JUDGMENT OF THE COURT (FIRST CHAMBER)
1 JULY 1982[1]

Teresita Pace, née Porta, v Commission of the European Communities

(Auxiliary staff — Employment or independent work)

Case 109/81

Jurisdiction of the Court — Arbitration clause — Contractual relationship based on successive contracts — Replacement of an oral contract by annual written contracts — Absence of any arbitration clause in the first written contracts — Arbitration clause included in each of the contracts signed subsequently — Consideration by the Court of all the contracts successively entered into

(ECSC Treaty, Art. 42; EEC Treaty, Art. 181; EAEC Treaty, Art. 153)

In so far as the jurisdiction of the Court of Justice is based on an arbitration clause contained in each of the annual contracts signed as from a particular year, the fact that the same clause does not appear in the previous contracts and that, as regards the first years of the relationship, there were not even any written contracts is no obstacle to the Court's having regard, in its assessment of the relations between the parties, to all the contracts successively entered into.

In Case 109/81

TERESITA PACE, NÉE PORTA, of 2 Via Cadorna, Ispra, Varese, represented by Angelo Volpi and Giuseppe Celona of the Milan Bar, with the right of audience before the Corte di Cassazione of the Italian Republic, with an address for service in Luxembourg at the Chambers of Georges Margue, 20 Rue Philippe-II,

applicant,

1 — Language of the Case: Italian.

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Sergio Fabro and Oreste Montalto, members of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of the latter, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION in the terms set out in the applicant's conclusions,

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, A. O'Keeffe and T. Koopmans, Judges,

Advocate General: F. Capotorti
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

From the academic year 1963/64 to the academic year 1980/81, Mrs Teresita Pace gave classes in general studies and Italian at the technical and vocational training school at the Joint Research Centre (hereinafter referred to as "the Centre"), Ispra. For the first five years she did so without a written contract. It was not until 6 November 1969 that the Director of the Centre wrote a letter to Mrs Pace specifying her hourly remuneration for the year in course. By letter of 11 December he informed her that the contract was to be regarded as having been entered into for the full academic year. Similar letter-contracts following during the years 1970 to 1975. As from the academic year 1976/77 more detailed contracts, described by the parties as relating to "prestazioni

d'opera" [provision of services] were concluded. Whilst those contracts were, according to the intention of the parties, governed by Italian law they nevertheless contained a provision, pursuant to Article 42 of the ECSC Treaty and Article 153 of the EAEC Treaty, that the Court of Justice of the European Communities was to have exclusive jurisdiction regarding any disputes arising as to the validity, interpretation of performance thereof.

Under those contracts, Mrs Pace's remuneration always took the form of hourly pay, based on the number of hours of classes given.

On 16 July 1980 Mrs Pace sent a registered letter to the Director of the Centre in which she stated that under Italian law the contracts in question were to be regarded for all purposes as giving rise to a single employment relationship of indefinite duration and that accordingly she was entitled to salary during the months of the year when the school was closed, to holidays or to an allowance in lieu thereof and to sickness-insurance and pension contributions. Moreover, Mrs Pace stated that her letter should be regarded as constituting an objection to the expiry date of the employment relationship and that she was at the disposal of the Centre for all academic requirements, subject to her entitlement to holidays. Finally, she asked to be informed whether the European Atomic Energy Community intended to apply Italian law in the terms set out above.

In his reply of 12 September 1980 the Director of the Centre, having acknowledged Italian law to be applicable, denied that the contracts in question fell within the category of "employment", contending on the contrary that they fell within the classification of contracts for "independent work" (in Italian law "lavoro autonomo").

Mrs Pace then sent a registered letter on 2 October 1980 to the President of the Commission of the European Communities in which, pursuant to Article 90 (2) of the Staff Regulations of Officials, she contested the decision of the Director of the Centre rejecting her complaint and confirmed the arguments set out in her first letter.

Since the second letter drew no response, Mrs Pace brought the present action against the implied decision rejecting her complaint, the application being received at the Court Registry on 6 May 1981.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

The Court also decided, pursuant to Article 95 (1) and (2) of its Rules of Procedure, to assign the case to the First Chamber.

