JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
28 January 1992 *

In Case T-45/90,

Alicia Speybrouck, a former member of the temporary staff of the Group of the European Right, in the European Parliament, residing in Bruges, represented by Vic Elvinger, of the Luxembourg Bar, and, at the hearing, by Catherine Dessoy, of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of her abovementioned Counsel, 31 Rue d'Eich,

applicant,

against

European Parliament, represented by Jorge Campinos, Jurisconsult, and Manfred Peter, Head of Division, acting as Agents, assisted by Hugo Vandenberghe, of the Brussels Bar, with an address for service in Luxembourg at the Secretariat General of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of the termination of the applicant's contract of employment, the award of compensation for the material and non-material damage suffered as a result of such termination and, in the alternative, the appointment of an expert to undertake a more detailed evaluation of such damage,

* Language of the case: French.

THE COURT OF FIRST INSTANCE (Fifth Chamber),

composed of: K. Lenaerts, President, D. Barrington and H. Kirschner, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 9 October 1991,

gives the following

Judgment

The facts

1 After working as a parliamentary assistant for various members of the European Parliament ('the Parliament') belonging to the European Democratic Group (1985 to 1989) and after working for several months for the Institut pour une Politique Européenne de l'Environnement in Brussels, the applicant was recruited with effect from 1 January 1990 as a member of the temporary staff in Grade A 3 in order to perform the duties of Assistant Secretary General of the Group of the European Right, for an indeterminate period. The contract of employment, which was undated, provided for (i) a probationary period of six months and (ii) three months' notice to be given by either party, notwithstanding the application of Articles 48, 49 and 50 of the Conditions of Employment of Other Servants of the European Communities (hereinafter referred to as 'the Conditions of Employment').

2 An 'end-of-probationary-period' report was drawn up on 3 May 1990. Both Mr Brissaud, the Secretary General of the Group, and the applicant signed the report on 18 May 1990.

3 By letter of 28 May 1990, the Chairman of the Group, Mr Le Pen, is reported to have asked Mr Brissaud 'to initiate the appropriate procedure for bringing (the applicant's) employment in the Group to an end in accordance with the rules in force in the European Parliament'. He is said to have added: 'there are serious political reasons for this action, of which I shall inform the Bureau of the Group at its next meeting, which I would ask you to convene in Brussels on Tuesday 5 June 1990'.

4 The applicant has contested the authenticity of that letter, emphasizing that only a copy was disclosed to her when documents were forwarded for the purposes of the application for interim measures to which reference will be made below. In response to the request sent to it by the Court on 6 June 1991 to produce the original of that letter, the Parliament stated that it was not able to comply since the Group is not in the habit of sending to it the originals in its possession.

5 The following is an extract from the minutes of the meeting of the Bureau of the Group purportedly held on 5 June:

'The Bureau, after hearing the views of its Chairman and after discussing the matter at length, decided by a majority of its members to confirm the decision taken by its Chairman to terminate the probationary period of Miss Alicia Speybrouck for serious political reasons which have come to his notice'.

6 According to the statements made at the hearing by the applicant, that meeting was in fact held on 7 June and not 5 June 1990.

7 By letter of 31 May 1990, which the applicant states came to her notice on 6 June 1990, the Secretary General of the Group, Mr Brissaud, informed her that her probationary period would not be extended and that she was to leave after serving a period of one month's notice, starting on 1 June 1990.

8 By letter of 6 June 1990 addressed to the Director General for Personnel, the Budget and Finance, Mr Van den Berge, the applicant submitted a complaint against that decision under Article 90(2) of the Staff Regulations of Officials of the European Communities, which applies by analogy pursuant to Article 46 of the Conditions of Employment, indicating at the same time that she was pregnant.

9 By letter of 18 June 1990, also addressed to Mr Van den Berge, the applicant confirmed that she had been pregnant since 15 May 1990, as evidenced by a medical certificate drawn up by her usual gynaecologist and send to the Parliament's medical officer on 18 June 1990.

10 By letter of 26 June 1990, Mr Brissaud informed the applicant that the Bureau of the Group had confirmed her dismissal, notwithstanding the notification of her pregnancy and the fact that it had commenced around 15 May 1990, that is to say before the decision of 31 May 1990 to dismiss her was adopted.

11 By letter of 9 July 1990, Mr Calingolou, the President of the Staff Committee, protested against the decision of 31 May 1990 to dismiss the applicant.

12 The Parliament states that, by letter of 10 July 1990, Mr Brissaud sent a reply to the Committee through the internal messenger service of the institution.

13 The applicant has cast doubt on the existence of that reply. In response to the request made to it by the Court, the Parliament stated that it was not in a position to produce the original of that letter, which, according to its statements at the hearing, had gone astray when the Staff Committee was renewed.

