JUDGMENT OF THE COURT (Fourth Chamber)
19 June 1992 *

In Case C-18/91 P,

Mrs V., a former member of the temporary staff of the European Parliament, residing in Brussels, represented by Andrea Guarino, of the Rome Bar, with an address for service in Luxembourg at the Chambers of Alain Lorang, 51 Rue Albert Ier,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 22 November 1990 in Case T-54/89 between Mrs V. and the European Parliament, seeking to have that judgment set aside,

the other party to the proceedings being:

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

THE COURT (Fourth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, C. N. Kakouris and M. Diez de Velasco, Judges,

Advocate General: C. Gulmann,
Registrar: H. A. Rühl, Principal Administrator,

* Language of the case: Italian.

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 13 December 1991,

gives the following

Judgment

1 By application lodged at the Court Registry on 18 January 1991, Mrs V., in pursuance of Article 49 of the Protocol on the Statute on the Court of Justice of the EEC and the corresponding provisions of the Statutes on the Court of Justice of the ECSC and the EAEC, appealed against the judgment of the Court of First Instance of 22 November 1990 in Case T-54/89 *V.* v *European Parliament* [1990] ECR II-659 in so far as it dismissed her application, on the one hand, for a declaration that the report of the Invalidity Committee which had considered her case, together with several decisions of the European Parliament denying her the benefit of the invalidity scheme, refusing to recognize the medical certificate attesting to incapacity for work which she had submitted, terminating her contract as a member of the temporary staff and rejecting her various complaints, were void, and, on the other hand, for a declaration guaranteeing her right to the initiation of a lawful procedure for determining invalidity.

2 It appears from the judgment under appeal that the appellant had been appointed in 1981 as a member of the temporary staff of the Group of the European People's Party (hereinafter 'the EPP Group') of the European Parliament. During the following years her total sick leave exceeded twelve months over a period of three years and the procedure under the fourth subparagraph of Article 59(1) of the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations') seeking to determine whether Mrs V. was affected by invalidity was initiated for the first time. The Invalidity Committee concluded on 20 November 1986 that she was not affected by invalidity.

3 Following further repeated absences, the Parliament referred Mrs V.'s case to a fresh Invalidity Committee. That committee also concluded that there was no invalidity.

4 By letter (No 05169) of 24 February 1988, the Parliament's Director-General for Personnel sent Mrs V. the Invalidity Committee's conclusions without comment.

5 By letter of the same date the Chairman of the EPP Group, as the appointing authority, informed Mrs V. that her contract was terminated and pointed out that the period of three months' notice required under Article 47(2)(a) of the Conditions of Employment of Other Servants (hereinafter 'the Conditions of Employment') would start to run on 1 March 1988.

6 On the previous day Mrs V. had submitted to the administration a medical certificate dated 23 February 1988, signed by her doctor and declaring her unfit for work for two months but not mentioning any medical reason. By letter of 26 February 1988 the Director-General for Personnel refused to accept the certificate.

7 The appellant submitted a second medical certificate dated 1 March 1988 declaring her unfit for work from 1 March to 1 June 1988. On 7 March 1988 the Parliament's Medical Officer visited Mrs V. at her home to examine her and formed the view that she was fit for work.

8 The complaints submitted by the appellant against the decisions and observations of the Parliament, referred to above, were rejected.

9 By application to the Court of First Instance Mrs V. claimed:

(a) a declaration that the 'Invalidity Committee's report' as sent to her on 24 February 1988 was void;

(b) a declaration that the 'decision' of the Director-General for Personnel sending her the report and refusing 'to allow the applicant the benefit of the invalidity scheme' was void;

(c) a declaration that the decision of the Director-General for Personnel of 26 February 1988 refusing the first medical certificate was void;

(d) a declaration that the decision of the Chairman of the EPP Group to terminate her contract of employment was void;

(e) a declaration that the rejection by the Chairman of the EPP Group of the complaints she had submitted against the decisions referred to at (b) and (d) above was void;

(f) a declaration by the Court of First Instance guaranteeing her right to the initiation of a lawful procedure to determine her invalidity.

