Having regard to Articles 37 (EEC) and 38 (EAEC) of the Protocols on the Statute of the Court of Justice;
Having regard to the Staff Regulations;
Having regard to Articles 69, 70 and 93 of the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

composed of: A. M. Donner, President, Ch. L. Hammes and A. Trabucchi (Rapporteur) Presidents of Chambers, L. Delvaux, R. Rossi, R. Lecourt and W. Strauß, Judges

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

hereby orders:

1. **The application to intervene is dismissed as inadmissible;**
2. **The costs of the intervention procedure shall be borne as follows:**
   (a) **in application of Article 70 of the Rules of Procedure the defendant in the original case shall bear its own costs;**
   (b) **having been unsuccessful in their conclusions the applicant in the original case and the intervener shall each bear their own costs.**

Luxembourg, 14 November 1963.

A. Van Houtte
Registrar

A. M. Donner
President

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

Mr President,
Members of the Court,

The fact that in this instance the Court was not content to follow the procedure laid down in Article 93 of the Rules of Procedure but decided the case should be argued by both parties in open court shows the importance of the principle in the question now before you, that is

1 — Translated from the French.

whether the Staff Committee 'set up within each institution' by virtue of Article 9 of the Staff Regulations may be allowed to intervene before the Court in an action pending between a servant and the institution by whom he is employed.

The applicable provisions are Article 37 of the Protocol on the Statute of the Court of Justice of the EEC and the corresponding Article (38) of the EAEC Protocol. Is it necessary further to refer to Article 34 of the Protocol on the Statute of the Court of Justice of the ECSC on the ground that the European Parliament is an institution common to all three Treaties? I think that this can be avoided, not because the Treaties of Rome are more recent than the ECSC Treaty and the latter should be considered as abrogated by implication to the extent that there is conflict (an argument which I have always opposed), but because a comparison of Article 34 of the ECSC Protocol with Article 37 of the EEC Protocol (I shall leave Euratom aside from now on for greater simplicity) reveals that the EEC rules on the right to intervene *cannot in any case be interpreted less broadly* than the ECSC rules on the right to intervene, whether intervention be by Member States, Community institutions or other interveners.

Let us look again carefully at the text of Article 37 of the EEC Protocol:

'Member States and institutions of the Community may intervene in cases before the Court.

The same right shall be open to any other person establishing an interest in the result of any case submitted to the Court, save etc.'

Two questions arise from this:

1. Is the Staff Committee of the European Parliament a 'person' within the meaning of this provision?

2. If so, has it established an 'interest' in the result of the case?

The first question is much the more delicate.

The discussion on this point has dealt at length with the meaning which should be given to the word 'person' in connexion with the concept of corporate personality and the place which this concept has in the Treaty. According to the intervener, there is an intentional difference between the use of the very general (I was about to say 'impersonal') word 'person' and the expression 'natural and legal persons' which occurs on several occasions in the Treaty, for example, in Article 173 with regard to actions or in Article 39 of the Statute of the Court with regard to third-party proceedings. I could also mention Article 34 of the Statute on the Court of Justice of the ECSC, which confers the right to intervene on 'natural or legal persons' establishing an interest in the result of any case. The right to intervene is thus wider in the EEC than in the ECSC (which, incidentally, puts the Staff Committee of the High Authority in a less favourable position than the Committees of the other institutions) and within the EEC, it is wider than the right to bring an action, which is reasonable enough since the right to intervene voluntarily in a case is normally more extensive than the right to bring an action.

To this the European Parliament replies that the expression 'other person' is merely contrasted with the Member States and Community institutions referred to in the first paragraph. Only the Community has ' legal personality (Article 210 of the Treaty) and if the institutions may bring legal proceedings it is only as representatives of the Community and by reason of the legal personality which is expressly recognized in it. And as the intervener has not failed to point out that in certain cases the institutions of the same Community may plead against each other, the defendant in the original case is confining its interpretation to actions be-

tween Community institutions and third parties.

Like the European Parliament I do not consider that the term 'person', which appears without any qualification in Article 37 of the EEC Protocol, conflicts with the expression 'natural and legal persons' used in the other articles. It is enough to compare Article 34 of the ECSC Protocol, which the draftsmen of the Treaties of Rome had before them, with Article 37 of the EEC Protocol to realize that the object of the change in drafting was not to create a concept of legal personality but merely to establish a privilege as regards the right to intervene in favour of Member States and Community institutions by dispensing with the requirement that they must establish an interest in the result of the case. Perhaps also, these same draftsmen, more respectful, at least in form, of the sovereignty of States and mindful of the regard which is due to them, refused to consider the States concerned as 'legal persons' in domestic law, as the ECSC Protocol had not hesitated to do.