14 By letter of 12 July 1990, which the applicant states came to her notice on 20 July 1990, Mr Le Pen, the Chairman of the Group, sent her a fresh dismissal notice, this time giving three months' notice, expiring on 11 October 1990. The Parliament admits that, before that letter was sent, there were contacts between the Group and the Parliament's Legal Service in which the latter advised that the first dismissal notice of 31 May 1990, based on Article 14 of the Conditions of Employment, should be replaced by a second dismissal notice properly founded on Article 47 of the Conditions of Employment.

15 By letter of 24 July 1990 addressed to Mr Van den Berge, the applicant submitted a further complaint, under Article 90(2) of the Staff Regulations, against that decision of 12 July 1990. By letter of 6 September 1990, Mr Van den Berge informed the applicant that her contract would end on 11 October 1990 and that both her complaints were being considered.

Procedure

16 By application lodged at the Registry of the Court of First Instance on 16 October 1990, the applicant brought an action for the annulment of the abovementioned decisions of 31 May and 12 July 1990 bringing her contract of employment to an end.

17 By a separate document lodged at the Registry on the same day, the applicant requested that the operation of the abovementioned decisions be suspended.

18 By order of 23 November 1990, the President of the Court dismissed that application. However, by way of interim measure, he directed that 'from the date on which the contract of employment was terminated and until the Commission actually pays the applicant the unemployment allowance provided for in Article 28a of the Conditions of Employment, the Parliament shall pay the applicant a sum equivalent to the abovementioned monthly unemployment allowance, together with, as from the birth of her child, the family allowances referred to in Article 28a(5) of the Conditions of Employment and shall provide for the applicant, without contribution on her part, the insurance cover against sickness as provided for in Article 72 of the Staff Regulations'.

19 By application lodged at the Registry on 14 March 1991, the applicant, claiming that the Parliament was not complying with the above order, made a further application for interim measures. On conclusion of the hearing of the parties on 20 March 1991, the proceedings on the second application for interim measures were suspended for three weeks. In view of the Parliament's change of attitude, the applicant withdrew her second application for interim measures by letter of 11 April 1991.

20 The written procedure followed the normal course and was concluded on 18 March 1991.

21 Upon hearing the report of the Judge-Rapporteur, the Court requested the Parliament, on 6 June 1991, to give precise and complete reasons for the dismissal and to produce the text of the Internal Rules on the Recruitment of Officials and Other Servants adopted on 15 March 1989 by the Bureau of the Parliament ('the Bureau's Recruitment Rules') and the originals of the letters of 28 May and 10 July 1990 mentioned above. It also asked the Parliament to state on what date the President of the Staff Committee had actually had the last-mentioned letter notified to him. The Parliament answered those questions only partially and did not produce the originals of the letters of 28 May and 10 July 1990.

22 Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiries.

The forms of order sought by the parties

23 The applicant claims that the Court should:

(a) annul the decisions of Jean-Marc Brissaud of 31 May 1990 informing the applicant of her dismissal, the implied decision of rejection of Mr Van den Berge, inferred from his silence for a period of more than four months

following the applicant's complaint of 6 June 1990, and the decision of Jean-Marie Le Pen, Chairman of the Group of the European Right, of 12 July 1990 informing the applicant that she was dismissed with effect from 11 October 1990, and consequently order the applicant's reinstatement in her former post;

(b) in the alternative, declare the dismissal unfair and order the defendant to pay Alicia Speybrouck the sum of Lfr 5 million in damages, or such greater sum as may be appropriate in the light of an expert's opinion;

(c) order the defendant to pay the costs of the proceedings.

24 The Parliament contends that the Court should:

(a) declare the action unfounded;

(b) make an order as to costs in accordance with the relevant provisions of the Rules of Procedure.

Admissibility

1. *The claim for annulment of the decision to dismiss the applicant of 31 May 1990*

25 In support of her claim that the first decision to dismiss her should be annulled, the applicant initially put forward three pleas in law, alleging, first, infringement of Article 9(d) of the Group's Rules of Procedure; secondly, misapplication of Article 14 of the Conditions of Employment and, thirdly, that the period of notice of one month initially given to her was insufficient, having regard to the relevant provisions of Article 47 of the Conditions of Employment.

26 Without thereby responding to those pleas for annulment, the Parliament observes that only the validity of the later decision to dismiss the applicant, of 12 July 1990, can be the subject of proceedings before the Court since in any event the applicant's contract of employment was properly kept in force until 11 October 1990.

27 The Court takes note of the fact that the applicant does not contest the latter assertion by the Parliament in her reply and defers in that regard to the judgment of the Court.

28 Similarly, the Court notes from the parties' statements at the hearing that they agree that the applicant regularly received her salary until 20 October 1990.

