6 In this circumstance, it is just to order the defendant to pay one half of the costs incurred by the applicant.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Communities;
Having regard to the Protocols on the Statute of the Court of Justice;
Having regard to the Staff Regulations of Officials of the European Communities, especially Articles 9, 34 and 91;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application as unfounded;**

2. **Orders the applicant to bear one half of the costs which he has incurred and the defendant to bear the remainder of the costs incurred by the parties.**

Trabucchi Pescatore Kutscher

Delivered in open court in Luxembourg on 12 May 1971.

A. Van Houtte
Registrar

A. Trabucchi
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL DUTHEILLET DE LAMOTHE DELIVERED ON 1 APRIL 1971[1]

Mr President,
Members of the Court,

Mr Nagels is an official of Belgian nationality. Until 1969 he performed the duties of an inspector at the Office National Belge des Débouchés Agricoles et Horticoles.

He applied for a post of Principal Administrative Assistant, Grade B 1 in the departments of the Commission, in the Directorate-General for Agriculture in

1 — Translated from the French.

circumstances to which I shall come back presently.

This application was accepted and, in accordance with Article 34 of the Staff Regulations, he was appointed to that post as a probationer on 1 March 1969 for a period of six months.

In accordance with that article, a report was drawn up on his probationary period on 30 July 1969. This report found serious inadequacies in the applicant's ability to hold the post to which he had been appointed and suggested, as the Staff Regulations allow, that that probationary period be extended for three months.

During that extension of the probationary period, the applicant fell ill and was absent for two months.

Then the Commission adopted a very liberal and humane measure, although its legality is debatable.

For, in spite of a second probation report which had also concluded that the applicant should be dismissed, it granted him an extension of his probationary period equal to the length of his absence through illness.

But a third probation report of 19 January 1970 confirmed the findings contained in the previous reports on the applicant's inability to perform the duties for which he had been recruited.

Accordingly he was dismissed from 17 February 1970 by a decision of which he was notified on 16 February.

In the present application, Mr Nagels requests the Court:

(1) to annul that decision and the rejection of his appeal through official channels whereby he had requested the Commission to revoke it;

(2) alternatively, if the Court does not accept the conclusions requesting an annulment, to order the Commission to pay him 200 000 francs damages to make good the damage which he has suffered.

I

Let us first examine the conclusions requesting the annulment of the decision.

The applicant puts forward three submissions in support thereof, or more exactly three groups of submissions, the first of which is in fact the main one.

The first submission will not detain me long. It is based on the claim that at the date when he was notified of his dismissal, Mr Nagels's probationary period had ended.

But it appears that the applicant is making a mistake on that point.

The end of the probationary period does not in any way imply the establishment by implication of the probationer.

In some countries the law governing the public service even goes much further and acknowledges that if the official is not established at the end of the probationary period this automatically terminates all relations between the probationer and the service and that the decision subsequently confirming it is only by way of ratification and may have retroactive effect from the date when the probationary period ends.

Without going so far, it seems to me however that the fact that the Commission gave the applicant the benefit of several weeks' salary to which he would not normally have been entitled by only deciding that he should be dismissed from the date at which the second probationary period ended, which had already been extended by two months, cannot in any case make the decision to dismiss him illegal.

The second submission is based on the claim that Article 9 (5) of the Staff Regulations has been infringed.

The applicant maintains that the procedure followed is irregular in that a consultative committee called the 'Reports Committee' for which Article 9 provides must be set up and consulted was not consulted for the simple reason moreover that that committee was never set up.

But Article 9 of the Staff Regulations solely provides that the competent authorities have power to set up that 'Reports Committee'.

The result is that those authorities are under no obligation to set up such a committee.

Therefore, since it is established that no committee of that kind which could competently give an opinion on Mr Nagels's case was set up, this submission cannot in my opinion be accepted.

The third submission, or the third group of submissions, brings me to the core of Mr Nagels's arguments.

The latter maintains that he was not put in a position to show the abilities involved in the post for which he had been recruited.

That post, according to the applicant, was essentially a technical post concerning *field tests* by an *agricultural economist* of species and varieties of agricultural and horticultural plants and in addition on the spot control of the arrangement of fields of those plants for purposes of comparison and the inspection of those fields.

But the applicant claims that essentially he was only made to perform work of an administrative nature, in particular drawing up reports of meetings or minutes.

The applicant concludes from this that he is entitled to rely upon the principles laid down in the judgment of the Court in the *Mirossevich* case of 12 December 1965 whereby the Court determined the course which a probationary period must take in order to be regular.

First of all I would like to make a preliminary remark on that subject, which is that the factual and legal conditions in which the Mirossevich case arose are entirely different from those in the present case.

