

JUDGMENT OF THE COURT SECOND CHAMBER
18 OCTOBER 1977 ¹

André Schertzer
v European Parliament

Case 25/68

Officials — Other servants — Temporary staff — Staff employed to fill posts with a political group in the European Parliamentary Assembly — Contract for an indefinite period — Clause relating to notice — Termination of the contract — No statement of reasons required

(Conditions of Employment of Other Servants, Articles 11 and 47)

The justification for the unilateral termination of a contract of employment for an indefinite period containing a clause stating the period of notice, such termination being expressly provided for by Article 47 of the Conditions of Employment of Other Servants, is to be found in the contract of employment and reasons do not have to be stated for

it. In this respect the position of temporary staff is fundamentally distinct from that of officials under the Staff Regulations; in particular, there is no basis for the analogy which justifies and limits the reference contained in Article 11 of the Conditions of Employment of Other Servants to Article 25 of the Staff Regulations of Officials.

In Case 25/68

ANDRÉ SCHERTZER, formerly a member of the temporary staff of the European Parliament, residing in Cap d'Agde (France), represented by Marcel Slusny, Advocate at the Cour d'Appel, Brussels, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Centre Louvigny, 34 B/IV Rue Philippe-II,

applicant,

v

EUROPEAN PARLIAMENT, represented by its Secretary General, Hans-Robert Nord, acting as Agent, assisted by Alex Bonn, Advocate of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of Mr Bonn, 22 Côte d'Eich,

defendant,

¹ — Language of the Case: French.

Application for the annulment of the measure of 19 September 1968 by which the European Parliament terminated with effect from 16 September 1968 the applicant's contract as a member of the temporary staff, alternatively of the implied decision rejecting the applicant's complaint against the letter of 12 March 1968 by which the European Democratic Union Group (now the European Progressive Democrats Group) terminated his employment as Administrative General Secretary, alternatively of the ruling contained in the letter from the President of the European Parliament dated 24 July 1968 that the applicant's complaint was inadmissible,

THE COURT (Second Chamber)

composed of: P. Pescatore, Acting President of Chamber, Lord Mackenzie Stuart and A. Touffait, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

The facts of the case, the procedure and the conclusions and arguments of the parties may be summarized as follows:

I – Facts

André Schertzer, an official of the Council of the European Communities since 1 July 1963, was employed from 1 June 1964 as Administrative General Secretary of the 'Non-attached' Group, subsequently the European Democratic Union Group (now the European Progressive Democrats Group), in the European Parliament.

Pursuant to a contract of employment concluded on 29 January 1965 under the Conditions of Employment of Other Servants of the Communities and signed on behalf of the European Parliament by Jacques Vendroux, in his capacity as Chairman of the European Democratic Union Group, Mr Schertzer became a member of the temporary staff in the same post and in Grade A 3 with effect from 1 January 1965 for an indefinite period.

By letter dated 12 March 1968, signed by Jean de Lipkowski, Chairman of the European Democratic Union Group, and

by Louis Terrenoire Vice-President of the European Parliament, the European Democratic Union Group informed Mr Schertzer that it had decided to terminate his employment as General Secretary from that date and that notification of that decision represented the beginning of three months' notice.

On 20 May 1968 Edmond Borocco, Parliamentary Secretary of the European Democratic Union Group, informed the Secretary-General of the European Parliament that since Mr Schertzer had been unable because of his work to take the full annual holiday to which he was entitled during his assignment to the European Democratic Union Group, the termination of his contract of employment had been definitely fixed for 16 September 1968.

By letter dated 10 June 1968 the Secretary-General of the European Parliament informed Mr Borocco that he had noted the date on which Mr Schertzer's contract of employment was to expire, although the grounds for its postponement did not appear to be in accordance with Article 4 of Annex V to the Staff Regulations.

On the same day, namely 10 June 1968, Mr Schertzer submitted a complaint through official channels to 'the President of the European Parliament and the authority referred to in Article 6 of the Conditions of Employment of Other Servants of the European Parliament' under Article 90 of the Staff Regulations (Article 46 of the Conditions of Employment of Other Servants) against the decision of the European Democratic Union Group of 12 March 1968.

