OPINION OF MR ADVOCATE-GENERAL LAGRANGE DELIVERED ON 5 DECEMBER 1963[1]

Mr President,
Members of the Court,

As you know, the action which the applicant, Mr Lepape, a member of the 'Inspection' Directorate at the High Authority, is bringing against the latter, relates partly to the reimbursement, refused by the administration, of the expenses of the removal effected on 22 April 1961 from Luxembourg to Brussels following a change of employment, and partly to the calculation of mission expenses for a whole series of missions undertaken since 1 July 1959. Let us examine these two points in order.

A—Removal Expenses

The question involves aspects of law and of fact.

1. *On law*, the parties differ on the interpretation to be given to the relevant provision, namely Article 15 of the General Regulation of the Community as amended by the decision of the Committee of Chairmen of 21 November 1960, taking effect from 1 December 1960.

Let us turn to this provision which is set out in the report of the Judge-Rapporteur (p. 6):

'The costs occasioned by the removal of personal furniture, including the cost of insurance against ordinary risks (breakage, theft, fire) shall be reimbursed to an official who is obliged to change his place of residence in order to comply with the provisions of Article 9 of the Staff Regulations. Such reimbursement shall not exceed the amount of an estimate approved in advance. Not less than two estimates shall be submitted to the appropriate departments of the institution, which may, if they consider the estimates to be excessive, select another removal firm. In the latter case, entitlement to the reimbursement may be limited to the amount of that firm's estimate.'

The question is as follows: is the strict observance of the provisions relating to the *prior* approval of an estimate, after the submission of not less than two estimates, a necessary condition of entitlement to reimbursement? This is the argument of the administration, which leads to an actual *forfeiture* of the rights of the servant who has moved before obtaining the necessary approval.

I find this argument unacceptable. As a perusal of the provision clearly shows (more clearly, moreover, than the version in force before its amendment by the decision of 21 November 1960), the *principle* of the entitlement to reimbursement, stated in the first sentence, must be distinguished from the *means*, discussed in the remainder of the text, in accordance with which the reimbursement is effected, once the right has been recognized. The formalities provided for in that second part are solely justified by the requirements of supervision. I think, therefore, that when the removal took place before these formalities had been completed, the party concerned was not *ipso facto* deprived of his entitlement to reimbursement, but that, of course, the administration retains a wide scope to check both the fact and the price of the removal; in this respect, it should require all evidence necessary to enable it to carry out the full check *a posteriori* which the negligence of the party concerned had rendered impossible to carry out in advance.

If an application for annulment is made to you, it would doubtless be sufficient simply to stop there, that is to say, to

1 — Translated from the French.

annul the contested decision because of an error of law and to return the matter to the administration. But such is not the case: pursuant to Article 91 of the Staff Regulations, we are concerned with a dispute where the Court has unlimited jurisdiction both to appraise the facts of the case and, if necessary, to fix the amount of the debt; moreover the conclusions of the application do not relate to the annulment of any decision, but only to ordering the High Authority to pay certain sums.

2. Let us then examine the question *of fact*. We may commence by leaving out of the debate the factors relating to the request for information addressed by the applicant to the administration on 17 February 1961 and to which he only received a reply on 18 May. Leaving aside the fact that the removal took place on 22 April, it is clearly impossible to put forward the applicant's ignorance of the rule as evidence: in the first place because he must be presumed to have known the contents of a regulation which, as is not disputed, was properly brought to the notice of the staff, and because, further, even if we emerge from the realms of legal fiction, it must be recognized that the nature of Mr Lepape's duties makes ignorance seem particularly improbable, all the more so since, in a letter of 15 June 1961, the applicant notifies the administration that he has requested written confirmation of quotations made to him in December 1960 by *various* transport firms in Luxembourg and Brussels; as early as December 1960, therefore, he was aware of the possibility of a transfer and that he should be in touch with at least two transport firms.

