JUDGMENT OF THE COURT (SECOND CHAMBER)
OF 11 JULY 1974 [1]

Pierre Guillot
v Commission of the European Communities

Case 53/72

Summary

1. *Officials — Performance of duties — Professional integrity — Serious accusations made by superior — Duties of the Administration*
(Staff Regulations, Article 24)

2. *Procedure — Appeals by officials — Time limits — Commencement — Definite decision by the Administration*
(Staff Regulations, Article 91)

1. Apart from the duties which fall on the Administration under Article 24 of the Staff Regulations, the principles of justice as well as those of good management demand that if serious accusations, reflecting on the professional integrity of an official in carrying out his duties, are made by a superior, the Administration should take all necessary steps to establish whether the accusations are justified. If they are not, it is incumbent on the Administration to refute them and to do everything possible to restore the good name of the official concerned. In any case, it is incumbent upon it not to give any unnecessary publicity to the accusations.

2. The time limits in the Staff Regulations commence to run only from a definite decision by the Administration.

In Case 53/72

PIERRE GUILLOT, official of the Commission of the European Communities at the Joint Research Centre at Ispra, represented by Marcel Slusny, Advocate at the Court of Appeal at Brussels, with an address for service in Luxembourg at the chambers of Ernest Arendt, 34 B/IV rue Philippe II,

applicant,

1 — Language of the Case: French.

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Giorgio Pincherle, acting as agent, with an address for service in Luxembourg at the office of its Legal Adviser, Emile Reuter, 4 boulevard Royal,

defendant,

Application for, principally, annulment of the express refusal of the Commission to accede to the applicant's request for withdrawal of accusations made against him by Mr Malvicini, and for damages.

THE COURT (Second Chamber)

composed of: M. Sørensen, President of Chamber, H. Kutscher, A. J. Mackenzie Stuart (Rapporteur), Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

I — Facts and procedure

The facts and the arguments developed by the parties in the course of the written procedure may be summarized as follows:

1. The applicant entered the service of the European Atomic Energy Community on 17 April 1961 and was posted to the Joint Research Centre at Ispra, hereinafter called the 'JRC'. On 1 January 1962, he was established at Grade A 6. Since 1965 he has worked in the Protection Department at the Centre under Mr Malvicini and has been given responsibility for observing the internal contamination of the staff by radiation and for calculating the quantities of radiation absorbed.

2. In 1968, as a result of an accident which occurred in the working of the Ispra I reactor, one of its operators was contaminated after inhaling radio-active gases. It was then decided to assign the applicant to the task of carrying out certain experiments with a view to obtaining the retention curves of xenon in the human body, a subject on which scientific literature contained little information.

From the first stages of these experiments, which took place in 1968, the applicant thought he detected 'a completely unexpected tendency' (isotope separation effect) as regards the way in which retention was affected by the quantity of xenon gas inhaled. Mr. Malvicini did not share this view and maintained that the results obtained were due to errors. Without accepting this criticism, the applicant believed it was desirable to continue the research in order to eliminate all possibility of mistake. Although Mr. Malvicini did not prevent him from doing this work, he refused the applicant's request for certain facilities (money, separate room) to be granted him for this purpose. The applicant continued the experiments in question; members of the Biology Department had become interested in his work and had obtained money and certain physical facilities for him.

3. In 1970, the applicant applied for permission to take part in the Brighton Congress on protection against radiation (May 1970) and also in the Evian Congress on radiobiology (June to July 1970), in order that he could report the results obtained in the course of the research mentioned above. The first request was refused, but the second was eventually granted.

4. On 3 and 4 May 1971 Mr Malvicini addressed two memoranda to Mr Caprioglio, Director-General of the Joint Research Centre.

In the first memorandum (No 2.31/91/71), he stated that certain measurements which the applicant had carried out as part of the abovementioned experiments had not been 'carried out under correct conditions'.

The second memorandum (No 2.31/94/71, headed 'Falsification of Experimental Results'), was in the following terms:

'Further to my note of 3 May, it is my duty to inform you that, in order to produce evidence of a separation effect, Mr Guillot has falsified the experimental data relating to the last six measurements.

Contrary to the arrangements made, Mr Guillot did not forward the listings from the machine printer but only the data as processed. The printer data did, however, appear on the listing from an Olivetti computer and I was able to recover this listing from the waste-paper basket.