By letter dated 11 July 1968 Mr de Lipkowski, Chairman of the European Democratic Union Group, informed the Secretary General of the European Parliament that the action constituted by Mr Borocco's letter of 20 May was not in accordance with the decision of the

European Democratic Union Group, that that prolongation definitely terminated in any event Mr Schertzer's employment with the European Democratic Union Group.

By letter dated 24 July 1968 the President of the European Parliament informed Mr Schertzer that his complaint of 10 June was wrongly addressed: on 12 December 1962 the Bureau of the European Parliament, acting under Article 6 of the Conditions of Employment of Other Servants, delegated to each political group the task of designating the authority empowered to conclude contracts of employment with its servants. Since the European Democratic Union Group had designated its Chairman, he was the authority to whom complaints by servants of his group should be addressed. The President of the European Parliament had no authority to deal with such a complaint.

On 19 September 1968 the Director-General of Administration of the European Parliament forwarded to Mr Schertzer the severance grant 'due to you on the termination of your temporary contract on the evening of 16 September 1968'.

II — Procedure

On 9 October 1968 Mr Schertzer brought the present action.

The written procedure followed the normal course. The Court (Second Chamber), after hearing the views of the Advocate-General, decided to open the oral procedure without any preparatory inquiry.

On 26 September 1969 the applicant lodged with the Court Registry certain documents in support of his application, in particular, photocopies of minutes of business meetings of the European Democratic Union Group and a copy of a letter of 17 May 1968 from Jean de

Lipkowski, Chairman of the European Democratic Union Group.

The European Parliament informed the Court that the validity of certain of these documents was contested by the European Democratic Union Group and that Mr de Lipkowski denied the authenticity of the letter of 17 May 1968; accordingly, the President of the Second Chamber, by order dated 1 October 1969, ordered the applicant to lodge the original of the documents in question.

After the European Parliament had submitted written observations on those documents, the parties were heard by the Court (Second Chamber) in the Deliberation Room on 29 October 1969.

During that hearing the applicant explained the cause of his delay in complying with the order of 1 October 1969 and the Court (Second Chamber), by order dated 29 October 1969, authorized the documents in question to be lodged and the European Parliament submitted further observations on them on 18 November 1969.

The Court (Second Chamber) was informed by the parties, on the one hand, that on 3 October 1969 the applicant had lodged a complaint alleging breach of trust before the senior Juge d'Instruction at the Tribunal de Grande Instance, Paris, on the question of the authenticity of the letter of 17 May 1968 from Mr de Lipkowski and, on the other hand, that Edmond Borocco and Raymond Triboulet, member and Chairman respectively of the European Democratic Union Group at the European Parliament, had on 18 November 1969 each lodged a complaint alleging forgery and the uttering of a forged document against Mr Schertzer before the Procureur de la République at the Tribunal de Grande Instance, Strasbourg.

As a result, by order dated 3 December 1969, the Court stayed the proceedings

pending a further decision of the Court and ordered that the parties should produce the judgments on the respective claims.

By a further order dated 3 December 1969 the Court (Second Chamber) suspended its decision on the applicant's claim made on 1 October 1969 for legal aid.

Since on 30 August 1976 the applicant informed the Court of his wish that the case should be retained on the register, the Court (Second Chamber) decided to reopen the oral procedure. The hearing was adjourned on various occasions.

On 27 January 1977 the applicant forwarded to the Court an order dated 6 November 1970 of the Juge d'Instruction at the Tribunal de Grande Instance, Strasbourg, quashing the indictment in respect of the information laid against him for forgery and the uttering of a forged document.

On the basis of further information and documents supplied on 27 January and 12 April 1977 the Court (Second Chamber), by order dated 28 April 1977, granted the applicant legal aid.

III — Conclusions of the parties

The *applicant* in his originating application claims in essence that the Court should:

- (a) principally: rule that the decision of 19 September 1968 confirming 16 September 1968 as the date of termination of the contract as a member of the temporary staff is invalid;
- (b) alternatively:
 - annul for lack of competence and misuse of powers the letter of 12 March 1968 terminating the contract;
 - declare that the contract of employment as a member of the temporary staff of 29 January 1965 is still in force;

- (c) order the defendants to bear the costs;
- (d) order the defendants to pay the applicant the sum of FB 1 by way of symbolic damages for the non-material loss caused.