Is the evidence subsequently produced sufficient? In my opinion, at least in the present state of the case, this is the sole question which can only be answered in the negative. In fact, the supporting documents are only two in number:

1. a removal *invoice* from a Belgian firm dated 22 April 1961: that document certifies that the applicant, 'conforming to estimate' (which has not been produced), has paid the sum of 13800 Belgian francs, without giving further details;
2. a letter of 30 May 1961 from a Luxembourg firm quoting for a removal from Luxembourg to Brussels (which had taken place on 22 April!): it relates to the removal of 50 cubic metres at a price of 13240 Belgian francs.

On the other hand, the written confirmation of the quotations which the applicant received from the transport firms in December 1960 never reached the High Authority and moreover has never been produced to the Court.

It seems plain to me that the two documents produced after the removal, one of which is only an invoice and the other a very brief estimate, are plainly insufficient to allow for checking of the details of that removal and, consequently, of its price. In the present state of the evidence produced, the first head of claim, therefore, can only be dismissed.

B—Mission expenses

The dispute turns in essence — it could be said solely, since the other differences over the calculation of the mission expenses have now disappeared — on the interpretation which must be given to the Regulations where they authorize the use of the official's own car and provide for reimbursement for journeys made under these conditions.

The relevant provision is Article 17 (d) of the Staff Regulations of July 1956, as amended by decision of the Committee of Chairmen of 21 November 1960. The provision as amended is to be found with no alterations other than those required for references, at Article 12 (4) of Annex VII to the present Staff Regulations; the interpretation which you give to provisions in force at the time when the missions in dispute were undertaken

will thus be valid for the future also.
Some of the missions relate to the original provisions of the Regulations, others to the provisions as amended. The two successive versions should therefore be examined.

1 — *The original version.* Let us recall its terms:

'An official may be authorized to use his own car on a given mission, provided that the duration of the mission is not thereby increased. Reimbursement of travel expenses shall in that case be calculated according to the conditions in Article 13 (d) of these Regulations'.
That is to say, on the basis of the rail fare.
If we were to stop there, there would be no problem: for an official to use his own car requires an authorization; *even in such cases*, reimbursement is made on the basis of the rail fare. However, in order to comply with the wishes of the members of the 'inspection' group, an opinion of the administrative committee of the High Authority of 3 May 1957, given the status of a decision by the approval of the President of that institution, in principle limits the rule of reimbursement according to the rail fare for the outward and return journey to the principal centre of the mission and grants, subject to certain detailed rules, a flat rate reimbursement of 3 Belgian francs per kilometre for journeys undertaken around the principal mission centre. The decision adds, 'it is stressed in particular that the use of a private car involving payment at the rate of 3 Belgian francs per kilometre must be expressly authorized'.
Thus authorization for the use of the official's own car, which must always be obtained, only gives flat rate reimbursement for the parts of the mission carried out in the neighbourhood of the principal centre. This does not mean, as the applicant claims, that the use of the official's own car, on that interpretation, would take on the character of a concession: it must be expressly authorized. This simply means that it must not be contrary to the interest of the service, which shall be checked by the administration; to the extent that it is judged to be in accordance with that interest, but to that extent only, a flat rate is therefore granted.
Faced with these rules, the officials concerned must choose between using their own cars and travelling by rail or another means of public transport to complete their mission. It is self-evident that officials are never obliged to use their own cars for the requirements of the service; they are indeed entitled to have none at all. In that case, in order to allow them to travel around the principal mission centre under satisfactory conditions, the decision provided for the use of hire cars without chauffeurs or, failing that, taxis. It is possible, as has been maintained, that such a system could prove in certain cases to be a heavier burden on the administration than a reimbursement of the whole journey at the rate of 3 Belgian francs per kilometre, but the applicant is not entitled to set himself up as a judge of the financial interests of his administration; he must comply with the Regulations.

2 — *The amended version.* The more flexible application of the regulations agreed to by the administration was confirmed and defined by the amendment of the Regulations themselves on 21 November 1960.
The first two subparagraphs of Article 17 (d) allowing officials to use their own cars subject to authorization, but with reimbursement at the railway rate, were retained, but to them was added a new subparagraph, which runs thus:
'In the case of an official travelling regularly on mission in special circumstances, however, the appointing authority may decide to grant that official an allowance per kilometre covered instead of reimbursement of rail fares, if the use

of public transport and reimbursement of travel expenses on the normal basis involve definite disadvantages.'

