On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

O'Keeffe Donner Mertens de Wilmars

Delivered in open court in Luxembourg on 26 February 1976.

A. Van Houtte
Registrar

A. O'Keeffe
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 5 FEBRUARY 1976

My Lords,

Essentially, the applicant in this case seeks an order setting aside a decision of the Commission whereby she was dismissed from its service at the end of her probationary period as an official. She also claims further or alternative relief by way of damages.

The applicant is M^me^ Germaine Lambert, *née* Van de Roy. She is Belgian. She was a successful candidate in Competition No COM/LA/90 held in 1973 to establish a reserve list of translators for the Commission. By a decision of 28 February 1974, she was appointed, as a probationary official, to a post in Grade LA/8 in the Commission's Dutch Translation Division, with effect from 16 April 1974.

That Division forms part of Directorate D (Translation, Documentation, Reproduction and Library) of Directorate-General IX (Personnel and Administration) of the Commission. The Head of the Division was, and I think still is, Mr Dallinga, whilst the Director of Directorate IX-D was Mr Ciancio. That Directorate also included a Division, 'Translation (General Matters)', of which the Head was Mr Pignot.

On taking up her duties the applicant was attached to a group concerned with

development grants, regional policy and transport. She was placed under the supervision of a reviser, Mr de Niel (also a Belgian), who acted as coordinator of that group. It appears that, during the early months of the probationary period all the applicant's work was revised by Mr de Niel who, on each occasion, orally explained to her the corrections he had made. Later, because that time-consuming procedure could not be adhered to forever, she was simply sent the revised texts of her translations and it was left to her to ask for explanations. In some cases, during this latter period, her translations were revised by persons other than Mr de Niel. The applicant complains that this procedure made it difficult for her to perceive her mistakes, as it meant that actual errors, stylistic imperfections and mere personal preferences were all treated on the same footing. She says that her difficulties were enhanced by the circumstances that Dutch is a rapidly evolving language and that accepted usage in the Dutch-speaking part of Belgium is not always the same as that which is regarded as correct in the Netherlands themselves. The Court was told however by Mr de Niel, at the hearing, that he treats as equally acceptable expressions used in the North and correct expressions used everywhere in Belgium.

According to the applicant, in or about June 1974, Mr de Niel expressed satisfaction with her progress. It is clear, however, that by November of that year, he had come to the conclusion that she would never make a satisfactory translator.

Article 34 of the Staff Regulations prescribes, for officials in Category A, LA or B, a probationary period of nine months. The applicant's probationary period was thus due to end on 15 January 1975.

Paragraph 2 of Article 34 provides:

'Not less than one month before the expiry of the probationary period, a report shall be made on the ability of the probationer to perform the duties pertaining to his post and also on his efficiency and conduct in the service. This report shall be communicated to the person concerned, who shall have the right to submit his comments in writing. A probationer whose work has not proved adequate for establishment in his post shall be dismissed.'

The report on the applicant had accordingly to be made not later than 15 December 1974.

By virtue of rules made by the Commission under the Staff Regulations, a probation report on an official of Category A or LA must be signed by 'the Director concerned'. This meant that the applicant's report must be signed by Mr Ciancio.

It was however Mr Dallinga who initiated the preparation of her report. This he did on 8 November 1975, as he told the Court at the hearing, when explaining why that date appeared at the top of the final version of the report. The Court was also told by Mr Dallinga (whom there is no reason whatever to disbelieve) that he then held two meetings with Mr de Niel and the other revisers and senior translators in Mr de Niel's group, to discuss the draft report that he (Mr Dallinga) had prepared. Following those meetings that draft was slightly revised and then re-typed. The re-typed version was signed by Mr Ciancio on 29 November 1974 and thus became the applicant's probation report. In addition to Mr Ciancio's signature, it bears the signatures of Mr Pignot and of Mr Dallinga as 'Senior officials consulted'.

As Your Lordships probably know, the rules made by the Commission provide for a probation report to be made on a form which, among other things, requires a number of characteristics of the probationer to be assessed as 'Very Good', 'Good' or 'Unsatisfactory'. The applicant's report rated as 'Good' her capacity to

organize, her sense of responsibility, her speed in carrying out work, her relations inside the department, her relations with outsiders and her punctuality. It rated however as 'Unsatisfactory' her knowledge in relation to what was required for the post she occupied, her comprehension, adaptability and judgment, her initiative, and the quality of the work. For each of these adverse ratings a short explanation was, as required, given. There followed the general observation that she had not reached the level to be expected even of a translator who was a beginner and that her previous experience had manifestly been insufficient. The report concluded with the recommendation that she should be discharged at the end of her probationary period.