The *European Parliament* in its statement of defence contends that the Court should:

- (a) declare the application to be inadmissible;
- (b) alternatively: declare it to be unfounded;
- (c) make an appropriate order for costs.

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

- (a) principally:
 - take note that he relies on the Court's discretion in maintaining his action against the second and third defendants referred to in the originating application;
 - declare that the submissions of inadmissibility put forward by the defendant are unfounded and reject them;
 - the same without prejudice to his previous conclusions;
- (b) alternatively and in so far as is necessary:
 - take note that the applicant offers to produce witnesses, in particular the Parliamentary Secretary and the Treasurer of the European Democratic Union Group, Mr Borocco, to the following facts:
 1. That during unofficial contacts which the applicant had with the group in May 1968 he was formally assured that the notice of termination of 12 March 1968 was to be regarded as rescinded and that as a result his contract of employment was to be continued for an indefinite period;
 2. That nevertheless the annulment and extension were not to be brought to the knowledge of the institution

until later and by September 1968 at the latest;

3. That pending such official notification the contract of employment was provisionally extended for a limited period expiring on 16 September 1968; that this was the true purport of the letter from Mr Borocco of 20 May 1968.

The *European Parliament* in its rejoinder contends that the Court should:

- (a) reject the applicant's submissions, conclusions and offer of proof;
- (b) the same without prejudice to the conclusions set out in the statement of defence.

IV — Submissions and arguments of the parties during the oral procedure

A — Admissibility

1. The naming of the defendants

The *European Parliament* is of the opinion that the authority referred to in Article 6 of the Conditions of Employment of Other Servants, in the present case the Chairman of the European Democratic Union Group, cannot be party to an action at law. The same is true of the political group of the European Democratic Union, which moreover has no legal personality. The European Parliament is the only appropriate defendant.

The *applicant* leaves the matter to the Court's discretion and refers to the judgment of 9 June 1964 in Joined Cases 79 and 82/63, *Jean Reynier and Piero Erba v Commission* [1964] ECR 259, which states that the appointing authority, which exercises in fact the powers of an employer with regard to officials, has the capacity to be a party to legal proceedings in disputes between servants and the administration.

2. The subject-matter of the dispute

The *European Parliament* is of the opinion that its letter of 19 September 1968 is not a contestable decision. It merely forwarded to the applicant his severance grant in pursuance of the decision terminating his contract of 12 March 1968, as supplemented by the letter from Mr Borocco of 20 May 1968; the action is therefore inadmissible in so far as it is directed against the letter of 19 September 1968.

As for the alleged implied decision rejecting the applicant's complaint of 10 June 1968, the explicit reply from the President of the Parliament dated 24 July 1968 rules out the possibility of speaking of silence on the part of the administration.

The fact that the applicant alleges lack of competence against the letter of termination from the European Democratic Union Group dated 12 March 1968 necessarily means that he regards the President of the Parliament as the authority referred to in Article 6 of the Conditions of Employment of Other Servants. The complaint through official channels was therefore wrongly directed.

The applicant is in fact complaining about the letter of termination dated 12 March 1968.

The *applicant* denies that the letter dated 19 September 1968 from the Parliament is merely in execution of a previous decision.

If the President of the Parliament lacked the necessary competence, as alleged in his letter of 24 July 1968, it follows that the authority referred to in Article 6 of the Conditions of Employment of Other Servants, to which the complaint of 10 June 1968 was also addressed, remained silent for more than two months; the implied decision of refusal resulting from that silence is therefore capable of being the subject-matter of an action. If, on the

other hand, the President of the Parliament was competent, his letter of 24 July 1968 cannot be regarded as an answer going to the substance and therefore the silence continued beyond that date.

If the letter dated 24 July 1968 from the President of the Parliament can be regarded as going to the substance, it is contested.

The action is not directed against the letter of termination of 12 March 1968 but against the implied decision rejecting the complaint made against that letter.

3. The time limit for bringing an action

The *European Parliament* considers the action, in so far as it is directed against the letter dated 24 July 1968 from the President of the Parliament, as being out of time: the time limit of two months from the date of the decision rejecting the complaint through official channels expired on 24 or at the latest 26 September 1968.

