JUDGMENT OF THE COURT
12 DECEMBER 1956[1]

Miranda Mirossevich v High Authority of the European Coal and Steel Community

Case 10/55

Summary

1. *Employees of the Community — Actions against institutions — Jurisdiction of the Court*
The jurisdiction of the Court derives from Article 42 of the Treaty in conjunction with the arbitration clause in the contract of employment and the provisions of the relevant Staff Regulations
(Treaty, Art. 42).

2. *Employees of the Community — Actions against institutions — Applications — Admissibility — No time-limit*
Since there is no provision for time-limits either in respect of applications through official channels or of applications to the Court, a time-limit similar to that in Article 33 of the Treaty and in Article 39 of the Statute of the Court of Justice cannot be applied by analogy having regard to the provisions contained in the aforementioned articles[2]
(Treaty, Art. 33; Statute of the Court of Justice, Art. 39).

3. *Employees of the Community — Appointment — Probationary period — Assessment by the Administration — Review by the Court*
It is for the administrative authority to evaluate in its discretion the capacity of candidates to carry out given duties and for the Court where appropriate to review the ways and means which may have led to this evaluation. An unfavourable assessment of the capacity of a candidate to be employed as a translator cannot reasonably be made as a result of a single translation.

4. *Procedure — Proof — Burden of proof*
Where there is a strong presumption in support of an argument it is for the other party to rebut it.

5. *Damage — Uncertain damage — No compensation*
Uncertainty with regard to the outcome which a probationary period would have had if it had duly taken place rules out certain damage. Non-material damage by reason of the improper nature of the decision to refuse a definitive appointment may be compensated by successive offers of a new post involving possibilities of promotion.

In Case 10/55

MIRANDA MIROSSEVICH, represented by Professor Federico A. Perini-Bembo, of the Trieste Bar, Advocate of the Corte di Cassazione, and other superior courts, with an address for service in Luxembourg at 83, Rue de la Semois,

applicant,

1 — Language of the Case: Italian.
2 — Article 2 of the Rules of Procedure for applications to the Court under Article 58 of the Staff Regulations of the Community which entered into force on 11 March 1957 provides a time-limit of two months for making an application to the Court (Journal Officiel, 6th year, No 8, p. 110/57).

V

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Professor Giulio Pasetti, acting as Agent, with an address for service in Luxembourg at its offices, 2 Place de Metz,

defendant,

Application for the revocation and amendment of certain internal administrative measures of the High Authority relating to the applicant,

THE COURT

composed of: M. Pilotti, President, J. Rueff and O. Riese (Presidents of Chambers), P. J. S. Serrarens, L. Delvaux, Ch. L. Hammes and A. van Kleffens, Judges,

Advocate General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

1. Procedure

On 19 July 1955 the applicant lodged an application with the Court against the High Authority asking:

'In the first place: the revocation of the notification on 8 January 1953 of the negative result of the probationary period because there had been no probationary period and in consequence the annulment of every administrative measure up to the decision of the Administrative Committee of 31 May 1955; in consequence the recognition of her services and work done in relation to translating and her definitive engagement as a translator in the translation department;
Alternatively ... a proper definition of her position giving her the grade which she claims (second category);
In any event: recognition of her entitlement to compensation reflecting the difference between the salary paid and that of staff of the second category;
An order that the defendant must pay the costs'.

On 29 July 1955 the applicant appointed as Advocate, Professor Federico A. Perini-Bembo, duly enrolled at the Trieste Bar, and asked the Court to grant her legal aid. By order of the First Chamber of 21 October 1955 aid was granted to her in respect of part of the costs.
On 20 August 1955 the High Authority, represented by its Agent, Nicola Catalano, appointed on 28 July 1955, lodged its defence.

