9. *Officials — Integration — Powers of the administration — Review by the Court — Limits*
(Staff Regulations of the EEC, Article 102)

10. *Officials — Integration — Opinion of the Establishment Board — Statement of reasons*
(Staff Regulations of the EEC, Article 102)

1. Cf. Para. 1 of summary in Joined Cases 79 and 82/63.
2. Cf. Para. 1 of summary in Case 18/63.
3. Cf. Para. 3 of summary in Case 26/63.
4. Cf. Para. 4 of summary in Case 26/63.
5. Cf. Para. 5 of summary in Case 26/63.
6. Cf. Para. 6 of summary in Case 26/63.
7. Cf. Para. 7 of summary in Case 26/63.
8. Cf. Para. 8 of summary in Case 26/63.
9. Cf. Para. 9 of summary in Case 26/63.
10. Cf. Para. 10 of summary in Case 26/63.

In Case 78/63

RÉMY HUBER, represented by Marcel Slusny, of the Cour d'Appel, Brussels, lecturer at the University of Brussels, with an address for service in Luxembourg at the Chambers of Ernest Arendt, avocat-avoué, 6 rue Willy-Goergen,

applicant,

v

THE EUROPEAN ECONOMIC COMMUNITY OR, ALTERNATIVELY, THE COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by its Legal Adviser, Paul Leleux, acting as Agent, assisted by Jean Coutard, Advocate at the Conseil d'État and at the Cour de Cassation of France, with an address for service in Luxembourg at the office of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

Application:

— for the annulment of the integration procedure applied to the applicant and of the report of the Establishment Board notified to him on 18 June 1963;

— for the annulment of the decision to terminate his contract of employment;

— for the recommencement of the integration procedure;

— for damages;

THE COURT (Second Chamber)

composed of: Ch. L. Hammes, President (Rapporteur), R. Rossi and R. Lecourt, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT
Issues of fact and of law

I—Facts

Mr Rémy Huber entered the service of the Commission of the European Economic Community on 1 October 1958, with the Directorate-General of External Relations in Grade B 7, Step 1. Under the integration measures necessitated by the implementation of the Staff Regulations, Mr Huber appeared before the Establishment Board in June and July 1962.

On 18 July 1962, the Board issued an unfavourable report on his establishment, the text being as follows:

'The establishment Board, after considering a report on the ability, efficiency and conduct in the service of Mr Huber who holds a Grade B 7 post in the Directorate General of External Relations, having gathered all the necessary information and heard the servant himself, considers that Mr Huber has neither the administrative knowledge nor the training necessary to perform the duties of a servant in Category B and consequently issues an unfavourable report with regard to his fitness to perform the duties assigned to him.'

On 28 November 1962, the Committee of Chairmen, the authority exercising the powers devolving upon the appointing authority with regard to servants in Category B, after taking account of the report of the Establishment Board and having heard the Chairman of that Board decided to terminate Mr Huber's contract with three months' notice. That decision was notified to the person concerned by a letter from the Director-General of Administration dated 18 June 1963.

II—Conclusions of the parties

The *applicant* in his appeal claims that the Court should:

1. annul the integration procedure followed with regard to the applicant, together with the opinion of the Establishment Board notified to the applicant by Mr Van Gronsveld's note of 18 June 1963;
2. annul the termination of his contract notified to the applicant by letter of 18 June 1963;
3. rule that the Commission must once

again apply the integration procedure to the applicant, after completing the formalities provided for in the last sentence of Article 5 and in Article 110 of the Staff Regulations;

4. order the Community or, alternatively, the Commission, to pay the applicant, by way of damages, 'the sum of 5000000 (Luxembourg) francs' for material damage and 5000000 francs for non-material damage, the applicant reserving the right to increase these figures in the course of the proceedings;
5. order the European Economic Community or, alternatively, the Commission to bear the entire costs of the proceedings, including all expenses and fees whatsoever;
6. take note that the applicant:
   — reserves the right to raise in the conduct of his case such fresh issues of fact and of law which it may be necessary for him to employ following the submission of the arguments in defence and the production of any documents by the defendant;
   — offers to prove by all legal means, including witnesses, the fact alleged by him and not previously set forth in writing, if such facts are disputed by the defendant;

In his reply the applicant claims that the Court should:

Rule that the requests are admissible and well-founded;

As a subsidiary point:

1. Order the defendant to produce:
   (a) The minutes of the Council of Ministers relating to the section of the Staff Regulations on the integration procedure and on the application of Article 110;
   (b) The communications made by the defendant to the Provisional Staff Committee relating to the integration of officials together with all minutes of the Provisional Staff Committee relating to the said integration procedure;
   (c) The 'White Book' distributed by the Provisional Staff Committee in June 1963 (document 7014 Pers. F. 63 and in particular a memorandum to the Commission (p. 17) and a declaration made to the Commission (p. 95));
2. order the examination of Mr Smulders, Director-General of Administration, with regard to the integration procedure in general.