29 Considering that it is thus established that the decision of 31 May 1990 no longer adversely affected the applicant when she lodged her application, the Court infers that the application is inadmissible to the extent to which its concerns that decision.

2. *The claim that the applicant should be reinstated*

30 It must be remembered that the Community judicature cannot, without encroaching upon the prerogatives of the administration, address injunctions to a Community institution.

31 As a general rule, that principle renders inadmissible claims that an institution be ordered to takes such measures as may be needed to comply with a judgment annulling a decision (see the judgment of the Court of Justice in Case 225/82 *Verzyk* v *Commission* [1983] ECR 1991, at p. 2005).

32 It must therefore be inferred that in the present case the applicant's claim is inadmissible.

Substance

1. *The claim for annulment of the decision dismissing the applicant of of 12 July 1990*

33 In support of her claim that the second decision to dismiss her should be annulled, the applicant puts forward three pleas in law in her application, alleging, first, infringement of a fundamental right whereby a pregnant woman is protected against any dismissal; secondly, failure to observe the applicable period of notice of three months; and, thirdly, breach of the provisions of Article 11 of the Bureau's Recruitment Rules and those of the Group's Rules of Procedure, in particular Article 9 thereof.

34 In her reply, the applicant puts forward a fourth plea, alleging that the reasons on which the contested decision was based were not given.

The first plea in law: infringement of a fundamental right for the protection of pregnant women

35 The applicant states, in the first place, that the decision to dismiss her of 12 July 1990 was taken when the appointing authority had known since 6 June 1990 that she was pregnant. She adds that that information was confirmed by a medical certificate forwarded to the Parliament medical officer on 18 June 1990. Moreover, in his letter to the applicant of 26 June 1990, Mr Brissaud, she says, acknowledged having received that information.

36 The applicant also maintained at the hearing that, in view of the fact that the meeting of the Bureau of the Group was held on 7 June 1990 and not, as wrongly contended by the Parliament, on 5 June 1990, it must be inferred that the Bureau of the Group itself had due notice of her condition when it confirmed the decision to dismiss her.

37 The applicant therefore considers that by dismissing her, even though aware of her condition, the Parliament infringed general principles of law of which the Court of Justice and Court of First Instance must ensure observance pursuant to Article 164 of the EEC Treaty.

38 After briefly analysing certain rules of international law — International Labour Organization Conventions Nos 3 and 103, adopted in 1919 and 1952 respectively —, of the European Social Charter, and of the domestic law of certain Member States, the applicant reaches the conclusion that all the legal systems of the Member States referred to by her have laid down a more or less rigorous prohibition of dismissing a pregnant woman, the duration of which varies according to the legislation in question.

39 From this she infers the existence of a fundamental right to such protection.

40 She does not deny, however, that, despite the existence of that fundamental right, which she regards as generally recognized, the Conditions of Employment do not expressly protect pregnant women against the possibility of dismissal.

41 In its defence, the Parliament contends, in the first place, that the applicant's contract of employment is governed by Community law, in this case the Conditions of Employment, Article 47(2) of which does not prohibit the termination of the contract of employment of a pregnant woman, the third sentence of that provision merely providing that the period of notice is not to run during maternity leave, the duration of which is laid down by Article 58 of the Staff Regulations, which applies by analogy pursuant to Article 16 of the Conditions of Employment. The Parliament contends that in the present case the starting point of the period of notice fell long before that of the applicant's maternity leave, which was not due to start until December 1990 at the earliest. The Parliament concludes that in the circumstances the applicant is not entitled to rely on that provision.

42 Secondly, the Parliament states that the general principles of law which the Court of Justice and the Court of First Instance are required to uphold do not include a fundamental right by virtue of which any dismissal of a pregnant woman is absolutely prohibited.

43 The Parliament states in its rejoinder that the general principles of law upheld by the case-law of the Court of Justice are derived from constitutional traditions common to the Member States or from international instruments for the protection of human rights to which the Member States are parties or in which they have cooperated. According to the Parliament, the applicant has not succeeded in establishing, from a comparison of the constitutional laws of the Member States, that the said prohibition is established as a fundamental right; in the present case, the applicant merely undertook a straightforward study of comparative labour law. According to the Parliament, that is not sufficient for the creation, *ex proprio motu* and without any legislative basis, of a general principle of law which, in the Parliaments view, is contrary to Article 47(2) of the Conditions of Employment.

44 Thirdly, the Parliament refers to the proposal for a Council directive concerning the protection at work of pregnant women or women who have recently given birth (COM (90) 406 final — SYN 303), submitted by the Commission on 18 September 1990 (Official Journal 1990 C 281, p. 3), Article 6(2) of which confirms the absence of any general prohibition of dismissing a pregnant employee.

45 In her rejoinder, the applicant rejects the latter argument, stating that, on the contrary, the relevant provisions of that proposal for a directive recognize the existence of a fundamental right whereby pregnant women are protected against any dismissal.

