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 1977 [1]

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.

be terminated at any time on three months' notice following a decision to dismiss him. On the other hand, he obtained a considerable advance in grade, passing without competition from Category B to Category A.

The risk inherent in his new employment did not prevent him from breaking his ties with the Council of Ministers, from which he had simply been seconded, and resigning as an established official on 10 October 1966.

He had cause to regret his action, for in April 1967 the Chairman of the European Democratic Union Group informed Mr Schertzer of the group's intention to terminate his contract on three months' notice. Nevertheless, notice was not given to terminate the contract at that time and he continued in his employment.

The following year, however, namely on 12 March 1968, the European Democratic Union Group gave Mr Schertzer three months' notice by registered letter terminating his contract. In accordance with Article 47 (2) of the Conditions of Employment of Other Servants the emoluments due during the period covered by the notice had to be paid but the applicant was relieved of his duties during that period and personally asked to make way immediately for Mr Bernasconi, a former Député of the French Assemblée Nationale who had not been re-elected in 1967.

The applicant's contract was to terminate, in accordance with that notice, on 11 June 1968.

The European Democratic Union Group, however, via its Parliamentary Secretary, Mr Borocco, decided to extend the contract until 16 September 1968 in order to compensate Mr Schertzer for leave which he had not taken during his years of service with the political group.

Although this procedure was unusual the Secretary-General of the Parliament agreed to the extension by letter dated 10 June 1968, stating that it was intended solely to compensate for the leave which the applicant had not been able to take.

On the same date Mr Schertzer made a complaint through official channels to the President of the Parliament requesting the annulment by him of the decision terminating his contract.

To this extra-judicial complaint the President of the Parliament merely replied, on 24 July 1968, that it was wrongly addressed since the authority competent to sign and, where appropriate, to terminate contracts relating to servants of a political group was the Chairman of the group concerned, in the present case the Chairman of the European Democratic Union Group.

Finally, on 19 September 1968 the administration of the Parliament informed Mr Schertzer of the amount of the severance grant due to him and confirmed that his contract had been irrevocably terminated on 16 September.

On 9 October 1968 the applicant nevertheless instituted legal proceedings, in the first place against the European Parliament and alternatively against the authority referred to in Article 6 of the Conditions of Employment of Other Servants, that is to say the President of the Parliament; finally, in the further alternative and in so far as necessary, against the political group of the European Democratic Union.

Written pleadings were exchanged within the normal time-limits. However, proceedings were stayed by order of this Chamber dated 3 December 1969 on the ground that complaints had been made, the first before the senior Juge d'Instruction at the Tribunal de Grande Instance, Paris, on the previous 3 October by the applicant, alleging breach of trust relating to the authenticity of a letter dated 17 May 1968 by which Mr de

Lipkowski was said to have revoked the dismissal in question; the second on 18 November 1969 against Mr Schertzer for forgery and the uttering of a forged document, before the Procureur de la République at the Tribunal de Grande Instance, Strasbourg.

The Second Chamber decided that the proceedings could be reopened when the parties had produced the judgments relating to the complaints lodged. In fact almost eight years passed before that decision was complied with. It was not until the beginning of this year, after the applicant had informed the Court of his wish that the case should be kept on the register, that the oral procedure was reopened. With regard to the complaint of forgery and the uttering of a forged document made against him Mr Schertzer has produced a decision dismissing the charge. As regards the complaint of breach of trust made by Mr Schertzer, it seems from the file that it has not been pursued.

These are the circumstances explaining the considerable delay that has occurred before this case has come on for hearing.

It is first necessary to determine the identity of the authority against which legal proceedings may validly be instituted and of the decision in question.

In this respect the action has a special feature.

