

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)  
26 January 1995

Case T-527/93

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v

**Commission of the European Communities**

(Officials – Action for annulment – Decision suspending payment of remuneration pursuant to Article 60 of the Staff Regulations)

Full text in French . . . . .II - 29

**Application for:** annulment of the Commission decision of 23 December 1992 ordering suspension, pursuant to Article 60 of the Staff Regulations, of payment of the applicant's remuneration with effect from 1 January 1993.

**Decision:** Decision annulled.

**Abstract of the Judgment**

The applicant, an official of the Commission, had, on 6 January 1991, a total of 289 days of sick leave. On 16 October 1991 the Invalidity Committee, to which the matter had been referred pursuant to Article 59(1) of the Staff Regulations, gave a

provisional opinion to the effect that the applicant should resume her duties on a half-time basis from the beginning of January 1992, which she did on 13 January 1992. She submitted new medical certificates justifying her absence until 31 May 1992.

On 18 March 1992 the Invalidity Committee found that the applicant was fit to return to work. Accordingly, the medical certificate covering March, April and May was rejected as from 23 March 1992. The applicant returned to work.

On 18 May 1992, the applicant, again on sick leave, was examined by the Commission's medical officer who considered that she was fit for work. She resumed her duties on 19 May 1992.

On 14 July 1992, the day before the applicant's departure on annual leave, the Commission's medical officer, stating that he had carried out a medical examination of the applicant, gave an opinion to the effect that she should return to work on 17 August 1992. The applicant sent to the medical service medical certificates justifying her absence from 17 August 1992. Some of those certificates were challenged by the Commission's medical officer on the ground that they did not state the name of the doctor who had signed them. By a letter of 18 September 1992, the Commission requested the applicant to undergo a medical examination on 29 September 1992. The applicant claimed incapacity to travel and did not attend.

By letter of 23 November 1992, the Commission informed the applicant that Article 60 of the Staff Regulations was applicable to her case since her absence was considered unjustified on account of the irregularity of the certificates. On 3 December 1992, the applicant sent copies of the certificates with the doctor's stamp. She stated that she had not received the letter of 18 September 1992 and that she had not undergone the examination of 14 July 1992. She requested information on the procedure for the supplementary expert opinion to which she wished to have recourse.

On 23 December 1992 the Commission refused to accept the certificates thus regularized and informed the applicant of its decision to suspend her remuneration with effect from January 1993.

### Substance

The medical certificates sent by the applicant to the Commission attested to her unfitness for work and were duly signed and dated. Accordingly, though those certificates did not bear a doctor's stamp, the applicant did not fail to justify her absences from the Commission, at issue in this case, from the time when they began (paragraph 34).

Once it was in possession of the sickness certificates regularized by the applicant, the Commission was required to re-examine those certificates before adopting the contested decision and, if unable to accept them as valid, to take the steps necessary to require the applicant to undergo a fresh medical examination. Refusal by the administration to accept a medical certificate without having made use of the possibility of requiring the official to undergo a medical check-up is contrary to Article 59 of the Staff Regulations (paragraphs 35 and 36).

See: C-18/91 P *V v Parliament* [1992] ECR I-3997, para. 33

Nor is it relevant that the Invalidity Committee had concluded that the applicant was fit to resume work. A report of the Invalidity Committee concluding that the conditions for suspending an official's service on grounds of invalidity are not satisfied does not have the effect of precluding the possibility that the official may be unfit for work at a given time. Thus, since it failed to carry out a medical examination before adopting the contested decision, the Commission must be considered to have suspended payment of the applicant's remuneration without having previously duly checked her state of health in accordance with Article 59 of

the Staff Regulations in order to give the applicant the opportunity of justifying the incapacity for work which she alleged (paragraphs 37 and 39).

— See: 271/87 *Fedeli v Parliament* [1989] ECR 993

**Operative part:**

**The Commission decision of 23 December 1992 ordering payment of the applicant's remuneration to be suspended with effect from 1 January 1993 is annulled.**