cant by the Director-General of Administration and not by the appointing authority, as powers had been delegated to that official for this purpose. Moreover, as I have already said, it was not for the Staff Committee to intervene in this termination. Although the Commission had the right under Article 102 to establish the applicant in a lower grade the fact that it did not use this power cannot constitute a wrongful act or omission. In addition, Mr Luhleich objects that the period of notice given to him was insufficient. On this point I can only refer to my opinion in Joined Cases 19 and 65/63.

— Finally, the applicant maintains that after his dismissal took effect personal and damaging attacks had been made against him at a press conference, by letter and by statement to a journalist from German television. Let me say without going into further detail that a consultation of the file shows these 'attacks' to have been merely a question of allegations or misunderstandings over the scope of these administrative measures, which in no way constitute wrongful acts or omissions.

There remain two subsidiary financial claims:

— The first deals with the repayment of 25 706 Belgian francs which the applicant claims was wrongly deducted from his compensation for dismissal. This sum represents the weighting which he received and to which he says he was entitled as a contractual servant. This argument appears to be incorrect since the grant of this weighting results from an application of Article 64 of the Staff Regulations and only applies to established servants. Although this advance was paid to Mr Luhleich, he was warned that it in no way affected the outcome of the integration procedure and could be recovered. This is in fact what happened.

— The second claim refers to the payment of 1 698 DM by way of reimbursement for personal expenses incurred by the applicant during his employment at Ispra.

The explanations given at the hearing by the Agent of the Commission show that these sums had been used to purchase equipment and that Mr Luhleich had been repaid in kind by being allowed to remove it. If I have correctly understood the reply given by counsel for the applicant the conclusions on this point must be regarded as withdrawn.

I am therefore of the opinion that

— Application 68/63 should be dismissed;

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

## ORDER OF THE PRESIDENT OF THE COURT
## 17 JULY 1963[1]

In Case 68/63 R

HARTMUT LUHLEICH, head of group in the Chemistry Department of the Joint Nuclear Research Centre at Ispra (Italy), represented by Ernest Arendt,

1 — Language of the Case: French.

Advocate of the Cour Supérieure de Justice of the Grand Duchy of Luxembourg with an address for service in Luxembourg at the Chambers of Mr Arendt, 6 rue Willy-Goergen,

applicant,

v

COMMISSION OF THE EUROPEAN ATOMIC ENERGY COMMUNITY, represented by its Legal Adviser, Jan Gijssels, acting as Agent, with an address for service in Luxembourg at the Offices of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

Application to suspend the operation of the measures contested in the original case and for the adoption of certain interim measures.

## Facts

Whereas, the applicant lodged an application at the Court Registry on 13 June 1963 for the annulment of the decision of the Commission of the European Atomic Energy Community refusing to integrate him under the Staff Regulations of officials of the EAEC;
Whereas, in his application for the suspension of the operation of the said decision, lodged at the Court Registry on 13 June 1963, the applicant claimed that the President should:

I — On the application for the suspension of the operation of the measures:

Order the suspension of the operation of the decision of 20 March 1963 refusing to integrate the applicant under the Staff Regulations;
Rule that in consequence the situation existing before the entry into force of the Staff Regulations resulting from the letter of appointment shall be maintained pending a decision on the substance of the case;

II — On the interim measures:

(a) Order, in accordance with the second subparagraph of Article 84 (2) of the Rules of Procedure, the immediate production at the hearing of the following documents:

1. The original personal file of the applicant;
2. The minutes of the Probation Committee;
3. The report of the Probation Committee;
4. The report of the Committee of Inquiry composed of Mr Consolo, Mr Euler and Mr Lacroix, as well as the minutes of the hearing of the persons appearing before that Committee;
5. The minutes of the Establishment Board in so far as they refer to the applicant, as well as the minutes of the hearing of his superiors and colleagues and of his own hearing;
6. The entire report of the Establishment Board to the extent that it refers to the applicant;

(b) Order that, until judgment be given in the original case, the applicant is entitled to continue to carry out his scientific research work at the Joint Nuclear Research Centre and shall have free access to the laboratory, the equipment and the office reserved for him; alternatively, rule that the applicant shall be considered as being on paid leave pending a decision on the substance of the case;
(c) Alternatively, should the application for the suspension of the operation of the measures not be accepted:
award the applicant, by way of advance and in anticipation of his salary, compensation amounting to twelve monthly payments of his salary;
Consequently, order the defendant to pay 320 000 francs (in round figures) to the applicant;

III — Reserve the costs;

Whereas on 5 July 1963 the defendant lodged its observations on the application for the adoption of an interim measure in which it contends that the President should:

'Dismiss the application for the suspension of the operation of the contested decision;

dismiss the application for interim measures;'

Whereas the parties being duly summoned put in an appearance before the President on 16 July 1963 and presented their oral observations;

Whereas during the oral procedure the defendant contended that the President of the Court should:

'Formally place on record that the defendant is disposed, on purely social grounds and without prejudice to the substance of the case, to grant Mr Luhleich, by reason of the imminent birth of a second child, financial assistance amounting to the total benefits which would have been allocated (for medical care, fees, hospital expenses) under the sickness and validity scheme in force in the EAEC had the birth taken place during his employment;'

Whereas in explanation of this conclusion the defendant declared that it has taken into consideration the draft rules applicable to all the European Institutions laying down the detailed rules for implementing Article 72 of the Staff Regulations and that these draft rules contain a provision prolonging the period of cover of officials who are no longer employed (Article 4);

## Law

Whereas it is clear from the wording of the application and the proceedings at the hearing that the purpose of the application for the suspension of the operation of the decision refusing to integrate the applicant under the Staff Regulations of the defendant is, in fact, for the suspension of the termination of the applicant's contract of employment provided for in Article 102 (2) of the Staff Regulations of the EAEC;

Whereas the contract of employment in question provides for a period of one month's notice on termination and whereas this period appears to have been observed in this case;

Whereas, however, the applicant maintains that his financial situation is such that he cannot provide for his needs pending judgment in the original case;

Whereas an allowance for necessities cannot be granted by means of an interim measure unless at first sight the original case appears manifestly well founded;

Whereas the facts of the case show that at the present stage of the action it is impossible to form an opinion on whether the original case is well founded;

Whereas, since the family circumstances referred to by the applicant cannot lead to any other conclusion, the Commission has rightly decided to apply to him the provisions of the sickness and invalidity scheme at present being drafted;

Whereas, for this reason, it is unnecessary to grant the application for the suspension of the operation of the decision;

Whereas the applicant requests that various interim measures set out in detail in his application be adopted in his favour;

Whereas the claim under II (a) of this application was withdrawn by the applicant during the oral part of the proceedings;

Whereas, once the application for the suspension of the operation of the decision has been dismissed, there are no grounds for ordering that the applicant be allowed to continue with his research work pending judgment in the original case;

Whereas for the above reasons the claim under II (c) cannot be admitted during consideration of the application for suspension;

On those grounds,

Having regard to Articles 152, 157 and 158 of the Treaty establishing the European Atomic Energy Community and Article 37 of the Statute of the Court of Justice of the European Atomic Energy Community;
Having regard to Articles 83, 84, 85 and 86 of the Rules of Procedure;

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

hereby orders:

1. **The application is dismissed;**
2. **The costs are reserved.**

Luxembourg, 17 July 1963.

H. J. Eversen
Assistant Registrar
For the Registrar

A. M. Donner
President