JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
22 November 1990 *

In Case T-54/89,

Mrs V., [1] a former member of the temporary staff of the European Parliament, residing in Brussels, represented by Christina Pagni, of the Milan Bar, and Andrea Guarino, of the Rome Bar, with an address for service in Luxembourg at the Chambers of Alain Lorang, 51 rue Albert Ier,

applicant,

v

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

defendant,

APPLICATION for the annulment of the report of the Invalidity Committee responsible for examining the applicant's case and several decisions of the European Parliament refusing to declare the invalidity scheme applicable to the applicant, refusing to recognize the medical certificate of unfitness for work submitted by the applicant, termination of her contract as a member of the temporary staff and the dismissal of various complaints lodged by the applicant,

THE COURT OF FIRST INSTANCE (Fourth Chamber),

composed of: D. A. O. Edward, President of Chamber, R. Schintgen and R. García-Valdecasas, Judges,

Registrar: H. Jung

having regard to the written procedure and further to the hearing on 4 July 1990,

* Language of the case: Italian.

1 — At the applicant's request, the Court ordered that her name should be replaced by her initial in all publications.

gives the following

Judgment

Facts

1 The applicant was employed from 10 July 1981 as a member of the temporary staff in Grade C 1 in the Group of the European Peoples' Party (hereinafter referred to as 'the EPP Group') of the European Parliament. During the succeeding years her sick-leave exceeded 12 months during a period of three years. According to the applicant, her absences were due at first to renal ptosis, the symptoms of which were sudden stabbing pains and a state of physical exhaustion, and subsequently depression. The applicant submitted a medical certificate for some of her absences.

2 Pursuant to the fourth subparagraph of Article 59(1) of the Staff Regulations of Officials of the European Communities, applicable to members of the temporary staff pursuant to Article 16 of the Conditions of Employment of Other Servants of the European Communities, the applicant's case was referred for the first time to the Invalidity Committee to determine whether there was a case of invalidity. The Invalidity Committee, which met on 20 November 1986, concluded that the applicant was not suffering from total invalidity preventing her from performing the duties corresponding to a post in her career bracket and that on that ground she should resume her duties. Dr Boccardo, the member of the Invalidity Committee appointed by the applicant, nevertheless signalled his disagreement with that conclusion. The applicant was informed of the Committee's opinion by letter dated 5 December 1986 from the Director-General for Personnel, the Budget and Finance instructing her to resume her work. The applicant resumed work on 6 January 1987.

3 After numerous subsequent absences the applicant was examined at the request of the Parliament's Medical Officer by Dr Van Roost, a nephrologist in Brussels, who found that:

'Clinical examination and careful study of all the documents brought by Mrs V. do not allow me to conclude that there is any permanent total invalidity making it impossible for her to perform her duties as a secretary.'

4 When the applicant was again absent on several occasions the appointing authority decided on 14 July 1987 to refer her case once again to the Invalidity Committee. The applicant appointed Dr Boccardo and the Parliament Dr Di Paolantonio to be members of it. The two doctors disagreed, however, about the appointment of a third member as well as about the requirement that the administration should forward a copy of all the medical documents on the applicant to Dr Boccardo.

5 By letter dated 6 October 1987 Dr Di Paolantonio wrote to Dr Boccardo as follows:

'The requirements made by Mrs V. on the subject of the choice of the third doctor (Italian culture and mentality, unconnected with her place of work) are met in the person of the doctor she has chosen to represent her, but the third doctor, according to the Staff Regulations, must be selected by common agreement of the two other doctors on the Invalidity Committee.

I confirm that I am unable to accept the doctors you have proposed in your letters of 26 August and 19 September 1987 and I regret that you have not been able to accept the candidates I proposed in my letter of 11 September 1987. In consequence I propose as the third doctor Professor Alexandre, a specialist in nephrology of world-wide reputation, attached to the University Clinic of Saint-Luc in Brussels.