The *applicant* considers that the administration did not answer the complaint of 10 June 1968 and that the action against that failure to answer, brought on 9 October 1968, was brought in good time. If, on the other hand, the letter from the President of the Parliament were to be regarded as an express answer on the substance the action would be admissible since the period of three months laid down for bringing an action was kept open because the complaint through official channels was submitted and the period thus did not expire until 24 October 1968.

4. Conduct of the applicant

The *European Parliament* maintains that the action as a whole should be regarded as inadmissible because of the applicant's acquiescence: by letter dated 21 May 1968 he noted that the

termination of his employment had been postponed to September and he gave the Parliament particulars of the bank account to which his severance grant should be paid. The only interpretation of the applicant's attitude is that he accepted the decisions taken with regard to the termination of his employment.

The *applicant* considers that great care should be exercised in deducing acquiescence on the part of a public servant from his conduct. He felt himself bound to reply to the European Parliament's request for information both on simple grounds of courtesy and in order not to render himself liable to disciplinary proceedings.

B — Substance

Submissions relating to the measures of 19 September 1968

1. Infringement of provisions governing the employment of staff

The applicant maintains that the letter of 19 September 1968 from the Director-General of Administration fixing 16 September as the date of termination of his contract showed that the Parliament regarded the letter of 12 March 1968 from the European Democratic Union Group as being of no effect. The contract of employment had thus been determined without the requisite three months' notice; this was invalid since it was contrary to Article 47 (2) (a) of the Conditions of Employment of Other Servants, in conjunction with the second paragraph of Article 4 of Annex V to the Staff Regulations.

During informal meetings in May 1968 with members of the European Democratic Union Group the applicant received promises which seemed to indicate that the decision of 12 March 1968 was rescinded by the Group. He offers to produce witnesses to prove this (*supra*: III — Conclusions of the parties, 3 (b)).

The *European Parliament* considers, on the other hand, that the extension of the applicant's contract in no way detracts from the decision of 12 March 1968 to terminate his employment.

The sole purpose of the letter of 20 May 1968 from Mr Borocco was to protect the applicant's rights in respect of unused leave. The fact that the method of compensation suggested therein was not completely in accordance with the second paragraph of Article 4 of Annex V of the Staff Regulations is irrelevant since the applicant has no interest in citing an irregularity which is more advantageous to him than the strict application of the staff regulations. In any event, the applicant has not contested the letter of 20 May 1968.

The offer of proof made by the applicant for the first time in the reply without any justification for the delay is inadmissible.

Moreover, on the applicant's own admission, the decision of 12 March 1968 to determine the contract could have been annulled only in writing. In addition, Mr Borocco contests the promises alleged by the applicant and in any event he was not authorized to take a decision on behalf of the Group; the latter formally denies the applicant's allegations. The offer of proof is therefore irrelevant.

It is inconceivable that the administration of the Parliament, in writing the letter of 19 September 1968 to the applicant, should have intended not to execute the decision of 12 March 1968 to terminate the applicant's employment, of which decision it was aware, but to give a new notice in place of the previous decision, which is alleged to have been annulled, although that annulment had not even been brought to its attention.

Finally, even assuming that the letter of 19 September 1968 terminated the applicant's employment, the dispute is

concerned solely with the contractual notice, since it remains common ground that the contract was terminated. The action can therefore give rise at most only to the award of compensation.

2. Lack of a statement of reasons

The *applicant* complains that no reasons were given in the letter of 19 September 1968 contrary to the provisions of Article 25 of the Staff Regulations, in conjunction with Article 11 of the Conditions of Employment of Other Servants.

The *European Parliament* considers that the observations made in respect of the first submission make this complaint irrelevant.

Submissions relating to the decision of 12 March 1968.

Should the three months' notice expiring on 12 June 1968 be regarded as having been validly extended until 16 September 1968, the applicant makes the following complaints against the notice dated 12 March 1968:

1. Lack of competence

The *applicant* maintains that to have legal effect the letter of termination dated 12 March 1968 should have been signed on behalf of the European Parliament by the appointing authority and not by the Chairman of a political group. The counter-signature of one of the eight Vice-Presidents of the European Parliament, a member of the European Democratic Union Group, cannot bind the institution.

