JUDGMENT OF THE COURT (FIRST CHAMBER)
25 JUNE 1964[1]

J. A. G. Baron de Vos van Steenwijk v Commission of the European Atomic Energy Community

Case 84/63

Summary

1. *Officials — Integration under the Staff Regulations — Probation report — Extension of probationary period — Establishment report — Period of reference covering the official's whole period of service*
   (EAEC Staff Regulations, Article 102)

2. *Officials — Integration under the Staff Regulations — Unfavourable opinion of the Establishment Board — Ground of complaint to be raised by means of an action against the decision of the appointing authority confirming this report*
   (EAEC Staff Regulations, Articles 91, 102)

3. *Officials — Integration under the Staff Regulations — Opinion of the Establishment Board — Communication before notification of the decision not obligatory*
   (EAEC Staff Regulations, Article 102)

1. In spite of the existence of a report drawn up after the serving by an official of a six months' probationary period and notwithstanding any extension of this period, the administration has the right and the duty to submit to the Establishment Board a more recent report covering the entire period which has elapsed since the applicant was engaged.
2. Any ground of complaint by an official against an unfavourable opinion of the Establishment Board can only be raised effectively by means of an action against the decision of the appointing authority, since this decision, which constitutes the final step in the integration procedure, is required to confirm the opinion.
3. The administration is not bound to inform the official of the opinion of the Establishment Board before its decision regarding his integration is notified to him.

In Case 84/63

J. A. G. Baron de Vos van Steenwijk, represented by André Elvinger, advocate at the Cour Supérieure de Justice of the Grand Duchy of Luxembourg, with an address for service in Luxembourg at the Chambers of Mr Elvinger, 84 grand-Rue,

applicant,

1—Language of the Case: French.

v

COMMISSION OF THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM), represented by its Legal Adviser, Jan Gijssels, acting as Agent, 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 decision refusing to integrate the applicant and terminating his contract and for the payment of damages;

THE COURT (First Chamber)

composed of: A. Trabucchi, President of Chamber (Rapporteur), L. Delvaux and W. Strauß, Judges,

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

gives the following

JUDGMENT
Issues of fact and of law

I — Facts

The facts may be summarized as follows: The *applicant* entered the service of the Commission of the European Atomic Energy Community on 15 May 1961 and was assigned to the Directorate of the Joint Research Centre at Ispra. His letter of appointment, dated 25 May 1961, refers to a salary corresponding to that of a servant in Grade A 4, Step 3, of the scale of remuneration in force in the ECSC.

In the 'probation report' of 16 February 1962 concerning the applicant drawn up at the end of six months of service, Mr Ritter, the Director of the Centre, requested that the trial period be extended by six months, that is, until 15 May 1962, on the ground that it had not been possible to assess the applicant whose ill-health had necessitated frequent absences. The personal file of the applicant contains, under the No 61, an extract from the minutes of the meeting of 4 February 1962 concerning the 'review of classification at the end of the first six months of service', showing that the competent committee had recommended in favour of this extension.

On 19 February 1963 the Establishment Board issued an opinion unfavourable to the integration of the applicant on the basis of the establishment report and the annexed memoranda of 16 and 27 November 1962 prepared by the applicant's superiors, Mr Ritter and Mr Mercereau, and after hearing the applicant, Mr Guéron, the Director-General of Research and Mr Ritter and Mr

Mercereau, Director and Assistant Director of the Joint Research Centre. On the basis of this opinion, the Commission of the European Atomic Energy Community decided at its meeting on 20 March 1963 to terminate the contract between the applicant and the Community. The applicant was notified of this decision by letter of 8 May 1963 signed by the President of the Commission of the EAEC. It is against this decision that the applicant has brought the present action.