Miss Mirossevich, who was recruited as a probationary translator, was complaining that during her probationary period she had done an insufficient translation work to enable an opinion on her abilities to be formed with full knowledge of the facts.

After hearing expert opinion, the Court in fact acknowledged that the little work that she had been given had not enabled the competent authorities to assess her abilities.

But Mr Nagels's case is quite different. He does not complain in any way that he was not given sufficient work to enable him to be judged. What he maintains is that since the work which he was given was not of the type indicated by the vacancy notice, the fact that he was given such work makes the whole probationary period irregular.

He accuses the departments of the Commission not of only having given him little or no work, but of having given him essentially administrative work to be carried out on the spot as the vacancy notice indicated.

But, my Lords, these arguments hardly withstand actual study of that vacancy notice. The latter, in its French version, is worded thus:

> '... Effectuer, dans le cadre de directives générales, des travaux de bureau particulièrement difficiles et complexes concernant:
> — le contrôle des espèces et variétés de plantes agricoles et horticoles;
> — l'aménagement des champs comparatifs de ces plantes;
> — procéder à l'inspection de ces champs'.
>
> ('Performing within the context of general instructions particularly difficult and complex office work concerning:
> — the testing of species and varieties of agricultural and horticultural plants;
> — the arrangement, for the purposes of comparison, fields of those plants;
> — carrying out the inspection of those fields.')

In that version there is hardly any doubt: this is particularly difficult and complex office work which implies, in addition to general knowledge, some technical knowledge, and which can also involve some field inspections.

The applicant contests this interpretation by putting forward two arguments.

First, he claims that the expression 'particularly difficult and complex office work' is a stereotyped general-purpose expression, which is intended to justify appointments to Grade B 1 in view of the table of basic posts annexed to the Staff Regulations.

Secondly, the Dutch version of the vacancy notice implies that the essential part of the work was technical field inspection work.

But neither of those two arguments is in my opinion convincing.

(a) As regards the French text, even if it is admitted that the qualification 'particularly difficult and complex' is perhaps rather in the nature of a stereotyped expression intended to link the post defined by the Staff Regulations, nevertheless the expression 'office work' characterizes the nature of the duties and the grade shows by itself that these are in no way unimportant administrative duties.

(b) As regards the Dutch text, obviously it is more difficult for me to adopt a definite viewpoint.

The Court has before it the text of the vacancy notice in the four languages.

The applicant maintains that even if it is acknowledged that it follows from the French text that the activities relating to the testing of agricultural or horticultural species or to the arrangement of test fields can only be activities which are linked to office work, this is not the case with the Dutch text.

In fact, in his opinion, the use of the present participle 'concerning' makes the French text relatively clear on that point. On the other hand, the effect of using that expression 'met name' is that the vacancy notice must be interpreted as foreseeing office work, certainly, but in particular work concerning the testing of agricultural and horticultural species and the arrangement of fields for the purposes of comparison.

But, he claims, and this is not contested, that office work formed the essential part of the duties which were given to him during his probationary period.

I shall not suggest to the Court that it accepts these arguments for three reasons:

(1) The applicant had indicated in his application form that although Dutch was his mother tongue he had a *very good knowledge* of French, at all events for the purpose of reading.

That very good knowledge of French should have shown him, if it existed, any discrepancy that there might have been between the Dutch text and the French and enabled him to ask for the necessary explanations.

(2) It is established that the applicant did not apply in 1969 having only seen the vacancy notice but following many contacts with the competent departments of the Commission going back as far as 1967.

It would really be quite extraordinary if the people who received him and who were completely acquainted with the essentially administrative duties for which it was anticipated to recruit a new official, according to the procedure laid down in Article 29 (2), had not explained to him the nature of those duties.

(3) In spite of the brilliant discussion on linguistics which the applicant's Counsel and the Commission's representative put forward during the oral proceedings, it does not seem to me to be at all certain that the expression 'met name' in Dutch always has the rather special meaning attributed to it by the applicant.

In these circumstances, I am of the opinion that this last submission cannot be upheld either and that the conclusions for the annulment of the decision put forward by the applicant must be rejected.

II

There remain the conclusions in support of the claim for damages.

They are based on the damages which it is claimed were caused to the appli-

cant by the wrongful act committed by the Commission by having a vacancy notice published the version of which was ambiguous in one of the Community languages.

But:

— on the one hand the existence of damages is far from established since the applicant, after being kept on probation for eleven months instead of the six months laid down as the normal rule in the Staff Regulations and after receiving his salary for more than two weeks after the end of his probationary period was re-instated in his national civil service straight away;

— on the other hand, as I have just told the Court, the applicant on whom the burden of proof rests in the claim for damages does not establish clearly the existence of an ambiguity in the Dutch text in comparison to the text in the other languages.

I conclude therefore

— that the application should be dismissed,

— that the parties should bear their own costs.