In the course of the oral procedure, the applicant amended his conclusions on damages and stated that, if the decision to terminate his contract were annulled, then the Commission should be required to pay him the arrears of his monthly salary.

The *defendant* contends that the Court should:

'dismiss as inadmissible or at all events as unfounded the application brought by Mr Huber against the integration procedure, against the opinion of the Establishment Board and against the termination of his contract notified to him on 18 June 1963, requesting that the integration procedure should be re-applied to him after the formalities provided for in the last sentence of Article 5 and in Article 110 of the Staff Regulations were completed, together with his claim for damages, and all the legal consequences, in particular with regard to costs and fees'.

III—Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

A — *Naming the Defendants as parties*

The *applicant* brings his action against both the European Economic Community and against the Commission of the EEC on the ground that, whilst he was aware of the opinion of the Advocate-General in Case 25/60 and of the decisions of the Court, he wished to

comply with Article 91 of the Staff Regulations and to have access to the preparatory work for the regulations of the Councils establishing the Staff Regulations.
The *defendant* leaves this issue to the discretion of the Court.

B — *The Admissibility of the Application*

The *defendant* maintains that the application for annulment is inadmissible in that it seeks to compel the Commission to re-apply the integration procedure to the applicant.
According to the defendant, the application is also inadmissible in so far as it is brought against the integration procedure and the opinion of the Establishment Board: a procedure is not a decision and the opinion of the Establishment Board is only a preparatory measure. Only the decision of the Committee of Chairmen to terminate the applicant's contract may be the subject of an application.
The *applicant* replies that the Court has unlimited jurisdiction with regard to appeals. The annulment of the integration procedure and consequently of the dismissal must moreover result in the re-appearance of the applicant before a differently composed Establishment Board, whose procedure must comply with Article 110 of the Staff Regulations, and in his retaining his previous position with all the advantages arising from his contract.

C — *On the substance of the Case*

(a) Application for annulment

1. *Infringement of Article 110 of the Staff Regulations:*
Absence of general provisions for giving effect to Article 102

The *applicant* claims that the whole of the procedure which was applied to him was null and void on the grounds of the absence, irregularity (failure to hold the necessary consultation with the Staff Committee and the Staff Regulations Committee) or the lack of publicity of the general provisions, referred to in Article 110 of the Staff Regulations, for giving effect to the integration procedure under Article 102. In this connexion he puts forward:
— A textual argument: the composition and position of the Chapters of Title IX of the Staff Regulations;
— An argument based on the objective of Article 110, which is to ensure the cooperation of the staff in working out the general provisions for giving effect to the Staff Regulations and standardizing their application by the various institutions;
— An argument based on facts: on 13 December 1961 and on 9 March 1962 the Commission enacted a regulation relating to the integration procedure and submitted it *a posteriori* to the Staff Committee.
The applicant considers that, in accordance with Article 110, it was necessary to fix the procedure for drawing up staff reports on officials and the method of doing so and to standardize the criteria by which the servants are appraised.
He is of the opinion that Article 102 presumes implementing measures, which the Commission has by implication admitted by adopting a regulation.
Finally he maintains that to admit the contrary would be to deny the aims and practical value of Article 110.
The *defendant* replies that Article 102 is a transitional provision and cannot be the subject of general provisions for giving effect to it. It is moreover sufficiently explicit to be directly and immediately applied.
The defendant refuses to acknowledge any significance in the argument based on the position of the provisions in Title IX and considers that Article 102, governing an operation prior to the application of the Staff Regulations, is a transitional provision.

It was thus not legally necessary to consult the staff. It was a mere gesture of courtesy, which makes the time when it occurred quite unimportant.
Moreover a rule relating to a transitional provision is not by its nature a permanent general provision for giving effect to the Staff Regulations.

