1. Dismisses the application as unfounded;

2. Orders the parties to bear their own costs.

Pescatore Kutscher Sørensen

Delivered in open court in Luxembourg on 18 October 1976.

A. Van Houtte
Registrar

P. Pescatore
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 30 SEPTEMBER 1976 [1]

Mr President,
Members of the Court,

The present case is concerned with the application of Article 24 of the Staff Regulations of the European Communities under the first paragraph of which the Community institutions have a duty of assisting any official in their service, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person or property to which he is subjected by reason of his position or duties.

Mr N. has chosen this field as the basis for the action which he has brought against the Commission.

The applicant was engaged by the European Coal and Steel Community in 1963 as a locksmith on the local staff in Luxembourg. He subsequently continued this work in Brussels where he was transferred in 1970 to the Commission and posted to the maintenance of buildings department. After a probationary period he was established as an official in a Grade D 1 post on 1 October 1972 and became head of the section dealing with maintenance of locks and metalwork in the buildings of the administration.

In this capacity he was entrusted with coordinating and checking the work done 'under supervision' by the workmen which a Brussels locksmith's undertaking had made available to the Commission under a contract to supply labour.

It appears that the applicant was against the employment of private labour on the premises of the institution; he would have preferred to work with local staff engaged directly by the administration. His relations with the representatives and workmen of the firm fairly soon became difficult and strained and he criticized

1 — Translated from the French.

the undertaking, in particular for supplying the Commission with insufficiently qualified staff.

Even before his establishment and in particular during his probationary period his superiors had noted the difficulties already arising at the time by the applicant's 'irritating' character and 'by reason of his tendency to cause complications with considerations irrelevant to the work and frequently matters of pure invention'.

This assessment, which is to be found in the probationary report made on 16 May 1972, resulted in an extension of the probationary period for three months.

It is unnecessary to pass any judgment on the merits of this report but it must be admitted that the administration had as from 1972 knowledge of the difficulties which the applicant's conduct and his relations with those around him in his work caused to the proper functioning of the department.

The action brought before you has its origin in a letter which the manager of the private undertaking sent on 25 March 1974 to the Director-General for Personnel and Administration responsible for equipment to complain about the applicant's attitude with regard to workers of the undertaking for whom he was responsible. I think it necessary to quote the most important passages of this complaint:

'Mr N. has been exceeding his duties for a long time. His constant interference in our relations with our workmen in regard to wages, due dismissals, number of hours worked etc. are unacceptable to us. I think it is no exaggeration to say that our men are terrorized and in any event our work force, which is very valuable, is in danger of breaking up as a result of the bad atmosphere at work ...

The impression is obtained that in throwing his weight about in all directions Mr N. is trying to destroy our work force for reasons best known to himself alone'

In conclusion the writer of the complaint suggested that an impartial inquiry should be conducted by the administration although the state of affairs complained of was in his opinion already well known to the applicant's immediate superiors. He asked that steps be taken to put the matter right in the interests of both the Commission and the undertaking.

The contents of this letter were not immediately notified to the applicant. In the absence of the Director-General, his assistant did not think he was authorized to send a copy of it to the applicant. In a note dated 17 April 1974 he limited himself to informing the applicant of the existence of the complaint and revealing to him certain of the accusations made against him and in particular that of 'terrorizing' the workmen in his charge. He stated that the Director-General had instructed the head of division concerned to hear the parties, that is to say on the one hand the writer of the complaint and on the other the applicant himself. Finally he invited the applicant to give a report in writing 'on the working relations' which he had with the locksmiths.

The applicant did not fail to ask for a copy of the letter which he regarded as offensive and defamatory of him and to defend himself against the charge of terrorizing which had been made against him he collected and sent to the administration a certain number of statements in which the workmen under him recognized that they were well and fairly treated by him.

Some weeks later, on 28 May 1974, while sending to the lawyer, whom the applicant had at the time instructed to represent him *vis-à-vis* the administration, a copy of the undertaking's complaint, the Director-General for

Personnel informed him that an internal inquiry was being held into the facts complained of; this would be conducted by the Director responsible for equipment assisted by two officials including the applicant's immediate superior.

In his reply of 24 June the applicant's lawyer asked for the first time for the application of Article 24 of the Staff Regulations 'in view of the serious, defamatory and mendacious accusations' made against the applicant which he refuted item by item and made sharp criticism of the author of the complaint.

The latter, who was heard on 7 June in the presence of the applicant, confirmed in substance his earlier allegations.