10 In her appeal Mrs V. claims that the contested judgment, in which the Court of First Instance dismissed the various claims set out in her application, should be reversed.

11 Reference is made to the Report of the Judge-Rapporteur for a fuller account of the procedure and the pleas in law and arguments of the parties, which are

mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The pleas in law alleging that the procedure followed before the Invalidity Committee was illegal

12 It appears from the contested judgment that with a view to the appointment of the third member of the Invalidity Committee, the doctor appointed by Mrs V. had stated by letter of 17 October 1987 that he had 'no objection to accepting as a third member of the Invalidity Committee' the doctor proposed by the Parliament, but added: 'Nevertheless I should like to put on record the conditions which I should like to have accepted prior to any final agreement ...'. The Parliament took the view that such conditions were unacceptable and asked the President of the Court of Justice to appoint the third member of the Invalidity Committee in pursuance of the third paragraph of Article 7 of Annex II to the Staff Regulations.

13 The Court of First Instance considered in the judgment under appeal (paragraph 33) that the terms of the letter of 17 October 1987 from the doctor appointed by Mrs V., interpreted in the light of the letter of 6 October 1987 from the doctor appointed by the Parliament, left no doubt as to the nature of the conditions to which the former's agreement to the appointment of Professor Alexandre as the third member of the Invalidity Committee was subject. Those conditions, which were not purely formal, were expressly described as pre-conditions to any 'final agreement', so that they had the effect of suspending the conclusion of such an agreement. Consequently the appellant cannot claim that an agreement was reached between the doctors appointed by her and by the Parliament. Accordingly the plea alleging that there was a procedural defect in the constitution of the Invalidity Committee had to be rejected.

14 The appellant claims in her appeal against the judgment that the doctor appointed by her and the one appointed by the Parliament had already agreed by telephone as to the third member of the Invalidity Committee. The

conditions set out in the letter of 17 October 1987 were therefore of a purely formal nature, and could not in any event affect the agreement already reached. In addition the Court of First Instance should not just have considered the wording of the letter, which, moreover, was written by a doctor and not by a lawyer, but should have considered its substance.

15 In this connection it should be noted that under Article 168a of the EEC Treaty and the corresponding provisions of the ECSC and EAEC Treaties, as well as the first paragraph of Article 51 of the Protocol on the Statute on the Court of Justice of the EEC and the corresponding provisions of the Statutes on the Court of Justice of the ECSC and the EAEC, an appeal is restricted to points of law. It follows that an appeal may be based only on pleas in law relating to an infringement of rules of law, to the exclusion of any issue challenging the facts as established by the Court of First Instance.

16 The appraisal by the Court of First Instance of the meaning of the terms of a letter sent by the doctor appointed by the appellant to the one appointed by the Parliament following a telephone conversation between them constitutes purely a finding of fact.

17 Consequently the plea challenging that finding must be rejected as inadmissible.

18 The Court of First Instance, in response to the plea in law alleging that the procedure was unlawful by reason of the absence of minutes regarding the work of the Invalidity Committee, considered that, as the Court of Justice had previously held in its judgment in Case 277/84 *Jänsch* v *Commission* [1987] ECR 4923, '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'.

19 The appellant claims in this connection that the existence of minutes regarding the work and conclusions of the Invalidity Committee is all the more necessary because, in this case, the report of the Committee, sent to the appellant as a pre-printed form on which the passages which did not apply had been deleted, was altogether inappropriate for ascertaining whether any logical link existed between the findings made and the conclusions reached by the Committee.