It is true that an argument *a contrario* exists based on the semantic interpretation of the wording of Article 37: if 'any other person' means 'any person other than Member States and Community institutions', does that not imply that the word 'person' cannot be synonymous with 'legal person', since Community institutions do not possess legal personality?

To that it is sufficient to reply with Article 39 of the same Protocol which, with regard to third-party proceedings, states without hesitation: 'Member States, institutions of the Community and *any other natural or legal persons*', which shows once again the weakness of *a contrario* arguments based on what is merely a flaw in drafting.

Let us then try to look at the problem *ab ovo*. The question is the following: *Has the Staff Committee the capacity to bring legal proceedings before the Court in the absence of any provision expressly conferring this capacity on it?* (No text can be invoked to support this proposition; in particular Article 91 of the Statute appears to refer only to proceedings by servants of the Communities.)

This question must, as always when a difficulty is not resolved *expressis verbis* by the relevant provisions, be considered in relation to the principles arising from all the provisions of the Treaty and to general principles of law, in particular to the laws of the Member States.

In the Treaty itself Article 210 provides that 'The Community shall have legal personality', a formula to be found also in Article 6 of the ECSC Treaty. Unfortunately, the final formula of Article 6 whereby 'The Community shall be represented by its institutions, each within the limits of its powers', is not found in Article 210; there is only Article 211 which refers to the legal capacity of the Community, allows it to acquire movable and immovable property and to 'be a party to legal proceedings' and adds: 'To this end, the Community shall be represented *by the Commission*',

As I emphasized in my opinion in Case 25/60 De Bruyn (Rec. 1962), raising the question on my own initiative, it seems that this exclusive power conferred on the Commission to represent the Community in legal proceedings concerns only relations with third parties and, in particular, what might be called the 'civil life' of the Community. 'This', I added, 'could not possibly have the effect of conferring on the Commission a monopoly of legal representation, particularly before this Court, in disputes which bring into play the varied powers attributed to the institutions in accordance with Article 4 of the EEC Treaty'. In fact, as everyone knows, the institution is always the defendant in actions for annulment of its decisions and even in actions for damages brought on the basis of the non-contractual liability of the Community which has been incurred by reason of damage caused by

its servants or institutions. Under the second paragraph of Article 215, the liability to make good such damage rests with the Community, which alone has legal personality.

What I wish to emphasize from this analysis of the various provisions is that the Treaty appears to require, for any legal proceedings, the existence of *legal personality*. In speaking on several occasions of 'legal persons' side by side with 'natural persons', the Treaty refers to entities which are, like natural persons, capable of being the subject of rights or obligations and consequently of possessing a legal personality. There seems to be no doubt that under the Treaty such a 'person' is alone capable of bringing legal proceedings, except of course when the Treaty expressly provides to the contrary, as in the case of institutions pleading against each other in the context of an action for annulment (analogies regarding the State may be found in domestic law).

This being so, the question is now to discover what concept of corporate personality which is a particular aspect of legal personality, was used by the authors of the Treaty.

It is here, as you know, that the different interpretations of corporate personality confront each other, in particular the theories of fiction and reality; under the former, long dominant, the legal person has no separate existence of its own distinct from that of the individuals which comprise it; it is merely a device of legal technique; the consequence of this is that, since only the law is capable of creating a legal fiction, corporate personality can only be conferred by law or by virtue of the law.

The fiction theory is nowadays widely criticized and rejected; it is largely replaced by the reality theory.

The reality theory, generally preferred nowadays, affirms that a legal person has a separate existence but that its reality is *sui generis*, not assimilable to but, by analogy, comparable with that of a natural person. It permits the recognition of corporate personality as of right when certain factual conditions are fulfilled, that is there must be existence of a group organized for a particular collective purpose. It has found expression in a judgment of the French Cour de Cassation of 28 January 1954 (Dalloz, 1954, p. 217) and I ask your indulgence in quoting the key passage: 'Civil personality is not a creation of the law; it belongs, in principle, to any group capable of collective expression in the defence of legitimate interests and therefore deserving of legal recognition and protection'. (This passage is the most commonly quoted because it most closely resembles academic opinion, but I shall continue:) 'If the legislature has the power, for the purposes of high policy, to deprive any particular category of groups of its civil personality, it recognizes by implication, but necessarily, its existence in bodies *created by the law itself* in order to *manage* certain collective interests which have thus the character of *rights* capable of being the object of legal proceedings'.

The position was as follows: an order having legislative effect had created shop committees and left to a decree the task of determining, first, the conditions under which the powers of the committees could be delegated to bodies created by them and, secondly, the *extent of the civil personality* of the shop committees *and of the bodies created by them*. The decree provided for the possibility of the committees creating such bodies; it had also laid down the extent of the civil personality *of the committees* by deciding in particular that these committees might be parties to legal proceedings where necessary in the exercise of their powers, but it had failed to say as much for the bodies created by the committees. This gap was filled by the judgment of the Cour de Cassation.