When, in the presence of Mr Dominici, Mr Guillot was asked to explain why the data had been altered, he was most insistent that the data had been obtained direct from the machine and that the printer listings had been forwarded to me. In reply to this statement, I produced the computer listing.

Mr Guillot then fetched the machine listings and justified the alteration of the data by explaining that it had become necessary to make a correction because of a change in the experimental measurement data and that he had been able to fix the "exact" correction factor without need for further experiment'.

A copy of this memorandum was distributed to five scientific officers of the JRC.

By letter of 14 May 1971, which reached the addressees on 18 May 1971, the applicant asked Mr Finzi, the immediate superior of Mr Malvicini, to forward a note dated 7 May 1971, attached to the said letter, to Mr Caprioglio. In this note, which the applicant described as a 'complaint against Mr Malvicini', he endeavoured, on scientific grounds, to refute the criticisms contained in the memoranda mentioned. In addition, he asked 'specifically that one or more impartial persons competent to judge should be given all the computer records held by Mr Malvicini, should examine and check all the figures enclosed herewith, together with my mathematical analysis, so as to ascertain whether my interpretation of the results is the correct one and dispose of these slanderous accusations made by Mr Malvicini'. He concluded as follows:

'I wish to continue these trials as they

may have important consequences. I hope these experiments will be checked, and if need be, rejected by impartial persons competent to judge . . . Mr Malvicini has disqualified himself by showing himself to be unbelievably biased and by rejecting the evidence'.

In a memorandum of 17 May 1971 (No 1.01/286/71), Mr Caprioglio wrote to Mr Malvicini again under the heading 'Falsification of Experimental Results' that 'the facts reported, following those already drawn to my attention, appear to me to be of sufficient gravity to justify disciplinary proceedings being taken against Mr Guillot'.

In a note of 24 June 1971, in reply to the note of 7 May 1971, Mr Caprioglio, after requesting the applicant to provide him with certain information, informed him that he was inclined to grant the request for an opinion on the experiments which had been carried out. In a note of 7 July 1971 (No 1.01/423/71), he told the applicant, among other things, that contrary to what the latter believed, he had 'never at any moment decided to open disciplinary proceedings against you, but I have asked my staff to investigate the situation, telling them that the facts appear to me to be of sufficient gravity to justify disciplinary proceedings'. No such proceedings have, however, been instituted to date.

5. On 8 November 1971, after the rejection of his request to be authorized to publish the results obtained during the course of his experiments, the applicant brought an action before the Court (Case 91/71).

In written observations dated 23 November 1971, Mr Malvicini criticized, on the basis of scientific consideration, the wording of the article which the applicant intended to publish.

On 24 November 1971 in response to an invitation from Mr Caprioglio, a group of senior officials of the JRC, including Mr Malvicini, met under the chairmanship of Mr Finzi, and delivered, unanimously, a 'considered opinion' against publication 'in its present form' of the article submitted for publication by the applicant. According to those who gave the opinion, 'neither the views expressed by the author of the article nor the conclusions which he has reached can be regarded as valid'; 'there are serious doubts about the validity of certain experimental data', these doubts being 'based on the suspicion that the data have been subjected to instrumental interference'.

As publication was eventually authorized on 8 February 1972, the applicant withdrew his action.

6. In May 1971, Mr Malvicini instructed the applicant, by word of mouth, not to continue his research and in a memorandum of 8 July 1971 the applicant asked for this order to be put in writing or withdrawn. In a note of 9 July 1971 Mr Malvicini informed the applicant that, in his view, it was necessary that 'conclusions should be drawn from the results of research completed to date on separation effects, before work in hand is continued and fresh experiments embarked upon'.

7. In a note of 8 November 1971, the applicant made the following statement, among others, to Mr Caprioglio:

'I should like to know the outcome of the inquiry which has been going on since May and of which I have heard nothing since July. I should also like to know what decision you have taken. I regard it as extremely important that a definite decision should be taken because, as I explained to you in my memo of 9 July 71, I must insist that the serious accusations, gratuitously and recklessly made against me, should be completely withdrawn, and that I should receive substantial compensation. Moreover, using this investigation as a spurious excuse, Mr Malvicini has once more forbidden me to continue my experiments in conjunction with the Biology Department, in accordance with job-sheet No 111-4-01/1971, which he

himself approved. From every point of view this ban is a very damaging one for me. I am therefore requesting you to cancel the ban and transfer the job-sheet to 1972'.