II — Conclusions of the parties

In his originating application the *applicant* claims that the Court should:

'declare that the establishment reports and the opinion of the Establishment Board are void on the ground that they infringe the rules of law applicable;

therefore, declare void and in any case unjustified the decision refusing to integrate the applicant and terminating his contract referred to in the letter of the President of the Commission of the EAEC of 8 May 1963 despatched on 15 May 1963 and received on 24 May 1963;

declare that taking these decisions in violation of the rights of the applicant amounts to a wrongful act giving rise to a right to compensation by means of an award of damages;

declare that the termination of the contract of employment is in any event improper and detrimental to the applicant;

order the defendant to pay 5000000 Luxembourg francs to the applicant by way of damages;

order the defendant to bear all costs of the action.'

In its statement of defence the *defendant* contends that the Court should:

'dismiss the application as being unfounded in its entirety; order the applicant to bear the costs.'

In his reply the *applicant* claims that the Court should:

'find in his favour in respect of the conclusions in the originating application order the defendant to produce before the Court:

1. the letter from the President, E. Hirsch, establishing the steering committee at Ispra and conferring on the applicant the duties of executive secretary of that body;
2. all administrative documents concerning the Nijsing and Bodnarescu incidents, referred to by the defendant in support of its argument;
3. in particular, as regards these incidents, the relevant extracts from the minutes of the deliberations which took place during the meeting of Euratom on 15 October 1963;
4. as regards the Bodnarescu incident, the letter expressly quoted in the applicant's reply to Dr Ritter of 7 September 1961;

order the personal appearance of the parties by their above-mentioned representatives;

alternatively, allow the applicant to tender in evidence all the facts referred to in the application instituting the proceedings and in this reply, in particular the following:

1. that since these various incidents took place, in particular those relating to the case of the officials Nijsing and Bodnarescu, that is, since the period September-October 1961, the applicant received from Dr Ritter, his immediate superior, no real and responsible task or instructions; on the contrary he was systematically deprived of all contact with the departments;
2. that no written or oral instructions had ever been or were subsequently sent to the various departments or to senior or junior officials concerning the applicant's duties;

3. that on the contrary the heads of department with whom administrative contact was essential, in particular the heads of staff administration, stores and instruments supervision, were advised by Dr Ritter not to cooperate with the applicant;
4. that the applicant was given the duties of executive secretary of the steering committee by President Hirsch and that this committee, meeting so far as the applicant can recall, for the first time on 27 November 1961, ceased to exist after a few meetings following a decision made or initiative taken by Dr Ritter; that even before this committee was disbanded the applicant had been relieved of the task of drawing up the minutes on the pretext that his work was unsatisfactory, although at that time he had only prepared a single draft of the first minutes of the first meeting;
5. that the "department" or "planning office", for which the applicant became responsible after the appointment of Mr Mercereau as assistant to Dr Ritter, had no powers, no real existence as a department in the service and no executive staff; that the applicant's attempts to make contact with different departments ran into the express and implied counter-instructions of Dr Ritter referred to under 2 above;
6. that the presence of the applicant in this "planning office" had become completely irrelevant since it had no communications with the Director, the Assistant Director or with the departments;
7. that on 8 April 1963, Mr Buurman, Assistant to the Director, Mr Funck, informed the applicant in the presence of Dr Ritter that in view of the decision refusing to integrate him and terminating his contract he was not required to resume his position at Ispra;

declare that this evidence is admissible, relevant and conclusive;

order an expert's report to be obtained on the material and non-material damage suffered by the applicant;

make such further orders as the Court shall consider appropriate;

In its rejoinder the *defendant* contends that the court should:

declare that the evidence tendered by the applicant is submitted out of time and is therefore inadmissible;

uphold the conclusions of the defendant set out in its statement of defence and which it repeats.'

III — Submissions and arguments of the parties

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

A — *On admissibility*

The *defendant* does not contest the admissibility of the action.

B — *On the substance of the case*

1. General

In support of his action the *applicant* pleads the grounds of infringement of the Treaty or of a rule of law relating to its application and misuse of powers.

