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

Mr President,
Members of the Court,

Mr Satya Prakash, a Doctor of natural sciences, was working at the Institute of Radio Chemistry at Karlsruhe when he was given employment with the organization at Ispra in the Joint Nuclear Research Centre with effect from 1 October 1961. He was appointed as a scientific collaborator in the Physical Chemistry Department, under the supervision of Dr Marchetti. He remained there until the Commission of the EAEC took a decision on 20 March 1963 to dismiss him, as the Establishment Board provided for by Article 102 of the Staff Regulations had on 19 February 1963 formed an opinion unfavourable to his integration.

Before the notification of this decision, Mr Prakash had already lodged Application 19/63 which was directed against a certain number of decisions, taken by his superiors, refusing to reimburse his removal expenses and to acknowledge his right to the installation allowance. He requests you to order the Commission of the EAEC to pay him the sum of 3 472 DM in respect of reimbursement of his removal expenses, and a sum equivalent to one month's salary in respect of the installation allowance.

These conclusions are repeated in Application 65/63 which is directed principally against the decision of 20 March 1963 by which he was dismissed. Mr Prakash asks you to reverse this decision or to annul it, and secondarily to order the Commission to pay damages for the wrongful acts or omissions which he asserts it committed in making, carrying out and terminating the contract. He estimates the damages at 2 000 000 BF for material damage and 6 000 000 BF for non material damage.

The examination of these matters which you have undertaken has been long and painstaking. You have been determined not to leave any stone unturned in an argument which from the applicant's side has been profuse, often emotional, and sometimes excessive in its choice of phrase. A number of procedural incidents have been involved: an order of the President of the Court has dismissed an application for the postponement of the putting into effect of the decision to dismiss the applicant. An order of the First Chamber has added to the main action an application based on Article 91 of the Rules of Procedure asking for the production of certain documents. You spent the whole of 9 December last hearing six witnesses. Finally the speeches by the applicant's counsel and by the Commission's agent, coupled with a truly exhaustive oral hearing, have succeeded in giving you a complete understanding of the different aspects of these cases, of the pleas raised by the applicant and of the facts on which he purports to base them.

I think that in these circumstances—and this observation holds equally good for Application 68/63 made by Mr Luhleich on which I shall shortly deliver my opinion—my part must mainly be to get to the bare bones of the discussion, and to focus the discussion on a limited number of rules of law emerging from the Staff Regulations and the case-law of this Court. It must be my rôle to do so in the clearest, most precise and shortest possible way.

Contrary to the order in which the applications were brought, but in con-

1 — Translated from the French.

formity with the order adopted in the speeches, I shall successively examine the legality of the decision of dismissal, the request for damages and finally the right to the reimbursement of the removal expenses.

I — The decision of dismissal

By a decision dated 20 March 1963, of which notice was given by a letter of 20 April 1963, the Commission of the EAEC terminated the contract which constituted the relationship between Mr Prakash and that Community. The unfavourable opinion of the Establishment Board had in fact rendered this measure inevitable. The dismissal took effect after the expiry of a period of notice of one month from the day on which notice was given. Apart from this period of notice the dismissal involved the payment of compensation equal to two months' basic salary as provided for by Article 102 of the Staff Regulations.

Thus the disputed decision constitutes both a refusal to integrate the applicant and, at the same time, the termination of his contract. The submissions made by Mr Prakash refer to either one or other of thes aspects depending on the particular point argued. These submissions are three in number:

A — In the first place he relies on the right to security of employment, saying that the understanding of the authorities of the Ispra Centre was that he had been offered employment on a permanent basis. This would appear from his being appointed to a permanent post, as is shown by the fact that as from the moment when his laboratory actually became fit for use it would take a period of at least a year to carry out the programme of work which had been assigned ot him. Thus the letter offering him employment intentionally did not say when this was to end, contrary to the provisions of Article 214 (3) of the Treaty. As for the clause in this letter providing for the possibility of terminating the contract at any time on either side by one month's notice, Mr Prakash says that he was expressly told that this was simply a matter of form. He concludes from this that he was eligible for establishment.