'Subject to the right to amend, add and require, where appropriate, proof and to the

production of documents and subject to all other rights'

the defendant asks that the Court should:

'Declare inadmissible and in any event unfounded the application made by Miss Miranda Mirossevich on 19 July 1955 and served on 21 July 1955; and order the applicant to bear the costs'.

On 30 September 1955 the case was assigned to the First Chamber for the purpose of any inquiry and Judge P. J. S. Serrarens was appointed as Judge-Rapporteur.
On 3 October 1955, that is two days after the expiry of the time-limit laid down by the order of the President of 31 August 1955 for lodging a reply, the applicant lodged an interlocutory application to the Court under Articles 69 and 70 of the Rules of Procedure of the Court claiming a declaration that the defendant could not reserve in its defence the right to amend its contentions during the course of the proceedings.
By order dated 28 October 1955 the Court ruled against that application and appointed 15 November 1955 as the date for lodging the reply.
On 15 November 1955 the applicant lodged her reply in which she asked that the Court should:

'Recognize itself as having jurisdiction;
Recognize the application lodged on 19 July 1955 by Miss Mirossevich as admissible;

and in the first place
Grant the substance, that is to say,
Declare that Miss Mirossevich was permanently and definitively engaged on 9 December 1952 as an interpreter/translator in the language department (former category II) at the annual salary of Bfrs 300 000 and that consequently the notification of 8 January 1953 is a nullity because it was vitiated as not in accord with the facts, as patently unjust and in any event as a misuse of powers;
Declare Miss Mirossevich entitled to reinstatement in her career bracket and back payment of salary;

Alternatively:

Grant in part the substance of the claim, that is to say:

Declare that Miss Mirossevich was engaged on a trial basis on 9 December 1952 as an interpreter/translator (former category II) at an annual salary of Bfrs 300 000 plus local allowance;
Declare that the trial took place only partially between December 1952 and January 1953 and was completed favourably after subsequent linguistic services rendered by Miss Mirossevich on a number of separate occasions after 8 December 1953;
Recognize the right of Miss Mirossevich to reinstatement in her career bracket as from 9 December 1952 and back payment as from 16 January 1953;

In any event:

Declare that the pseudo-contract of 12 October 1953 (referring to the period from 9 December 1952 to 8 December 1953) is vitiated for lack of consent by reason of mistake and fraud and is in consequence null and void;
Recognize that the applicant is entitled to the back payment of the difference between what has been paid to her and the sum to which she was originally recognized as being entitled on the basis of the salary of 1952;
Grant Miss Mirossevich damages for non-material injury;
Recognize that the applicant is entitled to a definitive contract (according to the rules in force) as interpreter/translator or at least in accordance with her ability, with the category in which she was originally engaged and with her ability and capacity shown over three years and with the services she has rendered;
Order the High Authority to bear the costs of the present application a statement of which will be produced in due course'.

By order dated 16 November 1955 the

President of the Court fixed 16 December 1955 as the date by which the rejoinder should be lodged.
This was lodged at the Registry on 12 December 1955.
In the rejoinder the defendant contended that the Court should:

'Declare inadmissible or at least unfounded both the main claim and the alternative claims both in the application made by Miss Mirossevich on 19 July 1955 and served on 21 July 1955 and in the reply of 15 November 1955;
Order the applicant to bear the costs'.

On 12 January 1956 the applicant made an interlocutory application to strike out the issue of the admissibility of the application on the ground that the defendant had infringed Article 69 of the Rules of Procedure of the Court. This application was dismissed by order of the Court of 17 March 1956.
On 12 January 1956 the applicant applied under Article 33 (7) of the Rules of Procedure of the Court to contest the authenticity of two documents supplied by the defendant and asked the Court to take the measures provided for in Article 33 (7) of the Rules of Procedure.
By order dated 17 March 1956 the Court decided not to grant the application for proof of the authenticity of the first document in view of the fact that the defendant waived reliance thereon and ordered that the First Chamber should hold an inquiry into the authenticity of the second.
By order dated 19 March 1956 the First Chamber ordered that an inquiry be opened and witnesses be heard on the facts and issues specified in the order and that the authenticity of the aforesaid document be proved. The Chamber appointed 15 April 1956 as the date by which the parties should submit a list of witnesses whom they wished to be heard.
On 15 March 1956 the Court ordered that the composition of the Chambers be amended. Case 10/55 was thereupon assigned to the Second Chamber, composed of the same judges who until then had dealt with the case.