46 Having considered the parties' arguments, the Court finds, in the first place, that it is clear from the applicant's pleadings and her statements at the hearing that she makes no claim that her dismissal was attributable to the fact that she was pregnant; on the contrary, all her arguments, based on the existence of a funda-

mental right, purport to deny the Group the right to dismiss a pregnant woman on any grounds, whether or not related to her pregnancy, provided only that it was aware of the fact that she was pregnant.

47 Having thus clarified the scope of this plea, the Court confirms, secondly, that the principle of equal treatment for men and women in matters of employment and, at the same time, the principle of the prohibition of any direct or indirect discrimination on grounds of sex form part of the fundamental rights the observance of which the Court of Justice and the Court of First Instance must ensure pursuant to Article 164 of the EEC Treaty.

48 On several occasions (judgments in Case 20/71 *Sabbatini-Bertoni* v *Parliament* [1972] ECR 345, Case 21/74 *Airola* v *Commission* [1975] ECR 221 and Joined Cases 75/82 and 117/82 *Razzouk and Beydoun* v *Commission* [1984] ECR 1509), the Court of Justice has recognized that it is necessary to ensure equality as between female and male workers employed by the Community itself, under the Staff Regulations of Officials, and in the last of the abovementioned judgments the Court emphasized that, in relations between Community institutions, on the one hand, and, on the other, their employees and the latter's dependants, the requirements imposed by the principle of equal treatment are in no way limited to those resulting from Article 119 of the EEC Treaty or from the Community directives adopted in that field.

49 More specifically, the Court of First Instance observes that, in its preliminary ruling in Case C-179/88 *Handels- og Kontorfunktionærernes Forbund i Danmark* v *Dansk Arbejdsgiverforening* [1990] ECR I-3979, the Court of Justice interpreted Article 2(1) and (3) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Official Journal 1976 L 39, p. 40) as meaning that the dismissal of a female worker on account of pregnancy (paragraph 13) constitutes direct discrimination on grounds of sex, as does a refusal to appoint a pregnant woman (judgment in Case C-177/88 *Dekker* v *VJM-Centrum* [1990] ECR I-3941). The same conclusion is to be drawn from the international instruments in which the Member States have cooperated or to which they have acceded and from the applicable law of the Member States.

50 It follows from the foregoing that only an employee dismissed on account of pregnancy may invoke the protection deriving from that fundamental right.

51 At this stage in its reasoning, the Court also wishes to make it clear that Article 47(2) of the Conditions of Employment, on which the Parliament seeks to rely and which provides that in the event of the dismissal of a member of the temporary staff employed under a contract for an indefinite period the period of notice is not to commence to run during maternity leave, must be interpreted in accordance with that fundamental right, as upheld by the decisions cited above.

52 Having regard to the facts of the present case, however, it must be stated that it has certainly not been established, nor has the applicant even maintained, that the dismissal of 12 July 1990 was attributable to her pregnancy. It follows that the applicant cannot claim that the abovementioned fundamental right has been infringed.

53 This plea must therefore be dismissed.

The second plea in law: failure to give the prescribed notice

54 The applicant's argument is based on the fact that the letter of dismissal of 12 July 1990, which indicated that her period of notice would expire on 11 October 1990, was not sent to her until 20 July 1990. Consequently, in the applicant's view, the period of notice could not start to run until the day following the date of notification and could not therefore expire until 21 October 1990 at the earliest.

55 In response, the Parliament argues that there is no provision of the Conditions of Employment which renders a dismissal void if — as a result of problems affecting deliveries of mail — the period of notice mentioned in the letter of dismissal does not correspond to the full period of three months reckoned from the date of receipt of the letter. According to the Parliament, it is sufficient if the recipient is

actually given a full period of notice of three months. It follows, in the Parliament's view, that the applicant's argument provides no grounds for annulling the decision to dismiss her.

56 In view of the foregoing matters of fact and law, the Court finds, first, that regardless of the delay in notifying the decision to dismiss the applicant of 12 July 1990, the period of notice given in that decision was too short since it was stated to expire on 11 October 1990 whereas in fact it should have expired at the end of 12 October 1990. It must therefore be concluded that the period of notice was insufficient at the outset. That does not mean that the decision to dismiss the applicant is void, since the applicant conceded, in particular in her statements at the hearing, that the Parliament had actually paid her salary until 20 October 1990, that is to say until the end of the proper period of notice. It thus having been established that the applicant suffered no damage through that error, it must be concluded that the present plea in law has become devoid of purpose and must be dismissed.

