JUDGMENT OF THE COURT (FIRST CHAMBER)
16 DECEMBER 1976 [1]

Letizia Perinciolo
v Council of the European Communities

Case 124/75

Summary

1. *Officials — Incapacity for work — Disputes — Invalidity Committee — Reference for an opinion — Limited to cases of sick leave*
   (Staff Regulations of Officials, Article 59)

2. *Officials — Application to the Court — Administrative measure — Application for annulment — Advantage to the applicant — None — Submission — Unreasonable nature — Inadmissibility*
   (Staff Regulations of Officials, Article 91)

3. *Officials — Invalidity — Committee — Member — Disagreement — Majority decision*
   (Staff Regulations of Officials, Article 59)

4. *Officials — Disciplinary proceedings — Hearing of person concerned by appointing authority — Defendant — Assistance — Right — None*
   (Staff Regulations of Officials, Annex IX, Article 4)

1. References to the Invalidity Committee in cases of dispute only concern sick leave.
2. A submission that an administrative measure be declared irregular and that the appointing authority should be obliged to repeat it is unreasonable if such a step cannot be of any advantage to the applicant. In those circumstances, such a submission is inadmissible.
3. A member of a medical committee, appointed by one of the interested parties, cannot, by his refusal to sign, block the procedure and make the application of the provisions of the Staff Regulations impossible.
4. An official charged does not have the right to be assisted in his defence by a person of his own choice in respect of a hearing by the appointing authority.

In Case 124/75

LETIZIA PERINCIOLO, a former official of the General Secretariat of the Council of the EEC, residing at 11, Rue Major Pétillon, Etterbeek-Brussels, represented

1 — Language of the Case: French.

and assisted by Thierry Vanderlinden and Patrick Van Damme, Advocates at the Brussels Bar, with an address for service in Luxembourg at the Chambers of André Elvinger, 84 Grand Rue,

applicant,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Antonio Sacchettini, acting as Agent, with an address for service in Luxembourg at the offices of J. Nicolas Van den Houten, Head of the Legal Service of the European Investment Bank, 20 place de Metz,

defendant,

Application primarily for the annulment of the decision of the defendant of 16 October 1972 whereby disciplinary proceedings were commenced against the applicant, and of the decision of 24 February 1975 revoking it,

THE COURT (First Chamber)

composed of: A. M. Donner, President of Chamber, A. O'Keeffe and G. Bosco, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts of the case, the procedure, the conclusions and the submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

The applicant, an Italian national, was appointed a probationer on 16 January

1964, and established in Grade C 4 with effect from the following 16 July. She worked as a typist in the typing pool of the Italian section until 1 January 1966.

On 6 November 1965, she was the victim of an accident while horseriding. After that accident, she suffered for a while from a total incapacity for work, followed by a partial incapacity. On 28 October 1968, an invalidity benefit was calculated and fixed at 15 % under the insurance scheme established pursuant to the Staff Regulations against accidents arising in private life.

Further to the after-effects of that accident, several doctors allegedly ordered her off heavy work, and in particular off typing.

From 1 January 1966 to 12 July 1967, the applicant worked in the typing pool of the linguistic section. On 13 July 1967, she was assigned as a typist and clerical officer to the records department of DG V.

On 23 March 1969 she was promoted to Grade C 3 with effect from 1 October 1968 and assigned to a post as a shorthand-typist. On 29 August 1970, she lodged a request to be transferred to another department on the ground that 'the "records" department was involving her in an increasing work load of typing incompatible with her state of health'.

From January 1971 to January 1972 she worked in the accounts branch. The administration then had her examined by the institution's medical officer who, after having had recourse to a sworn medical expert from outside the institution, advised that the applicant was fit to carry out work as a typist.

By note of 24 May 1972, the Director of Administration placed the applicant at the disposition of the typing pool as a shorthand-typist. By note of the same date the applicant protested against that decision. On 2 June 1972 the Director of Administration confirmed the substance of his decision. As the applicant did not appear at her post, but continued to present herself at her old office, the appointing authority regarded that conduct as unauthorized absence and applied Article 60 of the Staff Regulations of Officials by decision of 20 June 1972. The authority informed the applicant of its intention to commence disciplinary proceedings against her if she persisted in her refusal to take up her new post.