By order dated 24 April 1956 the Second Chamber named witnesses required to testify before the Chamber and fixed 15 May 1956 as the date of the inquiry.
The hearing of witnesses by the Chamber took place on 15 and 16 May 1956. At the conclusion of this hearing the Advocate General asked that a translation attributed to the applicant and produced by the defendant in the annex to the rejoinder be examined by an expert for the purpose of assessing its quality.
The Chamber fixed a time-limit expiring on 24 May 1956 for the parties to submit any application for further preparatory inquiries and their observations on the Advocate General's application.
On 23 May 1956 the defendant lodged its observations on the additional inquiry proposed by the Advocate General. Without objecting to that proposal the defendant nevertheless expressed the view that the assessment of the technical and vocational skill of its staff was a matter entirely for its own discretion and was as a result not subject to review by the Court.
On 24 May 1956 the applicant submitted observations in which she withdrew her challenge to the authenticity of the translation attributed to her (document No 10 in the annex to the rejoinder) and thus withdrew her application of 12 January 1956. At the same time the applicant asked the Chamber to institute a supplementary inquiry involving the hearing of further witnesses. This application was dismissed by the Chamber by order dated 4 June 1956.
By order of the same date the Second Chamber ordered that an expert be appointed to assess the quality of the translation contained in document No 10 in the annex to the rejoinder.
The two above-mentioned orders were read in open court on 12 June 1956.
On 6 June 1956 the President of the High Authority appointed Professor Giulio Pasetti as agent in place of Nicola Catalano.
The expert, Henri Bedarida, Professor at the Sorbonne, Director of the Institut d'Études Italiennes, submitted his report on 25 June 1956. At the end of his report the expert raised the question of the circumstances in which the translator was working (lack of time, existence of a revis-

er, and so forth); he queried whether they were not such as to lessen her responsibility and the scope of the imperfections in the work.

By order dated 30 June 1956 the Chamber declared the inquiry to be closed and fixed 31 July 1956 as the time-limit within which the parties should submit any final written observations. At the request of the applicant this time-limit was extendet to 15 August 1956 by order of the Second Chamber of 24 july 1956.

The observations of the High Authority were submitted on 14 August 1956 and those of the applicant on 16 August 1956. The two parties confirmed their previous observations.

By order dated 18 July 1956 the President of the Court appointed 24 September 1956 as the date for the oral procedure. On the application of the applicant the hearing was adjourned to 13 November 1956 by order of the President of 30 August 1956.

At the hearing in open court on 13 November 1956 the parties made oral observations.

At the hearing in open court on 15 November 1956 the Advocate General delivered his opinion that:

The decision of 8 January 1953 and the decision of the Administrative Committee confirming it be declared null and void;

The oral contract of 9 December 1952 be performed by Miss Mirossevich's serving a probationary period of one month in the language department of the High Authority as a translator and at the expiry of such probationary period, whatever be the results, the applicant's position should be governed by the provisions of the Staff Regulations of the Community now in force;

An allowance be granted to Miss Mirossevich as compensation for the damage suffered by her as a result of the delay by the High Authority in performing its obligations entered into with regard to her, the amount of which the Advocate General left to the discretion of the Court;

All other claims in the application be dismissed;

The costs be borne by the High Authority save those incurred by the application contesting the authenticity of documents, which should be borne by Miss Mirossevich.