The European Democratic Union Group has never designated the appointing authority; accordingly, the contract of employment could not be validly terminated save by the legal representatives of the institution itself.

In the contract of employment the Chairman of the European Democratic

Union Group expressly acted 'on behalf of the European Parliament'; the decision to terminate the employment, on the other hand, was not taken on behalf of the Parliament.

A decision by the institution is always required to terminate the contract of employment of a member of the temporary staff, even if the authority referred to in Article 6 of the Conditions of Employment of Other Servants has been duly designated.

The *European Parliament* points out that the authority competent both to conclude the contract of employment and to terminate it was the Chairman of the European Democratic Union Group.

It follows by implication from the decision of the Bureau of the Parliament of 12 December 1962 delegating to each political group the power to designate the authority empowered to conclude contracts of employment that the power of terminating those contracts was likewise delegated to the political group; the legal representatives of the Parliament thus had no authority in the matter. The European Democratic Union Group in fact decided that its Chairman should represent it 'generally in all acts whatsoever'; that decision was not recorded in writing by reason of the fact that the European Democratic Union Group has never kept minutes of its meetings.

Even assuming that there was no formal designation of the competent authorities, the European Democratic Union Group would have to exercise its powers in relation to staff through the intermediary of the authorities which normally represent it.

The contested decision was adopted in the name and on behalf of the European Parliament; in law it is not possible to disregard the decision conferring on political groups the power to appoint their temporary servants.

2. *Lack of a statement of reasons*

The *applicant* complains that no reasons were given in the written notice of termination of 12 March 1968, contrary to the provisions of Article 25 of the Staff Regulations and of Article 11 of the Conditions of Employment of Other Servants.

The *European Parliament* considers that the statement of reasons in a notice terminating a contract of indefinite duration of a member of the temporary staff may be limited to stating the period of notice.

3. *Misuse of powers*

The *applicant* complains that the reasons for the decision of 12 March 1968 did not have their origin in the interests of the service: it appears from a letter of 14 April 1967 from Mr Terrenoire that the post of General Secretary of the European Democratic Union Group 'must be reserved for one of our colleagues who has not been re-elected as a member of Parliament'.

The Conditions of Employment of Other Servants do not distinguish between political and administrative officials; one and the same set of conditions must be applied to all members of the temporary staff of the institution. The replacement of the applicant is contrary in particular to Article 12 (1) of the Conditions of Employment of Other Servants.

As regards the confidence in the Secretary of the political group displayed by the group itself, the minutes of a meeting held in Paris on 24 April 1967 reveal a very positive assessment by the European Democratic Union Group of the services rendered by the applicant.

The *European Parliament* maintains that the institution was entitled in accordance with Article 47 (2) of the Conditions of Employment of Other Servants to terminate the applicant's contract of employment provided only that it had

regard to the period of notice. The servants of the political groups are selected according to special criteria and are in fact in a different position from that of other members of the temporary staff; thus the applicant, who was an official in Grade B 2 with the Council, was able suddenly to assume duties in Grade A 3, step 4. The corollary is necessarily a certain precariousness in the post.

As for the letter of 14 April 1967 from Mr Terrenoire, it is proper to observe that it was not implemented, since almost a year elapsed before the notice of termination of 12 March 1968 was sent.

The European Parliament does not have to inquire into and in fact did not inquire into the motives which may have dictated the decision of the European Democratic Union Group to terminate the applicant's contract.

As for the minutes of the meeting of the European Democratic Union Group of 24 April 1967 referred to by the applicant, the European Democratic Union Group formally states that it never drafted or, as a result, approved minutes of its meetings at the time when the applicant was General Secretary. At a meeting of the group in Paris in April 1967 the only question at issue was that of not implementing the letter of 14 April 1967 from Mr Terrenoire and of provisionally retaining the applicant's services until he could be taken over by the General Secretariat of the European Parliament as a result of an internal competition.

4. *Disguised sanction*

The *applicant* considers that since the written notice of termination dated 12 March 1968 exempted him from working during the period of notice, it in fact constituted a disguised sanction.

The *European Parliament*, on the other hand, takes the view that it was a benefit granted to the servant concerned, whose

search for another post was thus facilitated. In view of the special nature of the applicant's duties the political group to which he was attached was at liberty to dispense with his services immediately.