II — Conclusions of the parties

Mrs Pace claims that the Court should:

As a preliminary and interim measure, pursuant to Article 186 of the Treaty:

Order the Commission to pay her remuneration for the school year in course;

Primarily and with regard to the substance of the case:

Order the Commission to accord to the applicant the same economic and legal treatment as that laid down in the collective labour agreement in force in Italy in the private teaching sector;

Order the Commission to grant to the applicant upon termination of her employment the retirement pension provided for staff serving as officials of the Community;

Order the Comission to pay the entire costs of the proceedings.

The *Commission* claims that the Court should:

As a preliminary measure:

Declare that the claim which was made on the first occasion in the applicant's reply of 20 November 1981 to the effect that she should be recognized as a member of the auxiliary staff is, being a new claim, out of time and therefore inadmissible;

In any event declare that the action is inadmissible as lacking sufficient legal basis;

In the alternative and with regard to the substance of the case:

Dismiss the claims as unfounded and order the applicant to pay the costs.

III — Submissions and arguments of the parties

(a) Admissibility

The *Commission* observes in the first place that since the claim is founded on Article 91 of the Staff Regulations which relates only to officials of the Community it must be declared inadmissible. In this case, there is a contractual relationship freely entered into by the parties, who acknowledge the applicability of Italian law to the contract and also recognize the jurisdiction of the Court of Justice pursuant to a specific clause in the contract which refers to Article 153 of the EAEC Treaty and Article 181 of the EEC Treaty. It follows that the application bears no direct or indirect relation to Article 91 of the Staff Regulations. Moreover, since it is acknowledged that Italian law is applicable to this case the result is that no reference may in any event be made to Community law. Furthermore, the applicant does not seek recognition of her status as an established employee of the European Communities — if she did, the Court would in fact have jurisdiction to adjudicate — but, on the contrary, she claims that pursuant to Italian law her independent work relationship should be regarded as an employment relationship, with all the attendant economic consequences provided for by that law.

In her reply, the *applicant* counters the Commission's preliminary objections with the following submissions:

The jurisdiction of the Court is incontestable since it arises from a specific clause in the contract;

Article 91 of the Staff Regulations is applicable by virtue of Article 46 of the Conditions of Employment of Other Servants pursuant to which Title VII (which includes Article 91) concerning appeals applies by analogy. Those conditions apply to the "members of the auxiliary staff" defined by Article 3 as follows: "'Auxiliary staff' means: (a) staff engaged ... for the performance of full-time or part-time duties in an institution but not assigned to a post included in the list of posts appended to the section of the budget relating to that institution."

In the present case, the applicant asserts that she was recruited on the understanding that she was to be an employee and not an independent worker. That claim, even if contested, is sufficient not only to establish the jurisdiction of the Court but also to render the procedure under Article 91 of the Staff Regulations applicable, as appears from the judgment of the Court of 11 March 1975 in Case

65/74 *Porrini & Others* v *European Atomic Energy Community* [1975] ECR 319.

The applicant also denies that this case has nothing to do with Community law. The subject-matter of the case is a relationship which, regardless of its nature, certainly existed with a Community institution and must be examined before the Community Court, which does not apply national law but only Community law. Community institutions may certainly enter into commitments provided for and sanctioned in the various national laws, but they do so only in accordance with rules and measures forming part of Community law.

Where, by means of a measure adopted by one of the institutions, Community law provides that a particular relationship is to be governed by the laws of a Member State, that relationship continues also to be a relationship within and governed by Community law. It follows that the Court is called upon to apply a Community measure within the Community legal order and need take cognizance of Italian law only in order to classify that relationship; once that classification has been made, the Court can decide upon the repercussions thereof on the Community institution in question. Thus, the applicant claims entitlement to a pension not on the basis of Italian law but on the basis of Community law; Italian law serves only to define the relationship as an employment relationship.

In its rejoinder, the *Commission* objects that the applicant's claim that she should be recognized as a member of the auxiliary staff is inadmissible since it cannot be regarded as anything other than a new claim, submitted out of time and no such claim was contained in the application or in the statement submitted through official channels.

The Commission also denies that that claim is well founded in so far as Article 52 of the Conditions of Employment of Other Servants provides that the actual duration of the contract of a member of the auxiliary staff may not exceed one year, which appears to contradict the claim that in fact the relationship was one of indefinite duration.