Although legal proceedings can challenge only the competent institution, that is to say the Parliament, represented according to Article 52 of its rules of procedure by its President, it appears from a resolution adopted on 12 December 1962 by the Bureau of the Parliament that the powers delegated under the Conditions of Employment of Other Servants are, as regards servants of the political groups, exerciseable directly by the groups themselves or the authority designated by each group. Thus the power to conclude and terminate a contract with a temporary servant was held by the political group of the European Democratic Union, which had designated its Chairman for that purpose.

As for the decision which is the subject of the dispute it is that of 12 March 1968 taken by the said Chairman because it expressly terminates Mr Schertzer's contract as a temporary servant.

It is not the objection of inadmissibility with which, by letter dated 24 July 1968, the President of the Parliament met the applicant's complaint through official channels. Nor can it be the letter of the following 19 September addressed to the applicant by the administration of the Parliament.

That document contains no decision properly so-called: it is a measure in execution of the previous decision of 12 March 1968 terminating the contract, and its sole purpose is to inform the applicant of the amount of the severance grant due to him as a result of that termination.

Nor can objection be validly made to the silence allegedly maintained by the institution on the subject of the complaint of 10 June 1968, since the President of the Parliament replied to that complaint that it was wrongly addressed and that he had no jurisdiction to act upon it.

Nevertheless, I think that that complaint did have the effect of keeping open the time-limit for instituting proceedings, for the President of the Parliament ought himself to have passed the complaint on to the person responsible for the measure in question, namely the Chairman of the political group concerned. In addition, the applicant had sent a copy of this complaint to the Chairman of the group directly. In these circumstances I cannot uphold the objections of inadmissibility made by the representative of the Parliament and it is in respect of the

legality of the decision to terminate the contract that I shall give my opinion.

Allow me to explain myself.

The letter of 19 September 1968 from the administration of the Parliament does not constitute in itself a decision capable of being contested. I have indeed said that it is only a measure in execution of the original decision of 12 March 1968 in that its purpose is to notify the applicant of the date on which his contract terminated, taking account of the allowance for leave which he had not taken.

In addition, Mr Schertzer has no interest in contesting the legality of that alleged decision since its effect is to extend the contractual notice beyond the three months required by the rules in force. In fact, he had the benefit of an appreciably longer period of notice.

This is why Mr Schertzer puts forward the following submissions against the decision of termination of 12 March 1968:

First, lack of competence. In the applicant's view the notice of termination should have been signed in the name of the Parliament by the appointing authority and not by the Chairman of a political group. However, this disregards the fact that the power of appointment may be delegated and that in the present case, concerned with the staff of political groups, that power was expressly entrusted to each of those groups by the resolution of 12 December 1962, which I have mentioned, adopted by the Bureau of the Parliament.

It was thus in accordance with that delegation that both the contract of employment and its termination were signed by the Chairman of the European Democratic Union Group, designated by the said group.

The applicant could not have been unaware of this position, which was the consequence of his contract of employment itself. He was also reminded of it by the reply from the President of the European Parliament to his complaint of 10 June 1968.

Second submission:

Lack of a statement of reasons for the decision to terminate the contract, contrary to the provisions of Article 11 of the Conditions of Employment of Other Servants, which refers to Article 25 of the Staff Regulations according to which any decision adversely affecting an official shall state the grounds on which it is based. This submission appears to me more serious. The defendant confines itself to alleging that the reasons for termination of a contract of indefinite duration of a temporary servant may be limited to referring to the period of notice. That explanation is unsatisfactory. Even accepting that the Parliament, as an institution, does not have to consider the reasons which may have led the European Democratic Union Group to its decision to terminate the applicant's contract, I think that that group ought expressly to have given reasons for such a decision. Although the obligation to give reasons is imposed as regards temporary staff only by simple analogy with the rules of the Staff Regulations, it seems to me clear that that obligation cannot be satisfied by simply mentioning the period of notice. It is true that servants of political groups are in a special position distinguishing them from other temporary staff of the Parliament. They are selected by the groups themselves, which are made up of elected members belonging to the same party or having similar political views, and are selected essentially in view of the ideology of the group. That is the basic factor behind their recruitment. Considerations based on qualifications and experience take only a second place in the choice made by the group.