As regards Mrs V.'s documents . . . In March 1984 she consulted you in connection with the annual medical examination. All the medical documents subsequent to that date were given to us by her and by yourself and I do not think it necessary to forward you a copy of those copies.'

6 By letter dated 17 October 1987 Dr Boccardo answered Dr Di Paolantonio:

'I am able . . . to confirm the answer I gave you over the telephone on 12 October 1987: we have no objection to accepting as a third member of the Invalidity Committee Professor Alexandre of the University of Brussels.

Nevertheless, I should like to put on record the conditions which I should like to have accepted prior to any definite agreement about the name you have proposed:

(1) Since it is the second time that we are accepting persons proposed by you, should Professor Alexandre not agree to be a member of the Committee any subsequent choice shall be made from among several persons whom we shall propose, excluding names which you have previously refused, albeit without any special ground;

(2) I do not consider your report summarizing the medical documents of my patient as satisfactory and therefore the Invalidity Committee will be summoned only when I have received a copy of all the correspondence concerning my patient (visits for tax purposes, assistance during work, therapy and so forth) and any other document which I do not have because I forwarded it to the Parliament's medical department.'

7 Since the Parliament considered that the conditions proposed by Dr Boccardo were unacceptable, it requested the President of the Court of Justice on 26 October 1987, pursuant to the third paragraph of Article 7 of Annex II to the Staff Regulations, to appoint a third member of the Invalidity Committee. Dr Pouthier, a doctor in the nephrology department of the Centre Hospitalier Luxembourg, was appointed and Dr Boccardo was informed by letter dated 12 November 1987 from the Director-General.

8 On 26 January 1988 the Invalidity Committee met for five hours and 40 minutes. At that meeting all the medical problems of the applicant, both physical and psychological, were examined. Dr Di Paolantonio and Dr Pouthier refused to sign a 98-page draft prepared by Dr Boccardo which concluded that the applicant should be retired on the ground of invalidity.

9 Dr Pouthier, moreover, did not wish to sign any document of the meeting because she required further information. She stated that she would forward her opinion shortly. No Minutes of the Committee's meeting were drawn up.

10 On 27 January 1988 Dr Di Paolantonio drafted a four-page medical report and a draft opinion which he submitted to his two colleagues. On 1 February 1988, at the end of the period which she had given herself, Dr Pouthier indicated that she shared Dr Di Paolantonio's opinion and signed the opinion which he proposed. On 8 February 1988 Dr Boccardo informed his two colleagues that he refused to sign the said opinion and requested a further meeting of the Invalidity Committee.

11 On 19 February 1988 Dr Di Paolantonio informed the Director-General of what had happened at the meeting and forwarded a copy of the opinion which the Invalidity Committee had reached.

12 On 24 February 1988 the Director-General informed Dr Boccardo by letter No 05170 that since two doctors had signed the same opinion he considered that it constituted the opinion of the majority of the Invalidity Committee and that in consequence the work of the said Committee was finished. By letter of the same date, No 05169, the Director-General sent the applicant, without comment, the Invalidity Committee's opinion.

13 By letter of the same day the Chairman of the EPP Group, as the appointing authority, informed the applicant that her contract of employment was terminated pursuant to the provisions of Article 47(2)(a) of the Conditions of Employment. He stated that the period of notice would begin to run from 1 March 1988 and expire on 31 May 1988.

14 In the meantime the applicant had forwarded to the Administration a certificate of incapacity to work for a period of two months dated 23 February 1988 and signed by Dr Verreydt. By letter dated 26 February 1988, No 05531, the

Director-General informed the applicant that the certificate had not been accepted 'in view of the opinion of the Invalidity Committee responsible for your case . . . and in accordance with our Medical Officer's proposal' and instructed her to resume her work forthwith. The certificate in question did not mention the medical reasons for her incapacity to work. According to the applicant she had been admitted to hospital to have her stomach pumped out.

15 The applicant thereupon submitted a second certificate dated 1 March 1988 also signed by Dr Verreydt and certifying unfitness for work from 1 March to 1 June 1988.