As he received no satisfaction, the applicant, in a complaint of 3 January 1972, registered at the Secretariat-General of the Commission on 5 January 1972, applied to the Commission for:

'1. written withdrawal, with apologies, of Mr Malvicini's accusations, and recognition of the validity of the results I have obtained from the experiments and which have been confirmed by Mr Malvicini;

2. authorization of and provision of the physical resources necessary for the continuation of these experiments, the theoretical and practical importance of which, already considerable, could, from the economic point of view, be enormous if the results I have obtained for the dissolution of radioactive xenon in water were of general application, especially as regards isotope separation of uranium;

3. adequate compensation for the harm done as a result of these accusations and of the ban imposed on my continuing the abovementioned experiments'.

In a letter of 14 April 1972, which reached the applicant on 28 April 1972, Mr Barre, vice-president of the Commission, replied as follows to the applicant:

'After careful consideration of your complaint, the Commission has established that the work which you are seeking authority to continue is not included in any of the programmes of work which the Council has approved for the Joint Research Centre. In these circumstances, the Commission has decided to confirm the decision of the Director-General of the Joint Research Centre not to authorize you to carry out work which is not included in the programme allotted to the Centre.

The Commission has also established that an appraisal of the scientific value of some of your experiments was carried out last year in connexion with, in particular, the request you submitted for authority to publish an article; that it is normal for the appointing authority to require to be given all the necessary safeguards before authorizing an official to publish the results of his work in the institution; that, subject to certain conditions, you were authorized on 8 February 1972 to publish the results of this work.

Having concluded its examination of this question, the Commission takes the view that the information which, by note of 24 June 1971, you were asked to provide, did not form part of a disciplinary inquiry; this view is, of course, the same as that communicated to you by the Director-General of the Joint Research Centre in his note of 7 July 1971.

Accordingly, the Commission hereby confirms that it has been decided not to take disciplinary proceedings against you and therefore directs that the Memoranda No 2.31/91/71 of 4 May, No 101/286/71 of 17 May, No 01.00/413/71 of 26 June and No 1.01/423/71 of 7 July 1971 be removed from your personal file. Finally, the Commission considers that there are no grounds for your first or your second request and that, consequently, no further amends are called for.'

8. On 25 July 1972 the applicant brought the present appeal.

9. The written procedure was duly completed. After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General the Court (Second Chamber) decided to open the oral procedure without a preparatory inquiry.

II — Conclusions of the parties

In his application originating proceedings, the *applicant* claims that the Court should:

'1. declare null and void the express rejection by the other party by letter of 14 April 1972 of the applicant's request under 1. of his administrative complaint of 3 January 1972;

2. rule that the other party, after having acknowledged the baselessness of the accusations made by Mr Malvicini against the applicant, is under an obligation to bring such acknowledgement to the notice of all who were aware of the contents of the notes exchanged in connexion with this case, namely: Messrs Appleyard, Benco, Bertolini, Blaes, Bourdeau, Caprioglio, Finzi, Gerbaulet, Herrinck, Kley, Lafuma, Marchetti, Schleicher and Scotti, and the presidents of the unions CLP (Comitato locale personale, local staff committee), USEI (Union syndicale des Employés d'Ispra, Trade Union of Ispra Employees), SILARN (Sindacato italiano lavoratori ricerca nucleare, Italian Union of Nuclear Research Workers) and FFPE (Fédération de la fonction publique européenne, European Public Service Union);

3. declare null and void the express rejection by the other party, by letter of 14 April 1972, of the applicant's request to be allowed to recommence work and experiments on the dissolution of radioactive xenon in water;

4. order the other party to pay the applicant, as compensation for material and non-material damage caused by the facts referred to under 1. of the administrative complaint, the sum of FB 100 000 subject to final assessment in the course of the proceedings;

5. order the other party to pay the applicant, as compensation for material and non-material damage caused by the facts referred to under 2. of the administrative complaint, the sum of FB 100 000, subject to final assessment in the course of the proceedings;

6. order the other party to pay the costs of the action;

7. as a subsidiary matter, direct that witnesses be called upon to testify to the truth of certain allegations in the application, those to be called upon being named by the applicant without prejudice to his freedom to extend the list of witnesses'.

In his reply, the *applicant,* without in any way modifying the claims set out in the application, makes the additional claim that the Court should rule that 'the appendices Nos 10 and 16 of the defence statement' viz. Mr Malvicini's comments of 23 November 1971 and the considered opinion of 24 November 1971, 'must not remain on the applicant's administrative file'.