What is disputed is not his eligibility but his legal right to be established. Article 214 to which he refers provides that *'Until the Staff Regulations of officials . . . have been laid down,* each institution shall recruit the staff it needs and to this end conclude contracts of *limited duration'*. If, contrary to the provisions of this Article, Mr Prakash's contract, like all those made under the so-called Brussels system, did not include a time-limit, this did not mean that the applicant had the right to security of employment, which only exists for established servants (*Von Lachmüller,* Joined Cases 43, 45 and 48/59, Rec. 1960, pp. 954-956). There are no grounds for calling the power of dismissal provided by the contract a mere matter of form. It is not disputed, to take the other point, that Mr Prakash occupied a permanent post, but, although this was necessary to enable him to be established, it was not of itself sufficient for him to become so. It was also necessary, by virtue of Article 192 of the Staff Regulations, for him to be the subject of a favourable opinion from the Establishment Board. On the other hand an unfavourable opinion from this Board led necessarily to the termination of his contract. It was this latter measure which was taken with regard to Mr Prakash, and he has no grounds whatsoever for claiming any purported security of employment.

B — The second complaint made by the applicant about the decision to dismiss him is based on infringement of essential procedural requirements. This submission constitutes the essential arguments in this case. It groups under the heading of infringement of essential

procedural requirements a series of complaints some of which are indeed about procedural irregularities. But others in fact deal with the material inaccuracy of the reasons on which the unfavourable opinion of the Establishment Board was based.

One ground of complaint should be dismissed straight away, and that is that, contrary to Article 110 of the Staff Regulations, neither the Staff Committee nor the Staff Regulations Committee was at any time called upon to take part in the procedure. This Article is concerned with general provisions for giving effect to the Staff Regulations, and you have already decided that in fact it does not apply to the integration procedure, which is of an essentially transitory nature (Case 26/63, *Pistoj*, Rec. 1964, p. 696). The reply argues another point, namely that by Article 9 of the Staff Regulations action on the part of the Staff Committee was necessary for the contract to be terminated. However it is enough to re-read that Article to see that this assertion is without foundation.

1. I come now to the complaints based on procedural irregularities, and these are numerous and varied. Article 102 of the Staff Regulations provides for the setting up of an Establishment Board, consisting of servants of the institution employed in a supervisory capacity, who shall be appointed thereto by the appointing authority. The Board furnishes this authority with an opinion on the ability of servants eligible for integration to carry out the duties which have been entrusted to them. It forms its opinion on the basis of a report prepared by the superiors of the person concerned on his competence, efficiency and conduct in the service. There is no need to stress the importance of the Board's functions because if its opinion is not favourable then not only can the servant not be established in the grade corresponding to the one which he had expressly or by implication attained, but his contract must generally speaking be terminated.

These are the only provisions of the Staff Regulations concerning the integration procedure.

Without its having the stature of any rule of law the practice which was in fact followed at Euratom was as follows. The members of the Establishment Board received reports from Heads of Department one by one as they were made. Comments submitted on these reports by the persons concerned were received in a similar way. It was only when a member of the Board raised an objection for some reason, such as knowledge of languages, general attitude or breach of discipline, that the case was reserved and gave rise to a more thorough study, including an oral discussion where appropriate. This was what happened with Mr Prakash. But an oral discussion does not in any way imply an unfavourable opinion or even a predisposition towards one. What matters is that when the Board forms its opinion it should have a thorough grasp of the case of the servant about whom it is required to form an opinion, and that the procedure should be carried out in a way which respects the servant's rights. To what extent was this so in this case? Let me say straight away that in assessing this I shall confine myself exclusively to the arguments contained in the written documents produced in Case 65/63 or expanded during the oral procedure. In his reply Mr Prakash states that he refers to all the arguments and legal submissions developed in Case 68/63 concerning his colleague Mr Luhleich, the point being that the two cases are very similar, if not exactly the same, in many respects as regards matters of both fact and law. Neither the similarity of situation nor the fact that the two persons have much in common can legally justify such a reference.

If I may confine myself to Case 65/63, the criticisms turn on two sets of facts:

first, various irregularities vitiating the documents as a whole contained in the file which the Board examined in forming its opinion, and secondly the circumstances in which the oral stage of the procedure took place before the Board.

(a) Although the establishment report is the only document mentioned in Article 102, it is clear that it is not the only evidence which may be taken into account. The personal file and the report at the end of the probationary period may also be taken into consideration. The applicant makes complaints concerning these three categories of documents.