2. Facts

Following an examination on 2 December 1952 at the Ministry for Foreign Affairs in Rome the applicant was invited to come to Luxembourg for the purpose of appointment as an interpreter/translator by the European Coal and Steel Community and on 9 December 1952 she took up employment with the High Authority as a translator.

On 5 January 1953 the head of the language department informed the Secretariat of the High Authority of the negative result of the applicant's probationary period and the staff administration thereupon informed the applicant on 8 January 1953 that it was not possible to offer her a contract as a translator.

On 17 January 1953 the Secretariat of the High Authority offered the applicant a post as typist in the pool with a probationary period of one month.

On 31 January 1953 the applicant received a letter of appointment as 'typist in the pool'.

In February 1953 a provisional contract was drawn up for the applicant as an 'executive clerk'.

On 12 October 1953 the applicant signed a contract of employment in the fourth category for a period of one year with retroactive effect to 9 December 1952 in the information and documentation department.

On 1 March 1954 the applicant was transferred to the applications section of the Personnel Department.

On 16 December 1954 the Administration proposed to assign the applicant to the Work Problems Division; the applicant rejected this proposal.

On 10 February 1955 the applicant made a complaint to the Administrative Committee of the High Authority in which she stated she was 'convinced' that she had been dismissed without a valid reason from the post to which 'she had been appointed when she entered the service of the High Authority'.

On 29 March 1955 the Administative

Committee decided that 'the High Authority was not bound by the first proposal of appointment made to Miss Mirossevich since the results of her probationary period were unsatisfactory'. Following this decision the applicant made an application to the Court of Justice on 19 July 1955.

3. Admissibility of the application

In the defence the defendant states that the application is 'patently inadmissible both because it has been made too late and in view of the implied acceptance by the applicant of the measures taken in respect of her'.
The applicant counters that her constant protests rule out any acceptance on her part.

4. Submissions and arguments of the parties

I. *Appointment of the applicant*

A. The applicant alleges that as a result of the tests taken at the Ministry for Foreign Affairs in Rome the Minister acting on behalf of the Community on implied instructions (implicit in the refund of the travel expenses incurred only at the request of the said Minister) notified the applicant by telegram dated 4 December 1952 of her posting to the European Coal and Steel Community as an interpreter/translator.
She was introduced to the language department of the High Authority by an official of the Italian Legation and was immediately engaged on a definitive basis.
The appointment of the applicant was not made only on an oral basis; it was confirmed by several documents such as the individual record sheet, the notification from the head of the department of 9 December 1952, the undertaking signed by the applicant not to divulge confidential matters and finally the telegram sent on 4 December 1952 by the Ministry of Foreign Affairs in Rome. The applicant was never informed that she would have to serve a probationary period. This cannot, moreover, be implied. The probationary period was not laid down for appointments under the High Authority in 1952. The engagement of other staff was expressly made subject to a probationary period. The applicant's training and experience moreover should have made it unnecessary for her to serve a probationary period.

B. The defendant for its part states that the applicant was never engaged as a translator with the High Authority. She was accepted for a trial period on the basis of a purely oral agreement.
The short oral examination taken by the applicant at the Ministry for Foreign Affairs could not give her any right to be engaged by the Community and could not in any way bind the institutions of the Community.
Appointment to a post with a public authority can never be effected on an oral basis. Such appointment depends further on the discretionary assessment by the Administration of the results of the trial which the applicant undergoes.