In its statement of defence, the *Commission* contends that the appeal should be dismissed as inadmissible or without foundation and that the applicant should be ordered to pay the costs.

In its rejoinder, the Commission, without prejudice to the arguments adduced in its defence, claims that 'if the Court considers that the bringing of a criminal action by the applicant is inappropriate in this case, it should direct that arrangements be made for an expert to examine and report on the facts relating to the experiments of 28, 29 and 30 April 1971 . . . it should note that, without prejudice to the final order as to costs, the Commission is prepared to advance the sums necessary for an expert opinion . . .'.

III — Submissions and arguments of the parties

1. On the first and second heads of claim in the application (withdrawal of Mr Malvicini's accusations and recognition of the authenticity of the experiments carried out by the applicant)

The *applicant* complains that the letter of 14 April 1972 did not go far enough to meet his complaint, in view of the fact that he had been the subject of defamatory accusations in circumstances which seriously reflected on his integrity as a man and as a scientist (memoranda of 3, 4 and 17 May 1971). The Commission, which under Article 24 of the Staff Regulations of officials, has an obligation to assist and protect its officials in case of need, must recognize that the said accusations, which, if proved, should have given rise to disciplinary measures, are wholly without foundation. In any case, 'custom and practice' require that a memorandum 'approved by the applicant' should be drawn up on the subject and that this memorandum should receive the same amount of publicity as that given to the memoranda which the Commission, as stated in its letter of 14 April 1972, said it was prepared to remove from the personal file of the applicant, i.e. that the memorandum should be sent to the group of people referred to under (2) of the claims in the application; to date, only Messrs Finzi and Herrinck are aware of the said letter, which is marked 'Confidential'.

The *Commission* replies that the applicant has 'received full satisfaction' so far as he is entitled to claim it. The Director-General of the Joint Research Centre acceded to the applicant's request of 7 May 1971 that arrangements should be made for the experiments in dispute to be checked by *impartial* experts (cf. 'the considered opinion' of 24 November 1971). Moreover, the documents mentioned in the letter of 14 April 1972 have been withdrawn from the applicant's personal file. The Commission is ready to take similar action regarding 'the considered opinion' mentioned above together with any other document concerning the work of the applicant which he would like to have removed from his file. In addition the Commission is ready, provided the applicant signifies his agreement, to communicate that part of the letter of 14 April 1972 beginning with the words 'having concluded its examination' and ending with the words '... your personal file' to the persons indicated under the second head of his statement of claim.

As the work in question is not covered by the official programmes of work for the JRC, the absence of any acknowledgement of its authenticity cannot harm the applicant. Even if this were not so, however, the Commission cannot be called upon to 'recognize' publicly the quality of the services rendered by an official.

In asking for his work to be examined by experts, the applicant has admitted that Mr Malvicini's 'accusations' were 'concerned with the way in which he carried out the experiments and drew conclusions from them and that these accusations belong, therefore, exclusively to the field of the scientific analysis of scientific experiments and work, where the right to criticize must be recognized as being not only acceptable but indispensable . . .'

The *applicant* replies that, as was decided by the Court in Case 83/63 *(Krawczynski v Commission,* Rec. 1965-2, p. 791 *et seq.*) the Communities are also under an obligation to protect an official against attack by other officials. This obligation also arises under the principle of 'Fürsorgepflicht', viz. the duty to look after the moral and physical well-being of officials. In this case, the Commission should either have taken action with regard to Mr Malvicini or have compelled him to tender an explanation or apology.

The applicant does not insist that the Commission should recognize his scientific theories and discoveries as correct but only that it should acknowledge that he has not used wrong methods or falsified results.

The absence of disciplinary action does not dispose of the attack on the applicant's integrity, as this absence could be due to reasons of expediency or convenience.

The Commission's offer to communicate certain passages of the letter of 14 April 1972 to the persons listed in the application cannot be regarded as adequate. The only way in which satisfaction can be given to the applicant is by drafting a statement agreed by both parties for communication to the individuals who were informed in writing of Mr Malvicini's accusations.

The documents which, as stated in its letter of 14 April 1972, the Commission has ordered to be withdrawn from the applicant's personal file do not cover the whole dispute; other documents must be withdrawn as well.