16 On 7 March 1988 Dr Vandenitte, the Parliament's Medical Officer, after telephoning the practitioner attending the applicant, called at her home to examine her. He considered that the applicant was then fit to work.

17 By letter dated 3 May 1988, registered at the Parliament on 24 May 1988, the applicant lodged a complaint against the decision of the Chairman of the EPP Group of 24 February 1988 and decision No 05531 of the Director-General of 26 February 1988 refusing the medical certificate dated 23 February 1988.

18 By a further letter dated 16 May 1988 and received on 24 May 1988 the applicant requested first the annulment of decision No 05169 of the Director-General of 24 February 1988 adopting the opinion of the Invalidity Committee and secondly that the procedure for determining that her invalidity should be continued.

19 On 22 August 1988 the appointing authority expressly rejected the two complaints.

Procedure

20 It was in those circumstances that by application lodged at the Registry of the Court of Justice on 21 November 1988 the applicant brought the present action against the Parliament, which was registered under No 336/88.

21 The whole of the written procedure took place before the Court of Justice. By order of 15 November 1989 the Court of Justice, pursuant to Article 14 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities, referred the case to the Court of First Instance, where it was registered under No T-54/89.

22 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure without any preparatory inquiry.

23 After being postponed twice the hearing finally took place on 4 July 1990. The parties' representatives submitted oral observations and answered questions put by the Court of First Instance.

24 The applicant claims that the Court of First Instance should:

(1) annul the following measures of the Parliament:

(a) the report of the Medical Committee concerning the applicant's invalidity, sent to the applicant on 24 February 1988;

(b) decision No 05169 of the Director of Personnel of the European Parliament, to the extent to which by implication it accepts and adopts the report of the Invalidity Committee and refuses the payment of an invalidity allowance to the applicant;

(c) decision No 05531 of the Director of Personnel of the European Parliament dated 26 February 1988 rejecting the medical certificate submitted by the applicant to the effect that she was unfit for work and instructing her to resume work;

(d) the decision of the Chairman of the Group of the European Peoples' Party, as the appointing authority, to terminate the applicant's employment contract as a member of the temporary staff of the European Parliament in Grade C 1, Step 5, working for the Group of the European Peoples' Party;

(e) the decision adopted by the Chairman of the Group of the European Peoples' Party, as the appointing authority, in so far as it rejects the complaint made on 16 May 1988 by the applicant under Article 90(2) of the Staff Regulations against decision No 05169 of the Director of Personnel;

(f) the decision adopted by the Chairman of the Group of the European Peoples' Party, as the appointing authority, in so far as it rejects the complaint made on 3 May 1988 by the applicant under Article 90(2) of the Staff Regulations against the decision of the appointing authority to terminate her employment;

(2) declare that the applicant is entitled to observance of the proper procedure for determination of the existence of physical and mental invalidity;

(3) order the defendant:

(a) to pay all the remuneration due to her as a member of the temporary staff of the European Parliament as from 31 May 1988, together with interest for late payment at the usual bank rate;

(b) to pay all the costs of the proceedings and lawyers' fees.

25 The Parliament contends that the Court of First Instance should:

(1) dismiss the application;

(2) make an order for costs in accordance with the applicable Staff Regulations.

Substance

26 In support of her claims the applicant makes in her written pleadings a number of submissions which were summarized at the hearing by the applicant's representative as follows:

(i) the Invalidity Committee was constituted unlawfully since the third member thereof was appointed by the President of the Court of Justice at the Parliament's request although the parties had already reached agreement on the name of Professor Alexandre;

(ii) the work of that Committee was not conducted in a collegial manner in accordance with the criteria laid down by the Court of Justice in its judgment in Case 277/84 *Jänsch* v *Commission* [1987] ECR 4923;

(iii) the work of that Committee is vitiated by failure to observe an essential procedural requirement, inasmuch as no Minutes were taken;