Before putting forward his arguments in support of these submissions the applicant sets out certain circumstances intended to show the unfair treatment which he suffered at the hands of Dr Ritter, the Director of the Centre. In order to explain the reasons for Dr Ritter's change of attitude towards him the applicant refers to the following two incidents:

1. His letter of 7 September 1961 to Dr Ritter concerning the duties of Mr Bodnarescu. The applicant main-

tains that this official had succeeded in obtaining a disproportionate influence in all departments and in acquiring powers which trespassed not only on those of the applicant, but also on those of his own colleagues;

2. His intervention in favour of Mr Nijsing, a Dutch official, which led to his remaining in the department at a time when Dr Ritter had almost decided to dismiss him.

The *defendant* maintains that these two incidents show an unfortunate tendency on the part of the applicant to see relationships within the department from a personal angle, which had led him constantly to commit indiscretions and even make outrageously slanderous remarks about the Directorate. The defendant regards the Nijsing incident as a specific act of insubordination in that the applicant, disregarding the refusal of his Director, sent a telegram at his own expense to the Dutch member of the Commission, Mr Sassen.

The *applicant* observes that his personal action regarding Mr Nijsing was accepted by the Commission and that as a result Mr Nijsing remained in his post contrary to the recommendation of Dr Ritter. As to the Bodnarescu incident, the applicant maintains that his action was justified by the transfer of this official to the Centre at Mol.

2. On the irregularity of the integration procedure

(a) The *applicant* maintains that the integration procedure as applied to himself was irregular in that, instead of being based on the first probation report drawn up in February 1962, it was based on a second probation report ('report on abilities') drawn up following a six months' extension of his trial period. This extension, authorized after the entry into force of the Staff Regulations, is illegal. The second probation report is also illegal in that, even under Article 34 of the Staff Regulations, it was submitted too late; it dates in fact from November 1962 although the extended probationary period came to an end on 15 May 1962.

The invalidity of the report of the Establishment Board, which results from the invalidity of the establishment report, means that the contested decision is also invalid since it constitutes the necessary confirmation of the Board's opinion.

In view of the favourable statements contained in the probation report of 16 and 24 February 1962, the applicant states that if the Establishment Board has, as it should have done, based itself on this report, which is the only valid one, his integration could not have been refused.

The defendant objects that the applicant has not shown to what extent the alleged irregularity in the preparation of the probation report could vitiate the integration procedure. It maintains that, having regard to the contractual nature of the legal relationship between the servant and the Community during the period before the entry into force of the Staff Regulations, the probation report had no legal effect as regards servants. Moreover, the defendant states that, as the applicant had been employed since 15 May 1961, there had been no extension of his probationary period within the meaning of Article 34 of the Staff Regulations. Lastly it maintains that, as the establishment report provided for in Article 102 of the Staff Regulations was a specific document expressly required by those Regulations, no other document could be substituted for it by the Establishment Board.

The *applicant* maintains that the defendant is playing with words by maintaining that only one establishment report was drawn up. He emphasizes that the heading in the probation report which determines its content was the same as that used in the establishment report. There were therefore no grounds

for regarding the probation report as invalid for the purposes of integration.

The applicant challenges the contention of the defendant that Article 34 was not applied to him by referring to the letter of 17 May 1962 from Mr Funck and to the undated minutes placed in his personal file under Reference No 61, informing him of the six months' extension of the trial period. Thus the defendant had applied Article 34, although it did not apply to the applicant, while trying to avoid the duties arising from it.

As regards the argument of the defendant that before the entry into force of the Staff Regulations the probationary period was merely an internal measure, the applicant maintains that this contradicts the principles established by the Court in the Mirossevich case.