The third plea in law: infringement of Article 11 of the Bureau's Recruitment Rules and of the Group's Rules of Procedure, in particular Article 9

57 The applicant states that the decision to dismiss her of 12 July 1990 was adopted without the internal prior reconciliation procedure provided for in Article 11 of the Bureau's Recruitment Rules, which provides 'Prior to any procedure for the termination of the contract of a member of the temporary staff on the basis of Article 2(c) of the Conditions of Employment of other servants, the Staff Committee must be duly informed. It may hear the person concerned and make an approach to the authority empowered to conclude contracts of employment'.

58 She also submits, without giving further details, that the decision is in breach of the Group's Rules of Procedure, in particular Article 9 thereof.

59 As regards Article 11 of the Bureau's Recruitment Rules, the Parliament has, particularly at the hearing, drawn attention to the fact that in its opinion the abovementioned Article 11 does not establish a reconciliation procedure but merely requires that the Staff Committee be given advance notice.

60 The Parliament states that it is apparent from Mr Brissaud's reply of 10 July 1990 to the letter from the Staff Committee of 9 July 1990 that the Group did in fact give that committee prior notice of its intention to dismiss the applicant, thus complying with the abovementioned provision.

61 As regards observance of the Group's Rules of Procedure, and more particularly Article 9 thereof, which provides *inter alia* that the letter of dismissal must be signed by the appointing authority, namely the Chairman of the Group, the Parliament states that Mr Le Pen, the Chairman of the Group, did sign the letter of dismissal of 12 July 1990.

62 In its statements at the hearing, the Parliament also insisted that the Group's Rules of Procedure have only ever existed in a draft version.

63 In her reply, the applicant no longer pleads that the Group's Rules of Procedure were infringed.

64 As regards infringement of Article 11 of the Bureau's Recruitment Rules, she has contended that the letter of 10 July 1990 never existed. For that reason, she asked that the original be produced and that the President of the Staff Committee should state whether or not he received that communication.

65 The applicant considers that, even if such a letter exists, the procedure provided for by the rules in question, which is intended to allow the Staff Committee to intervene and hear the views of the employee concerned, was in any event thoroughly abused. She states that the letter of 10 July 1990 concludes as follows: 'You are at liberty to hear the views of those two persons and make approaches to our Chairman'. However, according to the applicant, Mr Le Pen took the decision to dismiss her one day later, thus presenting the Staff Committee with a *fait accompli*.

66 In its rejoinder, the Parliament argues that the decision of 12 July 1990 to dismiss the applicant in no way prevented the Staff Committee from taking — if appropriate — the necessary initiatives to persuade Mr Le Pen to reconsider it.

67 It repeats that the letter of 10 July 1990 replied to a letter from the President of the Staff Committee dated 9 July 1990 in which the latter requested that the decision of 31 May 1990 to dismiss the applicant be reconsidered. The Parliament infers from this that the Staff Committee was thus clearly informed of Mr Le Pen's intention to dismiss the applicant, just as Mr Le Pen was informed of the request from the Staff Committee that he reconsider his decision, which confirms its conclusion that Article 11 of the Bureau's Recruitment Rules was fully complied with.

68 As regards the first part of the plea, alleging infringement of Article 11 of the Bureau's Recruitment Rules, the Court points out, in the first place, that, despite the fact that the contract of employment authorized the Parliament to dismiss the applicant without giving any reasons, provided that notice of three months was given, it must be considered that the rules in question, although not laid down by the Conditions of Employment, formed an integral part of the formalities which the Parliament was under an obligation to observe as employer when it sought to bring the applicant's contract to an end.

69 In that regard, it must be observed, on the one hand, that it is clear from the wording of Article 11 that it applies to 'any procedure for the termination of the contract of a member of the temporary staff on the basis of Article 2(c) of the Conditions of Employment' and, on the other, that, by virtue of settled case-law of the Court of Justice, the institutions are required to observe internal procedures that they have set up voluntarily by means of an internal decision since the principle of equal treatment may be breached in the event of non-compliance (judgments of the Court of Justice in Case 148/73 *Louwage* v *Commission* [1974] ECR 81 and Case 282/81 *Ragusa* v *Commission* [1983] ECR 1245). The Court concludes therefore that, by virtue of the provision referred to by the applicant, the Parliament was in fact required to give advance notice to the Staff Committee of the forthcoming dismissal of the applicant, so that the Committee would, if appropriate, be in a position to hear her views and make approaches to the relevant appointing authority.

70 Secondly, the Court finds that the Parliament clearly waived the right to rely on the decision to dismiss the applicant of 31 May 1990. It follows that the dismissal decision of 12 July 1990 must in fact be regarded as a second dismissal decision, with the result that recourse to the prior information procedure provided for in Article 11 of the Bureau's Recruitment Rules was called for.