(iv) the decision refusing to admit the applicant to the invalidity scheme is unlawful because it was adopted by a person without the power to do so since he did not have the capacity of appointing authority, and no grounds were given for the decisions;

(v) the decision to dismiss the applicant is unlawful since it was adopted before notification of the decision in relation to her request to be admitted to the invalidity scheme, that is to say before the invalidity procedure had been terminated and before the decision of the appointing authority had been duly notified;

(vi) the decision to dismiss the applicant is also unlawful because it was adopted when she was on duly justified sick-leave since the decision rejecting the certificates of 23 February and 1 March 1988 of Dr Verreydt was itself unlawful.

27 It is necessary to examine those submissions from two aspects, considering first the lawfulness of the constitution and the work of the Invalidity Committee and secondly that of the decisions adopted at the end of February and the beginning of March 1988.

The constitution and work of the Invalidity Committee

28 In the first place the applicant claims that Dr Boccardo and Dr Di Paolantonio reached agreement on the appointment of Professor Alexandre as the third member of the Invalidity Committee. Since that was so the Parliament was not

justified in requesting he President of the Court of Justice to complete the composition of the Committee, since that procedure, being exceptional, was reserved to cases of complete and permanent disagreement between the two doctors appointed by the parties. In those circumstances, Dr Pouthier was not appointed in accordance with the Staff Regulations and all the subsequent work of the Committee was thus irremediably vitiated by nullity.

29 In the second place the applicant claims that the work of the Committee was conducted in breach of the collegial principle as established by the Court of Justice in its aforementioned judgment of 10 December 1987 in the *Jänsch* case. In her view, the medical report and the opinion drafted by Dr Di Paolantonio following the first meeting should have been, along with Dr Boccardo's report, the subject of a debate between the members of the Committee at a second meeting. The applicant maintains that only after such a debate could the Committee have reached a valid opinion.

30 In the third place the applicant maintains that the absence of Minutes constitutes a failure to observe an essential procedural requirement, making the work of the Invalidity Committee a nullity. Even though the Court of Justice held in the aforementioned judgment in the *Jänsch* case that the existence of Minutes is not an essential condition for the validity of the deliberations of an invalidity committee, the Court of First Instance ought not to follow it on that issue.

31 The Parliament replies that the alleged agreement given by Dr Boccardo to the appointment of Professor Alexandre was not definite since it was subject to unacceptable conditions. The recourse to the exceptional procedure set out in the third paragraph of Article 7 of Annex II to the Staff Regulations cannot be regarded as having been premature since it did not take place until three months after the decision to instruct a new committee.

32 As regards the alleged breach of the collegial principle, the Parliament considers that that principle does not imply that doctors must draft opinions together. In the present case a long meeting took place during which each of the members could have taken notes on the basis of which he could propose a draft opinion. The fact that Dr Di Paolantonio submitted a draft opinion to his colleagues in no way

impinged on the collegial nature of the work of the Committee. The majority's opinion is valid notwithstanding the absence of the signature of the doctor in the minority. In that respect the Parliament relies on the judgments of the Court of Justice in Case 31/71 *Gigante* v *Commission* [1975] ECR 337 and in Joined Cases 42 and 62/74 *Vellozzi* v *Commission* [1975] ECR 871. As regards the absence of Minutes it refers to the aforementioned judgment in the *Jänsch* case.

33 The Court of First Instance considers that the terms of Dr Boccardo's letter of 17 October 1987, interpreted in the light of those of Dr Di Paolantonio's letter of 6 October 1987 (see paragraphs 5 and 6 above), leave no doubt about the nature of the conditions to which Dr Boccardo's agreement to the appointment of Professor Alexandre as the third member of the Committee was subject. Those terms, which were not purely formal, were expressly described as a pre-condition to any 'definite agreement', which they accordingly held in suspension. The applicant cannot therefore claim that an agreement was reached between Dr Boccardo and Dr Di Paolantonio. It follows that the submission that there was a procedural defect in the constitution of the Invalidity Committee must be rejected.