Submission relating to the letter of 24 July 1968.

The *applicant* remains of the opinion that the President of the European Parliament was competent to decide as to the substance of his complaint of 10 June 1968. Even if the President considered himself to be without authority he ought to have forwarded the complaint to the competent authority. A simple ruling of inadmissibility is a misuse of powers.

The *European Parliament* denies that it was competent in the present case. Its President was under no obligation to forward the applicant's complaint to the competent authority. Following the reply of 24 July 1968 it was for the applicant himself to forward his complaint to the authorities referred to in the President's letter.

V — Oral procedure

The parties submitted oral observations at the hearing on 9 June 1977.

The Advocate-General delivered his opinion at the hearing on 22 September 1977.

Decision

- 1 By his application dated 9 October 1968 the applicant seeks the annulment of the measure by which the European Democratic Union Group established within the European Parliament terminated his employment as Administrative General Secretary.

State of the procedure

- 2 After the written procedure was completed the applicant produced on 26 September 1969 a number of new documents relating to his action against the European Democratic Union Group.
- 3 By orders dated 1 and 29 October 1969 the Court authorized these documents to be lodged, without prejudice to the rights of the defendant and subject to their admissibility, authenticity and relevance, in respect of which certain were challenged.
- 4 At the same time the Court was informed that in relation to the same documents the applicant had filed a complaint before the Tribunal de Grande

Instance, Paris, against an unknown person for breach of confidence and that in their turn two Members of the European Parliament belonging to the European Democratic Union Group had lodged a complaint against the applicant before the Tribunal de Grande Instance, Strasbourg, for forgery and the uttering of forged documents.

- 5 In view of the connexion between these actions and the present case the Court, by order dated 3 December 1969, stayed the proceedings pending the decisions to be taken on the complaints referred to.
- 6 In the absence of any information on the outcome of those actions after the lapse of a prolonged period the Court informed the applicant by letter dated 14 November 1975 that it intended to remove the case from the register, and set the parties a time-limit within which to submit any observations.
- 7 Following this notification the applicant gave notice of his intention to continue the action and subsequently informed the Court that the complaint lodged against him before the Tribunal de Grande Instance, Strasbourg, was not being pursued.
- 8 On the other hand, he was not able to give any information as to the result of the complaint which he had himself made to the Tribunal de Grande Instance, Paris.
- 9 Upon completion of the file the case was heard on 9 June 1977 and deliberated after the Advocate-General had delivered his opinion.

The subject-matter and admissibility of the action

- 10 By letter dated 12 March 1968 signed by the Chairman and by a member of the European Democratic Union Group the applicant was informed that the group had decided to terminate the employment which he had entered pursuant to a contract of employment dated 29 January 1965.
- 11 That letter gave three months' notice from notification of the decision, it being understood that the remuneration relating to that period would be paid but that the applicant would not be required to discharge his duties.

- 12 On 10 June 1968 the applicant forwarded a complaint through official channels under Article 46 of the Conditions of Employment of Other Servants of the Community and Article 90 of the Staff Regulations to the President of the European Parliament against the communication of 12 March 1968.
- 13 By letter dated 24 July 1968 the President informed the applicant that his complaint was wrongly addressed since the Bureau of the European Parliament had by decision dated 12 December 1962 entrusted each political group with the task of appointing the authority empowered to conclude contracts of employment with its servants, so that the complaint should have been made to the Chairman of the group.
- 14 At the same time the European Democratic Union Group asked the Secretary-General of the European Parliament to postpone the expiry of the notice terminating the applicant's contract of employment until 16 September 1968, in view of the fact that because of his work he had been unable to take all the leave to which he was entitled.
- 15 By letter dated 10 June 1968 sent to the Parliamentary Secretary of the European Democratic Union Group, the Secretary-General of the European Parliament stated that he had noted the new date on which the contract of employment was to expire and that he would have regard to it in spite of certain reservations which he had as to whether the extension was in accordance with the applicable provisions of the Staff Regulations.
- 16 As a result the Director-General of Administration of the European Parliament forwarded to the applicant by letter dated 19 September 1968 the account of the severance grant due upon termination of the contract of employment on 16 September 1968.
- 17 The applicant has brought his action mainly against the letter from the Director-General of Administration dated 19 September 1968, and alternatively against the implied decision of rejection of the complaint lodged on 10 June 1968 with the President of the European Parliament in respect of the letter of termination dated 12 March 1968.