The examination of the applicant's work took place under conditions which are unacceptable. In the first place Mr Malvicini ought not, in view of his previous attitude, have taken part; secondly, the applicant ought to have been allowed to be present at the meeting and to have been invited to nominate persons of his choice to serve on the committee. The considered opinion, which has not yet, incidentally, been communicated to the applicant, does not represent a reply to his note of 7 May 1971 nor, amongst other things, does it arrive at any conclusion on the charge of falsification; it is exclusively concerned with the question whether authority should be given for publication of the article submitted by the applicant. As regards the statement that the work in dispute was not included in the programme, the applicant brings the same arguments to bear as those which he set out in connexion with the third head of claim (cf. 2 below). He adds that, if this statement is true, it is surprising that Mr Malvicini took an interest in the way in which the work was carried out and made this the subject of accusations against the applicant.

The *Commission* states in its rejoinder that the obligation to assist under Article 24 of the Staff Regulations is not an unrestricted one; 'the defamatory utterances' must 'be capable of being regarded, in substance and in essence, as actually existing'. The Commission would only consider itself obliged to accept that it should acknowledge 'that the applicant has not consciously falsified the experiments or conclusions drawn from them' if the Court were to declare that the facts which led to the alleged 'defamation' were non-existent.

In applying, in his application, for annulment of the Commission's decision of 14 April 1972, the applicant implicitly withdrew the request that the Commission should recognize the authenticity of the results he obtained from his experiments. If, on this point, the applicant wanted to amend his claim, the Court must take note of this partial withdrawal of the statement of claim in the application.

The Commission has no intention of adopting Mr Malvicini's statements concerning the falsification of experiments by the applicant, nor has it ever had this intention.

The Commission believes that, in this case, the institution of criminal proceedings would be an appropriate step for the applicant to take.

2. *On the third head of claim in the application (continuation of his experiments by the applicant)*

The *applicant* states that his request is not for the purpose of obtaining fresh authority but to enable him to continue work begun in 1968.

In forbidding the applicant to continue his experiments, Mr Malvicini exceeded

his authority. He was not in fact responsible for this work, which was within the competence of the Biology Directorate at Brussels and not of the JRC. In these circumstances, the grounds adduced to cover this particular point in the letter of 14 April 1972 are insufficient; they are also slightly inaccurate, as the Director-General of the JRC has taken no decision on the subject of this work.

Even supposing that Mr Malvicini had had the authority to take the decision mentioned, it would be vitiated as being a misuse of powers. It was designed to penalize the applicant in an indirect way and was conditioned by factors which militated against the interests of the service. Continuation of the experiments would, in fact, have been of capital importance for the institution; indeed, 'the foreseeable reduction in the activity of the "Protection" department led Mr Herrinck to transfer officials from this department to the schedules of other departments in the JRC'.

The *Commission* contends that the third head of claim is inadmissible on the ground that it is out of time and that the Court can grant no remedy. It states:

'Mr Malvicini's decision forbidding the applicant to continue the work which is in dispute dates from 9 July 1971. During the three months immediately following that date, the applicant did not initiate proceedings or submit a complaint through administrative channels. As the letter of 14 April 1972 did no more than confirm the position and contained nothing new in fact or in law, it could not operate to create a fresh time limit.

The above decision did not give the applicant any ground for complaint within the meaning of the Staff Regulations because, so long as the institution assigns an official to duties corresponding to his grade, he cannot claim that these duties should be of a particular kind. When, to some extent, the Commission changed the responsibilities with which the applicant had for the time being been entrusted, it exercised its overriding powers of discretion.'

There is no basis for this claim either. The work assigned to the applicant in 1971 and described in job-sheet No 111-4-01-71, a copy of which is attached to the application, was not covered by the JRC programme for that year, nor was it included in the programme for 1972. In these circumstances, the applicant had no justification for demanding to be authorized to continue the experiments concerned. Moreover, it is made quite clear on the sheet that it refers only to 'exploratory research'.

By his own actions (note of 8 July 1971 to Mr Malvicini and note of 8 November 1971 to the Director-General) the applicant himself admitted the JCR authorities' competence in this respect. There is no doubt that this competence existed, because the work involved had been entrusted to the JRC by the Biology Directorate and was due to be carried out in conjunction with other activities for which the JRC had been made responsible. The structure of responsibility in the Centre is in no way changed when, from time to time, it is called upon to carry out as part of the schedule of activities work which has not been assigned to it direct.