While still insisting that Article 34 of the Staff Regulations was not applied to the applicant, the *defendant* objects that if the contrary were true the applicant would have to claim that the trial period was invalid and not allege rights arising from the invalidity of this period. The arguments of the applicant would result in the procedures used before the entry into force of the Staff Regulations taking precedence over the provisions of the Regulations themselves, whereas the procedure involving the service of the trial period, which applied before the entry into force of the Regulations, was certainly not intended to replace the procedure referred to in Article 102. Moreover, as from 1 January 1962, the applicant's trial period could not be governed by Article 34, first because the conditions of application of this provision were not fulfilled and, secondly, because in both its substance and its effects the trial period prior to the entry into force of the Staff Regulations was different from the system laid down in Article 34.

The defendant contends that the applicant could claim no rights from the satisfactory outcome of his probationary period and maintains that such an outcome did not dispense with the need for the integration procedure; the applicant could, therefore, not be integrated without a favourable opinion from the Establishment Board.

In this respect, the attitude of the Court in the Mirossevich case does not conflict with the point of view of the defendant. In that case Advocate-General Lagrange maintained that the contract confers no right to a career or to security of employment, but merely provides employment.

(b) The *applicant* maintains that the actual integration procedure was irregular in that:

1. The opinion of the Establishment Board was not submitted to the applicant in its entirety before the decision not to integrate him was taken, nor was it placed in his personal file;
2. As no meeting took place between the servant concerned and the heads of department who submitted reports on him, the procedure made no provision for the applicant to be heard.

With regard to the first of the above points, the *defendant* disputes the claim that this opinion must be communicated to the party concerned before any decision is taken by the appointing authority. Such a procedure would be incompatible both with the scheme established by the Staff Regulations and with the rôle of the Establishment Board as a consultative administrative body.

The applicant was notified of the opinion of the Establishment Board by the letter terminating his contract, which enabled him to make his submissions by way of a complaint.

With regard to the second point, in view of the consultative character of the Establishment Board, the defendant considers that the principle of hearing the party concerned did not require a meeting between that party and his

superiors, as the prior communication to him of both the establishment report and his personal file and his opportunity to submit comments to the Board on all the observations made and information given by his superiors complied with that principle.

The *applicant* replies that the Board is not acting as a consultative body when it gives an unfavourable opinion since such an opinion is binding on the appointing authority.

On the other hand, the *defendant* repeats its argument that the opinions given by the Board are not in themselves conclusive even though they limit the power of the appointing authority to a considerable extent. Even if the opinion is unfavourable the authority may still choose between termination of the contract and establishment in a lower grade.

3. On the irregularity of the assessment made in the establishment report by the Establishment Board

Under this heading, the *applicant* pleads infringement of the Treaty or of a rule of law relating to its application, as well as misuse of powers.

(a) *Infringement of the Treaty*

The *applicant* maintains that any assessment of him was impossible and inherently defective since, at least during the period to which the evaluation made in the establishment report related, he had been prevented from performing the duties of Assistant to the Director of the Centre on which he should have been judged.

Moreover, both his original powers and his new duties — from the beginning of 1962 he had been assigned to a planning office with no real work or purpose — were so theoretical that it had been quite impossible for him to demonstrate his abilities, and this, by analogy with the decision of the Court in the Mirossevich case, invalidates the contested decision.

In support of his argument the applicant puts forward the following points:

1. The very general terms in which Mr Mercereau's report was expressed;
2. The report made by Mr Ritter shows that, first, a set of tasks had been created, each more theoretical and illusory than the last, and, secondly, that the applicant had been given tasks, for example, concerning insurance, requiring him not to act or prepare plans, but merely to decide 'where the problem lay', an unnecessary task since this problem was already being dealt with by Mr Citterio; also in questions of welfare and housing the applicant had only been given minor tasks which would normally form part of the duties of servants in Grade B and even Grade C; finally, as regards the work of the applicant on the steering committee, this committee, regarded as troublesome by Mr Ritter, had only been able to meet three times. As regards the complaint made in the establishment report of his absences from work, the applicant maintains that no complaint could be made in good faith about the absences of a servant deprived of all real responsibility and condemned to waste his time in an empty office.