- 18 The European Parliament, taking the view that the decisive measure is the letter of termination dated 12 March 1968, has contested the admissibility of the action on grounds of delay.
- 19 Although it is true that the letter of termination dated 12 March 1968 from the European Democratic Union Group must be regarded as having alone given rise to the claim in the action, the effect of the delay in instituting proceedings should not be strictly applied to the applicant in view of the difficulty which he experienced in identifying the authority competent to receive his complaint and the uncertainty with regard to the period of notice which resulted from the extension requested on his behalf by the European Democratic Union Group and granted by the Secretary-General of the Parliament.
- 20 In these circumstances the wrongly addressed complaint of 10 June 1968 may be regarded as having preserved the applicant's right of action.
- 21 The action is therefore admissible.

Substance

- 22 The applicant puts forward four substantive submissions, based on the lack of competence of the authority which decided his dismissal, infringement of provisions governing the employment of staff, lack of a statement of reasons for the decision taken with regard to him and misuse of powers.
- 23 In assessing those submissions it is proper to recall that the basis of the applicant's relationship with the defendant institution and with his immediate employer, the European Democratic Union Group, was a 'contract of employment as a member of the temporary staff', signed on 29 January 1965, between the applicant and the Chairman of the European Democratic Union Group acting in the name of the European Parliament.
- 24 Under that contract the applicant was engaged 'subject to the provisions of the Conditions of Employment of Other Servants of the Communities as a member of the *temporary staff*' and classified in Grade 3 of Category A.

- 25 The contract was concluded 'for an indefinite period' subject to termination on three months' notice by the employer and one month's notice by the person concerned – without prejudice to Articles 48, 49 and 50 of the Conditions of Employment of Other Servants which provide for immediate dismissal.

The submission as to lack of competence

- 26 The applicant maintains that to have legal effect the letter of termination dated 12 March 1968 should have been signed in the name of the European Parliament by the appointing authority and not by the Chairman of a political group, especially as his contract of employment was signed at the time by the Chairman of the European Democratic Union Group acting 'on behalf of the European Parliament'.
- 27 It is not contested that by decision of the Bureau of the Parliament dated 12 December 1962 the power to conclude and terminate contracts of employment was delegated to the political groups in respect of staff placed at their disposal.
- 28 The applicant cannot therefore contest the power of the Chairman of the European Democratic Union Group to terminate a contract concluded by his predecessor in the same capacity.
- 29 This submission must therefore be rejected.

The submission based on an infringement of the provisions governing the employment of staff

- 30 The applicant claims that since his contract was extended following the letter of termination dated 12 March 1968 a new period of notice should have been set, and that Article 47 of the Conditions of Employment of Other Servants was infringed since paragraph (2) thereof provides that where the contract is for an indefinite period the employment shall cease only at the end of the period of notice stipulated in the contract.

- 31 The letter of termination dated 12 March 1968 clearly shows the intention of the European Democratic Union Group to terminate the applicant's employment.
- 32 This intention to terminate is confirmed by the fact that the applicant was not required to discharge his duties during the period of notice.
- 33 The steps taken by the European Democratic Union Group to obtain on behalf of the applicant an extension of this period of remuneration following his suspension from his post cannot be regarded as a revocation of a formally worded dismissal.
- 34 The submission must therefore be rejected.

Lack of a statement of reasons

- 35 The applicant claims that the letter of termination dated 12 March 1968 contains no mention of the reasons for the termination of his employment.
- 36 He states that that decision is accordingly contrary to the second sentence of the second paragraph of Article 25 of the Staff Regulations which provides that: 'Any decision adversely affecting an official shall state the grounds on which it is based', since the applicant may rely on that provision in view of the first paragraph of Article 11 of the Conditions of Employment of Other Servants, which provides: 'Articles 11 to 26 of the Staff Regulations, concerning the rights and obligations of officials, shall apply by analogy ...'
- 37 In addition, the applicant refers in this respect to considerations relating to the characteristics of contracts of employment and the guarantees as to security given to members of staff recruited under contract, which considerations were set out by the Court in its judgments of 15 July 1960 in Cases 43, 45 and 48/59, *von Lachmüller and Others*, and 16 December 1960 in Case 44/59, *Fiddelaar*, (Rec. 1960, pp. 933 and 1077 respectively).
- 38 Article 47 of the Conditions of Employment of Other Servants provides that the employment of temporary staff shall cease, where the contract is for a

fixed period, on the date stated in the contract and, where the contract is for an indefinite period, at the end of the period of notice stipulated in the contract.