The Commission considers that in this case the Court, acting pursuant to a clause conferring jurisdiction, is called upon, by virtue of a provision contained in the same contract, to settle the dispute by applying Italian law as well (as the Court already had occasion to do in a similar case — cf. judgment of 7 December 1976 in Case 23/76 *Pellegrini* [1976] ECR 1807). In any case, the Court has on several occasions recognized that the Treaties and secondary Community legislation are not the only sources of Community law and that it is appropriate to use national law in order to fill any lacunae in Community law (judgment of the Court of 12 June 1980 in Case 138/79 *Express Dairy Food Limited* v *Intervention Board for Agricultural Produce* [1980] ECR 1887). In fact, the applicant seeks to avail herself of both Italian law and Community law so as to obtain from one what she thinks may be difficult to obtain from the other.

(b) Substance of the case

As regards the substance of the case, the *applicant* claims that under Italian law there is no doubt that teaching in private schools of any type gives rise to an employment relationship of indefinite duration. In support of her assertion, she cites a number of judgments of Italian courts according to which, by virtue of Articles 1 and 2 of Italian Law No 230 of 18 April 1962, a contract which is renewed, together with the additional responsibilities deriving therefrom, for several consecutive years and for periods exceeding the duration of each teaching course is regarded as a contract of indefinite duration.

As a result of the nature of her contract, the applicant is entitled to all the conditions enjoyed by teachers in the private sector, namely:

remuneration during the summer months when the school is closed;

the payment of insurance and social-security contributions;

the cost-of-living allowance ("contingenza");

periodical seniority increases;

the 13th monthly payment;

the retirement pension upon termination of employment;

all other economic and legal benefits provided for in the national collective labour agreement of 11 September 1978 for staff in schools managed by institutions, private individuals or legal persons.

The *nomen juris* "prestazioni d'opera" [provision of services] contained in the contract is of no importance since the terminology used by the parties cannot change the essential nature of the relationship.

The *Commission* considers that, although Italian law is applicable to the case, neither the legislation relied upon nor the case-law referring thereto is relevant. The judgments cited all concern private schools and, because of the utilitarian criteria according to which such schools are managed, they have an inevitable tendency to exploit the teaching staff who, because of their particular situation, are inadequately protected. This inevitably leads the courts to give decisions intended in all cases to protect the party who is regarded as economically weak. That case-law is not applicable to the Commission of the European Communities, a supranational institution, which is not to be regarded in the same way as a private entrepreneur, since it is non-profit-making. On the contrary, the academic activity provided by it is of public utility in so far as its sole objective is to improve the technical knowledge of a number of people; in that respect, the Commission is comparable to a public administration and not to a private school. In these circumstances, the case-law of the Italian administrative courts, which is more restrictive than that of the ordinary courts, becomes relevant.

In the second place, the Commission observes that Mrs Pace's work, although extending over a long period, is nevertheless the provision of a service of a special and occasional nature, so that it may be included within the cases referred to in Article 51 of Decree No 1252 of the President of the Republic of 7 October 1963 which, in its list of cat-

egories of staff recruited on a temporary basis in whose employment contract an expiry date may be inserted, expressly mentions staff responsible for vocational training courses of short duration. In fact, the activities carried out by Mrs Pace were not regular but occasional in character and in any case the monthly average number of hours of classes was variable and never attained the minimum of 72 hours provided for in Article 24 of the collective agreement referred to. Her work was carried out for fixed periods only in order to satisfy the organizational requirements of the school and Mrs Pace was paid monthly solely because she so requested. A close examination of the relationship at issue discloses that it can only be regarded as atypical and in any event as a case of a derogation from the general rules contained in a written instrument. In fact, the case-law cited by the applicant refers expressly to the intention of the parties to derogate from the rules which must, in order to be valid, be embodied in a written instrument.

The Commission does not, moreover, understand on what grounds it should have engaged in a pretence from which ultimately no advantage would accrue to it, in view of the fact that the total remuneration received in respect of each year by the applicant exceeds by far the remuneration provided for in the collective agreement even though the latter includes public holidays, the 13th month and other benefits not granted by the Commission. In fact, under the collective agreement, work of 18 hours a week — a number of hours which the applicant never worked — gives the right to annual remuneration of LIT 2 730 000 (plus the cost-of-living allowance), whereas for the last academic year Mrs Pace, under her individual contract, received total remuneration of LIT 9 944 000. Implementation of the collective agreement in the applicant's case would not therefore have given her any pecuniary advantage.