The *defendant* replies that there was never any doubts as to the duties to be performed by the applicant who was recruited to assist the Director of the Centre in the organizational work involved in setting up the Nuclear Research Establishment at Ispra. He was responsible, either on his own initiative or on instructions from the Directorate, for studying all the problems posed by the administrative organization of the establishment and for finding solutions to them, for preparing the relevant decisions and for supervising their implementation.

As is shown by the letter of 23 February

1961 sent by the applicant to Mr Ritter, the Director of the Centre, it was clear before his appointment that he would perform his duties under the authority of Mr Ritter. The applicant could not reasonably complain that he had no chance of demonstrating his abilities during the eighteen months between the beginning of his service and the preparation of the establishment report. As he was responsible for preparing and working out the details of the organization and administration of the Centre at a time when everything was still to be organized, he had a wide field of action and great responsibilities which required initiative. In his grade he could not expect his superiors to divide his work into a series of concrete tasks and duties. This being so, the burden of proving that the assessment made of his abilities was irregular rests entirely on the applicant. Moreover, the defendant challenges the statement made by the applicant. It maintains that the problems with which the applicant was concerned, such as insurance, housing, allocation of staff and transport, were specific and concrete and of great practical importance.

The *applicant* replies that, since the test of his efficiency was the successful accomplishment of concrete tasks, the general nature of the tasks given to him and the fact that the general research involved in them did not form part of a more comprehensive programme indicated that an old ruse had been applied 'to keep him out of harm's way'.

It would be extremely difficult for the applicant to prove these matters, in view of their negative nature, if the burden of proof fell on him. On the other hand, if precise instructions had been given to the applicant, it would have been easy for the defendant to prove this or at least to set out such circumstances, instead of merely disputing facts put forward by the applicant and describing in more carefully chosen words the tasks already enumerated in abstract terms by Mr Ritter. No written or oral instructions were given in regard to these matters to the various departments. On the contrary, the applicant was systematically isolated. Thus Mr Marcus, responsible for matters concerning staff and administration, had refused to allow him to become involved with any but the most basic matters; the applicant concludes from this that Mr Marcus had been instructed to frustrate any attempt by him to deal seriously with the organization of the welfare department. As to the creation of a planning office to deal with all the administrative questions assigned to him since the beginning of 1962, the applicant maintains that it had been created deliberately in order to conceal the fact that he had finally been put out of harm's way.

The criterion regarding the burden of proof followed by the Court in the Mirossevich case is applicable in this instance, since the qualitative and quantitative variations peculiar to that case (grade, length of probationary period and of service) do not affect the principles laid down in it.

The *defendant* maintains that the opinion of the Establishment Board was not based on the poor preparation of the minutes of the first meeting of the steering committee, but rather on the negligent manner in which the applicant dealt with the work entrusted to him, his unjustified absences, his ill-timed intervention in staff affairs for which he was not responsible, the offensive insinuations made against the Director of the Centre at Ispra and the unacceptable way in which he approached the Commission of the EAEC. In the light of such criticisms, supported by documents filed with the statement of defence, the applicant could not claim that it was for the defendant to justify further the opinion of the Establishment Board and the decisions to dismiss him.

With reference to the applicant's allegation that the duties described on page 15 of the statement of defence are unilateral since he did not agree to them as he did

not know what they were, as he was not informed of them, and as they were created after his appointment and were therefore irrelevant to the case, the defendant maintains that such duties do not conflict with the letter of 23 February 1961 which states that the applicant would work under the authority of the Director of the Centre.
According to the defendant, it is not usual to inform other departments by means of memoranda of the presence, the duties and the powers of servants who are taking up employment; such powers become clear through the use which is made of them. The applicant is unjustified in denying that he had been responsible for the welfare department, in particular for the housing office, since in his observations on the establishment report he had admitted this fact while complaining about it. As regards the planning office established at the request of Mr Mercereau, there is no justification for describing it as unimportant, since such an office plays an important rôle in the running of many large institutions. As regards his position as secretary of the steering committee, the applicant attended three of its meetings without drawing up the minutes of the last two, as was his duty.

