was not justified before the date on which the medical examination took place.

4. The justification for the unilateral termination of a contract for an indefinite period of a member of the temporary staff, which is expressly provided for by Article 47 of the Conditions of Employment of Other Servants, lies in the contract of employment and there is no need therefore for a statement of reasons since the contract of employment constitutes the basis of the relationship between that person and the institution concerned.

There is no provision 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.

REPORT OF THE JUDGE-RAPPORTEUR
in Case C-18/91 P *

1. This appeal is brought by Mrs V., a former member of the temporary staff of the European Parliament, against a judgment of the Court of First Instance dismissing the action by which Mrs V. claimed that the report of the Invalidity Committee responsible for considering her case and several decisions of the European Parliament refusing to allow her the benefit of the invalidity scheme, refusing to accept a medical certificate of incapacity for work presented by her, terminating her contract as a member of the temporary staff and rejecting her complaints, should be declared void.

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 (EPP) in the European Parliament. During the following years her total sick leave exceeded twelve months over a period of three years and the procedure seeking to determine whether Mrs V. was affected by invalidity (fourth subparagraph of Article 59(1) of the Staff Regulations) was initiated for a first time. The Invalidity Committee concluded on 20 November 1986 that she was not so affected.

3. Following further repeated absences, the European Parliament referred Mrs V.'s case to a fresh Invalidity Committee. The doctor appointed by her stated in writing that he had 'no objection to accepting as a third member of the Invalidity Committee' the doctor proposed by the Parliament, whilst

* Language of the case: Italian.

accompanying his agreement with conditions which he would like to have 'accepted prior to any definite agreement ...'.

4. Since the Parliament regarded those conditions as unacceptable, it requested the President of the Court of Justice to appoint the third member of the Invalidity Committee (third paragraph of Article 7 of Annex II to the Staff Regulations). The Invalidity Committee as thus constituted concluded that there was no invalidity.

5. By letter of 24 February 1988, No 05169, the Director-General of Personnel of the Parliament informed the appellant, without comment, of the Invalidity Committee's conclusions and by letter of the same date the Chairman of the EPP Group, as the appointing authority, informed her that her contract was terminated, subject to the required period of three months' notice (Article 47(2)(a) of the Conditions of Employment of Other Servants (hereinafter 'the Conditions of Employment')).

6. In the meantime Mrs V. had sent the administration a certificate of incapacity for work for a period of two months, dated 23 February 1988, signed by her doctor and not mentioning the medical reasons. The certificate was refused by the administration.

7. The appellant submitted a second certificate, dated 1 March 1988 certifying unfitness for work for three months. On 7 March 1988 the Parliament's Medical Officer called at Mrs V.'s home to examine her and considered that she was fit to work.

8. The appellant's complaints against the decisions and observations of the Parliament set out above were rejected.

9. In her application Mrs V. claimed:

— a declaration that the 'Invalidity Committee's report' as sent to her on 24 February 1988 was void; according to the appellant, the Invalidity Committee had been constituted unlawfully since the third member was appointed by the President of the Court of Justice whereas the parties were already in agreement; its work was vitiated by a procedural irregularity since there were no minutes and it did not establish a logical link between its findings and the conclusions it had drawn;

— a declaration that the 'decision' of the Director-General of Personnel sending her the report and refusing to allow her the benefit of the invalidity scheme was void. According to the appellant the decision was adopted by a person not having the capacity of the appointing authority and gave no statement of the reasons on which it was based;

— a declaration that the decision of the Director-General for Personnel refusing the first medical certificate was void;

— a declaration that the decision of the Chairman of the EPP Group to terminate her contract of employment was void. The decision was unlawful since it was adopted before the invalidity procedure had been terminated and at a time when the appellant was on sick-leave;

— a guarantee of her right to the initiation of fresh proceedings to determine her invalidity.

10. By judgment of 22 November 1990 (Case T-54/89 [1990] ECR II-659), the Court of First Instance found, first, that the Invalidity Committee was lawfully constituted with the appointment of the third doctor by the President of the Court of Justice in the absence of agreement between the parties and that, in accordance with the case-law of the Court of Justice, the existence of minutes was not an essential condition for the validity of such a committee's deliberations.

11. As regards the various decisions adopted by the Parliament, the Court of First Instance ruled that the letter from the Director-General of 24 February 1988 was not a decision capable of being the subject of an application the the Court, being a mere communication of the Invalidity Committee's conclusions as provided for in the second paragraph of Article 9 of Annex II to the Staff Regulations and that, under Article 33(2) of the Conditions of Employment, it was not for the appointing authority, if the Invalidity Committee came to the conclusion that there was no invalidity, to adopt a decision terminating the procedure.

12. With regard to the two medical certificates, the Court of First Instance found that, as the first did not duly mention the reasons on which it was based and the second was in total contradiction with the results of the visit for the purpose of a medical examination, they were rightly rejected by the Parliament.

13. Finally the Court of First Instance came to the conclusion 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 of indefinite length of a member of the temporary staff and that there was no provision that the effect of invalidity proceedings was to suspend the appointing authority's right to terminate such a contract until the committee's conclusions had been communicated to the person concerned.

