OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 19 MARCH 1975 [1]

Mr President,
Members of the Court,

On the expiry of her annual contract as a member of temporary staff, which had subsisted between her and the Commission since 1 August 1972, the applicant continued to be employed. As regards the terms of its relationship with her, the Commission for the first time expressed its intentions in letters dated 24 and 28 August 1973 in which the Director of Personnel informed her that the Commission proposed to extend the temporary staff contract by three months. The letter of 28 August referred to enclosure of a copy of the contract for signature but the applicant maintains that she never received it.

These two letters arrived at her office address during her prolonged absence on account of ill-health. Meanwhile, apparently about 4 September, a computer card arrived at the same address from the Computer Centre of the Communities in Luxembourg; in it 31 July 1974 was referred to as the date of expiry of the temporary staff contract between her and the Commission.

In the applicant's reply it is stated that, when her husband heard that there was correspondence addressed to her in the office, he arranged, in view of her own inability to go to work because of ill-health, to fetch the correspondence in which, as we have seen, there were conflicting statements. In this connexion, however, it should be noted that the computer card was dated 24 August, whereas one of the letters written on behalf of the Director of Personnel concerning extension for three months only bore the same date and the other a later date. Accordingly, even if it could be held that the date mentioned as that of expiry of the contract contained on the computer card was valid as a contractual offer once it had been communicated to her, it could not in the present case be so regarded because the individual concerned received it at the same time as two letters of the same or later date in which the authority competent to draw up a new contract with her expressed a different intention. Even if it had been a question of an annual offer of renewal it would therefore, have, through the letters, been validly revoked before it had been communicated to her.

In a letter of 12 October 1973, the Director of Personnel informed the applicant that her employment with the Commission would cease on 31 October 1973. The letter referred to a subsisting contract of service which was due to expire on that date and stated that the Commission did not intend to renew it.

The applicant contends that this letter in fact represents a decision to dismiss her because, according to her, the Commission had already renewed her contract of service for the period of a year, as is clear from the computer card, which is based on factual details contained in an official's personal file. The defendant admits that renewal for a year of the applicant's contract of service had at one time been under consideration but that later, before this decision was finalized, the competent authority had changed its mind in view of the applicant's repeated absences from work due to illness and also because her conduct at work was not entirely satisfactory.

There is no need here to go into the merits of the dispute between the parties concerning the applicant's conduct at work and the contradiction which the

1 — Translated from the Italian.

applicant sees in the fact that she had a good report whereas the letters of 24 and 28 August 1973 stated that 'there has been no real improvement in the report on your conduct at work', whilst reference was subsequently made to the unsatisfactory manner in which she had carried out her duties. This aspect of the dispute might repay study if it involved termination of the contract without notice on disciplinary grounds within the meaning of Article 49 [of the Conditions of Employment of staff other than officials]. This case, however, can involve only one of two alternatives: either

(a) discharge of the contract through expiry on the date laid down therefor: this would involve the concept of implied acceptance of the three months' contract by the person concerned. In any case, she had had notice of the relevant offer of a contract even though she had not received a copy of the contract itself. Thus, in the absence of any reaction on her part making clear, in time, that she did not accept the contract, and in view of the fact that she has shown that she continued to believe herself to be employed, the said offer must be deemed to have been tacitly accepted; or

(b) if it were held that, in the absence of written agreement by the applicant, the offer of the three months' contract had not been accepted, a *de facto* contract could nevertheless be deemed to exist because the situation was one in which the applicant worked after expiry of her annual contract and was duly paid by the Commission — a *de facto* contractual relationship which is widely recognized in modern labour law but which, as such, is regarded as of indefinite duration.

In neither of the two cases can it be denied that there exists a relationship which is contractual in character.

In the first case, the letter of 12 October would be merely a notification that the contract was not being further renewed.

In the second case, the letter of 12 October should be regarded as notice within the meaning of Article 47 of the Conditions of Employment of 'Other Servants' of the Community.

In my opinion, there can be no doubt that the more correct alternative is the second one, which embraces the whole period after expiry of the first contract for a year, including the period prior to the express offer of a new contract on the part of the Commission.

Since, in the latter case, the period of notice cannot commence to run during sick leave, provided this does not exceed three months, it might be necessary to determine whether the requirements of Article 47, quoted above, have in fact been satisfied and, accordingly, whether the applicant was given a period of notice as provided for under paragraph (2) of that article. We have insufficient information on this point. In objecting that the period of notice was not observed, the applicant argued solely in terms of a new annual contract and did not, therefore, supply any factual information which might help to establish whether the requirements of Article 47 (2) concerning termination of a contract for an indefinite period were complied with.

It will be for the defendant to ascertain whether they were applied in the applicant's case and, if they were not, to take appropriate action.

On the basis, therefore, of the submissions put forward by the applicant, the application must be dismissed as unfounded.

Nevertheless, under Article 69 (3) of the Rules of Procedure, the defendant ought to be ordered to pay the applicant's costs because of its confusing behaviour and of the doubts which, from the administrative point of view, could justifiably have arisen concerning the applicant's actual position, as a result both of the length of time it took, after expiry of the first contract, to inform her of a decision which was the reverse of what she had been led to expect, and as a result of the conflicting information given to her after the contract had expired.