As regards the claim for a pension, the Commission considers that, even if it is acknowledged — which is not the case — that an employment relationship exists, with the concomitant obligation to pay contributions, it should be noted that some of those contributions are in any event time-barred and, as regards the balance, any contributions paid would represent only a minimal proportion in comparison with the amount needed, under the Italian system, for entitlement to the minimum pension. Consequently it is very difficult to see how the applicant has suffered any real damage; in any case, the damage involved is very limited. All the foregoing is applicable if the applicant's claims are to that effect, since the claim to a "Community pension" is in any case without foundation.

In her reply, the *applicant* disputes the Commission's view that Italian legislation on teaching contracts is applicable exclusively to private schools. In that respect, she cites judgments of the combined divisions of the Italian Corte di Cassazione according to which, in the case of schools managed by public bodies, the public nature of the body does not necessarily mean that the employment relationship of the teachers is one governed by public law. The relationship is governed by public law only if the operation of the school falls within the institutional objects of the body in question, but it is not governed by public law if the school is managed on a *jure privatorum* basis (cj. judgments No 1321 of 23 June 1965, No 933 of 7 April

1966, No 847 of 11 April 1964, No 2424 of 10 October 1966 and No 2065 of 21 June 1968).

The applicant also contests the method adopted by the Commission to calculate the number of hours worked per week or month, since it apportioned the teaching hours actually worked among all the months of the year, disregarding all periods during which the school was closed or the applicant was sick or on maternity leave. She therefore maintains, on the basis of various calculations, that she worked a complete or nearly complete teaching timetable and notes that all the teachers in the Centre, with the sole exception of three language teachers, are officials in the permanent employ of the Community. The applicant further observes that Italian case-law has held that contractually agreed limitations on the duration of an employment relationship are lawful only within the scope of Article 2097 of the Civil Code, which was repealed by Law No 230 of 1962.

In reply to the Commission's argument to the effect that the monthly salary received was greater than the minimum salary prescribed by the collective agreement, she states that the collective agreement provides that, regardless of the level of monthly remuneration, the teacher is entitled to that remuneration even during holiday periods, to an extra monthly payment and to the "contingenza" allowance (or cost-of-living allowance). All these advantages accrue to the applicant under Italian law and they cannot be offset by the monthly salary, even if the latter is significantly greater than the compulsory minimum under the collective agreement.

As regards the conditions on retirement, the applicant states that the Commission is mistaken in its view that she did not claim "recognition of the status of established employee" since that recognition is a pre-condition for the benefit applied for. As far as the problem of the pension is concerned, it is true that since the Commission has never paid social-security contributions for Mrs Pace, some of those contributions are time-barred as regards the right of the Istituto Nazionale della Previdenza Sociale [National Social Welfare Institution] to demand them. However, the applicant maintains that, under Italian law, if an employer fails to insure its employee, the latter is entitled to compensation for damage where, as in the present case, non-payment of the contributions entails total or partial loss of entitlement to the insurance benefit. As regards Community law, Article 70 (1) of the Conditions of Employment of Other Servants provides that auxiliary staff must be affiliated to a compulsory social-security scheme. Since the applicant has asked that the Commission be ordered to pay her a pension, that means in practice that the defendant must ensure that Mrs Pace is affiliated to the Community social-security scheme, account being taken of the fact that the position regarding Mrs Pace's contributions before 1971 can no longer be regularized as far as the Istituto Nazionale della Previdenza Sociale is concerned, by reason of prescription. The grant of a Community pension therefore conforms perfectly both to Community law and to Italian law, which provides for compensation, even in a specific form.

Finally, the applicant complains that on 9 September 1981 she was publicly invited to leave the school and that, following

her refusal, she was removed *manu militari*. She states that it was only after being so removed that her remuneration for the academic year 1980/81 was paid to her.