2. *Infringement of Article 5 (4) of the Staff Regulations*:
Failure to define the duties and powers attaching to posts

The *applicant* claims that the contested decision is null and void because the Commission failed to define beforehand, after consulting the Staff Regulations Committee and the Staff Committee, the duties and powers attaching to each post, provided for in the last sentence of Article 5 of the Staff Regulations. This means that the reports of the applicant's immediate superiors, the opinion of the Establishment Board and the decision of the Commission resulting from it are void, as it is impossible to judge a servant's suitability for a post the duties attaching to which have not been legally defined.
The *defendant* replies that the question in this case was to consider whether the applicant in fact fulfilled the conditions for retention in the service of the Commission, taking account of his previous conduct in a given post. The applicant confuses the implementation of the Staff Regulations with the putting into effect of transitional provisions intended to facilitate this implementation.

3. *Violation of the audi alteram partem principle and of general principles of law*

The *applicant* contests the integration procedure and the decision to terminate his contract on the grounds that the *audi alteram partem* principle and the general principles of law were not observed by the Establishment Board which, according to him, is in fact an administrative tribunal.
In any case the *audi alteram partem* principle is a general rule binding the administration in all matters. In the present case this principle was not observed.
The applicant puts forward a series of facts which, according to him, establish the irregularity of the procedure followed by the Establishment Board, particularly:
— the report of his immediate superior comes from an official who has feelings of animosity towards him;
— the appraisals which appear in the report are subjective and impossible to review;
— it has not been established that the Board was aware of the means by which the report was made;
— the witnesses were not heard in his presence and he was not notified of the minutes of their examination;
— he was not given the last word;
— the Board's file does not contain the minutes and notes which he filed in his defence;
— the presence of a third party renders the Board's deliberations null and void;
— he was not allowed the assistance of a colleague or of a legal adviser.
The *defendant* replies that the applicant misunderstands the Establishment Board's nature, which is administrative. In this connexion it refers to the opinion of the Advocate-General in the Leroy case (Joined Cases 35/62 and 16/63).
The Board followed the proper procedure: the applicant was heard; he submitted his comments in writing and verbally on the criticisms levelled against him.
With regard to the particular complaints raised by the applicant, the defendant contends that:
— he has not established the animosity of his immediate superior, but only his own lack of deference in leaving

his department;
— the assessments of the applicant stated the reasons on which they were based as objectively as possible;
— the Establishment Board was informed of the means by which the report was compiled;
— the witnesses were by no means required to be heard in the presence of the applicant; the confrontation would moreover have been embarrassing and the applicant confuses the integration and disciplinary procedures;
— there is no obligation to allow the applicant the last word;
— the Head of the Personnel Department was required to attend the meetings of the Establishment Board under its rules;
— the fact that the applicant was not assisted by a colleague or a legal adviser during the hearing by the Establishment Board cannot be regarded as affecting the proper conduct of the procedure followed before a non-judicial body; the applicant is confusing the integration and disciplinary procedures.

4. *Infringement of Article 102 of the Staff Regulations*:
the improper composition of the Establishment Board

The *applicant* contests the decision adversely affecting him on the ground that Mr de la Fontaine was a member of the Establishment Board, although not employed in a supervisory capacity as required by Article 102 of the Staff Regulations.
The *defendant* replies that Mr de la Fontaine is established in Grade A 2 which corresponds to a supervisory post under Annex I to the Staff Regulations.

5. *Infringement of Article 25 of the Staff Regulations*:
failure to give a statement of reasons

The *applicant* contests the disputed decisions, since the opinion of the Establishment Board did not state the reasons on which it was based, as required by Article 25 of the Staff Regulations, although it adversely affected him and was at once communicated to him. The applicant denies in any event that the two paragraphs which take the place of a statement of reasons in the opinion might be considered as fulfilling the provisions of Article 25.
The *defendant* replies, quoting the text in support, that the opinion of the Establishment Board contains an adequate statement of reasons. This submission is moreover irrelevant, taking account of the judgment of the Court in the Leroy case.