The report was, as required by Article 34 (2) of the Staff Regulations, communicated to the applicant on 2 December 1974.

After having had an interview with Mr Ciancio on 3 December, the applicant, on 9 December, affixed her signature to the part of the report form reserved for her observations. In this she stated that she disagreed with the remarks contained in the report. On the same day she signed a detailed memorandum that she had written setting out her comments on the criticisms made of her in the report.

It seems that the dismissal of a translator at the end of his or her probationary period is a rare event at the Commission. Perhaps for this reason, Mr Ciancio thought it desirable t ask Mr Dallinga for a fuller report on the applicant's work and in particular for details of mistakes made by her in her work. This further report was sent by Mr Dallinga to Mr Ciancio on 14 January 1975. Annexed to it was a document setting out numerous examples of mistakes or alleged mistakes made by the applicant in her work, selected from a sample of translations made by her and grouped under three headings: A. Examples of insufficient knowledge of the Dutch language or of poor style, B. Examples of inaccurate or partially inaccurate translation and C. Examples of incorrect citation of earlier documents.

It does not however appear that this further report played any part in the decision-making process of the Commission.

The Commission decided that the applicant should be dismissed with effect from 16 January 1975. It is not clear precisely when this decision was taken. The formal document embodying the decision and signed by the Member of the Commission responsible for personnel matters is undated. The applicant says that on 14 January 1975 she still did not know what the decision was to be that on the 15 she was on leave, that, when she arrived for work on the morning of the 16, Mr Dallinga informed her orally of her dismissal, and that this was confirmed to her, also orally, by Mr Ciancio. At 16.43 hrs on the same day a telex from the Member of the Commission in question was sent to her from Luxembourg (where presumably he was at the time) informing her of her dismissal as from that day. An unsuccessful attempt was made by a porter to deliver this telex to her in the evening of 16 January. According to her own account of the events of that evening, that attempt was unsuccessful largely owing to her own behaviour. At all events, the telex was eventually handed to her by Mr Dallinga on the morning of 17 January. It was confirmed by a registered letter from the Director-General of Personnel and Administration dated 17 January, postmarked 20 January and received by the applicant on 21 January. This contained a copy of the formal decision dismissing her.

On 10 February 1975 the applicant submitted to the Commission a complaint about her dismissal under Article 90 (2) of the Staff Regulations.

This complaint was registered at the Secretariat-General of the Commission on 12 February 1975, and expressly rejected by a decision of the Commission dated 16 May 1975, which was communicated to the applicant on 2 June 1975.

On 11 August 1975, the applicant commenced the present action, in which she seeks the annulment of the decision to dismiss her, and, consequentially, the annulment of the decision rejecting her complaint under Article 90 (2) and also claims damages for the harm suffered by her reputation as a result of the former decision. She makes an alternative claim for payment of a sum equal to 10 months' salary.

The grounds upon which the applicant challenges the validity of the decision to dismiss her are to be found in an abridged version of her complaint of 10 February 1975 which is annexed to the application. In that summary she sets out those grounds under three headings.

The first heading comprises two grounds that are, understandably, inter-linked in the applicant's mind. First she contends that she was misjudged as regards her knowledge of the Dutch language. Secondly she contends that those who passed that judgment were not qualified to do so.

In support of the first of those contentions she relies on the fact that she has written a novel in Dutch 'Jakko en Jamina' which has been widely acclaimed, particularly for its style and choice of words, by a number of eminent critics, including Professor Meyers, of Brussels. She has also put forward, in an Annex to the Reply, a painstaking, point-by-point, commentary on the Annex to Mr Dallinga's further report to Mr Ciancio of 14 January 1975.

Leaving the law aside for a moment, it seems to me, with all respect to the applicant, that it is, as a matter of fact, irrelevant that she has written a successful novel in Dutch. The art of the novelist and the kind of professional skill that is required of a translator of Community documents have nothing in common. Each of course calls for a command of language, but of a very different kind. A novelist would not be read if he (or she) wrote in the style of Community documents relating to development grants, regional policy or transport. Conversely, it would be unsatisfactory if translators on the staff of a Community Institution chose to word such documents as if they were writing a novel.