In its rejoinder, the *Commission* also disputes the relevance of the case-law relied upon by the applicant in her reply and observes in that respect that the question is not one of deciding whether the employment relationship in question is governed by public or private law and that in any event even if the teaching did not fall within the framework of the institutional functions of the EAEC the fact would nevertheless remain that the EAEC is not acting as a private person of any kind. When the Commission states that it is not concerned with the pursuit of profit, it means that by operating the Ispra vocational training school it is not functioning as a private teaching establishment, which is clear in particular from the fact that the technical teaching provided in that school is totally free of charge and that accordingly the principles embodied in the case-law applicable to that field are not valid in this case.

As regards the teaching hours actually worked by the applicant, the Commission emphasizes that it is evident from the school timetable that the hours worked by Mrs Pace each week never attained the 18 hours provided for in the collective agreement and that in any case those hours are of a purely notional value, since although when Mrs Pace was ill or unable to be present the timetable was not respected, it served as the basis for her remuneration.

There is no doubt, according to the Commission, that in this case the parties intended to create a relationship limited in time, as is attested by the contracts for the various academic years. The renewal of those contracts on several occasions is accounted for by the fact that the activity carried out by the applicant at the vocational training school was of an extremely peripheral nature and could not therefore be dealt with from the legal point of view otherwise than by the conclusion of a contract for a specific period providing for work on a independent basis. The fact that other teachers in the school are officials of the Commission is of no relevance to this case, since they work there full-time.

The Commission disputes that Article 70 (1) of the Conditions of Employment of Other Servants enables the applicant to be covered by the Community's social-security system since those conditions provide that auxiliary staff must be affiliated to a national social-security scheme. It finally points out that Mrs Pace's criticism regarding the episode of her removal from the Ispra school is not relevant to the case.

IV — Oral procedure

At the sitting on 25 March 1982, oral argument was presented for the applicant by G. Celona of the Milan Bar, and for the Commission of the European Communities by S. Fabro, a member of its Legal Deparment, acting as Agent. The Commission replied, by letter received at the Registry on 30 March 1982, to a question put by the Advocate General, Mr Capotorti, concerning the legal position and remuneration of the other teachers at the Ispra technical and vocational training school.

The Advocate General delivered his opinion at the sitting on 6 May 1982.

Decision

1 By application received at the Court Registry on 6 May 1981, Mrs Teresita Pace, née Porta, a teacher at the technical and vocational training school of the Ispra Joint Research Centre (hereinafter referred to as "the Centre"), brought an action for an order that the Commission should accord her economic and legal treatment equivalent to that laid down in the collective labour agreement in force in Italy for staff in the private teaching sector and also grant her, upon termination of her employment, the retirement pension provided for employees of the Community.

2 During the academic years 1963/64 to 1979/80, the applicant was asked by the Director of the Centre to give courses in general studies and Italian at the above-mentioned school. For the first five years of the employment relationship there was no written contract but subsequently, from 1969 to 1975, the Director of the Centre specified each year, in a letter-contract, both the duration of the teaching, being the full academic year, and the remuneration, which was allocated on an hourly basis.

3 As from the academic year 1976/77, the relationship between the Centre and the applicant was based on a more detailed contract, signed by both parties, which defined it as a contract for "prestazioni d'opera" [provision of services]. The contract stipulates that the teaching must be provided "in accordance with the educational objective to be attained as indicated in the programme of vocational training courses". Clause 6 provides that the contract is to be "governed by Italian law". The next clause states that the teacher has been "informed that it is exclusively the teacher's responsibility to regularize his or her position regarding Italian tax and social-security legislation, the institution having no obligation in that respect in view of the nature of the present contract".

4 In the contracts the parties declared, pursuant to Article 42 of the ECSC Treaty, Article 181 of the EEC Treaty and Article 153 of the EAEC Treaty, that the Court of Justice was to "have sole jurisdiction to settle all disputes relating to the validity, interpretation or performance" of the said contracts.

5 The applicant claims in her application that under Italian law, which is applicable to this case, the employment relationship between her and the Centre must be regarded as relating to the uninterrupted provision of work as an employee for an indefinite period and claims in consequence that she should be accorded the same treatment as private teachers and, in particular, she claims entitlement to pay during the summer months when the schoool is closed, payment of insurance and social-security contributions, the cost-of-living allowance, periodical seniority rises, the 13th monthly payment, a retirement pension upon ceasing work definitively, and all other economic and legal advantages provided for in the national collective labour agreement of 11 September 1978 relating to management staff and teaching staff in schools managed by institutions, private individuals or legal persons.