14. In support of her appeal, lodged on 18 January 1991, Mrs V. essentially puts forward the following pleas in law:

(a) the Court of First Instance wrongly concluded that the Invalidity Committee had been lawfully constituted. The appellant had already agreed to the third doctor proposed by the Parliament and the conditions given in writing were strictly matters of form. In any event, the Court of First Instance ought to have considered their substance. The Parliament ought not therefore to have asked the President of the Court of Justice to appoint the third member of the Invalidity Committee;

(b) the appellant challenges the finding of the Court of First Instance that the letter communicating the conclusions of the Invalidity Committee was not capable of being the subject of an application to the Court and that, if the Invalidity Committee concluded that there was no invalidity the proceedings ought not to be terminated by a decision of the appointing authority. In her opinion, any invalidity proceedings capable of producing legal effects with regard to the person concerned must necessarily be terminated by a decision of the appointing authority. In this case the letter of 24 February 1988 from the Director-General was such a decision, but was adopted by an unauthorized person;

(c) the appellant claims that, even if the conclusion is reached that in this case the invalidity proceedings should not end with a decision of the appointing authority, all proceedings of an individual nature must be concluded by a document capable of being the subject of an application to the Court. As, therefore, the Court of First Instance took the view that the contested letter from the Director-General was not such a document, it should have considered the report of the Invalidity Committee, as one of the specific claims of the application was to the effect that it should be declared void. In this case the report was entirely unsuitable for checking whether there was a logical link between the findings and the conclusions contained therein;

(d) the Court of First Instance failed to come to a decision as to the appellant's claim concerning the recognition of her right to fresh invalidity proceedings;

(e) as regards the Parliament's refusal to take account of the medical certificate submitted by the appellant on 23 February 1988, she claims that the Court of First Instance relied on an incorrect interpretation of the judgment of the Court of Justice in Case 271/87 *Fedeli* v *Parliament* [1989] ECR 993. No provision is made in the law of the Community public service for the outright rejection of a medical certificate. In any event, as regards the 'statement of the reasons' on which a medical certificate is based, each institution must accept as valid a certificate drawn up in accordance with the ethical rules of the country of the doctor consulted. Thus in Belgium it is provided that a medical certificate need not normally mention the patient's illness. In any case the 'refusal' of the medical certificate ought to have come from the appointing authority and not from the Director-General of Personnel;

(f) the appellant challenges the statement of the Court of First Instance that there is no rule providing that the implementation of invalidity proceedings suspends the appointing authority's power to terminate the contract of a member of the temporary staff. In her view, even if that does not yet specifically appear in any provision it should be recognized as a basic principle of the law of the Community public service. In any event, the decision to dismiss her is vitiated by misuse of power since the real motive for it was the desire to dismiss a worker because of the precarious state of her health.

15. The Parliament's reply to the arguments concerning the illegal composition of the Invalidity Committee sent on 17 October 1987 by the doctor appointed by the appellant to the doctor appointed by the Parliament shows clearly that the agreement given therein was conditional. Hence, as no definitive decision had been taken, the Parliament was justified in applying to the President of the Court of Justice for the appointment of the third member of the Invalidity Committee.

16. The Parliament claims that as regards the nature of the letter of 24 February 1988 sent by its Director-General to the appellant, it is a mere letter communicating the conclusions of the Invalidity Committee pursuant to the second paragraph of Article 9 of Annex II to

the Staff Regulations and is not a decision or an act adversely affecting her. According to the case-law of the Court of Justice, the Invalidity Committee alone has authority to give an opinion on medical matters and to determine the state of invalidity of an official (judgment in Case 29/71 *Vellozzi* v *Commission* [1972] ECR 517). Accordingly the appointing authority has no power to check the medical or pathological aspects and can in no way take a decision contrary to the clear conclusions of the Invalidity Committee.

17. As regards the validity of the work of the Invalidity Committee, it is consistent case-law that the committee has a wide discretion to organize its own work and that the rules in staff matters relating to invalidity are not intended to set in motion an adversarial procedure but to establish medical findings (judgment in Case T-31/89 *Sabbatucci* v *Parliament* [1990] ECR II-265). Accordingly, since the Invalidity Committee operated in the normal way and lodged conclusions whose clarity the appellant has never challenged, it cannot be denied that it has worked in the normal manner and that the conclusions it has reached are therefore apposite.

18. The Parliament further contends that there are no legal means by which the applicant's claim for the institution of fresh invalidity proceedings could be accepted.

19. As regards the validity of the two medical certificates submitted by the appellant, the Parliament observes that the first, without giving any medical reasons, envisaged an absence from work of two months, whilst the second, issued one week later, envisaged inability to work for three months. In this problematical situation the visit for the purpose of a medical examination on 7 March 1988 made it possible to ascertain the accommodating nature of both certificates and the appointing authority's decision to reject them was therefore justified.

20. Finally the Parliament claims that the decision to dismiss the appellant was legally taken inasmuch as the unilateral termination of the contract of employment of a member of the temporary staff is expressly envisaged by in Article 47 of the Conditions of Employment, is provided for in the contract of employment of members of the temporary staff and it is therefore unnecessary for the reasons on which it is based to be stated (judgment in Case 25/68 *Schertzer* v *Parliament* [1977] ECR 1729).

C. N. Kakouris

Judge-Rapporteur