I revert to the law, which is on this point abundantly clear. The Court cannot substitute its judgment of the ability of an official to perform particular duties for that of the employing Institution. The jurisdiction of the Court in such a case is limited to examining the methods by which the employing Institution has reached its decision and the correctness and relevance of the facts on which that decision was based. See for instance Case 10/55 *Mirossevich* v *High Authority* (Rec. 1955 — 56 at p. 387) and Case 29/70 *Marcato* v *Commission* (Rec. 1971 at p. 248). I do not overlook that in the *Mirossevich* case the Court obtained an expert's report on the quality of a translation that had been made by the applicant, but it did so for a different purpose. That case arose in the days before there were any Staff Regulations. The applicant had been engaged as a translator by the High Authority under a contract which (so it was held) provided for her to serve for a probationary period of one month. During that month she had been given only three short translations to do. The question arose whether she had thereby been given a sufficient opportunity to show her ability. In support of its contention that she had, the High Authority put in evidence one of her translations — the other two having, apparently, been lost. The argument of the High Authority was that that translation was so bad that there had

obviously been no point in giving her further work to do. The Court's purpose in calling for an expert's report was to ascertain whether that was so.

So far as the present case is concerned it must I think be borne in mind that it was not only the quality of the applicant's work that was rated 'unsatisfactory' but also her general knowledge, her comprehension, adaptability and judgment, and her initiative. This constitutes a complex value judgment of a kind that the Court has, over and over again, held not to be susceptible of judicial review.

The applicant's challenge to the competence of those who passed judgment upon her may be summarized as follows: —

(a) Ciancio and Mr Pignot knew no Dutch;
(b) Mr Dallinga had taken no interest in her work for the first seven months of the probationary period;
(c) Mr de Niel was biased against her;
(d) The other officials whom Mr Dallinga consulted had seen very little of her work and one of them, when revising one of her translations, had actually introduced mistakes into it for which, at first, she had been blamed.

My Lords, if the applicant is right in all this, it seems to follow that no-one was competent to draw up or to sign her report.

In my opinion it was perfectly proper that Mr Dallinga should have been the person to draft the applicant's report and that he should have done so in consultation with Mr de Niel, who knew most about her work, and with the other senior officials of his Division who knew something of it. There is no evidence that Mr de Niel was biased: there is evidence only that he formed an adverse view of the applicant's ability. Nor is there any reason to think that Mr Dallinga was in any way remiss over keeping himself informed about the work of his Division and particularly about the progress of its probationers.

Mr Ciancio signed the report because the rules required that he should sign it. This cannot have operated to the detriment of the applicant: it can only have been an additional safeguard for her. Quite why Mr Pignot also signed it is not explained, but I do not see how his doing so can have harmed the applicant.

I conclude that the applicant is not entitled to succeed on either of the grounds she puts forward under her first heading.

Under her second heading the applicant contends that Article 34 of the Staff Regulations was in her case infringed because she did not benefit from a probationary period of a full nine months. She says that the period was reduced by her holidays (one week in July and two in August 1974), by periods when there was no work (three weeks in September and three in October 1974) and by periods when, so she alleges, she was denied work although it was available (from 15 to 29 November, and for the last three weeks of December 1974, and from 3 to 15 January 1975). She says that, in the result, her probationary period effectively lasted only five months.

My Lords, it is undoubtedly the law that a probationer is entitled to be given an opportunity to show his ability. So much was decided in the *Mirossevich* case and is also implicit in the Judgment of the Court in Case 52/70 *Nagels* v *Commission* (Rec. 1971 (1) at pp. 369-372). But it is not in my opinion the law that Article 34 confers on a probationer a right to be allowed a full nine months in which to prove himself. Not only is the provision that the probation report is to be made 'not less than one month before the expiry of the probationary period' inconsistent with the existence of any such right, but so is

the provision in the second subparagraph of Article 34 (2) enabling a report on a probationer to be made 'at any time during the probationary period if his work is proving obviously inadequate', and empowering the appointing authority to dismiss him, on the basis of such a report, before the end of the probationary period.

So the only question is whether the applicant was given an adequate opportunity to show what she was worth.

As to this she clearly cannot complain about her own holidays, which must, incidentally, have included some days in the last three weeks of December 1974, during which she alleges that she was denied work.