Mr Prakash saw his *personal file* several times, and he complains first that it was not kept in chronological order, and that he found new documents in it every time he consulted it. It seems that this is explained by the difficulty involved in the management of staff posted far away from the institution's headquarters. However, contrary to the interpretation which the applicant claims to give to one of the administration's letters in his reply, there are not several personal files but one. It is not disputed that the whole file was made available to Mr Prakash before he was heard by the Board. Therefore, even accepting the existence of the irregularity of which he complains, I do not see how it could vitiate the procedure.

The applicant took up his duties on 1 October 1961, and therefore according to the practice at Euratom his probationary period ought to have ended on 1 April 1962. In fact the *probation report* was only drawn up by Mr Marchetti, his superior, on 31 August 1962, and was only forwarded to him for his comments on 1 December 1962. The local Staff Committee criticized the delay at the time. One may wonder what the reasons were for insisting on a probationary period in a scheme governed by a contract of unspecified duration and terminable on one month's notice. However, whatever they may be, neither the expiry of the normal length of the probationary period, nor the making of the probation report, can alter a servant's position as regards his eligibility for integration. I do not see any way in which this delay can have adversely affected Mr Prakash's rights. It is true that Mr Prakash asserts that the two procedures for the end of the probationary period and for integration were 'merged'. It is certain that they took place more or less simultaneously, but they were not merged. In any case, in what way could this simultaneity harm the applicant and influence the opinion of the Board?

There remains finally a more important document which is the *establishment report* drawn up by his immediate superior on 31 August 1962. Mr Marchetti, after having stated his assessment of the various aspects of the applicant's character, makes the following general judgment: 'I think he has the right qualifications but apparently he does nothing or almost nothing'. This report was filled out by a twenty-line schedule dated 5 November 1962. Mr Marchetti repeats his assessment of Mr Prakash's knowledge, saying that it is sufficient for carrying out the work assigned to him, and then adds that his subordinate has had difficulties in clearly seeing what methods were needed to carry this work out. He took a long time in making his only suggestions which were on too large a scale bearing in mind the means at the disposal of the Department. When at last he was restricted to acceptable limits, all that he did was to order apparatus without using the apparatus which was available in the Department. Mr Marchetti concludes as follows: 'I have not been able to get any sort of work out of him. This shows that there is an insufficient sense of responsibility and an absence of devotion to the task which ... has been entrusted to him. Therefore I cannot assess the quality of non-

existent work. I thought it right to delay Mr Prakash's probation report, in the hope of seeing him apply himself to his work. After a year I do not think it possible for me to keep him in my department'.

This report was countersigned on 6 November 1962 by the Director-General of the Centre, Mr Ritter, in the following terms: 'I do not think that Mr Prakash is able usefully to work at Ispra'. Finally this report was the subject of lengthy comments submitted by the applicant on 8 January 1963.

Contrary to what Mr Prakash says first, there is no contradiction between the assessments made in this report and those found in the probation report, particularly between the 'excellent relations within the Department' which is about personal relationships, and 'insufficient ability to work in a team'. Nor is there any contradiction between 'difficulty in clearly defining the methods of carrying out' his work and his 'great capacity of self-expression'. These assessment deal respectively with his way of implementing a programme and with his verbal fluency.

But the applicant makes a more serious complaint on this point and it is worth pausing at it because it throws doubt on the honesty of a Head of Department. Without drawing any express conclusion, but presumably in order to draw the essence from a document which is harshly worded the applicant asserts that the schedule to the report was written by Mr Marchetti at the earliest on 12 December [sic] 1962 (and not on 5 November 1962), and thus after the assessment made by Mr Ritter on 6 November. This was contrary to internal provisions which say that the establishment report is to be signed by the Director-General last of all. He asserts that the schedule was written in response to criticisms made by the local Staff Committee on the delay which had occurred in drawing up the probation report. He thus asserts that the schedule is lacking in objectivity.

The reply puts this on page 18 as follows: 'The date 5 November 1962 is an antedate. This fact can be seen from the original of the report. Marchetti had at first put 11 November as the date, and this was then erased and replaced by 5 November 1962, namely the day before Dr Ritter's assessment'.

You will look, as I have done, at the applicant's personal file. There you will see as Document No 68 the photocopy of the schedule to the establishment report and on it the statement by Mr Prakash of 10 January 1963. The document is type-written and Mr Marchetti has signed by hand. The document is dated 5 November 1962, and there is no erasure as regards this date.