Neither can it be said that there has been, as alleged, any misuse of powers, as appears from the reasons given for the order to discontinue the experiments (the need to 'draw conclusions') and from subsequent decisions and developments. No disciplinary proceedings were instituted against the applicant, whose work was made the subject of a purely scientific appraisal.

The *applicant* disputes the validity of the arguments adduced to demonstrate that this head of claim is inadmissible:

(i) The note of 9 July 1971 did not constitute a ban but 'a decision to suspend the work on a purely temporary basis'. It is doubtful whether a measure of this kind can

form the subject of a complaint or of an appeal. However, a complaint or an appeal is always admissible once a definite decision has been taken.

(ii) Mr Malvicini's decision could only refer to the year 1971; in fact, the resources (staff, budgetary provision, etc.) shown on the job-sheet covering the work in dispute (a copy of which was attached to the reply) was, for budgetary reasons, allocated only for a year, whereas the present appeal is basically concerned with the future.

(iii) The decision of 14 April 1972 did not merely confirm Mr Malvicini's decision. In order to justify refusal to authorize the applicant to continue his work, the decision of 14 April pointed out that the work was not included in the official programmes of work of the JRC, whereas Mr Malvicini relied on different reasons.

(iv) As Mr Malvicini's decision was vitiated as being outside his competence and a misuse of his powers, the question whether the applicant may claim to be allowed to continue his work is relevant on the merits of the claim but not on its admissibility.

(v) A scientific officer can expect not to be tied down to purely routine work but to be allowed to carry out research which permits him to broaden his knowledge and experience; otherwise, an official would be hopelessly frustrated in his career. Moreover, Article 24 of the Staff Regulations of officials, as revised with effect from 1 July 1972, imposes the obligation on the Communities to 'encourage an official's advanced vocational training'.

As regards the claim itself, it is inconceivable that work entered on a job-sheet, for which there was an allocation of physical resources, funds and the assistance of a collaborator, did not appear in the JRC's programme of work.

The facts adduced in support of the allegation that Mr Malvicini exceeded his competence are as follows. Since the beginning of 1971 the JRC and the Biology Directorate have been under two separate Directorates-General. The Biology Directorate includes a Biology Department at Ispra, to which it allocates certain work, including that involved in this case. The execution and supervision of this work are the exclusive responsibility of this Directorate, part of which is based in Brussels, part at Ispra.

The Commission cannot support its case by reference to the fact that the applicant wrote to Messrs Caprioglio and Malvicini. The question under whose authority the applicant was working must be settled objectively and not with reference to his own subjective appraisal. Although he was working on behalf of the Biology Department, he remained a member of the JRC staff.

As regards misuse of powers, this ground of complaint normally rests solely on inference. In this case the inferences are fairly strong, since it is clear from the file on the present case as well as from the file covering the applicant's previous action (cf. I, 5 above) that he 'has been the target of implacable hostility' on the part of Mr Malvicini.

The *Commission's* reply is that there is no relevant, objective and consistent evidence of malice. The Commission believes that it has provided sufficient evidence to show that Mr Malvicini's attitude, which was dictated by his misgivings as to the validity of the results obtained by the applicant during his experiments, was shared by a number of others.

The job-sheets cannot change the duties which officials are intended to undertake. The job-sheet produced by the applicant was drawn up as guidance

for exploratory work. The Commission has stated that this fell outside the normal programme.

The Commission has no intention of instructing its officials to carry out scientific work which is not part of the research programme laid down by the Council. It therefore has no intention of arranging for the applicant's experiments to be repeated, not even for the sole purpose of establishing whether his conclusions were, or were not correct.

3. *On the fourth and fifth heads of the applicant's claim (damages)*

The *applicant* contends that, in taking no definite decision on Mr Malvicini's accusations and in making wholly inadequate amends to the applicant, the Commission has committed a wrongful act or omission for which it must pay him damages. The Commission is responsible for the actions of its officials.

Similarly, the obstacles put in the way of the applicant's scientific work and particularly the ban imposed upon his continuing his experiments have caused damage for which the Commission must pay adequate compensation.

The *Commission* declares that it is clear from its statement concerning the other heads of the application that there has been no wrongful act or omission.

In reply to this the *applicant* declares that the alleged wrongful act or omission consists of Mr Malvicini's whole attitude towards him. He sets out in detail the facts to demonstrate that Mr Malvicini has systematically blocked, or tried to block, the applicant's advanced training and that he has treated him less favourably than colleagues in the same position as regards authorization to undertake assignments or training courses, facilities for his work, promotion and also the award of additional advances in step and bonuses for exceptional services.