(b) *Misuse of powers*

The *applicant* emphasizes that the only specific task which Dr Ritter indicated as having been entrusted to him was the preparation of the minutes of the first meeting of this committee and that, one year after the faulty drafting of these minutes, this is still the only criticism which could be made of him. The applicant bases his submission of misuse of powers on this and on the fact that Mr Ritter had reduced the rôle of the applicant, originally intended by President Hirsch to be that of executive secretary of the committee, to that of a mere secretary.
The *defendant* observes that the applicant has presented no arguments and supplied no proof whatever which could establish the existence of a misuse of powers and submission is therefore inadmissible.
The *applicant* states that the Director of the Centre used his powers of assessment for personal ends, that is, in order to rid himself of a troublesome colleague. The terms used by this Director at the meeting of the Establishment Board are significant in this respect.
The *defendant* objects that it is not sufficient for the applicant to plead irregular conduct on the part of his superiors in order to establish a misuse of powers by the Establishment Board. The report made by the applicant's superiors is in fact only one of the factors on the basis of which the Board formed its opinion. Moreover, as only the person in whom a power is vested may be accused of its misuse, it is necessary to show that the Commission of the EAEC adopted the alleged corrupt motives of the applicant's superiors.

4. Damages

The *applicant* maintains that, since the termination of the contract is the result of the refusal to integrate him, the irregularity of the refusal entailed the irregularity of the termination, which, having lost its justification is improper and gives rise to a claim for damages. Alternatively, even if the refusal to integrate him were to be upheld, the applicant maintains that the period of one month's notice given on termination of the contract was insufficient. The fact that this period was mentioned in the letter of appointment did not render the less improper or detrimental the termination by one month's notice of a contract held by an official with an expectation under the Staff Regulations and the right to security of employment: such a period of notice would be regarded as insufficient by most European legal systems.

The applicant is claiming 1 000 000 Luxembourg francs by way of damages for loss caused by temporary unemployment, 3 000 000 Luxembourg francs by way of damages in respect of the impairment and reduction of his working life and, finally, 1 000 000 Luxembourg francs in respect of non-material damage.

The *defendant* observes that the clause fixing the period of notice at one month exists in all contracts concluded by the institutions under Article 214 (3) of the EAEC Treaty. As the applicant has not established that any damage was suffered, or submitted any figures to support the amount of his claim, the defendant contends that the claim is inadmissible.

In his reply, the *applicant* maintains that his claim for damages is justified by the untimely nature of the termination of employment. The clause concerning notice, although legal in itself, had been used improperly in this case.

The *defendant* observes that the applicant received, in addition to one month's notice, compensation amounting to two months' salary according to Article 102 (2) of the Staff Regulations.

5. On the admissibility of the evidence tendered

Although in his originating application, the *applicant* expressly reserved the right to give particulars at a later stage of the nature of the evidence tendered if the facts and circumstances referred to in his application were contested, the *defendant* objects that according to Article 42 (1) of the Rules of Procedure the delay in indicating such evidence must be justified if it is not to be declared inadmissible.

The *applicant* criticizes the defendant for its formalistic attitude and states that Article 42 (1) of the Rules of Procedure recognizes in principle the right of the parties to formulate in the reply particulars of the nature of the evidence tendered while insisting that reasons be given in order to avoid abuse of the provision.

The *defendant*, while adhering to its contention that such particulars are inadmissible, observes that the one exception laid down in Article 42 to the rule therein stated only applies when reasons are given for the delay. If the defendant's failure to raise objections could constitute a valid reason for the delay, particulars of the nature of the evidence tendered need never be given in the originating application and Article 38 would thus have no meaning.

IV — Procedure

The procedure followed the normal course.