(b) I do not think that there is any point in spending more time on the criticisms made against the various documents submitted to the Establishment Board, and I come now to the other aspect of the alleged procedural defect. At the oral stage of its enquiries did the Board fail to have regard to the contentious nature of the procedure? Was it in possession of all the factors necessary to form its opinion?

You have the minutes relating to the applicant's case in the file. After hearing Mr Marchetti on 12 January, the Board heard him again on 11 February and also heard Dr Ritter, Mr Lindner and Mr Mercereau on that date. Three of them have given evidence before you in this case. Then Mr Prakash, to whom the Chairman had passed on the additional information and the facts stated orally to the Board, submitted his comments which are analysed in the minutes. It is not disputed that he was heard for an hour and a half, that he replied to questions and that he spoke last. The opinion of the Board was delivered on 19 February without another hearing.

The applicant complains that no confrontation took place between himself and Messrs Marchetti and Ritter. He further complains that he was not provided with the minutes of the hearing given to them. But you have judged that this confrontation was not required by the integration procedure, and that the administration cannot be obliged to communicate the Board's minutes to the person concerned before the decision of the appointing authority has been announced (Case 87/63, *Georges*, Rec. 1964, p. 948). The contentious nature of the procedure only requires that the servant be invited to give his explanation of any new points of assessment furnished to the Board (Case 80/63, *Degreef*, Rec. 1964, p. 797). But, as you know, Mr Prakash had the last word.

In his reply the applicant takes up the complaint about the absence of a confrontation again under another guise. He blames the Board for having refused to follow up the offers which he had made to furnish proof that his laboratory was inadequate, or to follow up similar offers concerning the want of financial resources. However, although he has indeed explained himself on these different points, there is nothing in the minutes to show that he made offers of proof concerning them. Furthermore it was for the Board, which was in possession of the assessments concerning the applicant on which the latter had had the opportunity to explain himself, to consider whether it had a sufficiently clear view or whether on the contrary further enquiries were needed.

Mr Prakash, it is true, complains that the Board did not include any experienced scientist able to form an opinon for himself on the effectiveness and the quality of the work carried out by him, and therefore it was led to rely entirely on the assessment of Mr Marchetti, his immediate superior. This ignores the fact that this Board, the membership of which complied with the conditions laid down in Article 102 of the Staff Regulations. did not only hear Mr Marchetti, but also the Director-General of the Centre and the Assistant Director-General who, it is admitted, were in a good position to assess the work of their fellow scientists.

In its own words the application states that 'the whole integration procedure must be described as arbitrary, lacking in objectivity and biased'. I think that what I have said is enough to show that this accusation is totally unjustified.

Finally the application reminds you that the reason for an administrative decision must be stated clearly, and asserts that the conclusions of the Establishment Board are 'vaguely and imprecisely worded', and that they are vitiated because they are inadequate to an extent which makes it impossible for you to review them. In reply to this criticism I shall do no more than remind you of the full text of the opinion issued by the Board:

'The Board considers that this servant, by his tendency towards excess in planning programmes and in calculating resources, has not, despite the instructions given to him, managed to exploit the resources placed at his disposal so as to provide the scientific contribution to the Department which it was entitled to expect of him.'

2. However, when the applicant thus disputes the sufficiency of the reasons given by the Establishment Board he is in fact doing so to dispute the soundness of its unfavourable opinion. Article 102 places on the Board the onus of making a value-judgment based on the conduct of the person concerned in carrying out his duties. This judgment is with a view to assessing the suitability of the person to continue to carry out those duties as an established official. You cannot substitute your own assessment for that of the Board nor can you make a general value-judgment of the conduct and

ability of the applicant. On the other hand, you do have jurisdiction to satisfy yourselves as to whether the opinion issued by the Board is based on facts which are materially inaccurate, as the applicant asserts. If it is, it amounts not just to a procedural failing but is something affecting the substance of the case. I must also remind you that in this case the burden of proving the accuracy of the facts which might be called in question does not fall on the defendant institution. I must further remind you that, since the opinion as issued was a general value-judgment on the conduct of the applicant, the inaccuracy of a fact would only vitiate it for irregularity if that fact was sufficiently important for it to have an influence in itself on the judgment made by the Board.

The meaning and scope of this opinion is clear. It makes two complaints against Mr Prakash: on the one hand, excess in planning programmes and calculating resources and, on the other hand, insufficient output in spite of the instructions which he received and the means put at his disposal, the one complaint explaining the other. As regards these two points, you have many documents, produced in the written procedure, and you have heard five witnesses who were Mr Prakash's superiors or colleagues. You have also heard the oral arguments. Therefore I can be relatively brief.