The applicant lodged two applications with the Court on 16 August and 20 October 1972, applying respectively for the annulment of the decision appointing her to the post and for the annulment of the measure applying Article 60 of the Staff Regulations. In its judgment of 17 May 1973, the Court (First Chamber) dismissed the first application as unfounded and the second as inadmissible (Joined Cases 58 and 75/72, [1973] ECR 511).

On 16 October 1972 the appointing authority commenced disciplinary proceedings against the applicant for infringement of the duty of obedience (last sentence of the third paragraph of Article 21 of the Staff Regulations) and of the duty to be at all times at the diposal of the institution (first paragraph of Article 55 of the Staff Regulations).

In its opinion of 4 July 1973, the Disciplinary Board recommended that a medical examination of the applicant be carried out in order to determine her then state of health. It did so with a view to putting the authority in a position to choose between the two solutions which it proposed (limiting disciplinary action to a reprimand if the applicant signified her intention to comply with her posting, or if she resigned; removal from post if the applicant persisted in her refusal). That examination took place on 25 July 1973 and the result was that she was declared fit. But since the applicant had submitted an opinion of a specialist

whom she had consulted, the defendant decided to proceed to an additional medical inquiry at which the interests of both parties would be represented. For this purpose, the administration appointed Dr Castiaux, the applicant Dr d'Avanzo, and the two doctors so appointed agreed upon the name of Dr Godenne as a third doctor. By letter of 2 January 1975, Dr Castiaux produced the report on the examination to the institution, which concluded that the applicant was fit, but which was only signed by Dr Godenne and himself, Dr D'Avanzo having refused to sign. That report was submitted to the applicant who was heard by the Secretary General of the Council on 29 January 1975. On 24 February 1975, the applicant was removed from her post with effect from the following 1 March.

On 20 May 1975, the applicant, pursuant to Article 90 (2) of the Staff Regulations, submitted a complaint against the decision to remove her from her post.

The administration did not reply within a period of four months, and accordingly the applicant lodged the present application pursuant to Article 91 of the Staff Regulations. It was entered in the Court Registry on 17 December 1975.

Upon hearing the report of the Judge-Rapporteur, and the views of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The applicant claims that the Court should:

1. Declare null and void the decision of 17 October 1972 by which the authority decided to initiate disciplinary proceedings against the applicant;
2. Declare the whole of the disciplinary proceedings void for defects of form and declare the opinion of the Disciplinary Board of 4 July 1973 void and of no effect;
3. Declare the medical report of 21 November 1974 concerning the state of health of the applicant to be void and of no sufficient scientific value;
4. Declare the hearing of the applicant on 29 January 1975 by the Secretary-General to be of no effect owing to a violation of the rights of the defence;
5. As a result declare the decision of 24 February 1975 (No 146/75) removing the applicant from her post to be void and of no effect and rule that the applicant shall be re-established as from 1 March 1975 with all her rights as an official in Grade C 3 in the General Secretariat of the Council;
6. Order the opposite party to pay the costs.

The defendant claims that the Court should:

1. Dismiss as unfounded the applicant's claim for the annulment of the decision of removal of 24 February 1975 (No 146/75) and that the Court should 'rule that the applicant must be reinstated in all her rights as an official in Grade C 3 at the General Secretariat of the Council with effect from 1 March 1975';
2. Dismiss the applicant's other claims as inadmissible, or alternatively, as unfounded;
3. Order the applicant to bear the costs in so far as they do not fall upon the defendant, by virtue of the provisions of Articles 70 and 95 (2) of the Rules of Procedure.

III — Submissions and arguments of the parties

(a) On admissibility

The *Council* is of the opinion that it is only the claim concerning the annulment of the decision to remove the applicant from her post that is admissible. The claim against the

decision of 16 October 1972 is out of time. As for the other measures contested, they were not taken by the appointing authority. However, since they were measures leading up to the contested decision, the Council leaves this as an open question for the judgment of the Court.