II. *The period spent by the applicant in the language department*

A. The applicant claims that she was not required to serve 'the prescribed period of probation'. The month spent in the language department cannot be regarded as a probationary period because the applicant was given no opportunity to prove herself. During the first fortnight she had only three translations all of which were of little importance.
During this short period no observation was made on the quality of the applicant's work. Further, assuming a probationary period, the applicant ought at least to have been heard before a final step was taken with regard to her. Her unsuitability ought to have been determined by due process.
B. The defendant observes that the result of the trial period was completely negative. The applicant was considered unsuitable for doing the work of a translator. The defendant observes that in all public administrations officials are as a rule subject to a trial period and that their establishment depends upon the result of the said period. An official considered unsuitable may be dismissed without any compensation in

spite of the favourable results which he may have obtained at a competition.
Further, it is solely for the administration to assess ability.
With regard to the fact that only a little work was entrusted to the applicant, the defendant stresses that it was not necessary to have numerous and repeated tests.
With regard to the complaint that no observations were made to the applicant at the time with regard to the quality of her work, the defendant considers that there is here a confusion with the disciplinary procedure in the more general sense. This requires that the person concerned should be warned and given an opportunity to defend himself but prior notification is never required when it is a question of a judgment on the ability of staff.

III. *Misuse of powers*

A. The applicant states that although she knew four languages she was replaced by a friend of the reviser who was not even a qualified translator and who had only an indifferent knowledge of French and no English; shortly afterwards moreover he was transferred to another department.
The only reason that the applicant was dismissed is that the reviser in the Italian section wished to replace the applicant by this friend; it was this reviser who assessed the applicant's ability. After giving her no work at all he proposed that she should be transferred, asserting, without any proof in support, that the result of the purported trial period was negative and this without any proper check.
The applicant cites several witnesses in support of the facts which she alleges.
B. The defendant denies that the applicant was replaced by a new translator and observes that it was not necessary to dismiss the first in order to engage the second. The engagement of the latter cannot constitute proof in support of a claim of misuse of powers.
The defendant claims further to be in a position to prove by documents the applicant's patent unsuitability to do the work of translator. Finally it considers it not permissible to seek to prove a misuse of powers solely on the basis of statements of witnesses.

IV. *Promises alleged to have been made to the applicant*

A. The applicant alleges that when she left the language department she had been assured that she would be maintained in a grade equal to that of translators. However, these various promises were never kept. She has moreover never ceased to claim her rights.

B. The defendant stresses that the applicant is wrong in maintaining that she received a promise that she would be given a grade and salary equal to those given to translators. Her statements are moreover contradicted by the documents in her personal file.

V. *Contract signed by the applicant on 12 October 1953*

A. The applicant alleges that this is a pseudo-contract with retroactive effect for ten months; this contract was a legal fiction and was signed expressly on a provisional basis in the expectation that the applicant would be put back into the category of assistant. She did not really give her consent. The act was vitiated for fraud. On 16 May 1955 she was invited to sign a new incomplete contract (a contract for 24 months, made seven months before its expiry) which she refused.

B. The defendant considers that the applicant accepted without reservation the contract of engagement contained in the letter for the period of 9 December 1952 to 8 December 1953. She thus expressly accepted in writing the duties which were offered to her after she left the language department.

VI. *The decision of the Administrative Committee*

A. The applicant maintains that the assumptions on which this decision was based are false; the unsatisfactory probationary period referred to did not take

place; the engagement for a probationary period which is assumed was in fact a definitive engagement and the contract referred to in the decision did not in fact amount to a contract.

B. The defendant considers that the assumptions at the basis of the decision of the Administrative Committee do not bind the High Authority which is the sole judge in the matter.

Law

1. Jurisdiction

The Court has jurisdiction in the present case on the basis of Article 42 of the Treaty in conjunction with the second paragraph of Article 12 of the letter of appointment dated 12 October 1953 which provides that disputes of an individual nature arising from the application of the provisions of the letter of appointment or the regulations and decisions relating to staff shall be brought before the Court of Justice and also in conjunction with Article 50 of the Provisional Staff Regulations which contains a similar provision.

2. Admissibility

The defendant contests the admissibility of the application because it is out of time and because the applicant has tacitly accepted the measures taken in respect of her.

