to the Treaty establishing the European Economic Community, especially Article 19;
Having regard to the Staff Regulations of officials of the European Community, especially Articles 5, 25, 90, 91, 102 and 110;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 38 and 69;

THE COURT (Second Chamber)

hereby:

1. **annuls the decision to terminate the contract of employment of Mr R. Degreef, notified to him by letter of 28 June 1963;**

2. **orders the Commission of the EEC to pay Mr Degreef the arrears of his monthly salary and the accompanying allowances from the date of his dismissal, taking into account any sums he may have received from alternative employment during this period;**

3. **orders the Commission of the European Economic Community to pay the costs.**

Hammes Rossi Lecourt

Delivered in open court in Luxembourg on 1 July 1964.

A. Van Houtte
Registrar

Ch. L. Hammes
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 10 JUNE 1964[1]

Mr President,
Members of the Court,

The case of Degreef against the Commission of the European Economic Community originates in the unfavourable outcome of the integration procedure under Article 102 of the Staff Regulations as regards the applicant, who since 25 September 1959 had been a messenger in the service of the Commission, and this led to his dismissal by the Director-General of Administration (notification to the applicant by letter

1—Translated from the German.

of 28 June 1963).

His conclusions are similar to those in Case 78/63; similarly the complaints which he puts forward in this case largely correspond to those in Case 78/63.

My examination of this case can therefore be correspondingly brief. I will only give my opinion in detail on the points which distinguish the two cases.

I. This means:

1. No objection is raised as to the admissibility of the conclusions, in particular if the request for annulment of the integration procedure is only regarded as an integral part of the request for the annulment of the report of the Establishment Board or as the ground upon which the latter request is based.
2. Article 110 of the Staff Regulations has not been infringed, because this provision only applies to *general* provisions for giving effect to the Staff Regulations, not to the provisions in the Chapter entitled 'Transitional Provisions' which can only be applied once.
3. Article 5 of the Staff Regulations has not been infringed, because the definition of posts for the purposes of the integration procedure is of no importance.
4. The subjective nature of the assessment of the ability, efficiency and conduct of the applicant in the service in the report of his superiors arises out of the system of Article 102. The prior determination of uniform criteria for such an assessment and reference to facts in this report were not necessary because in the end a single authority (the Establishment Board) had to give a decision based on all the reports, which enabled widely differing assessments to be reconciled, and because there was the opportunity for an exhaustive discussion of the facts before this Board.

   Having regard to this fact in my opinion the Court need not in this case examine the allegation that there was animosity between the official who was being assessed and his superiors, which could influence the report. In fact it is clear that the Establishment Board heard the views of other officials concerning the applicant and that after doing so it unanimously gave an unfavourable opinion. In addition it must be noted that the relevant report containing the assessment of the applicant was on the whole favourable, was prepared by the applicant's immediate superiors and not by the head of his section and, according to the statements of the Commission, was also based on the reports of other superiors of the applicant.
5. No objection can be made to the participation in the integration procedure of an official of the Legal Department of the Commission who was not employed in a supervisory capacity, because, on a proper understanding of the situation, only participation of a senior official with the requisite experience and authority is necessary.
6. Finally the fact that the applicant appeared before the Establishment Board without an adviser, does not constitute in this case a ground for annulment. The documents which have been produced do not disclose that the applicant endeavoured to avail himself of the services of an adviser and was prevented from doing so by the Establishment Board. The assignment of a kind of official counsel for the defendant cannot however, in spite of the importance of the integration procedure, be regarded as necessary.

II. I must now examine other arguments in the applications in greater detail, either because they were not put forward in Case 78/63 or because they disclose special factual aspects which merit attention.

1. In the first place there is the complaint that the integration procedure was carried out in an irregular manner, which in the Degreef case is likewise subdivided into several points of objection:

(a) In Case 78/63, having regard to the importance of the integration procedure I declared that I accepted the principle that the servant concerned must be given the opportunity of submitting his comments on all the facts considered by the Board which may influence its opinion.