The applicant was not called upon to make his observations orally until more than two months later before only one of the members of what may be called 'the Committee of Inquiry'. The defendant states that at this hearing the applicant refused to supply any supplementary explanation to facilitate the conduct of the administrative procedure.

The administration nevertheless considered that since it had all the available information it was not necessary to carry the matter further and on 8 October 1974 at a meeting with the applicant's lawyer the Director-General for Personnel informed him that the administration regarded the matter as closed and that no decision adverse to the applicant would be taken.

The applicant however maintained his conviction that the Commission had to his prejudice disregarded the obligation imposed on it by Article 24 of the Staff Regulations to assist and protect him against any offensive and defamatory complaint capable of harming his reputation and submitted on 17 December 1974 to the appointing authority a request in accordance with Article 90 of the Staff Regulations requesting the Commission to ensure that Article 24 of the Staff Regulations was respected and to inform him of the results of the inquiry conducted so far and to pursue it and to inform the applicant officially and fully of the particulars in the file; finally an express decision should be taken rejecting the accusations made against him.

The administration was obviously not anxious to accept his view and intended to bring the matter to a definite conclusion. In his reply of 24 February 1975 the Director-General for Personnel explained to the applicant that the complaint had received no publicity and that the matter had been treated confidentially; he confirmed his decision to do nothing further about the matter with the result that there would be no adverse consequences for the applicant; he considered that in these circumstances there was no reason to pursue the inquiry.

The applicant was not satisfied with this answer. On 22 May 1975 he made a complaint within the meaning of Article 90 of the Staff Regulations. While confirming his request that the Commission take a decision to clear him of any charge, he asked for compensation for the non-material and indeed material damage which the Commission's refusal to help had caused him. It is against the implied decision of rejection arising from the Commission's failure to reply to this complaint that the action before the Court is directed.

You have had the opportunity on many occasions to rule on the application of Article 24 (1) of the Staff Regulations and you know that two contradictory interpretations of this provision are generally maintained before you.

The applicants, and this is so in the present case, maintain that a wide interpretation is called for to the effect that the Community institutions have a general duty to protect members of their staff in all cases in which they are

subjected either by third persons or by colleagues or immediate superiors to actions, and, in particular, threats, insulting or defamatory acts or utterances of such a nature as to cause them damage.

The defendant on the other hand takes the view that Article 24 imposes on the administration a duty to help only where the official injured has himself taken the initiative in pursuing the author or authors of the attacks against him. The Commission thus interprets Article 24 (1) literally and restrictively to the effect that the institution's intervention on behalf of the official is only ancillary and expletory. It relies in this respect on the opinion given in Case 83/63 *Krawczinski* v *Commission* by Mr Advocate-General Gand [1965] ECR 643.

The latter queried whether Article 24 'which is intended basically to apply outside the Community, by which the Community cooperates in legal proceedings brought by one of its officials' may be applied within the Community for the settlement of internal difficulties arising out of relationships within the service.

The Court's case-law has resolved this question in the affirmative in so far as it has recognized that Article 24 applies when an official has been wronged by a third party having no connexion with the administration and also when the author is himself integrated into the Community civil service and in particular where he is the official's own superior officer (Case 53/72 *Guillot* v *Commission* [1974] ECR 791).

It thus seems to me unnecessary to inquire whether in the present case the author of the insulting complaint made against the applicant must be regarded as a third party on the ground that he is the manager of a private undertaking or on the contrary is connected with the administration since the undertaking which he controls is under contract to the Commission and the attacks made against the applicant directly affect relationships within the department.

It is necessary however to go further and categorically reject the restrictive interpretation which the Commission maintains. The applicant does not rely only on the first paragraph of Article 24 of the Staff Regulations; he also relies on the general principle which requires the administration to protect any official against serious accusations of such a nature as to cast aspersions on his reputation and integrity in the performance of his duties.

It was in this respect in the judgment in *Guillot* the Court confirmed that the administration had in such a situation the duty to take all necessary steps to establish whether the accusations were justified and to refute them if they were not.

It is necessary to enquire whether in the present case the Commission has complied with its obligations in the light of this case-law.

One preliminary fact appears to me to be incontestable, the more so as the administration itself has admitted it. It appears moreover from the letter sent to the Director-General for Administration and Personnel by the manager of the private undertaking. The allegations contained in this letter are obviously insulting to the applicant and are such as to cast aspersions on his integrity in the performance of his duties by directly opening up to question his behaviour in the department and in particular his relations with the workmen of the undertaking; they tend to discredit the applicant in the opinion of his superiors. They are thus serious accusations which if accepted as justified would undoubtedly have been such as to harm him.

The administration moreover was well aware of this and has admitted that it had to establish whether the accusations were justified or not.