The Court finds against the allegation that the application is out of time since no time-limit is specified in any provision applicable in this case either for a complaint through official channels or for an application to the Court. The Court rejects the defendant's argument that a time-limit similar to that in Article 33 of the Treaty and Article 39 of the Statute of the Court of Justice must be applied by way of analogy. Article 33 concerns only applications for annulment against decisions of the High Authority brought by Member States, the Council, undertakings and their associations. Article 39 of the Statute further declares the time-limit of one month in Article 33 of the Treaty applicable to actions relating to pecuniary sanctions taken against undertakings and actions in relation to fundamental and persistent disturbances affecting the States.

The Court further declares that the applicant's attitude following the decision of 8 January 1953 cannot be regarded as acquiescence in that measure involving a waiver of any action to question the legality of the said measure.

Performance by the applicant of successive tasks required of her by the High Authority is no ground for deducing that she accepted the contested measure without reservation. Moreover the signing by the applicant on 12 October 1953 of the letter of appointment with retroactive effect to 9 December 1952 does not in the opinion of the Court constitute a manifestation of aquiescence excluding any subsequent action. It appears from the documents in the file that for the High Authority itself this letter of appointment was only of a provisional

nature and not intended to govern finally the legal position of the applicant since her reclassification was expected. Finally it appears from the inquiries which the second Chamber has made that the applicant has constantly made reservations about her position. The statement of the Director of Administration of the High Authority confirms in particular the applicant's statement that when signing the said letter of appointment she had maintained her reservations about her classification.
The Court in consequence declares the present application admissible.

3. Substance

A. *The conditions upon which the applicant entered the services of the High Authority*

The Court rejects the applicant's argument, put forward for the first time in the reply, that she was definitively engaged by the High Authority when she entered into service on 9 December 1952.
The evidence adduced by the applicant in support of her claim is in no way conclusive. On the one hand the examination taken at the Ministry for Foreign Affairs in Rome and the telegram from the said Ministry inviting the applicant to go to Luxembourg for the purpose of her employment by the High Authority could not, without instructions to this effect, give rise to an obligation on the part of the latter towards the applicant. The applicant's signature to an undertaking to preserve official secrecy with regard to anything which might come to her knowledge during her employment and the note from the head of the translation department sent to the Administration to inform it of the applicant's entry into service do not constitute proof of a definitive appointment.
Further, both in the application made on 10 February 1955 to the Administrative Committee of the High Authority and in the application to the Court the applicant refers on several occasions to a probationary period and thus recognizes that her employment was not of a definitive nature.
The Court also rejects the defendant's argument that the applicant was simply admitted for a trial period: this, as distinct from an appointment on probation, would give rise to no legal relationship between the person admitted and the administration since the trial period would not provide confirmation but simply be a substitute for any other means of recruitment such as an examination, a competition based on qualifications and so forth.
Entry into service under such conditions would appear at the very least to be exceptional and has not been provided for by any of the regulations in force until now in the Community. It moreover appears from the evidence of the secretary of the High Authority that instructions were given to exercise caution in engaging staff: the probationary period was meant as a safeguard. The fact that the probationary period was customary with the High Authority is confirmed by the statements of the director and an official in the administrative department of the

High Authority uncontradicted by other witnesses.
The defendant has put forward no argument to substantiate its claim of admission for a trial period. It alleges that the absence of any document is confirmation of its statement. However, it appears from the documents in the file and from the inquiry that during the period when the High Authority was being set up the convening of those engaged to organize the work and their terms of reference were generally fixed orally. The fact that the applicant entered into service purely on the basis of an oral agreement therefore does not prove that she was accepted only on a trial basis.
Finally in the 'Memorandum to the Director of the Staff and Administration Division' of 31 May 1955 which constitutes the decision of the Administrative Committee taken as a result of the applicant's complaint through official channels, the Committee itself does not mention that the applicant was admitted on a trial basis but finds that her entry into the service was as a result of a proposal to employ her subject to the results of a probationary period proving satisfactory.
There was thus an oral proposal by the High Authority to the applicant to appoint her for a probationary period as an interpreter/translator and by her actual and immediate entry into service the applicant accepted this proposal of employment and thus an oral contract of employment was concluded subject to the results of a probationary period proving satisfactory.
The Court finds that it follows from the above-mentioned facts that on 9 December 1952 the legal position of the applicant was that of a probationer.