Thereafter, the Regulations were followed some months later by a decision of the President of the High Authority approving an opinion of the administrative committee, dated 20 February 1961, which itself adopted a proposal made on 24 January 1961 by the general department of administration and finance. But on this occasion the decision does not introduce new material in relation to the Regulations; it limits itself to specifying detailed rules for its application. In particular, it provides for the way in which checking of the two joint conditions hitherto required for flat rate reimbursement shall be carried out, namely:

1. The use of public transport must involve definite disadvantages;
2. Reimbursement of travel expenses on the normal basis must also involve definite disadvantages.

With regard to the first point, it is stated that the flat rate arrangement may only be used 'in connexion with journeys which have been found, at the responsibility of the Director of the Inspection Directorate, to be impossible to carry out under satisfactory conditions by means of public transport'. Furthermore, in accordance with the proposal of the general department of administration and finance, adopted by the administrative committee, as we have said, 'reasons must be stated on the travel order'. I wish to point out that, under this new system, the flat rate reimbursement is no longer necessarily limited to movements around the mission centre: it may cover the main journey, but it requires evidence and reasons.

With regard to the second point, it must be 'found that reimbursement of expenses on the normal basis would be clearly insufficient (subsequent check on the basis of a detailed reasoned statement of the distance covered)'.

Thus the respective responsibilities of the Inspection Directorate and the department charged with financial supervision are clearly distinguished and logically separated.

In fact it appears that the principal difficulties which have arisen in the application of this system arise from the fact that the head of the Inspection Directorate continued to consider that authorization of an official to use his own car was sufficient to justify entitlement to the flat rate allowance. According to the provisions which I have just reviewed, this is plainly wrong. Thus the administration found itself bound to refuse this method of reimbursement when the travel instructions did not expressly mention, giving reasons in support, that it would be impossible to carry out the movement under satisfactory conditions by means of public transport. It is clear that such a requirement is justified in particular for a journey undertaken from the place of employment to the principal mission centre, since this journey is of a considerable length and there are good rail connexions.

A last point remains, that relating to the period during which a general strike prevailed on the railways in Belgium. The High Authority continues to take refuge behind the Regulations, refusing, in this instance too, the flat rate reimbursement.

This time I think that it is wrong. Any regulation, even a financial one, must be applied reasonably. Here we have circumstances which made it impossible to use the means of transport which, even although it was not in fact habitually used, is the means of transport normally used for the basis of the allowance. The official's use of his own car is therefore in the interest of the service, and, in accordance with the spirit of the Regulations, the interest of the service justifies the flat rate reimbursement. In my opinion this is also the case under the original Regulations which did not

grant the flat rate allowance for the full distance covered on the mission.

In sum, I suggest that you acknowledge only the last head of claim, which, in accordance with the calculations agreed between the parties, relates to the increase of travel expenses of 2968 Belgian francs. To this should be added the sums which the High Authority recognizes to be due from it and which it offered to pay in its conclusions in its statement of defence, confirmed in the rejoinder, the calculation of which — being 12364 Belgian francs — is not contested by the applicant.

In its rejoinder, the High Authority also offers to pay interest from the date of the claim, but only up to the date on which the statement of defence was served on the applicant. I do not think that this limitation is justified. At the date when the offer was made, the proceedings had begun, and, if you agree with my suggestions, the application will be recognized as partially founded. It seems to me that, in accordance with custom, interest must run until the date of payment.

With regard to the costs, I think that it would be equitable to charge them principally to the applicant, with one quarter, for example, being charged to the defendant. As you know, only the costs incurred by the applicant are concerned, since this is a staff dispute.

I am therefore of the opinion that:

— note should be taken of the High Authority's offer to pay the sum of 12364 Belgian francs to Mr Lepape;

— the High Authority should be ordered to pay in addition the sum of 2968 Belgian francs to Mr Lepape;

— these sums should bear interest to be paid to the applicant as from 9 February 1963;

— the remaining conclusions of the application should be dismissed;

— one quarter of the costs incurred by the applicant should be borne by the High Authority, the expenses incurred by the latter remaining its liability in accordance with Article 70 of the Rules of Procedure.