71 In order to reply, thirdly, to the question whether, in the present case, that procedure was in fact followed, the Court observes, first, that the Parliament states that the Staff Committee was given advance notice of the applicant's forthcoming dismissal, as is evidenced both by the letter of 9 July 1990 sent by that committee to the Chairman of the Group and by the letter of 10 July 1990 which the Secretary General of the Group is said to have sent to the President of that committee.

72 It must be observed that the first letter merely expresses the Staff Committee's disapproval of the first decision to dismiss the applicant of 31 May 1990, upon which the Parliament no longer relies.

73 As regards the second letter, of 10 July 1990, the Court notes that the applicant refused at any time to recognize its authenticity, but without ever explaining the reasons underlying her reservations. In reply to one of the questions put to it by the Court on 6 June 1991, the Parliament states in that regard that the President of the Staff Committee declared that he was not able to produce the original of that letter. It also appears from the statements made at the hearing that that letter went astray when the Committee, in particular the President and Secretary thereof, was renewed. The Parliament therefore produced only a copy.

74 Considering that the circumstances mentioned by the Parliament are plausible and are not such as to raise doubts as to the authenticity of the copy produced by it, the Court finds that, according to that letter, the earlier decision to dismiss the applicant was confirmed, as was the decision to dismiss another member of temporary staff employed by the Group. That letter also indicates that the two persons concerned would shortly receive a letter of dismissal from the Chairman of the Group and that the Committee would thus be entirely free to hear their views and make approaches to the Chairman of the Group.

75 The Court notes that although the second decision to dismiss the applicant was adopted on 12 July 1990, it was not notified to the applicant until 20 July 1990 and therefore did not take effect until that date. As a basis for that conclusion, the Court refers to the first sentence of the second paragraph of Article 25 of the Staff Regulations, which applies by analogy pursuant to Article 11 of the Conditions of Employment and provides that 'Any decision relating to a specific individual which is taken under these Staff Regulations shall at once be communicated in writing to the official concerned'.

76 In the present case, ten days elapsed between the letter of 10 July 1990 informing the Staff Committee that the dismissal of the applicant was confirmed and the notification of the decision effectively dismissing her, and during that period the Staff Committee had a genuine opportunity to take action on behalf of the applicant, although it did not in fact do so, as, moreover, was confirmed by the applicant at the hearing.

77 In other words, it is not therefore correct to assert, as the applicant does, that after the letter of 10 July 1990 was sent to it, the Staff Committee had only an unreasonably short period of two days in which to take action on behalf of the applicant.

78 It follows that in the present case the procedure provided for in Article 11 of the Bureau's Recruitment Rules was not infringed, it being apparent from the facts of the case that the Staff Committee, duly informed of the second dismissal of the applicant, did in fact have a reasonable time in which to take action vis-à-vis the relevant appointing authority but nevertheless did not do so.

79 The Court observes *ad abundiantam* that, even if it were appropriate to conclude that, by taking the decision to dismiss the applicant on 12 July 1990, that is to say two days after sending the letter to the Staff Committee, the appointing authority demonstrated its scant respect for the Bureau's Recruitment Rules and thus abused them, it would nevertheless have to be concluded that the absence of any intervention on the part of the Staff Committee, even, at the limit, within the period of notice of three months which expired on 20 October 1990 at midnight, proves that in any event the course of the procedure leading to the decision to dismiss the applicant would not have been different (judgment of the Court of Justice in Case 30/78 *Distillers Company* v *Commission* [1980] ECR 2229, paragraph 26, and judgment of the Court of First Instance in Case T-7/90 *Kobor* v *Commission* [1990] ECR II-721, paragraph 30). In view of the facts of the present case the applicant cannot therefore invoke that irregularity.

80 It follows from the foregoing that in any event the first part of this plea must be dismissed.

81 As regards the second part of the plea, namely the alleged infringement of the Group's Rules of Procedure, the Court finds that the applicant has given no details of the substance or scope of that infringement. Therefore, the Court considers that the second part of the plea must also be dismissed.

82 The Court thus concludes that this plea in annulment must be dismissed in its entirety.

The fourth plea: lack of a statement of reasons

83 In her reply, the applicant submits that the decision to dismiss her is void in any event since no statement was given of the reasons on which it was based, contrary to Article 25 of the Staff Regulations in conjunction with Article 11 of the Conditions of Employment.

84 In that regard she refers to the Opinion of Advocate General Mayras in Case 25/68 *Schertzer* v *Parliament* [1977] ECR 1729, at p. 1749, and specifically to the following passage: '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'.

85 She also points out that in its judgments in Joined Cases 43/59, 45/59 and 48/59 *Von Lachmüller and Others* v *Commission* [1960] ECR 489 and Case 44/59 *Fiddelaar* v *Commission* [1960] ECR 535, the Court of Justice considered, after analysing the public interest, that the administration is always required to observe the principle of good faith and that is must therefore give reasons for its dismissal decisions.