B. *The decision of 8 January 1953*

The applicant bases her alternative claims on the irregularities which, she alleges, vitiate the statement of the reasons on which the decision of 8 January 1953 was based, namely: 'Your ability does not meet the requirements of the department'.
The irregularities alleged are on the one hand irregularity in the conditions under which the probationary period took place and on the other hand the misuse of powers, the real reason for her dismissal being the reviser's desire to replace her by a friend.
The two claims must be considered separately.

(a) The claim relating to the irregularity of the probationary period
The Court considers that it is for the competent administrative authority to evaluate in its discretion the capacity of the candidates to carry out given duties. However, it is for the Court where appropriate to review the ways and means which may have led to this evaluation.
In the present case the Court must consider whether the applicant has been given the opportunity to show her capacity during the probationary period.
The Court finds that during the month spent by the applicant in the translation department she was entrusted with only three translations, the first two of which contained only two pages each and the third of which, of seven pages, was done

in collaboration with the Italian reviser. Further the documents to be translated in the opinion of both parties presented no serious difficulty.
The defendant justifies the small number of tasks required of the applicant during her probationary period either by the lack of work in the department or the obvious incapacity of the applicant for her duties, which the defendant seeks to prove by producing one of the three translations made by the applicant during her probationary period. The imperfection of these three translations is alleged to have convinced the defendant that there was no need to subject the applicant to any other tests.
As for the first argument it appears from the documents in the file that during the period 9 December 1952 to 8 January 1953 the average number of pages translated was some 95 per translator for the Italian section. This argument cannot therefore be accepted.
As to the translation of 18 December 1952 produced by the defendant, the applicant by notice dated 3 January 1956, registered on 12 January 1956, contested its authenticity and claimed not to be the author. However, by notice dated 22 May 1956, registered on 24 May 1956, the applicant notified the Court that she accepted the said document as 'legally authentic' although it did not reflect the true position.

The Court must rule on the authenticity of the said document.
The documents produced by the defendant show that the document in question is in fact the translation made into Italian by the applicant from a French original. The evidence of witnesses given at the inquiry conducted by the Second Chamber corroborates the findings resulting from the documents produced.
The expert's opinion ordered by the Second Chamber with regard to this document has not confirmed the defendant's allegation that this translation constituted by its inferior quality patent evidence of the applicant's inability.
Having regard to the opinion of the expert and taking account of the fact that the time-limit given for the translation was very short, the Court considers that an unfavourable evaluation could not reasonably have been made as a result of this single test which has been produced in view of the fact that the quality of the translation is not such as to reveal by itself marked inability on the part of the applicant for the work of translator with the High Authority.
The two other translations made by the applicant have not been produced so that it has not been shown that they reveal inability on the part of the applicant.
Further the applicant, having entered a department which was strange to her and which required a certain assimilation to adapt herself to it, could legitimately expect a greater amount of work which would have allowed her to show her capacity.
For all these reasons the Court considers that the exceptionally limited number of translations required of the applicant during her probationary period constitutes a serious presumption in support of the claim that the probationary period of the applicant was not regularly conducted. In the circumstances it was for the defendant to rebut this presumption. Sufficient evidence is the form of transla-

tions made under appropriate conditions by the applicant showing her patent incapacity to do her work with the High Authority has not been adduced and in consequence the probationary period must be regarded as not having been properly conducted.

(b) Misuse of powers

The applicant has alleged that the decision of 8 January 1953 was vitiated for misuse of powers since the real ground for her dismissal was the reviser's desire to replace her by a friend.