Nobody has disputed the fact that the applicant is a good scientist and in particular the defendant institution has not done so. You will remember that Dr Ritter, who had already met the applicant at Karlsruhe, thinks of him mainly as a theorist, ill at ease in the necessarily limited atmosphere of the Research Centre. You will also remember that—perhaps because of this character—at Ispra he had a tendency to draw up excessively elaborate programmes. This is a first assessment the soundness of which is not contradicted by any document on the file. Quite the contrary.

It may well be that account should be taken of the fact that the rôle of the Ispra Centre was not clearly defined at that time, and also that a new arrival needs a certain amount of time to fit in with 'the atmosphere of the house'. Be that as it may, you will remember that Mr Prakash took up his duties on 1 October 1961 and on 15 January presented his first programme which consisted mainly in a review of research carried out throughout the world. Mr Marchetti, while recognizing that this project was interesting, asked him to reduce it drastically and to prepare a programme 'within one man's potential'. He gave him the directive to refine a method for measuring the number of molecules adsorbed on aluminium by infra-red adsorption, and provided him with 4 000 units of account in February to enable him to begin to set up his laboratory. This figure gave an idea of the order of magnitude of the Centre's means (the credits allocated to the Physical Chemistry Department in 1962 were 200 000 units of account). However, on 5 March, Mr Prakash asked for 55 000 units of account for apparatus. This sum was reduced to 15 000 units of account and the local Programmes Committee refused to approve the latter amount. A new programme was presented on 17 May, again to Mr Marchetti, and it began as follows: 'Please find herewith the report which I have completed after several discussions with you about the area of my research'. This time Mr Marchetti reacted with a note dated 4 June 1962 which distinguishes between the short-term programme (point 3) reproducing the instructions given in February and for a limited amount of credits had been allocated, and the long-term programme (point 2) the implementation of which was to be the subject of a budget presented to the local Programmes Committee. However

in September 1962 Mr Prakash asked for a sum of 67 320 units of account, and I shall add, to finish this point, that in October 1970 he asked for 100 square metres of space to set up a laboratory. This is the first complaint drawn up by the Board. The applicant has never disputed the facts on which it was based; he has limited himself to saying that he did not know what means were at the disposal of the Department. But if that is perfectly acceptable as regards the programme of 15 January 1962, it is no longer so as regards what happened afterwards.

As for the other complaint, insufficient work, or lack of work, this presupposes assessments of a technical nature and therefore I see no other method than to mention the evidence which you have already heard. Mr Marchetti expressed himself in clear terms: 'Mr Prakash was never blamed for not getting results, but for not having started the work'. Later he adds: 'If somebody does in a year what could be done in a fortnight he is not working'. In a more diplomatic way Mr Mercereau expresses a fairly similar opinion. In his view Mr Prakash did not try to do any realistic and continuous work with the apparatus at his disposal. Can it therefore be said that he was unable to work for want of instructions and want of means? But the note of 4 June 1962 followed on from conversations between the applicant and Mr Marchetti as is particularly clear from the letter from the former to the latter dated 17 May. The note simply confirmed the oral instructions which had been given when the programme had been submitted in January. Then comes financial means and apparatus. I shall not put forward here the somewhat caustic criticism made by Mr Marchetti about 'Christmas trees', and it is clear that the means at the applicant's disposal did not suffice for putting points (b) (long-term programme) into action. But as for point (c) (short-term programme), for which he had the Department's means at his disposal and particularly the infra-red spectrograph, none of the witnesses said that the apparatus available did not enable him to *begin* the work. Yet in fact what Mr Prakash is blamed for is not having started.

Furthermore, although the events outlined above only go back over the written and oral parts of the proceedings, it must certainly be admitted that they are on the brink of the limits of your jurisdiction, in so far as they tend in fact to verify the soundness of the judgment formed by the Board about Mr Prakash's activities, and are not limited to an investigation of materially inaccurate allegations of fact. To my mind it seems clear that no inaccuracy of this sort has been established, which is enough to discard this complaint.