20 This plea in law must be rejected. As the Court held in the judgment in Case 277/84 *Jänsch*, previously cited, although the absence of minutes relating to the work of an Invalidity Committee is regrettable, its existence is not an essential condition for the validity of the Committee's deliberations. Moreover any defects in the resulting report of the Invalidity Committee cannot have any bearing on the absence of minutes.

21 In addition, even if the alleged defects in the Invalidity Committee's report communicated to the appellant could be regarded as grounds for an independent plea in law, it should be observed that the contested judgment of the Court of First Instance does not relate to such defects and that, as follows from Articles 113(2) and 116(1) of the Rules of Procedure, fresh submissions not contained in the original application may not be raised in an appeal.

The plea in law alleging that the letter of 24 February 1988 from the Director-General of the Parliament to the appellant was incorrectly described

22 In the contested judgment the Court of First Instance found that the letter (No 05169) of 24 February 1988 by which the Parliament's Director-General for Personnel communicated to the appellant the conclusions of the Invalidity Committee was not a decision of the appointing authority capable of being the subject of an action for annulment since it constituted notification of the Invalidity Committee's conclusions as provided for in the second paragraph of Article 9 of Annex II to the Staff Regulations.

23 The Court of First Instance also found that that letter was not a decision terminating the invalidity procedure. It referred in that connection to Article 33(2) of the Conditions of Employment to conclude that, where the Invalidity Committee has reached the conclusion that a member of the temporary staff is not affected by invalidity, the appointing authority cannot take a contrary decision and it is therefore not for that authority to adopt a decision terminating the procedure.

24 The appellant contests that finding. She claims that all acts capable of producing legal effects on the employment relationship between the institution and its employees fall within the exclusive purview of the appointing authority unless power has been expressly delegated to another body. That is the case as regards the termination of the invalidity procedure, which is capable of producing legal effects with regard to the person concerned. Since admittance to the invalidity scheme is a matter within the purview of the appointing authority, refusal to grant admittance must also be within its purview. The appellant does not consider that the provisions mentioned by the Court of First Instance unequivocally provide that a decision refusing admittance to the invalidity scheme lies outside the purview of the appointing authority.

25 Consequently she claims that the letter of 24 February 1988 constitutes a decision refusing admittance which falls within the purview of the appointing authority, although it was adopted by the Director-General, who had no authority in that regard.

26 It should be noted that under Article 33(2) of the Conditions of Employment, 'invalidity shall be established by the Invalidity Committee provided for in Article 9 of the Staff Regulations'. Accordingly, since the appointing authority has no discretion in the matter, the communication of the conclusions of the Invalidity Committee to the person concerned, referred to in the second paragraph of Article 9 of Annex II to the Staff Regulations, cannot be described as a decision. Moreover, should the said committee conclude that there is no invalidity, as in this case, the communication of its conclusions to the person concerned may reasonably be regarded as terminating the invalidity procedure.

27 It follows from the foregoing considerations that this plea in law is unfounded.

The plea in law alleging that the rejection of the medical certificates submitted by the appellant was unlawful

28 It is apparent from paragraphs 46 and 47 of the contested judgment that in the view of the Court of First Instance the correct interpretation of Article 59 of the Staff Regulations leads to the conclusion that the administration is entitled, taking account of all the circumstances, in particular the report of the Invalidity Committee and the fact that the medical certificate in question does not set out the medical reasons for the sick leave which it prescribes, to reject a certificate without carrying out the medical examination provided for by that article.

29 The appellant claims in that respect that the judgment of the Court of Justice in Case 271/87 *Fedeli* v *Parliament* [1989] ECR 993 sets out the principle that the production of a medical certificate raises a presumption that the official's absence is legitimate and that in case of doubt the only means at the disposal of the institution concerned is to have a medical examination carried out. In her view, the Community public service law does not therefore envisage a medical certificate being rejected altogether. Moreover, even where the institution exercises its power to make the official concerned undergo a medical examination, the results whereof do not correspond to those on the medical certificate produced by the person concerned, the institution is not entitled on those grounds to take the view that the official's absence was unjustified from the outset, since the legal consequences of the examination arise from the time at which it was carried out.

