — provisions which never became applicable to the applicant.

Moreover, the letter quoted above clearly shows that the defendant reserved the right to recover the sum in question if the beneficiary failed, as in the present case, to become integrated under the Staff Regulations.

The fact that the applicant's dismissal was irregular cannot give him a right to repayment of the sum in question, since he himself has stated that he does not intend to re-enter the employment of the defendant, whatever the decision of the Court on the legality of the dismissal.

The present conclusions are therefore unfounded.

V — The claim for repayment of the sum paid by the applicant out of his personal funds

In his application the applicant stated that he had expended a sum of about $400 out of his own pocket for his laboratory at Ispra and that his superiors had refused to reimburse him.

However, these conclusions were only put forward in his reply.

It does not appear that this delay in the formulation of his conclusions is justified by legal or factual elements which became apparent after the filing of the application.

This being so, these conclusions are inadmissible under the terms of Articles (d) 38 (1) and 42 (2) of the Rules of Procedure.

VI — Costs

The applicant has succeeded in the main points of his application and has claimed that the costs of the application be borne by the defendant.

Under the terms of Article 69 (2) of the Rules of Procedure the defendant must therefore be ordered to pay the costs.

Both the order of 17 July 1963 by which the President of the Court dismissed the application made by the applicant for the adoption of an interim measure and the order of the First Chamber of the Court of 13 November 1964 concerning the hearing of certain witnesses reserved the decision as to costs.

Costs in the above proceedings must go the same way as those in the original action.

By order of 11 July 1963, the First Chamber of the Court granted in part the request of the applicant for legal aid, whilst ruling that the Cashier of the Court should make a recoverable advance of 25 000 Belgian francs to the applicant and reserving the decision as to costs.

In accordance with the second subparagraph of Article 76 (5) of the Rules of Procedure it is appropriate to require that sum to be paid over to the Cashier of the Court by the defendant.

The costs of these proceedings must go the same way as those in the original action.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon examining the witnesses;
Upon hearing the parties;
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, especially Article 18;
Having regard to the Staff Regulations of officials of the European Economic Community and the European Atomic Energy Community, especially Article 102;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 38, 69 and 76;

THE COURT (First Chamber)

hereby:

1. **Rules that the decision of the defendant of 20 March 1963 terminating the contract of the applicant is illegal and constitutes a wrongful act incurring the liability of the Community;**

2. **Orders the defendant to pay damages to the applicant equivalent to to nine times the monthly net emoluments received by him at the moment when the dismissal took effect;**

3. **Dismisses as inadmissible the applicant's claim for damages for loss suffered independently of the illegality of the above decision;**

4. **Dismisses as unfounded the request of the applicant for the payment of a weighting of 25 706 Belgian francs;**

5. **Dismisses as inadmissible the request of the applicant for the payment of a sum expended out of his personal funds on his laboratory at Ispra.**

6. **Declares it unnecessary to rule on the applicant's request for the reversal or, alternatively, the annulment of the implied decision of the defendant rejecting the complaint of 30 August 1962 and for the payment of damages by virtue of the alleged illegality of that decision;**

7. **Orders the defendant to pay the costs of the action, including those incurred in the application for the adoption of an interim measure, in the hearing of witnesses and in the grant of legal aid;**

8. **Orders the defendant to pay 25 000 Belgian francs to the Cashier of the Court.**

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

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 17 MARCH 1965[1]

Mr President,
Members of the Court,

Mr Hartmut Luhleich, a Doctor of natural sciences with a degree in chemistry, had been an assistant at the University of Cologne for four years when, after a proposal from the Federal Ministry of Atomic Energy and after contacting Dr Ritter, he was employed at Ispra. He actually took up his appointment on 1 November 1960 and was classified in Grade A6, Step 2. You are aware of the manner in which his career developed. He was first posted to the Chemistry Department, then in January 1961 was transferred to the Physical Chemistry Department which was at that time under the authority of Monsieur Gillot, the interim Head of Department, but from 1 July 1961 was under the authority of Mr

1 — Translated from the French.