34 As regards the collegial nature of the work of the Committee, the Court of First Instance considers that where, as in the present case, a meeting of five hours and 40 minutes has taken place during which a 98-page draft has been discussed, it is not possible to object to the fact that the subsequent exchange of views took place in writing. There is no indication that the procedure adopted by Dr Di Paolantonio prevented the other members of the Committee from freely expressing their opinion. Nor is there any indication that the two other doctors were not sufficiently informed of Dr Boccardo's point of view. Finally, there is no factor which might lead the Court of First Instance to find that Dr Pouthier was led to sign the documents prepared by Dr Di Paolantonio otherwise than with complete freedom of conscience. In those circumstances the Court of First Instance considers that the criteria laid down by the Court of Justice in its aforementioned judgment in the *Jänsch* case had been fully observed.

35 As regards the lack of Minutes, the Court of First Instance considers, as the Court of Justice already held in the aforementioned judgment in the *Jänsch* case, that the existence of Minutes is not an essential condition for the validity of a committee's deliberations. In the present case the lack of Minutes has affected neither the continuation of the Invalidity Committee's work nor the review by the Court to which it is at present subject.

36 It follows from those considerations that the course of the Invalidity Committee's work has not been affected by any substantive defect capable of vitiating it. That submission must therefore be rejected.

The lawfulness of the decisions adopted at the end of February and the beginning of March 1988

37 The applicant puts forward various submissions and arguments to establish the unlawfulness of all the decisions adopted with regard to her by the appointing authority at the end of February and the beginning of March 1988. In particular she maintains in the first place that the decision refusing to admit her to the invalidity scheme is unlawful for lack of power and failure to state reasons. In the second place she claims that the decision determining her contract as a member of the temporary staff is also unlawful since it was adopted when not only was the invalidity procedure still in progress but she herself was on duly justified sick-leave. In order to establish the unlawfulness of those two decisions the applicant considers it necessary to challenge in turn 'decision' No 05169 of 24 February 1988 of the Director-General 'in so far as he accepts and adopts the Invalidity Committee's report and refuses to apply the invalidity scheme to her' and 'decision' No 05531 of 26 February 1988 of the Director-General rejecting the medical certificate of 23 February 1988 given by Dr Verreydt. She infers that the decision of the Chairman of the EPP Group, as Appointing Authority, to terminate her contract of employment was also unlawful, especially since when the notice was due to begin to run Dr Verreydt had again certified her unfitness for work. Finally, for the same reasons she maintains that the decisions rejecting her complaints are also vitiated by unlawfulness.

38 As regards letter No 05169 of 24 February 1988, the applicant alleges that the appointing authority ought to have adopted a reasoned decision at the end of the invalidity procedure independently of the Invalidity Committee's report. Letter No 05169 merely communicated the opinion of the Invalidity Committee, signed by a person — the Director-General — who did not have the status of appointing authority and therefore did not have power to adopt the decision refusing to admit the applicant to the invalidity scheme. In the applicant's view that letter therefore did not terminate the invalidity procedure, which continued.

39 The Parliament recognizes that in order to simplify administration the Invalidity Committee's opinion was forwarded to the applicant by the Director-General responsible for Personnel. Nevertheless, it maintains that such communication, in the form of a registered letter sent to the official, cannot be denied the status of notification and recognition as an act adversely affecting the applicant within the meaning of Article 90(2) of the Staff Regulations. In any event, the Parliament maintains that since the appointing authority rejected the applicant's complaint based on the alleged unlawfulness of the procedure, it adopted the notification contained in letter No 05169.