For my part I would exclude from consideration anything that happened after 29 November 1974, the date when her probation report was signed, for after that, so far as regards the contents of that report, the die was cast. Her only means of influencing the appointing authority's decision based on the report were the written comments that she was entitled to make on it.

This leaves the periods in September, October and November 1974 during which she complains that she was left without work. It was explained by Mr Dallinga and Mr de Niel at the hearing that, since beginners cannot be entrusted with urgent or difficult work, there are times when no suitable work can be found for a probationer. During such periods probationers are expected to do some reading to improve their terminological knowledge. Mr Dallinga and Mr de Niel conceded that, for this reason, there were periods when the applicant had been given no work. They thought however that she had exaggerated their length.

In answer to a question put to it by the Court, the Commission produced a table showing the number of pages per month translated by the applicant. The figures in this table for September, October and November 1974 do not appear to be significantly different from those for the earlier months of her probationary period. The table evinces also that in the period from April to November 1974 inclusive the applicant translated a total of 294 pages.

In all the circumstances it seems to me that the applicant was given a fair opportunity of showing what she was worth. The facts of this case are a far cry from those of the *Mirossevich* case.

Under her third heading the applicant groups a number of complaints of which I will say at once that, neither individually nor cumulatively, do they amount, in my opinion, to grounds for setting aside the decision to dismiss her.

First she refers to the incident to which I have already alluded when a reviser introduced mistakes into one of her translations. Since, as she herself states, it was accepted by Mr de Niel, when she pointed it out, that she was not responsible for those mistakes, I do not think this incident is of any relevance.

Second she refers to an occasion in mid-November 1974 when she was asked to translate urgently a German text which, she says, was partly unintelligible and of which the author told her, when she telephoned him, that it was not ready for translation. She complains that she was given too short a time to re-read her translation of this text after it had been typed. But it seems to me that this is the sort of occurrence that must inevitably form part, from time to time, of the life of any translator.

Thirdly she complains that it was made impossible for her to check Mr de Niel's corrections of some translations she produced between 29 November and 3 December 1974. As I have already indicated I do not think that anything of this kind that happened after 29 November 1974 can be material.

Lastly she says that the explanations given in her report for her adverse ratings were so brief and in such general terms that they were difficult to comment on. But, my Lords, it is in the nature of such explanations that they should be succinct and in general terms.

It follows, in my opinion, that the applicant's claim for annulment of the decision to dismiss her must fail.

So, consequently, must her claim for damages. This, as I have mentioned, is in respect of the harm allegedly suffered by her reputation as a result of her dismissal. The basis of it is that, since probationary officials are very seldom dismissed, people who know the applicant may hold her in lower esteem. So they may, but she can recover damages in respect of that harm only if it was the result of an unlawful act on the part of the Commission. This, if I am right, it was not.

The applicant's alternative claim to a sum equal to 10 months' salary is based on the argument that she cannot have been in a legal vacuum in the period between 15 January 1975 (when her probationary period ended) and 21 January 1975 (when, according to her, she received proper notice of her dismissal) and that she must therefore have been employed from 15 January onwards under an implied contract of indeterminate duration, which the Commission unilaterally broke by dismissing her.

My Lords, it seems to me that, even assuming in the applicant's favour that she is right in saying that she was not properly informed of the Commission's decision until 21 January 1975, that argument is not only fanciful but inconsistent with the authorities.

The starting point is of course that, nowadays, the legal relationship between an official and his employing Institution is statutory, not contractual: see for instance Case 28/74 *Gillet* v *Commission* [1975] ECR at p. 472.

In Case 52/70 *Nagels* v *Commission* (Rec. 1971 at p. 372) and Cases 10 & 47/72 *Di Pillo* v *Commission* [1973] ECR 770 it was held that an Institution is entitled to a reasonable time after the end of an official's probationary period in which to decide whether to establish or dismiss him. In the *Nagels* case a delay of 16 days was held to be reasonable. In the *Di Pillo* case one of nearly seven weeks after the completion of the probation report was held to be reasonable. I do not overlook that in the latter case damages were awarded to the applicant, but this was because in that case the probation report had been over three months late. The Commission was in that respect in breach of the Regulations.

I would finally observe that the applicant in this case was entitled, under Article 34 (2) to compensation equal to two months' basic salary, which she duly received.

In the result, I am of the opinion that this action should be dismissed, each side bearing its own costs.