This seems to me to be a good example of a healthy and not too rash application

of the theory of the 'reality' of corporate personality, the sole object of which is to allow groups *recognized by law and endowed by it with specific powers* to enjoy civil capacity and the right to bring such legal proceedings as are necessary in order to exercise those powers fully. I think that such a theory can and should be welcomed by the Treaty, so much does it follow the general line of interpretation which has always inspired the Court in determining the conditions and limits of the exercise of the powers of the institutions.

If this interpretation is accepted, it is not necessary to require from the Treaty or an implementing regulation an *express* attribution of civil capacity or the right to be party to legal proceedings or both, or even of legal personality, to the Staff Committees in order for them to have the right to be party to legal proceedings. It is enough — but it is imperative — that the right to be a party to legal proceedings before the Court (since that is the issue in the present case) be recognized as necessary in order that the Committee exercise the powers conferred on it by the Staff Regulations. It is all a question of the nature and extent of those powers, that is, of the interpretation of Article 9 of the Staff Regulations in which they are defined.

On this point, I do not think that the argument of the intervener — or to be more precise the body wishing to be recognized as intervener — can be accepted, at least without considerably forcing the meaning of the Treaty and consequently going against the presumed intentions of its authors. If it is true, as has been said, that a Staff Committee is set up 'within each institution', that merely signifies that it has a collective existence independent of that of its members and other departments or bodies within the institution and that it exercises certain powers of its own, but the question remains whether it exercises these powers solely in the context of internal relations within the institution or whether it is responsible for defending *erga omnes*, if need be against the institution, the professional interests of the officials and servants of that institution.

To this question the Staff Regulations give an answer:

Article 9, which defines the task and the powers of the Staff Committees, limits their activities essentially to work within the institutions concerned; it is within the institution that the Staff Committee represents the interests of the staff; it is between the institution and the staff that it maintains a continuous contact; it contributes to the proper functioning of the departments of the institution; it is *to the notice of the competent bodies of the institution* that it brings 'any difficulty having general implications concerning the interpretation and application' of the Staff Regulations; finally, it is to the same bodies that it submits 'suggestions concerning the organization and operation of the service and proposals for the improvement of staff working conditions or general living conditions'.

The Staff Committee thus appears, if not as a body properly so-called of the institution, at least as a *cog in the internal administrative machine* and not as the holder of legal rights and obligations of its own as against the institution to which it belongs.

It would only be otherwise to the extent that the Committee was exercising the powers laid down in the fourth paragraph of Article 9 (3), enabling it to take part in the *management* of bodies having a social welfare character: if this were so, legal capacity and the right to be a party to legal proceedings *to the extent necessary to exercise this power of management* would in my opinion have to be recognized; such a view would be very close to that on which the judgment of the Cour de Cassation quoted above was based.

It must therefore be admitted that the Staff Regulations in no way intended to give the Staff Committee the capacity or

even the ability to represent and defend what the intervener calls the 'corporate interests', and what I prefer to call the 'professional interests', of its principals. The defence of professional interests as such, on the collective level, belongs to associations or unions which are regularly constituted under private law and can establish that they are sufficiently 'representative'. In my opinion, such a task might possibly be carried out by legal proceedings and in particular by intervention where, as in this case, a question of general application arises on the occasion of an individual action.

We have no need, in these circumstances, to examine the second condition imposed by the second paragraph of Article 37 of the Protocol concerning the admissibility of an intervention by a person other than a Member State or an institution, that is, the establishment of an interest in the result of the case. Let me say, however, that this condition is in any case fulfilled, given the position adopted on principle by the European Parliament to justify its decision: this is a model of the question with which the Staff Committee should normally be asked to deal. We know (see the application to intervene, p. 3) that it has not failed on this occasion to 'bring to the notice of the competent bodies of the institution' this problem, which, to use the words of Article 9 (3), is a 'difficulty having . . . implications concerning the interpretation and application of these Staff Regulations'. We know, therefore, and this is important, that the competent bodies of the European Parliament were fully informed of the position of the staff with regard to the problem before taking their decision.

It is in the light of these observations that I must submit that you should not allow the application to intervene made by the Staff Committee of the European Parliament.

As to costs, a strict interpretation of the combined provisions of Articles 70 and 95 (1) of the Rules of Procedure appears to be opposed to the application in this case of the exceptional provisions of Article70. Is it necessary to make a strict interpretation? I leave this point to your wisdom.

I am therefore of the opinion that:

— the application to intervene should be dismissed;

— the costs of the action should be paid as the Court sees fit.

ORDER OF THE PRESIDENT OF THE COURT
13 MARCH 1963[1]

In Case 15/63 R

CLAUDE LASSALLE, an official of the European Parliament, represented by

1 — Language of the Case: French.