C — In the third place the applicant raises misuse of powers which he says vitiates the impugned decision in two ways: it is asserted that Mr Marchetti's animosity towards the applicant was continually made plain on the occasion of the various incidents to which I have already alluded, with the result that the applicant's scientific activity as a research worker was systematically and intentionally paralysed. The other aspect is that according to the applicant the integration procedure was a mere formality so far as he was concerned, and he asserts that the refusal to integrate him was in the nature of a disciplinary measure taken because of the complaint which he had submitted to the Director of the Centre in September 1962. In his reply he even argues that, although the report of the Consolo Commission, which we shall come across again in another case, had come down in favour of 'the responsibility of superiors', the defendant preferred to throw this responsibility on to the shoulders of subordinates—hence the refusal to integrate him.

This line of argument is a pure figment of the imagination. The cases brought

before you against refusals to integrate usually blame the unfavourable report of the superior on the ground of personal animosity. It still has to be shown that the opinion expressed in the report does not correspond with the actual facts. Furthermore the impugned decision was not taken by Mr Marchetti, but by the Commission of the Community following the opinion of the Establishment Board. It would therefore be necessary to find that the latter demonstrated personal animosity towards the applicant and that this animosity was the factor determining the position which it adopted. There is not the slightest suggestion in the file which backs up the applicant's assertion. Therefore I suggest to you that this last submission should be discarded, and accordingly that you should dismiss the principal conclusions of Application 65/63, arguing for the annulment of the decision putting an end to Mr Prakash's contract.

II — Request for damages

The conclusions concerning damages which Mr Prakash brings before you are supported by him in two ways. Even if you were to annul the decision which he attacks, this annulment would not compensate for the loss caused by the measure in view of his status as a scientist. This is because, quite apart from the affront to his reputation, the temporary interruption of his work caused him damage, so it is said, to the extent that he was thereby prevented from continuing his creative activity. If, as I suggest you should, you dismiss the conclusions for annulment of the decision, the conclusions concerning damages as thus supported will necessarily go the same way. You have already judged, in fact, that a measure which has not been shown to be unlawful cannot constitute a wrongful act or omission and thus unlawfully prejudice the honour and reputation of the person to whom it refers, unless it contains superfluous criticisms of that person. These are the terms of your judgment in Leroy delivered in a case which, like this one, was about a refusal to integrate ([1963] E.C.R. 197). In the present case the opinion of the Establishment Board, the terms of which were adopted by the Euratom Commission, does not come in for any criticism from this point of view. And the solution in the Leroy judgment is of very general application: a legal decision can never constitute a wrongful act giving rise to unlawful damage (Case 25/62, *Plaumann,* [1963] E.C.R. 95).

In case you should reject his conclusions for the annulment of the decision, Mr Prakash asserts that the length of notice gven to him was too short. You know that this was a period of one month by virtue of the letter offering him employment, and that Articel 102 grants, *inter alia,* two months' salary as supplementary compensation where a servant is dismissed pursuant to the application of this Article. The applicant thinks that the contractual period of notice could no longer be applied so rigidly after the end of the usual length of the probationary period. Furthermore he again relies on the fact that he is a scientist, which does not allow him to obtain another suitable post in such a short time.

According to your case-law the application of the contractual period of notice can only be set aside if the servant's consent was not freely given or if the period is 'patently unjust or onerous' (*De Bruyn,* Rec. 1962, p. 45). And where there is a dismissal carried out in accordance with Article 102 you have strictly bound yourselves by the combined provisions of this Article and the contract (*Baron de Vos,* Rec. 1964, p. 639).

These principles remain valid. Mr Prakash freely consented to the condi-

tions of his employment. He indicates that his former contract at Karlsruhe provided for a period of notice of six months. This does not mean either that his contract with Euratom was vitiated for want of consent or that the period laid down in it was 'patently unjust or onerous'. The disadvantage of a shorter notice period was compensated for by other material advantages. A contract is a compromise and cannot consist exclusively of favourable aspects. Besides, in prolonging the contractual period by two months, Article 102 was clearly intended to effect a complete settlement of situations arising from refusals to integrate. In his opinion in the Baron de Vos case, the Advocate-General emphasized that the mandatory provisions of the Staff Regulations seemed to preclude any special assessment by the Court of each particular case. I do not see any reason in law or in fact which could lead to the adoption of a different standpoint for scientists. I invite you to confirm your case-law which has been consistent up till now and to dismiss the conclusions of Mr Prakash.