6 She also claims that her entitlement to membership of a pension scheme should be recognized. In that respect, she had initially requested in her application that the conditions laid down for staff in the service of the Communities should be applied to her. At the hearing, she stated that for that purpose she does not seek to be included in the list of posts of the staff of the Commission but simply that she be granted, in one way or another, the same pension as that which she would have received if her insurance contributions had been paid by the Centre, as is required by Italian law.

Admissibility

7 In its defence, the Commission objected that the application was inadmissible as being founded on Article 91 of the Staff Regulations of Officials upon which the applicant is not entitled to rely.

8 In her reply, the applicant maintained that, having worked as an employee in the service of the Community, she was entitled to rely on the Conditions of Employment of Other Servants, Article 46 of which renders applicable by analogy the provisions of the Staff Regulations concerning appeals.

9 However, at the hearing, the applicant stated that she did not seek to be considered as an employee of the Community and that her application was intended only to secure the advantages provided for by Italian law, and the defendant acknowledged that under the arbitration clause in the contracts, based on Article 42 of the ECSC Treaty, Article 181 of the EEC Treaty and Article 153 of the EAEC Treaty, the jurisdiction of the Court of Justice was incontestable.

10 In those circumstances, it is not appropriate to examine the questions of procedure raised by the parties in their written submissions. In fact, it is sufficient to note that the jurisdiction of the Court is based on the arbitration clause contained in each of the contracts signed as from the academic year 1976/77. The fact that the same clause does not appear in the previous contracts and that, as regards the first years, there were not even any written contracts is no obstacle to the Court's having regard, in its assessment of the relations between the parties, to all the contracts entered into, a fact which is, moreover acknowledged by the parties themselves.

Substance of the case

11 It is incontestable that Italian law is applicable to the contractual relations between the parties. It is therefore on the basis of that law that the problem of the classification of those relations and the consequences deriving therefrom must be resolved.

12 To that end, it is necessary to establish in the first place whether the applicant's work for the Centre from 1963 to 1980 has given rise to an employment relationship of indefinite duration, regard being had to the purpose for which the work was done, the duration thereof and the manner in which it was performed.

13 According to Italian law, the fundamental criterion for distinguishing between independent work ("lavoro autonomo") and employment ("lavoro subordinato") is based on the fact that the subject-matter of independent work is the "opus", that is to say the result of the worker's activity, whereas the subject-matter of employment is the work effort ("operae") which the

worker places at the disposal of the employer, expending that effort under the supervision and in accordance with the instructions of the employer.

14 In accordance with that criterion, Italian case-law consistently declines to classify teaching activity as independent work when that activity is carried out subject to the control of the principal of the school, is paid for monthly and involves the fulfilment of programmes drawn up by the management of the school and compliance, which may be subject to verification, with a predetermined timetable.

15 In this case, it is apparent from the wording of the contracts entered into from 1976 to 1980 that the applicant, although enjoying, like every teacher in a public or private school, independence regarding her teaching methods, nevertheless had to follow programmes and pursue pedagogical objectives which were established in advance by the management of the school, that the starting and finishing dates of the courses, the holidays and the timetable were fixed according to the service requirements of the institution and that the payment of remuneration was monthly. It follows from this that the conditions laid down in Italian case-law for work to be considered as "employment" have been satisfied in the applicant's case.

16 The Commission contends that the Italian case-law relied upon by the applicant relates only to schools in the private teaching sector operated on a profit-making basis and cannot therefore apply to a school managed by a Community institution of a public nature, pursuing exclusively objectives of public utility. That view is without foundation. It hardly reflects the importance which the defendant itself attributed to the private nature of the relationship at issue. Moreover, the criteria for determining whether or not a work relationship constitutes employment cannot vary according to the public or private nature of the employer. In any event, Italian case-law consistently recognizes that an employment relationship, even one with a public institution, is of a private character where the duties of the workers do not fall within the framework of the institutional functions of the institution concerned, which is precisely the situation in this case.