It follows that when the group no longer has confidence in the loyalty of a servant

to that political ideology the contractual lien may be dissolved by the group itself or the authority which it has designated, normally its Chairman. But these considerations, which were relied on by the defendant Parliament, do not appear to me to allow notice to be given without any reasons at all.

I therefore consider that the objection that no reasons are stated is valid.

The submission based on misuse of powers remains to be considered.

It must first of all be clearly stated that neither the oral promises which the applicant claims to have received from certain members of the European Democratic Union in May 1968 nor the letter which Mr de Lipkowski, the then Chairman of the group, sent to him, had the effect of revoking the decision of 12 March 1968 to terminate his contract. As for the letter dated 20 May 1968 signed by the Parliamentary Secretary of the group, Mr Borocco we know that its sole purpose was to specify the date on which the applicant's contract was to expire, namely the following 16 September, having regard to the outstanding leave to which he was entitled. Withdrawal of the termination of the contract could have been made only in writing by the competent authority, namely the Chairman of the political group of the European Democratic Union. No document on the file reveals a decision to withdraw the decision to terminate. On the contrary, Mr Borocco himself stated that he did not have the power to extend the applicant's contract. He confined himself on this issue to requesting the agreement of the general secretariat of the Parliament.

The original decision of 12 March 1968 thus remained unchanged, apart from the fact that the period of notice was extended by the period of leave due to the applicant, with the agreement of the general secretariat of the Parliament, as appears from the letter of 10 June 1968 sent by the latter to Mr Borocco.

It is necessary, however, to inquire whether the dismissal decision was based on legally valid reasons. The applicant relies in support of his case on the favourable assessment made by members of the political group and which is to be found in the copy, which he has himself produced, of the minutes said to record a meeting of the European Democratic Union Group held in Paris on 24 April 1967, regarding the 'qualities of loyalty and devotion to the cause and to the interests of the European Democratic Union, and the ability and efficiency on all occasions which Mr Schertzer has shown in the fulfilment, to the satisfaction of all concerned, of a task and duties which were very often extremely arduous and difficult to perform in view of the very special working conditions and climate which he had to face almost without a break from 1964'.

It is true that it appears from the same minutes that the group already anticipated Mr Schertzer's transfer to a vacant post in the same grade in the secretariat of the Parliament, such a transfer allowing Mr Bernasconi to take over the duties of General Secretary of the Group. Thus while already anticipating in 1967 the termination of the applicant's contract in order to make way for Mr Bernasconi, the group was undertaking to obtain the reclassification of the applicant in a permanent post at an equivalent level in the hierarchy of the general secretariat of the Parliament.

Mr Borocco also asked the members of the group to refrain from anticipating or laying down in advance, even informally or unofficially, 'any definite date on which Mr Schertzer's duties are to be terminated so long as there is no certainty about the desired transfer'.

This was an undertaking which the political group could not in any event have entered into without the agreement of the institution and it must be assumed that this agreement was not obtained,

since the following year notice was given to the applicant without any guarantee of reclassification.

In these circumstances Mr Schertzer maintains that in the absence of any unfavourable evidence regarding his service between April 1967 and March 1968 there is every reason to assume that the unilateral decision to terminate his contract as a temporary servant was taken not for reasons of public interest but for personal reasons of which he was given no explanation.

However, as the Court is aware, the authenticity of the minutes in question is formally denied by the defendant, which maintains that the European Democratic Union Group has never drawn up minutes of its meetings.

Accordingly, on the evidence of the file as at present constituted, misuse of powers has not been shown.

It is thus the submission based on the absence of any statement of reasons for the contested measure which I find valid.

My opinion, therefore, is that the decision of 12 March 1968 to terminate the contract should be annulled, that the further conclusions in the action should be rejected and that the defendant should be ordered to bear the costs.