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

Mr President,
Members of the Court,

Unlike the two fellow research workers of Euratom in whose case I have just delivered my opinion, Mr Krawczynski was integrated by a decision notified on 25 April 1963 as a 'scientific officer' in Grade A5, Step 1, with seniority in that step from 1 April 1961.

As, in the applicant's opinion, this classification was incorrect, he submitted a complaint on 17 May 1963, the aim of which was to obtain classification in Grade A3 or, alternatively, in Grade A4. An incident occurring on 25 April 1963 between the applicant and the Director-General for Research led the applicant to submit a further complaint on 28 April 1963. As he received no reply to these complaints, he made Application 83/63 to you on 1 August 1963.

Before considering his conclusions and the arguments which he sets out, let us remember that Mr Krawczynski, who was born in 1929, holds a degree in physical sciences from the University of Munich with the mention 'very good' and a doctorate in natural sciences from that university with the mention '*summa cum laude*'. He was working at the Karlsruhe Atomic Centre when, following a proposal from Dr Ritter, who knew him and considered him to be experienced in the field of decontamination (that is, the processing of radio-active waste and effluents) and in hot chemistry (the chemistry of radio-active materials), the Commission of the EEC appointed him to a post at Ispra as from 1 April 1961. His letter of appointment did not specify the powers which would be conferred on him; in line with the proposals made by the Director of the establishment, his remuneration was to correspond to the first step of Grade A5 of the EAEC scale.

His duties and his position were necessarily dependent on the administrative structure of Ispra and on the trend of the research work undertaken at that establishment, neither of which was at that time fixed since the Centre was at an early stage of development. Although on a local level the directorate and departments of the Centre might hold views on the direction which this trend should take, a final decision could only be taken by the Commission, which is empowered by the Treaty to determine the organization and running of its departments.

Mr Krawczynski was first entrusted with research concerning technical reprocessing which may be defined as the series of operations which take place after a fuel element has been used in an atomic pile or reactor allowing the elimination of the fission products and the recovery of re-usable fissile matter. It appears that there were rather ambitious ideas at the Centre on the construction of 'hot laboratories' which the senior authorities, being bound by a general policy and budgetary constraints, did not always ratify. When you heard Dr Ritter, he both acknowledged this fact and found it regrettable. Only a limited number of fellow-workers were available to Mr Krawczynski in the performance of his duties, although credits amounting to 70 000 units of account were granted him in order to acquire the basic equipment required for a reprocessing laboratory. In accordance with the proposals made by the Director of the establishment, the report drawn up at the end of the probationary period, which in this case was prepared within the prescribed period, merely confirmed his original classification.

1 — Translated from the French.

However, in 1962 it did not appear to the Commission to be expedient to develop reprocessing at Ispra. Following a reorganization of the Chemistry Department, decided upon on 17 May 1962 by the Director-General for Research and the Director of the Centre, Mr Krawczynski was given responsibility for the section concerned with decontamination and processing of effluents, which was divided into two groups dealing with administrative duties and research respectively.

During the same year integration was taking place; the assessments made by the two senior officials to whom I have just referred led the applicant, who considered that he was already the victim of discrimination in his post and the target of hostility on the part of the Director-General for Research, to submit a complaint to the Commission on 16 October 1962. The Commission considered that, as regards the consequences of the report drawn up by the two senior officials, the matter fell within the competence of the Establishment Board. In accordance with the opinion of this body, Mr Krawczynski was established by a decision of 25 April 1963 as a Scientific Officer in Grade A5, Step 1, with effect from 1 January 1962.

His application is directed first against the rejection of his complaint through official channels against this classification. The Commission, finding that the present grounds of complaint recapitulate those which had already been set out in the complaint of 16 October 1962, claims that the application is therefore time-barred. This is clearly not so: whatever the fate of the statements which he made during the preparatory procedure, Mr Krawczynski was entitled to contest his classification within the period which begins to run from the date of its notification. Moreover, it was only on 11 July 1963 that the table of the definitions of basic posts provided for in Article 5 of the Staff Regulations and Annex I B thereto was drawn up regarding Scientific Officers, and it was on the basis of this table that classification was to be made.