6. *Infringement of the principle of equality of treatment*

The *applicant* maintains that, in the absence of any criteria uniformly laid down in advance for all the officials entrusted with compiling reports and for all servants with posts on the same level subject to them, the reports are highly subjective and can only lead to divergent opinions on these servants, thus placing them on an unequal footing with each other.
The *defendant* replies that the applicant confuses integration and competitions for entry or promotion. The Establishment Board is only bound to check the suitability of the person concerned for the duties of his post and not to compare the respective merits of the various servants.

7. *Incorrect finding or appraisal of the facts*

The *applicant* alleges that the facts on which the Establishment Board based its decision are incorrect or that it has incorrectly appraised them. He states in particular:
— that the report on him indicated that

his knowledge of written German was poor, which is inconsistent with the data on the file;

— that the minutes of the Board only show that it heard the applicant's immediate superiors; no opportunity was given for the applicant or a person acting on his behalf to dispute their evidence and it is not known to what extent it influenced the Board's opinion;

— the wording of the opinion is very abstract and has no precise fact from which the Board's assessment may be deduced; the Court is therefore not in a position to review the manner in which the Board may have arrived at its assessment.

The *defendant* observes that the applicant does not support this submission with a shred of evidence, but with mere assertions.

In particular, with regard to his knowledge of German, the report only states that the applicant speaks and reads German very well but that he writes it poorly, a judgment which shows both the good and bad points and contains no inconsistencies.

In any event, the Court in its judgment in the Leroy case recognized that it could not check whether the complex value judgments delivered by the Establishment Board were well-founded.

(b) Application for damages

In his application, the *applicant* claims that the Community or, alternatively, the Commission should be ordered to pay damages as compensation for material and non-material damage suffered by him because of the termination of his contract of employment. In the course of the oral procedure he stated that he only claims as damages, should the contested decision be annulled, the payment of his salary until he is reintegrated.

The *defendant* limits itself to maintaining that no fault can be alleged against it.

IV—Procedure

Mr Huber's application was lodged at the Court Registry on 29 July 1963.

The written procedure followed the normal course.

The Second Chamber of the Court, to which the case was assigned pursuant to the Court's decision of 9 October 1963 (Official Journal of 29 October 1963, p. 2598/63), decided to open the oral procedure without a preparatory inquiry.

The parties were heard at the hearing of 13 May 1964.

On 10 June 1964 Advocate-General Roemer delivered his reasoned oral opinion for the annulment of the contested decision.

Grounds of judgment

A — The naming of the defendants as parties

The application is brought against the European Economic Community or, 'alternatively', against the Commission of that Community.

Under Article 179 of the EEC Treaty, 'The Court of Justice shall have jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment'. The expression 'the conditions laid down in the

Staff Regulations' necessarily implies that there is conferred upon the institution itself, as the appointing authority exercising its powers either directly or indirectly, the right to be a party to legal proceedings relating to disputes with its servants and officials.

Article 90 of the Staff Regulations, governing complaints through official channels prior to an appeal to the Court, provides that any official may submit a request or complaint to the appointing authority of his institution. The appeal to the Court referred to in Article 91 of the Staff Regulations must, in the absence of any provision to the contrary, follow similar rules and be made against the same institution. The decision to terminate the applicant's contract was taken by the Committee of Chairmen which, under Article 2 of the Staff Regulations, exercised within the Commission of the EEC the powers conferred by the Staff Regulations on the appointing authority. The appeal must therefore be considered as brought against the Commission of the EEC.

B — Application for annulment

Admissibility

The first claim in the applicant's conclusions is for the annulment both of the integration procedure which was applied to him and of the Establishment Board's report which was communicated to him by letter of 18 June 1963.

The defendant maintains that this head of the conclusions is inadmissible in that it relates to a procedure and a measure not having the nature of a decision.

Under Article 91 (1) of the Staff Regulations there may be referred to the Court any dispute between the Communities and any person to whom the Staff Regulations apply regarding the legality of an act adversely affecting such a person ('un acte faisant grief à cette personne'). Only acts which are capable of directly affecting a given legal situation can be considered as adversely affecting a person.

In the present case the integration procedure, consisting of a series of measures preparatory to the disputed decision to terminate the applicant's contract, is not an act which in itself adversely affects the applicant.

Although under Article 102 (1) of the Staff Regulations the opinion of the Establishment Board constitutes an essential factor in the decision if it is

unfavourable to the integration of the servant, it is not, however, for the purposes of an appeal under Article 91, a measure separable from the decision of that authority. It therefore cannot be considered as having a direct adverse effect upon the applicant.