Without dwelling on the fact that there is a connexion between the departure of the applicant and the arrival in the translation department of the reviser's friend, that the latter did replace the applicant and that the decisions to dismiss and appoint were proposed by the same person, the Court finds that misuse of powers has not been sufficiently proved. This claim can therefore not be upheld.

The Court concludes that the applicant's probationary period was not conducted under proper conditions and that the decision of the Personnel Department of 8 January 1953, informing the applicant that her ability did not accord with the requirements of the department, and the decision of the Administrative Committee which confirmed it must be annulled.

In consequence, since the oral contract concluded between the applicant and the High Authority on 9 December 1952 was not duly performed, it must now be performed: the applicant must serve the probationary period provided for in the said contract under proper conditions.

The duration of this probationary period was according to both parties a month in accordance with the rule usually applied by the High Authority at that time. It appears from the statement of the secretary of the High Authority that that period was considered too short and that as a result applicants were required to serve a probationary period of three months as from the beginning of 1953. The provisional Staff Regulations of 16 March 1954 provided for a similar probationary period and in July 1956 the Staff Regulations of the Community extended the period to six months. In these circumstances the Court considers that the applicant should serve her new period of probation for a period in accordance with that provided for in Article 36 of the Staff Regulations.

4. Compensation claimed by the applicant

The applicant claims compensation equal to the difference between the salary actually received by her and that of staff in the second category.

The Court finds that in view of the uncertainty regarding the result which the first probationary period would have led to had it been duly conducted and in consequence regarding the applicant's possible appointment in the second category, there can be no question in the present case of any clear damages suffered by her.

Further the applicant has claimed for the first time in her reply non-material

damage by reason of the improper nature of the decision of 8 January 1953; the Court does not think it right to grant the applicant compensation under this head. In this respect also account must be taken of the uncertainty of the results of the probationary period and the successive offers of new opportunities of promotion made by the High Authority to the applicant after she had left the translation department.
It follows that the applicant is not entitled to damages.

C. Costs

Since the defendant has failed on several issues it must, in accordance with Article 60 of the Rules of Procedure of the Court, be ordered to pay the applicant four-fifths of her costs. Further, the defendant must pay to the Court four-fifths of the costs incurred by the Court in the form of legal aid granted to the applicant for part of the trial by order of the First Chamber of 21 October 1955.

The defendant must bear its own costs.

Upon reading the pleadings;
Upon hearing the parties;
Upon hearing the opinion of the Advocate General;
Having regard to Article 42 of the Treaty;
Having regard to the Protocol on the Statute of the Court of Justice;
Having regard to the Rules of Procedure of the Court and the rules of the Court on costs;
Having regard to the provisional Staff Regulations of the High Authority and the Staff Regulations of the Community,

THE COURT

hereby:

Declares the present application admissible;

Annuls the decision of the High Authority of 8 January 1953 and the decision of the Administrative Committee of 29 March 1955, which confirmed it;

Orders that the applicant shall complete a probationary period of six months as a translator in the language department of the High Authority;

Orders the High Authority to bear four-fifths of the applicant's costs and all its own costs.

Orders the High Authority to reimburse to the Court four-fifths of the costs incurred by it as legal aid.

Pilotti Rueff Riese

Serrarens Delvaux Hammes van Kleffens

Delivered in open court in Luxembourg on 12 December 1956.

M. Pilotti
President

P. J. S. Serrarens
Judge-Rapporteur

A. Van Houtte
Registrar

OPINION OF MR ADVOCATE GENERAL LAGRANGE

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Mr President,
Members of the Court,

I shall refrain in this case from beginning with a statement of the facts not only because these have been stated in full before you and moreover perfectly summarized in the report of the Judge-Rapporteur but because the case depends largely on the facts themselves so that an introductory summary would require a position to be adopted at that stage on important aspects of the case.

I – Claims in the application

Let me confine myself first of all to reminding you of the applicant's claims. In this re-