But Mr Krawczynski also criticizes the Director-General for Research on the ground that, during a working meeting held on 25 April 1963, he refused to shake the applicant's hand and turned his back on him. He also criticizes the Commission and questions its implied refusal to assist him as provided in Article 24 of the Staff Regulations; he sees in this attitude a wrongful act or omission of such gravity as to entitle him to damages.

Finally, he criticizes the inability of the Commission to remedy the lack of administrative and scientific organization resulting from the absence of coordination and the misunderstanding existing between the Directorate-General for Research and the local Directorate.

These are the points on which you are required to give a decision.

I — Classification

What is the problem before us? Let me make two preliminary observations:

1. The issue concerns the classification to which Mr Krawczynski was entitled at the time of his integration on the entry into force of the Staff Regulations. Thus, the considerations concerning the proposals for promotion which were made in his favour in 1963 or 1964 and the advancement of other Scientific Officers during these same years have no relevance in the present matter.

2. In order to assess the rights of the applicant we must look at the position existing on 1 January 1962. The principles were laid down by Article 102 and by your case-law, in particular by the judgment in the Maudet case. On integration a servant is entitled to the grade and step in the scale of remuneration of the Staff Regulations which cor-

responds to those which he had expressly or by implication obtained earlier. If, however, he remains in an already existing post which, by virtue of the duties involved, should under the new Staff Regulations correspond to a higher grade than that obtained under Article 102, he has the right to request that his position be regularized.

Mr Krawczynski was classified in Grade A5, Step 1, which he had formerly held by virtue of his letter of appointment. In order to assess whether this classification is correct or is inadequate, we must compare the duties actually performed by the applicant at the entry into force of the Staff Regulations (which he is still performing) with Annex I B to those Regulations and the table of definitions adopted on 11 July 1963. The section of the table which concerns us states that the basic post in career bracket A5 to A8—the applicant's career bracket—is that of a 'Scientific Officer', who is either the head of a specialized section or group or is responsible for carrying out certain tasks, such as perfecting a new technique or carrying out research on a project or an important part of a project.

Career bracket A4 is that of a 'Principal Scientific Officer'. Such a person is the head of the science department of a division, a larger department or a research institution. He might also be a qualified Scientific Officer, responsible for research into a subject requiring various techniques or various scientific disciplines.

Career bracket A3, which is claimed by Mr Krawczynski in his principal submission, is that of a 'Head of Division' who, under the authority of a Director, a Head of Department, or if necessary under the direct authority of a Director-General, directs a scientific unit within a specialized sphere such as a division.

We have heard derisive comments about the arbitrary nature of this table or the lack of precise information given therein; however, it must in all honesty be admitted that, in the field of science more than in any other, once the principle was laid down by Article 5 and by Annex I B it was difficult to do better. At your request, the defendant institution has demonstrated the procedure employed in the initial constitution of groups of research workers before the entry into force of the Staff Regulations. The institution considered that the way to obtain the most objective classification possible was to give the greatest importance to criteria based on university education, previous experience in employment and age, even if corrections had to be made to the theoretical result in order that certain agents did not, after classification, receive a lower rate of remuneration than before. This method cannot be condemned *a priori* and it was in this way that the applicant was originally classified in Grade A5.

You have heard the Director of General Affairs of Euratom on the original classification of the applicant. He told you that, without being extraordinary, recruitment in Grade A5 at the age of 31 years was the mark of great esteem, as the growing tendency was to appoint scientists in a lower grade, even if they then rose more quickly in the grades in the career bracket in question. It cannot therefore be stated *a priori* that Mr Krawczynski's merits required better classification.

The applicant puts forward various arguments in support of his claim that he should be classified in Grade A3 (Head of Division) or at least in Grade A4 (Principal Scientific Officer). He refers first to the formal promise made to him by Dr Ritter that he would be responsible for devising, establishing and directing the Reprocessing Department and, more specifically, for setting up a plant similar to that which he had devised and constructed at Karlsruhe. The applicant brings no evidence of the reality of this promise and it is not mentioned in the letter of appointment,

the conditions of which he accepted.