The conclusions seeking the annulment of the integration procedure and of the opinion of the Establishment Board, considered separately from the contested decision to terminate the contract, are inadmissible. However, the submissions and arguments put forward in support of these conclusions may be invoked against the decision to terminate the contract itself.

The applicant further claims that the Commission should be required to resubmit him to the integration procedure, after completing the formalities provided for in the last sentence of Article 5 and in Article 110 of the Staff Regulations. The defendant submits that these conclusions are inadmissible, on the ground that the present case is an application for annulment in the context of which the Court is not empowered to order such a measure.

Although the Court, even in the context of proceedings in which it has unlimited jurisdiction, as it has under Article 91 (1) of the Staff Regulations, is unable to order the administration to carry out a specific act, the reopening of the integration procedure must however be considered merely as one of the consequences flowing from the execution of the present judgment if the appeal were to be upheld.

The applicant finally claims that the decision to terminate his contract, communicated to him by letter of 18 June 1963, should be annulled. The defendant does not dispute the admissibility of this head of the conclusions and there are no grounds for the Court to raise the matter of its own motion.

As to substance of the case

Infringement of Article 110 of the Staff Regulations

The applicant alleges that the integration procedure which was applied to him pursuant to Article 102 of the Staff Regulations is void owing to the failure to adopt the general provisions for giving effect to it in compliance with the first paragraph of Article 110.

The implementing provisions provided for in Article 110 are of a 'general' nature. They are therefore only necessary for the implementation of the permanent provisions of the Staff Regulations. In this case, apart from the

question whether Article 102 of the Staff Regulations is sufficiently explicit to be applied without any other implementing measure, it must be stated that it only governs situations limited to a certain period of time. Since they relate to an essentially transitional provision, the measures adopted for giving effect to it consequently cannot be general in nature. In these circumstances, the regulations adopted by the Commission on 13 December 1961 and 9 March 1962 to implement Article 102 are special implementing measures which are not to be confused with the general implementing measures with which Article 110 is concerned and thus did not need to be adopted in accordance with the procedure provided for in that Article.

The first submission is therefore unfounded.

Infringement of the last sentence of Article 5 of the Staff Regulations

The applicant maintains that the integration procedure in dispute is irregular since the definition of the duties and powers attaching to posts, provided for in the last sentence of Article 5 of the Staff Regulations, was not adopted beforehand in accordance with Article 110, and that this irregularity invalidates the decision to terminate his contract of employment.

The principal aim of the definition of duties is to facilitate the classification, on the basis of Annex I to the Staff Regulations, of the servants integrated under the Regulations. It cannot therefore be considered as an indispensable legal procedure for the purposes of the application of Article 102. In this case moreover, in view of the complexity of the task of defining the various posts and the time involved, and taking account of each institution's need to integrate its servants as quickly as possible, it must be accepted that the disputed decision discloses no irregularity in this respect.

Infringement of the audi alteram partem principle and the general principles of law

The applicant puts forward a series of facts which, according to him, establish that the procedure followed before the Establishment Board disregarded the *audi alteram partem* principle as well as the general principles of law.

It is agreed that the report on the applicant's ability, efficiency and conduct in the service prepared by his superiors concluded that he was not fit to perform the duties of his post. By virtue of Article 102 (1) of the Staff Regulations an unfavourable opinion by the Establishment Board binds the

appointing authority. Before drawing up such an opinion this Board must however afford the person concerned an opportunity to submit his comments on the factors capable of influencing his integration. This requirement is satisfied when the person concerned has been heard by the said Board in connexion with the factors in the report which formed the basis for its decision and from which it drew its conclusions.

A different situation would obtain if the conclusions of the report had been amended after hearing new witnesses without the issue of any invitation to the servant concerned to submit fresh comments thereon. This did not happen in the present case. The applicant was aware of the report on him drawn up by his superiors. It is not disputed that he submitted his comments on the conclusion of this report, that he lodged written statements and that he was heard by the Establishment Board.

The fact that the minutes of the hearings of the persons who appeared before the said Board were not communicated to the applicant and that he himself was not heard afresh after that hearing is not such as to affect the regularity of the procedure followed, since these hearings in no way altered the conclusions in his superiors' report, which the Establishment Board adopted.

On this issue the application is therefore unfounded.