40 As regards the medical certificates given by Dr Verreydt, the applicant maintains that the decision rejecting the certificate of 23 February 1988 was adopted, according to the actual terms of letter No 05531 of 26 February 1988 from the Director-General notifying the decision, on the basis of the Invalidity Committee's opinion. In reliance on the judgment of the Court of Justice in Case 271/87 *Fedeli* v *Parliament* [1989] ECR 993, the applicant submits that the said opinion had nothing to do with the determination of the lawfulness of her temporary absence because of sickness, since they were separate matters. In addition, the certificate was rejected without a visit to check. As regards the subsequent certificate, dated 1 March 1988, there was no visit to check until 7 March 1988, that is to say when the period of notice had begun to run.

41 The Parliament replies that the first certificate, dated 23 February 1988, did not mention medical reasons to justify not working whereas the second was based on the same diagnosis as that which had been relied upon before the two successive Invalidity Committees. The length of the absence provided for in the two certificates was an important factor in the adoption of the decision. The fact that the Parliament's Medical Officer found that the applicant was fit to work a fortnight after being certified unfit for two months and six days after being certified as unfit for three months, confirms, in the Parliament's view, that the appointing authority was right to reject the first medical certificate and take no account of the second.

42 As regards the decision to dismiss her, notified by letter dated 24 February 1988 from the Chairman of the EPP Group, the applicant does not deny that it was adopted by the appointing authority, but she maintains that the appointing authority was not entitled to take such a decision while the invalidity procedure was still in progress and before the medical certificate of 23 February 1988 had

been rejected. The applicant claims that in selecting 1 March 1988 as the date from which the notice should begin to run, the defendant misused its powers in order to ensure that the rejection of the medical certificate had been duly notified to the applicant.

43 In reply, the Parliament points to the provisions of Articles 47 and 48 of the Conditions of Employment and the judgment of the Court of Justice in Case 25/68 *Schertzer* v *Parliament* [1977] ECR 1729, which show the precariousness of the position of a member of the temporary staff such as the applicant, whose contract of employment may be terminated without a statement of reasons. The Parliament denies that the decision to dismiss the applicant was adopted after receipt of the medical certificate of 23 February 1988. It considers that the facts in the present case, as established, show that the applicant was not unable to work, and therefore was not on sick-leave, when the decision to dismiss her was adopted or when the period of notice began to run.

44 As regards first letter No 05169 of 24 February 1988 from the Director-General, the Court of First Instance finds that it is not a decision by the appointing authority capable of being the subject of an application for annulment. The letter constitutes notification of the Invalidity Committee's conclusions as provided for in the second paragraph of Article 9 of Annex II to the Staff Regulations, according to which:

'The Invalidity Committee's conclusions shall be communicated to the appointing authority and to the official concerned.'

Therefore the applicant's claim for annulment of that letter cannot be upheld.

45 In so far as the applicant's argument assumes that the invalidity procedure could be terminated only by a decision of the appointing authority, it must be pointed out that in the case of a member of the temporary staff Article 33(2) of the Conditions of Employment expressly provides:

'Invalidity shall be established by the Invalidity Committee provided for in Article 9 of the Staff Regulations.'

It follows that where the Invalidity Committee has reached the conclusion that the member of the temporary staff is not suffering from invalidity, the appointing authority cannot take a contrary decision. It is therefore not for the appointing authority to adopt a decision terminating the procedure. It is nevertheless necessary to inquire whether the lawfulness of the decision to dismiss the applicant could be affected by the fact that it was adopted before she received notification of the Committee's conclusions. The Court of First Instance will discuss that question when considering the lawfulness of the decision to dismiss the applicant.