He also raises the fact that the detailed list of posts in force at that time distinguished, in diminishing order of importance, between larger and smaller departments ('départements' and 'services'), sections and groups and that in 1962 the establishment report had acknowledged his position as head of the Reprocessing Department ('service'). However, as the institution observes, such designations are not conclusive, both because at that time there was no detailed list of posts drawn up or recognized by the Commission but only drafts drawn up at local level, and because they precede the table of definitions drawn up in July 1963. At that time the term 'department' ('service') referred to a sector of activity and not to an administrative unit. In order to appreciate the very limited significance of these designations it is sufficient to remember that Dr Ritter, when replying on 1 August 1962 to a complaint made by the applicant, informed him that Grade A5 'normally corresponds to a *post of head of department ("service") or section*'.

The other facts referred to are no more conclusive. These are the participation of the applicant in the work of the local Programmes Committee or the Materials Department Committee, neither of which had a defined structure and thus cannot be used in any way to support the applicant's submissions.

In fact, in order to assess the correctness of the classification, one may look to the duties performed thereunder or compare Mr Krawczynski's position with that of other servants.

On the question whether the duties performed by the applicant before the reorganization of 17 May 1962, had he continued to perform them, corresponded to a higher classification, Dr Ritter, while fully sympathetic towards Mr Krawczynski, replied in the negative, as did Mr Hubert, although he expressed a reservation on the position of the organization of the Centre had been different. He added, moreover, that in other establishments there are servants in Grade A5 with similar responsibilities to those of Mr Krawczynski.

Was he, however, the victim of discrimination? Although this ground of complaint was not raised in the oral procedure, it must be discussed, since it represented an important part of the applicant's arguments. He claims, first, that there was discrimination on the ground of his nationality, in that an agreement had been made between the Commission and the Federal Republic that German research workers recruited at Euratom would in no case receive remuneration exceeding by more than 20% that received in their previous posts. The Commission denies this allegation and offers evidence of its inaccuracy. You saw no need for your preliminary inquiry to deal with this point, considering no doubt that the applicant's allegation was incredible.

Discrimination compared with other scientists at Ispra? On this point you have heard witnesses. Mr Lindner has replied in the negative. Dr Ritter has told you that the two people specifically referred to directed more research workers in Category A than the applicant did and that responsibility for their departments was greater since the tasks involved were more fundamental. He has stated that in 1962 he believed Mr Krawczynski's classification to be justified in relation to his colleagues. And you will recall here that, although on several occasions he made suggestions for improving the position of the person concerned, they concerned an alteration in step in 1962 and a promotion in 1963, both of which are outside the scope of the present discussion.

Did the alleged animosity on the part of the Director-General for Research influence the applicant's classification? It might be replied first of all that if, in the light of the duties performed, such a classification is *objectively* cor-

rect the ill-will on the part of this senior official is unimportant. However, although this official suggested that Mr Krawczynski should not be integrated immediately but should be offered a contract for two years, this solution was not adopted.

Thus, nothing in the file amounts to evidence that Mr Krawczynski's classification in Grade A5 during the integration procedure did not conform with the provisions of Article 102 of the Staff Regulations and Annex I B thereto. Although some doubt might arise by reason of the very loose structure of the establishment at Ispra, the evidence of the witnesses, the statistics and the comparative tables which have been put before you show the applicant not to have been the victim of ill-will or discrimination. In my opinion therefore the conclusions concerning his classification must be dismissed.

II — Damages

Although this question was not raised at the hearing, we know that Mr Krawczynski is also claiming damages for the injury which he had suffered as a result, first, of the inefficient organization of the Ispra Centre arising out of the lack of coordination and misunderstanding existing between the authorities of the Centre and the Directorate-General for Research which the Commission, it is claimed, had been unable to remedy and, secondly, the refusal of the Commission to assist him, in accordance with Article 24 of the Staff Regulations, against the 'basic hostility' of the Director-General for Research.