By order of 18 March 1964 the First Chamber of the Court decided to order the following facts to be proved by witnesses:

(a) Is it true that since September–October 1961 the applicant was systematically deprived of all contacts with the departments? In particular, is it true that those heads of department with whom administrative contact was essential, notably those of staff administration and of the stores and instruments supervision department, were advised by Dr Ritter not to cooperate with the applicant? If so, were reasons given for this direction, and if so, what were they?

(b) Is it true that, following his preparation of the minutes of the first meeting of the steering committee, the applicant was relieved of this task?

(c) Is it true that the 'planning office', for which the applicant became responsible after the assignment of Mr Mercereau to Dr Ritter, had no powers, no existence as a department and no communication with the Director, the Assistant Director or the departments?

On 13 May 1964 the First Chamber of the Court heard the following witnesses on these questions:

Mr H. Marcus, head of the Personnel and Welfare Department of the Joint Research Centre, Ispra;

Mr W. Metzger, head of the Administration and Finance Department of the Joint Research Centre, Ispra;

Mr G. L. Faa di Bruno, official of the EAEC;

Mr M. Camps, head of the Supply Department of the Joint Research Centre, Ispra;

Mr F. P. Mercereau, Assistant Director of the Joint Research Centre, Ispra.

The parties were heard on 13 May 1964.

The Advocate-General gave his opinion at the hearing on 13 June 1964.

Grounds of judgment

On admissibility

The defendant has made no objection to the admissibility of the application and no grounds exist for the Court to raise the matter of its own motion. The application is therefore admissible.

On the substance of the case

On the ground of complaint based on the irregular extension of the probationary period

The applicant maintains that the extension of his probationary period was detrimental to him on the ground that the report prepared at the end of his first six months' service was favourable to him, whereas the report prepared after the extension of his probationary period, on which the Establishment Board relied, was unfavourable. Therefore, since the extension was irregular, so too must be the contested decision.

Even if the applicant's probationary period did not take an entirely normal course it cannot be said that the irregularities invoked in this connexion are such as could invalidate the decision not to integrate him.

In fact, since the integration procedure took place more than a year after the end of the period referred to in the probation report of 16 February 1962, the administration, notwithstanding any extension of the applicant's probationary period, had the right and the duty to submit to the Establishment Board a more recent report covering the entire period which had elapsed since the applicant was engaged. The establishment report drawn up in November 1962 was therefore properly put before the Establishment Board.

This ground of complaint is therefore unfounded.

On the ground of complaint based on the irregularity of the integration procedure

The applicant complains that the full contents of the opinion of the Establishment Board were not made available to him before the decision refusing to integrate him was taken and that the opinion was not placed in his personal file.

The unfavourable opinion of the Establishment Board is binding on the appointing authority. Any ground of complaint by the person concerned against this opinion could only be raised effectively by means of an action against the decision of the appointing authority, since this decision, which constitutes the final step in the integration procedure, is required to confirm the opinion.

Therefore, the applicant could not have been prejudiced by the failure to inform him of the opinion before the decision was taken. In those circumstances, the administration cannot be regarded as bound to inform the party concerned of the opinion of the Establishment Board before its decision is notified to him.

Moreover, the applicant considers that the integration procedure is irregular in that he was allowed no meeting with those heads of department who drew up his establishment report.

The applicant was in a position to give the Establishment Board his views on the observations made with regard to him by his heads of department.

Furthermore, in view of the circumstances peculiar to this case, a direct meeting between the servant concerned and his heads of department could hardly have brought any substantial new facts to the notice of the Board.

The applicant's complaints based on the unlawful nature of the integration procedure are therefore unfounded.

On the submissions concerning the irregular assessment of the applicant's abilities

(a) On the infringement of the Treaty

The applicant maintains that, since, during the period covered by the substance of the establishment report, it had been made impossible for him

to perform his duties as Assistant to the Director of the Ispra Centre for which he had been engaged, any assessment of his abilities was basically defective.