4. *On the supplementary claims submitted in the reply (withdrawal of certain documents from the applicant's administrative file; the Court's exclusion of them from its consideration)*

The *applicant* states that the documents comprised in Annexes 10 and 16 of the statement of defence (Mr Malvicini's written observations of 23 November 1971; considered opinion of 24 November 1971) are defamatory and, contrary to the provisions of Article 26 of the Staff Regulations of officials, have not been communicated to him or signed by him. They cannot therefore be used against him.

IV — Oral procedure

After closing the written procedure, the Court (Second Chamber) asked the Commission to explain why it had not investigated the truth of the accusations made by his superior against the applicant.

The reply given by the Commission at the hearing may be summarized as follows:

The Commission began by going into the causes of the differences: the document referring to the matter of the falsification, the reports on the previous work of the applicant, the considered opinion on the article submitted for authorization for publication, all of which helped the authorities at the Research Centre to decide not to go further into the truth of the matter. Inquiries just stopped at that point, which may perhaps be an unsatisfactory solution, but was the appropriate one in the circumstances.

The Commission is further of the opinion that a wrongful act or omission can arise only from a wrongful course of conduct, deliberately pursued by the Commission, with the intention of harming someone. It was in order to

avoid harming anyone that the Commission decided to do nothing and simply put a stop to inquiries.

Maître Slusny spoke on behalf of the applicant and Mr Pincherle on behalf of the Commission.

The Advocate-General presented his opinion at the hearing on 21 June 1974.

Law

1 By appeal submitted on 25 July 1972, the applicant sought annulment of the decision of 14 April 1972 rejecting his complaint of 3 January 1972 in which he requested (i) withdrawal of certain accusations made against him by his superior (ii) annulment of the decision not to authorize him to continue his experiments and (iii) grant of damages in respect of the accusations made against him and of the ban on his going on with his work.

On the first and second heads of claim

2 The applicant relies on the general principle which requires the employer to look after the interests of his employees, and on the first paragraph of Article 24 of the Staff Regulations, which imposes on the Community a duty to assist an official who becomes a victim of certain misdeeds.

3 Apart from the duties which fall on the Administration under Article 24 of the Staff Regulations, the principles of justice as well as those of good management demand that if serious accusations, reflecting on the professional integrity of an official in carrying out his duties, are made by a superior, the Administration should take all necessary steps to establish whether the accusations are justified.

4 If, after this has been done, it appears that the accusations cannot be justified, it is incumbent on the Administration to refute them and to do everything possible to restore the good name of the official concerned.

5 In any case, it is incumbent upon it not to give the accusations any publicity beyond what is strictly necessary.

6 It is accepted, in this case, that a serious accusation has been made against the applicant by his superior.

7 After having asked the applicant for information about the experiments in dispute in order to establish whether disciplinary proceedings should be instituted against him, the Commission, in the person of the Director-General of the Joint Research Centre at Ispra, in the end decided not to institute disciplinary proceedings against the applicant.

8 This decision was communicated to him only in the Commission's reply of 14 April 1972 rejecting his complaint through administrative channels.

9 In his complaint of 3 January 1972 the applicant applied to the Commission for 'written withdrawal, with apologies, of [the] accusations, and recognition of the validity of the results I have obtained from the experiments...'

10 Though this request could be more happily phrased, nevertheless, in view of the applicant's note of 8 November 1971 according to which he wished 'to know the outcome of the inquiry which has been going on since May ... and to know what decision you have taken', it can only be taken as a request addressed to the Commission to conduct an investigation and, in the event of the accusations of bad faith proving to be without foundation, to ensure that they be withdrawn.

11 For its failure to give an express reply on the substance of the request in its letter of 14 April 1972 the Commission must be regarded as having taken a decision to refuse an inquiry.

12 In neglecting to take all steps necessary to investigate the truth of the accusations made by the applicant's superior and, more specifically, to conduct a conclusive investigation, the Commission failed in its duty to the applicant.

13 This was aggravated by the Commission's failure to take the requisite steps to ensure that there was no publication of the accusations beyond what was strictly necessary.

14 In view of this the Commission's refusal to undertake an inquiry should be annulled.

15 In the application initiating proceedings, the applicant asked the Court to direct that witnesses, a list of whom he provided, should be called upon to verify the facts.