In the present case, too, a number of doubts arise on this point. The minutes of the meetings of the Establishment Board show that at various sessions other servants (three altogether) gave evidence to the Board on the subject of the applicant. The content of their evidence was not recorded in the minutes and the applicant was neither informed of them nor heard on them. This fact is all the more important because the report on the applicant prepared by his superiors was on the whole favourable. The question in this report: 'Is the servant capable of performing the duties of his post?' ('l'agent est-il apte à exercer les fonctions auxquelles il est affecté?') was answered in the affirmative. We must therefore assume that the statements of the servants who were heard by the Board had a considerable influence on the unfavourable opinion of the Establishment Board.

In this case also the Court must therefore, having regard to the infringement of an essential procedural requirement, annul the opinion of the Establishment Board and the consequential decision to dismiss the applicant from the service.

(b) It is furthermore the view of the applicant that the integration procedure was also defective, because a senior official of the administration, who was not a member of the Establishment Board, had attended its meetings.

With regard to this complaint I stated indeed in Case 78/63 that such participation was not prejudicial if it did not extend to meetings at which the Board deliberated and took decisions. In this case it is however doubtful whether that is what happened. Whereas all the other minutes contain a note that the official concerned was not present during deliberations and voting we find in the minutes of the last meeting, which record the adoption of the opinion, only the date and hour when the applicant was present, from which it is impossible to conclude whether this period extended beyond the commencement of the deliberations. It is not however necessary to clarify this issue, because the defects in the procedure which have already been mentioned are sufficient grounds for the annulment of the opinion.

(c) Similarly in connexion with the procedure the complaint was made that the composition of the Establishment Board changed while the applicant's case was being dealt with. This fact might be of importance in that all members of the Board should be provided with sufficient information of the facts to be considered, upon which the final vote is based. In fact in the integration procedure the principle should be applied that all voting members of the Board must be fully informed with regard to the facts submitted for consideration by them.

On this point this case raises certain doubts: it is clear that a member of the Establishment Board took part in the voting on 13 July 1962, but was temporarily absent during a

previous meeting and indeed during the meeting when apart from the applicant three other servants gave evidence concerning him. We do not know whether the other members of the Board reliably informed him of the matters dealt with in his absence. One may wonder whether such information was adequate or whether the principle that all information must be given directly to members of tribunals must be applied to the integration procedure. It certainly appears to me that further clarification of this point is unnecessary because in any event the other procedural defects which have been mentioned are sufficient for the annulment of the opinion of the Establishment Board.

2. Finally in this case the complaint has also been raised that the reasons upon which the opinion of the Establishment Board are based are inadequate. It does not seem to me to be permissible to dismiss this complaint simply by referring to the Leroy judgment, although the opinion which we must consider is superficially similar to the one in Case 78/63. The applicant in fact submits that reference to the report prepared by his superiors is no substitute for a statement of the reasons upon which the opinion was based, because this report was in the final analysis favourable to the applicant, while the opinion of the Establishment Board was *unfavourable*.

Nevertheless there does not seem in the end to have been any infringement of the duty to give the reasons upon which the opinion was based. The decisive reasons for the unfavourable opinion are contained in the opinion itself (lack of conscientiousness, lack of punctuality). Yet it is precisely these two points which are qualified in the assessment report by the observation 'insufficient'. The reference to this report does not therefore seem to be meaningless, because the Establishment Board is not bound by the recommendation of the applicant's superior when it makes its final evaluation.

3. After everything which I have said so far it seems to me that I need not examine the complaint that the facts were not correctly evaluated. The applicant will be able to obtain satisfaction on this point if, after the annulment of the opinion of the Establishment Board, the integration procedure is re-applied to him. It is before this Board that questions of fact can properly be discussed, not before the Court, which at best could decide whether they have any influence on the value-judgment given by the Board, but which cannot itself undertake a complete assessment of them.

III. With regard to the claim for damages in its amended form I refer to my observations in Case 78/63.

IV. To sum up I came to the following conclusion:

Even without taking into consideration the evidence offered by the applicant, the Court can annul the opinion of the Establishment Board and the decision to dismiss the applicant with the result that the integration procedure must be re-applied to him.

The claim that the Commission should be ordered to pay the applicant's salary from the date of dismissal has been substantiated.

The Commission must also bear the costs because the application has in the main succeeded.