The applicant further maintains that the report of his superior was inspired by feelings of personal animosity to him. This allegation only refers to the applicant's immediate superior, Mr Berghold. The report on the applicant's ability, efficiency and conduct in the service was not however prepared by Mr Berghold alone, but also by others of the applicant's superiors'.

With regard to Mr Berghold, although the facts alleged in the application give grounds for admitting that his relations with the applicant did not always run smoothly, it does not however follow from this that they were the determining factor in the unfavourable assessment contained in the establishment report.

Finally the presence of a stranger to the proceedings, as a mere observer moreover, at the deliberations of the Establishment Board and the fact that the applicant was not assisted by a colleague or by a legal adviser are not such as to call in question the proper conduct of the proceedings before the Establishment Board.

The submission is therefore unfounded.

Infringement of Article 102 of the Staff Regulations

The applicant alleges that the opinion of the Establishment Board is irregular on the ground that this Board was not appointed in accordance with Article 102 (1) of the Staff Regulations since one of its members, Mr de la Fontaine, was not employed in a supervisory capacity.

Mr de la Fontaine was classified in Grade A 2. According to Annex I to the Staff Regulations this grade corresponds to the basic post of director. On this point the regularity of the opinion delivered by the Establishment Board must therefore be accepted.

Infringement of Article 25 of the Staff Regulations

The applicant maintains that the opinion of the Establishment Board does not sufficiently state the reasons on which it is based.

In its opinion of 18 July 1962 the Establishment Board declared that it had formed its opinion 'after considering a report on the ability, efficiency and conduct in the service of Mr Huber . . . , having gathered all the necessary information and heard the servant himself'.

It indicates the reasons for its unfavourable assessment of the applicant's suitability for the duties of his post in the following manner:

'Mr Huber has neither the administrative knowledge nor the training necessary to perform the duties of a servant in Category B.'

In these circumstances it must be found that opinion of the Establishment Board sufficiently states the reasons on which it is based by means of the references made both to the information used and to the basic factors borne in mind underlying its assessment.

The same is true of the decision to terminate the applicant's contract, notified to him on 18 June 1963, since it adopts the reasoning of the opinion of the Establishment Board.

The submission is therefore unfounded.

Infringement of the principle of equality of treatment

The applicant maintains that the integration procedure followed in his case

is invalid, since, lacking criteria laid down uniformly and in advance, the reports on the staff were markedly subjective, and, necessarily leading to divergent conclusions, violated the principle of equal treatment of the various servants.

The reports on the ability, efficiency and conduct in the service provided for by Article 102 (1) of the Staff Regulations must be prepared by the superiors of the servants who are subject to the integration procedure. Since their aim is to express a value judgment on a servant's aptitude in the performance of his duties and to supply an assessment of his general conduct, they necessarily contain subjective judgments. In any event, the integration procedure does not aim at making a comparison between the respective merits of various servants, but at finding whether the person concerned is suitable for the duties of the post which he held prior to the entry into force of the Staff Regulations.

On this issue the application is therefore unfounded.

Incorrect finding or incorrect assessment of the facts

The applicant maintains that the Establishment Board based its opinion on incorrect findings of fact or made an incorrect assessment of them.

The only fresh argument put forward in support of this submission is that the report wrongly stated that the applicant had a poor knowledge of written German. In this connexion it should be observed that the report of the Establishment Board does not adopt this finding which, whether right or wrong does not appear to have been one of the determining factors in the unfavourable assessment of the abilities of the applicant or, consequently, in the decision to terminate his contract.

The submission is therefore unfounded.

C — Application for damages

In the course of the oral procedure the applicant stated that his claim for damages should be interpreted to mean that, if the contested Decision to terminate his contract were to be annulled, the Commission should be ordered to pay him the arrears of his monthly salary.

The submissions made against the Decision to terminate his contract, contested by the application, have been shown to be unfounded. It is therefore unnecessary to adjudicate upon the claim for damages.

Costs

The applicant has failed in his action.

Under Article 70 of the Rules of Procedure of the Court of Justice of the European Communities, in proceedings commenced by servants of the Communities, institutions shall bear their own costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 179;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Staff Regulations of officials of the European Economic 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;

THE COURT (Second Chamber)

hereby:

1. **Dismisses application 78/63 as unfounded;**

2. **Orders the parties to bear their own 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