In my opinion the first ground cannot give rise to a claim for damages. It concerns the organization and running of the department which, good or bad, are matters for the Commission alone. A servant is not entitled to criticize such organization unless it leads to an infringement of his rights under the Staff Regulations. In this case no such infringement has been established, or even seriously alleged.

The second ground raises a more difficult problem. The applicant criticizes the Commission for having failed to deal with his complaint submitted on 20 April 1963 after the incident which occurred between him and the Director-General for Research. He regards this failure to take action as a wrongful infringement of Article 24 of the Staff Regulations and, although he acknowledges that before this date he had no difficulty either personal or professional with the senior official in question, he nevertheless claims that this official showed a basically hostile attitude towards him.

Let us re-read Article 24 on which, as far as I know, you are hearing argument today for the first time:

'Each Community shall assist any official in its 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 or a member of his family is subjected by reason of his position or duties.

It shall compensate the official for damage suffered in such cases, in so far as the official did not either intentionally or through grave negligence cause the damage and has been unable to obtain compensation from the person who did cause it.'

To what do these provisions refer? Since by definition the official acts on behalf of and in the interests of the Community, the intention was to involve the Community in his defence where his occupation caused him to suffer material or non-material damage. For example, let us imagine the case of a servant who was attacked in the press. However, the rôle of the Community in such defence is only subsidiary. It '*shall assist* any official in its service, in particular in *proceedings*

against any person perpetrating threats, etc.', which implies that it is for the servant to take the initiative. The second paragraph continues 'it shall compensate the official for damage suffered' in so far as he *'has been unable to obtain compensation from the person who did cause it'*; here again the obligation on the Community appears subsidiary.

I am thus led to ask whether this Article really has the scope claimed by the application. Can a provision which is intended basically to apply outside the Community, by which the Community cooperates in legal proceedings brought by one of its officials and compensates him where he has been unable to obtain compensation from the person causing the damage, be applied within the Community itself for the settlement of internal difficulties arising out of professional relations? For my part I doubt this very much, despite the ingenious but inconclusive comparisons made in the application with Articles 11, 12 and 21 of the Staff Regulations. This is not to say that an official cannot refer to the Commission a disagreement with a superior or even with a colleague; but a refusal to deal with such a complaint or silence when presented with the request does not alone constitute an infringement of Article 24 of the Staff Regulations.

If, however, you consider that this Article can be applied in this way, it will remain to be seen whether the implied rejection by the Commission of the applicant's complaint is a sufficiently wrongful act or omission to justify the award of damages.

Mr Krawczynski maintains that, from his entry into service at Ispra, the Director-General for Research had been hostile towards him. This senior official was, however, not opposed to the recruitment of the applicant, nor to the classification originally proposed by Dr Ritter; although, with the latter, he was responsible for the decision of 17 May 1962 on the organization of the Chemistry Department and although there is no doubt that one year earlier he had been responsible for the deceleration of the projects for hot laboratories at Ispra, it is extremely self-centred of the applicant to claim that the basic reason for these general measures was a desire to injure him. It is true that, disagreeing with Dr Ritter, the senior official in question suggested during the integration procedure that the applicant should be given a temporary contract rather than integration, but it is also correct that the applicant reacted by submitting a complaint to the Commission on 16 October 1962 in which he strongly attacked this Director-General. Finally, it is also true that his letter of the preceding 19 July was drafted in terms which could only offend the addressee, which was no doubt why he received no reply.

What remains for me to consider? The incident of 25 April 1963 in which the hand offered by the subordinate was not taken by the superior. How should this be interpreted? As a reminder from the superior that it was for him to take the initiative—on this point conventions may differ from country to country—or as a sign of irritation in a man who had not been spared by the applicant in his earlier complaints through official channels? Perhaps it was both of these. Whatever the answer, I do not believe that it is evidence of a basic animosity or hostility or that the silence with which the Commission met the applicant's complaint about the incident constituted a wrongful act or omission incurring its liability. For this reason also, I suggest that you should dismiss the claim for damages.

I am therefore of the opinion that the application should be dismissed, and that in accordance with Article 70 of the Rules of Procedure both parties should bear their own costs.