16 In its defence, the Commission expressed the view that the applicant's requests were 'devoid of foundation and therefore unjustified'.

17 In its rejoinder, the Commission contended that the Court 'should direct that the necessary arrangements be made for the facts relating to the experiments of 28, 29 and 30 April 1971 to be investigated by an expert responsible for analysing all the papers of the applicant and of his superior' which are of a *purely* scientific character.

18 After the hearing, the Commission renewed its offer to refer the scientific issues to an expert.

19 Thus, throughout the whole proceedings, the Commission has wilfully failed to appreciate the applicant's claims.

20 The applicant's complaint, explained afresh at the hearing, is that the Commission did nothing and thus created a problem which, with the passage of time, became increasingly serious.

21 It is thus necessary to make it clear that the purpose of the inquiry which the Commission ought to have undertaken was to seek evidence as to the truth of the accusations reflecting on the applicant's integrity.

22 Now that the Commission's refusal has been annulled, it must carry out this obligation with the minimum delay.

On the third head of claim

23 The applicant claims that the decision prohibiting him from continuing his experiments was vitiated as being a misuse of powers in that it was intended indirectly to punish him.

24 The Commission objects that his head of claim is inadmissible as being out of time.

25 As his superior's decision of 9 July 1971 forbade the applicant to continue his work and as he had not submitted a complaint through administrative channels within three months of that date, the Commission's reply to the administrative complaint was mere confirmation of the previous decision.

26 The time-limits laid down in the Regulations commence to run only from the moment the competent administrative authority adopts a definite attitude.

27 On 8 November 1971, the applicant asked the Director-General to take a definite decision.

28 On 3 January 1972, having received no reply from the Director-General, the applicant applied to the Commission for a definite decision within the prescribed time limit.

29 The objection on grounds of inadmissibility must therefore be dismissed.

30 The original decision, taken by the applicant's superior, temporarily withdrawing some of his responsibilities cannot reasonably be separated from the accusations of dishonesty made during the same period against him.

31 Though there was good reason at that time for a decision of this kind while the inquiry begun by the Director-General was going on, this is to some extent invalidated by the fact that the inquiry was not completed.

32 The fact that, without specifically basing its decision upon the accusations of dishonesty, the Commission confirmed the decision to prohibit the applicant from continuing his research, is not enough to remove the impression that, because it was maintained, the decision was a disciplinary measure rather than a temporary suspension pending the outcome of the inquiry.

33 The argument advanced by the Commission to justify prohibiting the applicant from continuing his work, viz. that the work was not covered by the programme of the Joint Research Centre, does not explain why, in that case, the annual job-sheet referring to the applicant's work provided for him to do this work during the whole of 1971, as he had done during the previous year.

34 In view of these considerations, the Commission's decision on this point must be annulled.

On the fourth head of claim

35 The applicant asks that the defendant be ordered to pay him the sum of FB 100 000 as compensation for material and non-material damage resulting from the refusal to ensure withdrawal in writing of the accusations made by his superior and from the refusal to recognize the validity of the results he had obtained from his experiments

36 Pending the outcome of the action which must be taken by the Commission, the Court cannot at this time take a decision on this head of claim

On the fifth head of claim

37 In addition, the applicant is asking for FB 100 000 for material and non-material damage resulting from the Commission's express rejection of the applicant's request to be allowed to recommence his work and experiments.

38 It is clear that the applicant has not suffered any material damage as a result of refusal of authority to recommence his work and experiments.

39 Annulment of this refusal is sufficient compensation for all non-material damage he has sustained.

Costs

40 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay costs.

41 The Commission has failed as regards the substance of its pleas and must accordingly be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Annuls the rejection by the Commission of the applicant's request of 3 January 1972 that the Commission should institute an inquiry into the accusations of dishonesty made against him by his superior;**
2. **Annuls the express rejection by the Commission of the applicant's request of 3 January 1972 to be allowed to recommence his work and experiments pursuant to job-sheet III-4-01/1971;**
3. **Dismisses, in so far as the present proceedings are concerned, the fourth head of claim;**
4. **Dismisses the fifth head of claim;**
5. **Orders the defendant to pay the costs.**

Sørensen Kutscher Mackenzie Stuart

Delivered in open court in Luxembourg on 11 July 1974.

A. Van Houtte
Registrar

M. Sørensen
President of the Second Chamber