It is true that on the assignment of the applicant to a 'planning office' established following the arrival at Ispra of Mr Mercereau a change took place in his original position within Euratom. In view of the very general terms used in the letter of appointment and of the requirements relating to the organization of the departments which became particularly apparent during the establishment of the Ispra Centre, this transfer does not appear to exceed the very wide powers which it must be admitted were necessarily held at that time by the Directorate of the Centre.

In these circumstances, it is reasonable that the report drawn up for the purposes of the integration procedure concerning the applicant should assess all the activities in fact carried out by the applicant in the performance of the various tasks entrusted to him.

This ground of complaint is therefore unfounded.

The applicant maintains, moreover, that he had not been allowed to show his abilities since no specific task had been given to him during the period covered by the substance of the establishment report and all contact with the various departments had been refused him.

As regards the work he did do, the applicant is criticized mainly for his lack of initiative in finding problems for study and for his carelessness; although, as was admitted in his evidence given to the Chamber by Mr Mercereau, Assistant Director of the Centre, the applicant's work on specific questions was at first of the required standard. The measures of inquiry carried out by the Chamber at the request of the applicant did not disclose anything which might show that he had been prevented from having contacts with those departments which might have been affected by his activities. Therefore, having regard to the very general nature of the tasks involved in the applicant's duties, there are no grounds for stating that he had no opportunity to demonstrate his abilities.

Although it is possible that the deterioration in the applicant's personal relations with the Directorate of the Ispra Centre and his disappointment at being assigned to the planning office affected his general behaviour, this could not justify his negative attitude, typified among other things by several unjustified periods of absence, which was contrary to the basic principles necessary for the efficient running of the departments.

This ground of complaint cannot therefore be upheld.

(b) On the misuse of powers

The applicant maintains that the Director-General misused his powers in drawing up an unfavourable report in that he used his powers of assessment for personal ends.

The report on the applicant submitted to the Establishment Board by the Assistant Director of the Centre who did not have a poor relationship with the applicant, confirms in substance, although in more carefully chosen terms, the unfavourable report of the Director-General. This being so, there is no conclusive evidence that the unfavourable assessment of the applicant made in the report of the Director-General of the Centre was based on personal animosity against the applicant. This submission cannot therefore be upheld.

On the claim for damages

It is clear from the above considerations that the applicant has been unable to show that the contested decision was illegal. Therefore, taking into account its nature and purpose, this decision could only constitute a wrongful act giving rise to a claim for damages if it contained superfluous criticisms of the person referred to in it. In this case the statement of reasons for the contested decision does not contain such criticisms.

Therefore, it only remains to consider the claim for damages based on insufficiency of the period of notice. The period of one month's notice applied to the applicant was the period laid down in his contract of employment. Moreover, under Article 102 (2) of the Staff Regulations the applicant received in addition compensation equal to two months' basic salary as provided for in Article 34 of the Staff Regulations. By payment of this compensation, directly determined by the Staff Regulations, the defendant has properly fulfilled its obligations with regard to notice in this case.

Therefore the conclusions of the applicant concerning damages cannot be accepted.

Costs

The applicant has failed in his action.

Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

However, under Article 70 of the Rules of Procedure, in proceedings instituted by servants of the Communities, institutions shall bear their own costs.

Since the witnesses were heard in their capacity as officials of the Commission of the EAEC, their travel expenses must be borne by the defendant.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the witnesses;
Upon hearing the opinion of the Advocate-General;
Having regard to the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community;
Having regard to Article 152 of the Treaty establishing the European Atomic Energy Community;
Having regard to the Staff Regulations of officials of the European Atomic Energy Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT (First Chamber)

hereby:

1. **Dismisses the application as unfounded**;

2. **Orders each party to bear its own costs**;

3. **Orders the travel expenses of the witnesses to be borne by the defendant.**

Trabucchi Delvaux Strauss

Delivered in open court in Luxembourg on 25 June 1964.

A. Van Houtte
Registrar

A. Trabucchi
President of the First Chamber