- 39 The justification for the unilateral termination of a contract of employment, expressly provided for in the aforementioned provision and, in addition, recognized by the applicant at the time of his recruitment, is to be found in the contract of employment and therefore reasons do not have to be stated for it.
- 40 In this respect the position of the applicant is fundamentally distinct from that of an official under the Staff Regulations, such that there is no basis for the analogy which justifies and limits the reference contained in Article 11 of the Conditions of Employment of Other Servants to certain provisions of the Staff Regulations.
- 41 It is not possible to counter this legal assessment with considerations drawn from the period prior to the adoption of the Staff Regulations, when contractual relations were the general rule and were intended as a whole to be consolidated subsequently within the framework of the Staff Regulations.
- 42 Considerations of this nature are therefore irrelevant since this case is concerned with the assessment of the position of a member of staff recruited for a particular purpose of an essentially political nature, as defined in Article 2 (c) of the Conditions of Employment of Other Servants.

The submission of misuse of powers

- 43 Finally, the applicant refers to a number of factors alleged to show that his dismissal was ordered for reasons alien to the interests of the service and constitutes 'a disguised sanction' against him.
- 44 In spite of the very favourable assessment of his work reported in the minutes of the European Democratic Union Group and in documents said to have been sent to him, the decisive reason for his dismissal is alleged to have been to provide a post for a member of the group, a former Member of the Parliament who had not been re-elected.

- 45 In accepting a post with very special characteristics such as that of General Secretary of a Parliamentary group the applicant must have been aware of the political factors and risks which were involved both in his recruitment and his subsequent dismissal.
- 46 The complaints made by him against his former employer do not reveal any breach of contract on the part of the group to which he was posted.
- 47 Nor can his dismissal be described as a 'disguised sanction' when it represents merely the exercise of a contractual right which the parties reserved when the contract of employment was concluded.
- 48 This submission must therefore be dismissed.
- 49 For all the abovementioned reasons both the application for a declaration that the dismissal, the subject-matter of the letter of 12 March 1968, is null and void and the claim for damages in respect of non-material loss must be dismissed.

Costs

- 50 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.
- 51 The applicant has failed in his submissions.
- 52 However, under Article 70 of the Rules of Procedure, the costs incurred by the institutions in actions brought by servants of the Communities are to be borne by the institutions.
- 53 By order of 28 April 1977 the Court (Second Chamber) granted the applicant legal aid.
- 54 In application of Article 76 (5) of the Rules of Procedure it is appropriate to order the payment to the cashier of the Court of the amount advanced by way of legal aid.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**
2. **Orders the parties to bear their own costs. The applicant is ordered to refund to the Court the amounts advanced by it as legal aid.**

Pescatore

Mackenzie Stuart

Touffait

Delivered in open court in Luxembourg on 18 October 1977.

A. Van Houtte

Registrar

P. Pescatore

Acting President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL MAYRAS
DELIVERED ON 22 SEPTEMBER 1977¹

*Mr President,
Members of the Court,*

Mr André Schertzer entered the employment of the Council of Ministers of the European Communities on 1 July 1963 in Grade B 2, third step.

He was seconded by that institution to the European Parliament on 1 June 1964 to be Administrative General Secretary of the Non-attached political group, which subsequently became the European Democratic Union Group.

In the absence of a budgetary post he was first of all given a contract as a member of the auxiliary staff and then on 1 January 1965 he was made a temporary servant under a contract signed by the Chairman of the group and classified in Grade A 3, fourth step.

That is to say that he exchanged an established post, with the guarantees of stability which that involves, for a precarious post, since his contract as a temporary servant could, under the regulations applicable to other servants,

¹ — Translated from the French.