30 As regards the 'statement of reasons' on which a medical certificate is based, the appellant maintains that every institution must accept as valid a certificate drawn up according to the ethical rules of the country of the doctor consulted. Thus, in Belgium, it is provided that a medical certificate need not necessarily mention the patient's illness.

31 The appellant claims in the alternative that in any event the 'refusal' of the first medical certificate should have come from the appointing authority and not from the Director-General for Personnel.

32 It should be borne in mind in this connection that the Court has held, in the matter of social security for workers, that both the competent social security institution and the employer are bound, in fact and in law, by the medical findings made by the institution at the place of residence or abode of the worker as regards the commencement and duration of incapacity for work if they do not have the person concerned examined by a doctor of their choice, as the Community rules authorize them to do (judgments in Case 22/86 *Rindone* v *Allgemeine Ortskrankenkasse Bad Urach-Münsingen* [1987] ECR 1339 and in Case C-45/90 *Paletta* v *Brennet AG* [1992] ECR I-3423).

33 The principle thus laid down should be applied to the interpretation of the Staff Regulations, as may be seen, moreover, from the judgment in Case 271/87 *Fedeli*, previously cited. Article 59 of the Staff Regulations, referred to earlier, does not empower the administration to refuse to take account of a medical certificate, even though it does not mention the medical reasons for the incapacity for work of the employee concerned, but it does empower the administration to have the employee examined by a doctor of its choice. It must therefore be held that the refusal of the Parliament's administration to accept the medical certificate of 23 February 1988 without availing itself of its power to require Mrs V. to undergo a medical examination is contrary to Article 59 of the Staff Regulations.

34 Moreover, the provision in Article 59 to the effect that the employee 'may be required to undergo a medical examination arranged by the institution' must be interpreted as meaning that the administrative effects of the findings of the medical examination start to run from the time at which the examination is carried out. To regard the results of such an examination as having any retroactive effect would undermine the principle of the credibility of a medical certificate and the presumption of its legality.

35 Thus, in stating in paragraph 47 of the contested judgment that, in view of the special circumstances of the case, the Parliament was entitled to reject the medical certificate of 23 February 1988 and in regarding the findings of the medical examination of 7 March 1988 as having retroactive effect with regard to the medical certificate of 1 March 1988, by finding that 'the applicant has not established that at any time during the relevant period she was entitled to sick leave', the Court of First Instance has made an error of law.

36 Consequently that section of the contested judgment must be set aside.

The pleas in law alleging that the decision to dismiss the appellant was illegal

37 The Court of First Instance took the view, in the contested judgment, that Articles 47 and 48 of the Conditions of Employment did not prevent the unilateral termination, without a statement of reasons, of a contract of employment for an indefinite period of a member of the temporary staff; nor was there a provision laying down that the effect of initiating the invalidity procedure would be to suspend the appointing authority's right to terminate such a contract as long as the conclusions of the Invalidity Committee had not been communicated to the person concerned.

38 The appellant claims that, even if such a provision does not yet figure expressly in the Staff Regulations, it must be accepted as a fundamental principle of Community public service law that the appointing authority's right to terminate the contract of a member of the temporary staff is suspended during the invalidity procedure.

39 As the Court held in its judgment in Case 25/68 *Schertzer* v *Parliament* [1977] ECR 1729, the basis of the relationship between a member of the temporary staff and the institution concerned is the 'contract of employment as a member of the temporary staff'. Moreover, the justification for the unilateral termination of such a contract of employment, which is expressly provided for by Article 47 of the Conditions of Employment, lies in that contract of employment and there is no need therefore for a statement of reasons; it is in this respect that the position of a member of the temporary staff differs fundamentally from that of an official under the Staff Regulations.