In this respect has it taken the measures required by Article 24 and by the general duty of protection that it owes to its officials?

I think so. In the absence of any legal proceedings by the applicant against the author of the complaint before the competent national court, the question of the Commission's helping him in legal proceedings did not arise. Moreover I agree with the applicant on this point that legal proceedings for insulting or defamatory acts or utterances would in all probability have been doomed to failure by reason of the fact that no publicity had been given to the accusations made against him.

The problem thus remained purely internal within the administration and I think the Director-General for Personnel rightly took the decision which was required by ordering a purely administrative inquiry conducted within the department and in such a way as to avoid any publicity.

This meets the rule in the Court's judgment in *Guillot* in which it was held that it is incumbent upon the administration not to give any unnecessary publicity to the accusations.

Was the applicant justified in demanding that this inquiry should be conducted by an adversary procedure and that the complainant should be heard in his presence and that he should be given an opportunity to reply to him? On the contrary I think that the Committee of Inquiry acted wisely by avoiding bringing the accuser and accused together and even more by not itself hearing the evidence of the workmen whose evidence in his favour the applicant had solicited of his own volition.

In my opinion, the administration, which obviously resolved to 'minimize' the conflict by acting with all possible discretion, is to be commended.

But the applicant complains that the administration terminated the inquiry prematurely without his having been officially notified of all the contents of the file. No doubt he would have been justified in this claim if the administration had taken a decision with regard to him infringing his rights under the regulations either by posting him elsewhere or, *a fortiori*, by imposing a disciplinary sanction on him. But this is not the case; on the contrary, the Director-General for Administration and Personnel decided in a decision notified to the applicant not to take any further step with regard to the complaint and to regard the matter as closed in such a way that there would be no adverse consequences for the applicant.

This decision thus amounts to dismissing the accusations made against him in so far as they were insulting and intended to damage his reputation; it therefore seems to me that the administration has correctly applied the principles of justice and good administration which it was its duty to respect.

Was the applicant entitled to be more exigent? It is necessary to draw a distinction here between on the one hand the damaging allegations, in particular that of 'terrorizing' the workmen of the undertaking placed under his charge and that of having deliberately attempted 'to break up the work force' made available to the Commission and on the other hand the matters previously raised by the applicant's superiors in particular in the probationary report for 1972.

On the one hand we have serious and damaging allegations which, if the administration had considered them justified, were capable of involving the applicant in serious consequences; on the other hand we have findings which the administration itself has made in the context of its power of assessment of the behaviour of its staff.

On the basis of Article 24 of the Staff Regulations and, more generally, on the basis of the principle of the protection by institutions of their officials, only the accusations made by the complainant are relevant.

On the other hand the assessments in the probationary report and in the periodic reports of the applicant's conduct as regards in particular his relationship with his colleagues are a completely different matter. These assessments may certainly be challenged by the person concerned who may be permitted, if he wishes, to submit his observations; they may even become the subject of litigation but then it is a different cause of action altogether. The applicant has not embarked upon this course. On the contrary whereas the draft periodic report made on him on 31 October 1975 contains once again remarks tending to confirm the difficulties caused by his strained relations with his colleagues, both sides have told you at the Bar that this report, which is subsequent to the facts which have given rise to the action, must be disregarded.

To keep strictly to the facts of the case relating to the alleged infringement of Article 24 of the Staff Regulations and the duty of protection which the administration owes to its staff, I can only propose that you dismiss the claims in the action.

With regard to the action for compensation for the damage which the administration is alleged to have caused to the applicant, it is based on the wrong which the defendant is alleged to have committed in disregarding this duty of protection. This action, it seems to me, must be rejected likewise for two reasons.

The first lies in the fact that in my opinion, the administration has acted lawfully and has complied with the only obligations which it had in the present case. Only a wrongful omission on its part would have been capable of involving it in liability.

The second reason arises from the absence of evidence of any material or non-material damage. There has been no material damage, since the rights of the applicant under the Staff Regulations have in no way been affected; the administration has simply filed the complaint and has not taken any decision with regard to the applicant capable of adversely affecting him. With regard to non-material damage — the slur on his reputation — as we have heard, the Director-General for Personnel has seen to it that the accusations made against the applicant have not received any damaging publicity.

If the existence of the complaint has been brought to the attention of third parties and in particular of the workmen of the undertaking, and even assuming that in this way damage has resulted to the applicant, this could be ascribed only to his own act in seeking the statements of these workmen.

In these circumstances my opinion is that the action should be dismissed and, applying Article 70 of the Rules of Procedure, that each party should bear its own costs.