III — Removal expenses and installation allowance

In 1962 Mr Prakash was refused authorization to set up house at Ispra, which would have meant the reimbursement of his removal expenses and payment of the installation allowance. In application 19/63 he submitted to you various 'decisions' express or implied taken on this subject and the Commission raised a number of objections of inadmissibility to his conclusions. Later the defendant institution expressly rejected Mr Prakash's demand and its decision of 18 April 1963 has been contested in Application 65/63 in due form. Therefore you can pass judgment on the substance of the dispute.

Before examining the fairly confused factual circumstances in which Mr Prakash met with a refusal, it is necessary to clarify which set of legal rules is applicable to this matter. Contrary to what he claims, this cannot be the Staff Regulations because unless otherwise expressly stated these only apply to officials, a status which he has never had. Nor can it be the Staff Regulations of the ECSC 'applicable by analogy' because this application by analogy can only arise to the extent to which the position of contractual servants is not governed by the contract or by circulars of a general nature promulgated by the institution for the functioning of its departments. There was nothing in Mr Prakash's contract of employment. However the Euratom Commission had issued Circular No 50 on 24 February 1959, and its provisions were in force at the time of the matters in dispute.

The procedure is as follows: a servant who has been employed for at least six months can ask for authority to change his permanent residence. This request is transmitted to the Director of Administration by the Director of the Division to which he is posted, acting as intermediary. The latter must state that he does not see any objection to the removal and that he considers the person making the request to be capable of fulfilling the duties which have been entrusted to him and to be fit for service with the Community. Furthermore it is stated that such authorization is necessary in order to obtain the installation allowance as well as the reimbursement of removal expenses.

In other words, there must be a minimum period of service but there must also be a favourable assessment of the servant's ability by the Head of Department. Furthermore, even if these two conditions are fulfilled, the power of decision is entirely reserved to the higher authority.

Another point is that the circular lays down that the servant must present two

detailed estimates one month prior to the intended removal at the latest. The administration may either approve one of them or call for an estimate from a third firm.

The above is the law applicable. What happened in fact? Mr Prakash arrived at Ispra on 1 October 1961 and submitted his request on 30 August 1962. At that time Mr Marchetti said that he was unable to confirm the servant's abilities.

A second request was made on 27 September on the official form. You know that there are in existence two versions of this request. There is a photocopy held by Mr Prakash on which the Head of Department has signed under the sentences about approving the removal and about the abilities of the applicant, but without the Director's having signed. On the original, on the contrary, the same sentences are crossed out and followed by Mr Marchetti's signature dated 1 October 1962. The document carries the remark 'refused' signed by the Assistant Director, Mr Mercereau, on 7 November.

The parties have discussed at length the reasons for and the consequences of this divergence between the two forms of the same document. According to Mr Prakash, Mr Marchetti gave his approval and returned the document to the applicant; his approval was irrevocable. According to the Commission, the Head of Department could change his mind so long as a decision had not been taken by the competent authority, and the reasons justifying such a change of mind have been given to you.

Whatever may be said of these arguments, it is certain that while the approval cannot be given without a favourable report from the Head of Department, this report is not in the nature of a decision and cannot therefore of itself create any rights. It can be altered so long as a decision has not been taken. It does not even bind the competent authority, and that authority is free to refuse to give it. Therefore the decision of 7 November 1962 does not run counter to the provisions of Circular No 50 in any way. Mr Prakash objects, in fact, that on 18 October 1962 the Personnel Department approved the removal estimate made by a Duisburg firm and that approval of the estimate means approval of the request. This is not correct; that approval was for the sum for which the administration was to be potentially responsible, but it does not mean that the principle of changing permanent resident was approved. What is more, this approval of 18 October 1962 was given under irregular circumstances which do not permit Mr Prakash to rely on it. Circular No 50 lays down that the estimates must be submitted at least one month before the intended removal. As he himself admits, it was on 12 April 1962 that Mr Prakash addressed them to the administration for approval, but the removal had been carried out in two stages on 8 January and 19 February 1962.

The applicant was clearly free to conduct this operation when he wanted, but payment for it by the Community presupposed an authority which was refused on 7 November 1962 in due and proper form. His conclusions directed against both this decision and the decision of 18 April 1963 by which the Commission rejected his complaint can only be set aside.

I am therefore of the opinion:

— that Applications 19 and 65/63 should be dismissed; and

— that both parties should bear their own costs in accordance with Article 70 of the Rules of Procedure.