86 In its rejoinder, the Parliament observes first of all that that plea did not appear in the application, thus casting doubt on its admissibility.

87 Nevertheless, it responds to it, submitting that the essential feature of contracts between a political group and its temporary staff is mutual trust, without which such contracts are entirely pointless. In support of that view, it refers to the judgment of the Court of Justice in Case 25/68, cited above, and more precisely to paragraphs 39 and 40, which read as follows: 'The justification for the unilateral termination of a contract of employment expressly provided for in the aforementioned provision (Article 47 of the Conditions of Employment) ... is to be found in the contract of employment and therefore reasons do not have to be stated for it. In this respect the position of the applicant is fundamentally distinct from that of an official under the Staff Regulations, so that there is no basis for the analogy which justifies and limits the reference to Article 11 of the Conditions of Employment of Other Servants to certain provisions of the Staff Regulations'. Therefore, the Parliament considers this plea to be unfounded.

88 Having regard to the parties' arguments, the Court finds that the present plea, which was put forward for the first time in the reply, is inadmissible and points out that under the first paragraph of Article 48 of the Rules of Procedure of the Court of First Instance no new plea in law may be introduced in the course of the proceedings.

89 In view of the importance which attaches, in general, to the duty of the Community institutions to state reasons for decisions taken in the exercise of their powers, the Court will nevertheless consider, of its own motion, whether in the present case the applicant may rely on the application by analogy, provided for in Article 11 of the Conditions of Employment, of the last paragraph of Article 25 of the Staff Regulations, which provides in general terms that any decision adversely affecting an official is to state the grounds on which it is based.

90 The Court observes in the first place that by contrast with officials, whose security of tenure is guaranteed by the Staff Regulations, temporary staff are subject to specific conditions based on the contract of employment entered into with the institution concerned.

91 In the present case, the contract of employment expressly provided that either of the parties might terminate it unilaterally by giving three months' notice. The

contract of employment did not therefore impose on the employer any obligation to state the grounds of termination, provided that the proper notice was actually given.

92 Similarly, the applicant's contract of employment referred to Articles 48, 49 and 50 of the Conditions of Employment and thus confirmed their applicability. Of those provisions, only Article 49 imposes the obligation to give reasons for a decision to dismiss a member of the temporary staff, where his contract is unilaterally terminated on disciplinary grounds in the case of serious failure to comply with his obligations. In such circumstances, Article 49 expressly provides that employment may be terminated without notice, thus making it clear that, by virtue of the contractual basis on which the member of temporary staff is engaged, the obligation to state reasons applies only where no notice is given. In that regard it must be pointed out that in the present case the contract was not terminated under Article 49 of the Conditions of Employment.

93 It is apparent from the foregoing that the unilateral termination expressly provided for by the contract of employment does not require reasons to be given, whichever party takes the initiative. It follows that, in this regard, the position of a member of the temporary staff differs from that of an official whose employment is governed by the Staff Regulations, with the result that the application by analogy of Article 25 of the Staff Regulations provided for in general terms in Article 11 of the Conditions of Employment is excluded.

94 Secondly, the Court observes that, as correctly stated by the Parliament, mutual trust is an essential feature of the contracts of employment of the temporary staff referred to in Article 2(c) of the Conditions of Employment. That applies with greater force to persons who are engaged by the Parliamentary groups which, as a general rule, exist by virtue of a clearly defined political choice. In the present case, it is clear that by accepting a senior post involving very special duties, such as that of assistant Secretary General of a Parliamentary Group, the applicant should have been aware of the factors and political uncertainties which were decisive regarding both her recruitment and her subsequent dismissal. This analysis is confirmed by the judgment of the Court of Justice in Case 25/68 *Schertzer* v *Parliament*, cited above.

95 The foregoing considerations, concerning the specific nature of the function for which the applicant had been recruited, reinforce the conclusion that, in the event of disappearance of the mutual trust which prevailed when the applicant was recruited, the Group was entitled to decide unilaterally to terminate her contract, without being under any obligation to state the reasons for doing so.

96 It follows that this plea in law is unfounded.

2. *The claim in the alternative for, first, a declaration that the dismissals are unfair; secondly, for compensation for the material and non-material damage allegedly suffered; and, thirdly, for the appointment, if necessary, of an expert to evaluate that damage*

97 As to whether the Court may declare the dismissals unfair, it must be remembered, in the first place, that it is clear from Article 47(2) of the Conditions of Employment that the termination of a contract of indefinite duration is, provided that notice of three months is given as laid down in the contract and in conformity with that provision, a matter within the discretion of the competent authority.

98 Accordingly, the Court cannot review the merits of such a discretionary assessment unless a manifest error or misuse of powers can be established (judgment of the Court of Justice in Case 25/80 *De Briey* v *Commission* [1981] ECR 637).