17 The Commission further observes, in its defence, that the relationship at issue is not single and continuous since it is made up of several distinct contracts. In that regard, it should be noted that the first paragraph of Article 1 of Italian Law No 230 of 18 April 1962 (Gazzetta Ufficiale [Italian Official Gazette] No 125 of 17 May 1962) lays down the general rule that every employment contract must be considered as being of indefinite duration and that the stipulation of a specific period of validity is allowed only in the cases referred to in the second paragraph of that article, of which more details are given in Decree No 1252 of the President of the Republic of 7 October 1963, issued pursuant to that law (Gazzetta Ufficiale No 307 of 26 November 1963).

18 The Commission contended in its defence that the relationship at issue falls within the provisions of Article 1 (2) (c) of Law No 230 of 1962 concerning commitments entered into "with a view to performance of work or a service defined and determined in advance, of an extraordinary or occasional nature". It also sought to rely upon Article 51 of Decree No 1252 abovementioned, concerning staff responsible for "vocational training courses of short duration". Those arguments, as the Commission itself admitted at the hearing, cannot be upheld, since in this case the relationship is one which extended without interruption over 17 years.

19 The Commission further claims that the remuneration paid to the applicant is higher than that provided for by the national collective agreement referred to by her, even if regard is had to the fact that she did not enjoy a number of advantages provided for by that agreement. That fact, even if it were true, does not affect the rights claimed by the applicant, since the levels of remuneration provided for in the agreement are merely minimum levels.

20 It must therefore be concluded that the teaching provided over a period of 17 years by the applicant at the technical and vocational training school at the Centre involved an employment relationship of indefinite duration and that accordingly the applicant is entitled to the benefit of every advantage which Italian law attaches to a relationship of that kind.

21 As regards the retirement pension, the applicant has abandoned her initial claim that she be classified as an employee of the Commission and be granted a Community pension. There is no need therefore to adjudicate on that matter. On the other hand, it should be made clear that the applicant is entitled to be granted, in such manner as may be agreed between the parties, the equivalent of the retirement pension to which she would have been entitled under Italian legislation if the Centre had not failed to insure her with the Istituto Nazionale della Previdenza Sociale [National Social Welfare Institution] and to pay the contributions for that insurance, in accordance with the provisions of the law governing the contract.

22 For those purposes, it is appropriate to specify a period within which the parties are called upon to reach agreement as to the pecuniary consequences of the classification of the relationship made in this judgment. The Court reserves the right, in default of agreement within such period, to take a decision on those matters and also on costs.

On those grounds,

THE COURT (First Chamber),

by way of interlocutory judgment in the action brought by Mrs Pace, née Porta, hereby:

1. **Declares that the applicant's teaching activity at the vocational training school at the Ispra Joint Research Centre implies the existence of an employment relationship for an indefinite period, within the meaning of the applicable Italian legislation;**

2. **Invites the parties to reach an agreement as to the pecuniary consequences of that classification of the relationship, as regards both the applicant's remuneration whilst employed and her retirement pension, within a period of six months from the date of this judgment;**

3. Declares that if no agreement is reached within that period the Court will adjudicate on the applicant's claim regarding the remuneration and pension due to her;

4. Reserves the costs.

Bosco O'Keeffe Koopmans

Delivered in open court in Luxembourg on 1 July 1982.

J. A. Pompe
Deputy Registrar

G. Bosco
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 6 MAY 1982 [1]

Mr President,
Members of the Court.

1. This case is the judicial epilogue to a dispute between the Commission and Mrs Teresita Pace in connection with the teaching done by Mrs Pace for the European Atomic Energy Community over a period of 17 years.

The applicant taught general studies and Italian as part of the vocational training courses at the Ispra Joint Research Centre from the beginning of the school year 1963/64 until the end of the school year 1979/80. For the first five years there was no written contract in respect of her teaching but subsequently, from 1969 to 1975, the Director of the Centre specified each year, in a letter to Mrs Pace, both the duration of her service, which corresponded to the full school year (namely from 15 September to 15 July), and the hourly pay which she would receive. Then as from the school year 1976/77, the relationship between the applicant and Ispra Centre was based on a more comprehensive document (drawn up in French and signed by both

1 — Translated from the Italian.