OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 26 FEBRUARY 1975 [1]

Mr President,

Members of the Court,

In the case in which I am called upon to give the Court my opinion, objections have been raised as to admissibility and afterwards consideration has been given to its substance.

Correct procedure would certainly require questions on the issue of admissibility to be considered first because it is only after they have been disposed of that the Court can proceed to decide on the substance of the case. However, in a case like the present one, in which, in order to settle an issue which is stated to be concerned with both economics and ethics, more than five hundred officials of the Commission are raising a question of law, I believe that, for once, the basic sequence in logic and also, of course, in law may be reversed for the special reason that the answer on the issue of substance seems to me to be so clear that I regard it as preferable from every point of view to deal with it first and suggest a decision whose importance transcends all normal patterns of procedure.

The application is for annulment of the decisions by which the Commission made a deduction from the salaries of its officials in respect of the last two days of a strike which took place from 11 to 15 December 1972.

If it were necessary to cover the whole ground on the subject of strikes, we should need to deal with a number of questions, beginning with the answer which would first have to be given on the legality of a strike of officials of the Community in the absence of any legislative provision for it. But, in my view, even this fundamental question can be disposed of by reminding ourselves of the inherent characteristics of this social phenomenon.

What, in essence, is a strike?

A concerted abstention from work for a trade union objective is certainly not to be judged by the criterion of sub-division into a collection of individual breaches of the master-and-servant relationship. The realities of life in modern society have produced this particular development, which is best described as a method which workers, as a section of society, use for attainment of a collective aim. Viewed in this light, a strike has its own place in the social structure which marks it out as constituting a clearly defined phenomenon both in itself and in the effects which it produces. There is, for example, wide and general acceptance that, unless the processes of elementary reason are to reversed, abstention from work by the individuals who take part in it is justifiably followed by non-payment of the reward for the work which their clear intention has been to avoid. If this were not so, a strike would lose all its meaning and, may I add, its morality. It would no longer have a claim to be considered as justified in the normal way as a militant act within the framework of a liberal interpretation of the master-and-servant relationship, but would be a mere abregation of the law. In such circumstances it would be all the more important to safeguard the corresponding position of the employer, who could not tolerate an avowed breach of the relationship which binds him to the individual worker.

Thus, apart from any more compelling considerations with regard to the legality of this method of social conflict when adopted by public officials, or to the

1 — Translated from the Italian.

silence of the Staff Regulations, it seems clear and beyond dispute that, in the case of a strike initiated by employees, the latter cannot expect to receive payment for work not performed on the days when they withhold their labour or, consequently, object to the deduction from salary pursuant to Article 85 of the Staff Regulations of any payment so made. And this argument, which is based on the very nature of the instrument as it is used and understood by the trade unions, goes well beyond the application of an argument akin to the 'services rendered' formula.

This is enough to condemn the applicants' claim as unfounded.

In less general and more familiar terms, it could also be stated that the general principle of mutuality of consideration, which also applies to employment in the public service, is recognized by the Staff Regulations, as shown by the wording of Article 40, which lays down that an official is not entitled to be paid during a period of leave on personal grounds, and of Article 42 according to which an official who is called up for military service, while retaining the right under the Staff Regulations to a higher step and promotion, ceases to receive his remuneration.

Because of the necessarily collective nature of a strike, there is no substance, even by analogy, in the argument which the applicants have based on Article 60 of the Staff Regulations, which was designed to meet individual contingencies of an altogether different kind.

Reference has been made to the allegedly punitive character of the deduction from pay because it was not applied to those officials who discontinued strike action after 14 December; reference has also been made to discrimination because the deduction was not applied in other cases or by other institutions. It is not my task, nor, I believe, that of the Court, to go into the reasons why the defendant institution or other institutions of the Community did not apply stoppage of pay to their staff who went on strike. One assumes that there were special reasons for so deciding. However that may be, it is obvious that the mere fact that Community administrations have sometimes avoided strict application of a principle which is sound in law does not constitute a licence to demand other departures from rule for which there is no specific justification.

For this reason I urge dismissal of the application, with the legal consequences which follow from it.