99 Since in the present case no such error or misuse of powers has been established or even alleged by the applicant, the Court cannot substitute its assessment for that of the competent authority and declare the dismissals of the applicant unfair.

100 This claim must therefore be dismissed.

101 As regards the claim for compensation for the material and non-material damage allegedly suffered, the Court observes, with regard to its admissibility, that the applicant had already made such a claim in the alternative in her complaint of 24 July 1990 against the dismissal of 12 July 1990 and that, in any event, this claim is closely linked to the claim for the annulment of the decisions referred to above.

102 It follows that the applicant's claim for compensation for the damage which she considers herself to have suffered is admissible.

103 As regards the merits of this claim, it is necessary to establish whether the applicant has shown that the Parliament has been guilty of maladministration in her case such as to give rise to the damage for which she seeks compensation.

104 In the present case the applicant has put forward no plea of such a kind as to entail the annulment of the contested decisions. Thus, the applicant has not established any irregularity capable of constituting maladministration on the part of the Parliament and capable of justifying the award of damages.

105 The claim for compensation for the material and non-material damage allegedly suffered must therefore be dismissed. It follows that the request for the appointment of an expert to evaluate the said damage must also be dismissed.

106 It follows from the foregoing considerations that the application must be dismissed in its entirety.

Costs

107 With respect to the costs of the first application for interim measures, the Court observes that the applicant initiated that procedure at the same time as she lodged her main application, on 16 October 1990, in order to remedy the precariousness of her situation resulting from her dismissal, which would have left her without financial resources pending either the grant of the unemployment allowance provided for in Article 28a of the Conditions of Employment or delivery of a judgment upholding her case, even though she was pregnant and thus had to contemplate increased expenditure in connection with her confinement and the care of her child.

108 It must be pointed out that, whilst the President of the Court of First Instance, in his order of 23 November 1990, did not accede to the applicant's request for suspension of the operation of the decisions to dismiss her, he nevertheless directed, by way of interim measure, that 'from the date on which the contract of employment was terminated and until the Commission actually pays the applicant the unemployment allowance provided for in Article 28a of the Conditions of Employment, the Parliament shall pay the applicant a sum equivalent to the abovementioned monthly unemployment allowance, together with, as from the birth of her child, the family allowances referred to in Article 28a(5) of the Conditions of Employment and shall provide for the applicant, without contribution on her part, the insurance cover against sickness as provided for in Article 72 of the Staff Regulations'.

109 He thus recognized that the applicant's condition justified particular concern for her welfare on the part of the Parliament, so as to ensure that she was not temporarily deprived of resources and unable to provide for her upkeep and that of the child to which she was about to give birth.

110 The Court thus finds that there are exceptional reasons for the costs of the first application for interim measures to be borne by the Parliament, in accordance with the first subparagraph of Article 87(3) of the Rules of Procedure of the Court of First Instance.

111 As regards the costs of the second application for interim measures, the Court finds that in view of the fact that the Parliament initially refused, or at least was slow, to comply with the said order of 23 November 1990, the applicant was obliged to seek, by an application received at the Registry of the Court of First Instance on 14 March 1991, further interim measures in order to secure due compliance with the operative part of the order.

112 In that regard, the Court points out that it was only in the course of the hearing of 20 March 1991, held in connection with the second application for interim measures, that the Parliament actually undertook to comply with the operative part of the said order, thus enabling the applicant to withdraw her second application by letter of 11 April 1991. As to the costs of the second application for interim measures, which the applicant in her application of 14 March 1991 requested should be borne by the Parliament, the applicant proposed, in the said letter of 11 April 1991, that a decision should be given on them in the main action, which at that time was still pending.

113 In view of the foregoing, the Court concludes that the costs incurred by the applicant for her second application for interim measures were incurred as a result of the attitude of the Parliament and that it is therefore proper for the Parliament to be ordered to pay the costs pursuant to the first subparagraph of Article 85 of the Rules of Procedure of the Court of First Instance.

114 Accordingly, the Parliament is to be ordered to pay all the costs of the proceedings on the two applications for interim measures lodged on 16 October 1990 and 14 March 1991.

115 As regards the costs of the main proceedings, pursuant to Article 87(2) of the Rules of Procedure of the Court of First Instance the unsuccessful party is to be ordered to pay the costs if they are asked for in the opposite party's pleadings.

However, pursuant to Article 88 of the same rules, in proceedings between the Communities and their servants the institutions are to bear their own costs. The parties should therefore be ordered to bear their own costs in respect of the main proceedings.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the Parliament to pay the costs of the applications for interim measures in their entirety;

(3) Orders the parties to bear their own costs in respect of the main proceedings.

Lenaerts Barrington Kirschner

Delivered in open court in Luxembourg on 28 January 1992.

H. Jung
Registrar

K. Lenaerts
President