40 It should be noted that there is no provision in the Staff Regulations to prevent the institution concerned from terminating the contract of employment of a member of the temporary staff who is the subject of an invalidity procedure, since the termination of the contract cannot jeopardize the completion of the Invalidity Committee's work or the possible recognition, by the Committee, of invalidity arising before such termination and cannot affect the rights of the employee concerned once the procedure in question has been concluded.

41 This plea in law must therefore be rejected.

42 The appellant also claims that the decision to terminate her contract as a member of the temporary staff is vitiated by misuse of power inasmuch as its real reason was the wish to dismiss a worker on grounds of the precarious nature of her health.

43 In this connection the Court of First Instance concluded in paragraph 48 of the contested judgment that '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'.

44 It should be noted that by this plea the appellant is challenging a finding of fact in the contested judgment, according to which no misuse of power was established. This plea must therefore be rejected as inadmissible.

The request for the invalidity procedure to be initiated anew

45 In her application initiating the proceedings, the appellant had also sought 'a declaration by the Court of First Instance guaranteeing her right to undergo a

fresh medical examination to check that the conditions for a finding of invalidity were fulfilled'. As that request was formulated in the event of the invalidity procedure being declared void, the Court of First Instance did not consider it.

46 The appellant claims that the failure of the Court of First Instance to accede to that request constitutes a denial of one of the fundamental safeguards provided by law in favour of workers.

47 This plea in law, worded in those terms, must be understood as meaning that the Court of First Instance failed to accept the appellant's right to the initiation of the invalidity procedure anew even though the procedure previously initiated had not been declared void. The plea is therefore based on a misapprehension since no such request was made to the Court of First Instance.

48 If, moreover, this plea in law is to be understood as meaning that the Court of First Instance omitted to consider the request that in the event of the contested invalidity procedure being declared void, a lawful procedure should be initiated anew, suffice it to note that that is the normal consequence of a declaration of annulment and that, in any event, in this case the procedure was not declared void.

49 Consequently there is no unlawful omission in the contested judgment to accede to such a request and hence this plea in law cannot be accepted.

50 It follows from all the foregoing considerations that the contested judgment of the Court of First Instance of 22 November 1990 in Case T-54/89 must be set aside to the extent to which it held that the Parliament was entitled to reject the medical certificate of 23 February 1988 and to give retroactive effect to the findings of the medical examination of 7 March 1988.

51 The remainder of the appeal must be dismissed.

52 With regard to the section of the judgment of the Court of First Instance which has been set aside, the state of the proceedings permits the Court of Justice to give final judgment in the matter pursuant to the first paragraph of Article 54 of the Protocol on the Statute on the Court of Justice of the EEC; in view of the foregoing (paragraphs 27 to 35), the decision contained in the letter of 26 February 1988 from the Parliament's Director-General rejecting the medical certificate of 23 February 1988 and the finding that the applicant's sick leave was not justified before 7 March 1988 must be declared void.

Costs

53 Since both parties have been unsuccessful in their submissions, it is appropriate, pursuant to Article 69(3) in conjunction with Article 122 of the Rules of Procedure, to order the parties to bear their own costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. Sets aside the judgment of the Court of First Instance of 22 November 1990 in Case T-54/89 in so far as it held that the Parliament was entitled to reject the medical certificate of 23 February 1988 and to give retroactive effect to the findings of the medical examination of 7 March 1988;

2. Dismisses the remainder of the appeal;

3. Giving judgment on the substance of the case, declares void (a) the decision contained in the letter of 26 February 1988 from the Parliament's Director General for Personnel rejecting the medical certificate of 23 February 1988 and (b) the attribution of retroactive effect to the findings of the medical examination of 7 March 1988;

4. Orders the parties to bear their own costs.

Kapteyn Kakouris Diez de Velasco

Delivered in open court in Luxembourg on 19 June 1992.

J.-G. Giraud — Registrar

P. J. G. Kapteyn — President of the Fourth Chamber