46 As regards the medical certificates given by Dr Verreydt, it is true that the Court of Justice held in the aforementioned judgment in Case 271/87 *Fedeli* v *European Parliament*, that the object of the report drawn up by the Invalidity Committee in proceedings relating to invalidity is 'to determine whether or not an official is fit permanently to perform the duties corresponding to a post in his career bracket and not to consider whether his temporary absence may be regarded as medically justified'. The Court of Justice inferred therefrom that 'the conclusions reached by the Invalidity Committee in the context of the procedure relating to the applicant's retirement on the ground of invalidity, to the effect that the conditions for thus retiring an official are not satisfied, may not be used as evidence of his physical fitness to perform his duties at a given time in view of the different nature of the assessment to be made in each case'. The Court also stated on that occasion that if the defendant institution 'still entertained doubts as to the validity of the medical certificates submitted by the applicant and therefore as to the justification for her absences' it 'could have followed the procedure provided for for that purpose by the Staff Regulations by carrying out the examinations provided for in Article 59'. Nevertheless, it appears from a perusal of the whole judgment, the Report for the Hearing and the Opinion of the Advocate General that the circumstances of the *Fideli* case were very special, since the Parliament had decided, in view of the opinion of the Invalidity Committee, to reject certain medical certificates which contained a statement of reasons, although it had already been forced to alter its position with regard to previous certificates and to recognize that they were valid precisely as a result of findings made on the occasion of an examination. The Court of First Instance therefore considers that the judgment cannot be regarded as supporting the applicant's submission in the present case that the mere presentation of a medical certificate, even one which does not state grounds, always gives immediate entitlement to sick-leave which cannot be terminated until after a visit to check has established fitness to work.

47 In the present case the first certificate issued by Dr Verreydt, that of 23 February 1988, did not mention the medical reasons for not working but nevertheless

provided for two months' sick-leave. The Court of First Instance considers that in view of the special circumstances of the case and having regard, in particular, to its long history, the opinion of the Invalidity Committee and the proposal of its Medical Officer, the Parliament was entitled to reject such a certificate. The applicant had therefore not adduced evidence that her absence at that date was medically justified and therefore that she was entitled to sick-leave. She nevertheless still had the possibility of remedying the lack of reasons in the first certificate by submitting a more explicit certificate. That is what she did by producing the second certificate, issued by Dr Verreydt on 1 March 1988. Nevertheless, according to the Parliament's statement, which was not challenged by the applicant, the second certificate mentioned only the diagnosis which had just been rejected by the Invalidity Committee. Furthermore, on 7 March 1988 a visit by the institution's Medical Officer enabled him to find that the applicant was fit to work at that date, in total contradiction with the terms of the two certificates given by Dr Verreydt which provided for an absence of two or three months. In those circumstances the certificate of 1 March 1988 cannot be regarded as having retroactively remedied the lack of statement of reasons which vitiated the previous certificate of 23 February 1988. It follows that the applicant has not established that at any time during the relevant period she was entitled to sick-leave.

48 As regards the decision to dismiss her, Articles 47 and 48 of the Conditions of Employment do not prevent the unilateral termination, without a statement of reasons, of a contract of employment of indefinite length of a member of the temporary staff (judgment in the *Schertzer* case, referred to above). That is so even during a period of sick-leave, the only condition being that where the contract provides for notice, the period of notice cannot begin to run during the sick-leave provided the sick-leave does not exceed three months. There is no provision that the effect of invalidity proceedings is to suspend the appointing authority's right to terminate the contract of a member of the temporary staff until he has been informed of the Invalidity Committee's opinion. The sole fact that the decision to dismiss her was adopted before the applicant was informed of the Invalidity Committee's opinion does not permit the Court of First Instance to find that there was a misuse of power. It holds that all the submissions regarding the alleged unlawfulness of the decisions adopted with regard to the applicant in February and March 1988 must be rejected.

49 On all the foregoing considerations it follows that the action must be dismissed in its entirety.

Costs

50 Under Article 69(2) of the Rules of Procedure of the Court of Justice, applicable *mutatis mutandis* to the Court of First Instance pursuant to the third paragraph of Article 11 of the aforementioned Council Decision of 24 October 1988, the unsuccessful party shall be ordered to pay the costs if they have been asked for in the successful party's pleading. However, Article 70 of those Rules provides that institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the parties to bear their own costs.

Edward Schintgen García-Valdecasas

Delivered in open court in Luxembourg on 22 November 1990.

H. Jung
Registrar

R. Schintgen
President