The *applicant* considers that the appointing authority ought to have noted the irregularities in the proceedings before the Disciplinary Board and should therefore be held responsible for those irregularities.

The *Council* replies that those arguments seem completely to disregard the very clear provisions of Article 90 of the Staff Regulations.

(b) On the first submission as to substance

The *applicant* claims that the administration should have made a reference to the Invalidity Committee (first paragraph of Article 59 of the Staff Regulations) before concluding that there was an 'unauthorized absence'. In establishing that Committee the authors of the Regulations provided a procedure whereby all disputes concerning the right to sick leave may be resolved upon hearing both parties. So the case wrongly went to the Disciplinary Board before goint to the Invalidity Committee, and the Board's opinion is null an void.

The *defendant* replies that the failings noted by the Disciplinary Board, namely the failure in the duty of obedience and the failure to be at all times at the disposal of the institution were at the origin of the applications brought by the applicant on 16 August and 20 October 1972. The following conclusions may be drawn from the abovementioned judgment of the Court in those cases:

— the third paragraph of Article 59 cannot be prayed in aid in respect of a refusal, based on reasons of health, to obey an order of a hierarchical superior;
— an official who, for reasons of health, does not consider it possible to carry out the duties assigned to him, must present himself at his post and carry out the said duties until such time as he is assigned to a new post;
— in such circumstances the absence of the official, following the medical certificates, is not permitted.

That being the position, the applicant in the present case had indeed rendered herself liable to disciplinary action under Article 86 of the Staff Regulations, and no legal obstacle stood in the way of referring the case to the Disciplinary Board, the applicant having been heard previously.

The *applicant* replies that the Council ought not to have taken the view that the third paragraph of Article 21 and the first paragraph of Article 55 of the Staff Regulations had been infringed. In fact:

— the report of the medical expert outside the institution was not forwarded to Dr D'Avanzo, the applicant's own doctor, and this was an infringement of the rights of the defence and of the general principles of law;
— the Staff Regulations do not permit recourse to an outside doctor;
— according to the judgment of the Court (Second Chamber) in Joined Cases 42 and 62/74 [1975] ECR 871), the application of the third paragraph of Article 59 of the Staff Regulations 'necessarily presupposes the existence of a dispute which has not been finally resolved'. However, in the present case the existence of the dispute was obvious ever since the defendant envisaged assigning the applicant to the typing pool of the Italian section despite the adverse opinion of her own doctors;
— contrary to the opinion delivered by Mr Advocate-General Warner and to the abovementioned judgment of the Court in Joined Cases 58 and 75/72 the defendant has itself adopted the proposition that an established

official of the Communities has an inherent right to 'a posting compatible with his state of health'.

The powers conferred on the Invalidity Committee make it clear beyond doubt that the applicant has the right to have her case referred to it in order that it may determine on the basis of scientific criteria her physical fitness to perform certain given duties.

The *Council* replies that it is only in cases where, pursuant to the provisions of the Staff Regulations, an Invalidity Committee has been constituted that a consideration in committee of the conclusions reached upon the carrying out of the examinations can take place. Any decision by the medical officer to obtain the opinion of a specialist in cases of uncertainty as to the existence of an illness is indisputably in the interests of the official. Such a decision thus constitutes an additional guarantee in the applicant's favour. The forwarding of the report to her own doctor would only have been conceivable in a case where an Invalidity Committee had been constituted.

The abovementioned judgment in Joined Cases 58 and 75/75 says that the constitution of an Invalidity Committee cannot be invoked in the presence of a situation characterized by the objections raised by the applicant on grounds of health concerning her assignment to the typing pool. The Order in Case 75/72 R ([1972] ECR 1203) says that in such circumstances the alleged invalidity of an official 'does not constitute sufficient grounds for absence from work, except in cases where it is actually impossible to attend, without the agreement of the appointing authority'.

The decision to proceed to an additional medical investigation going beyond the suggestion of the Disciplinary Board was taken as a precautionary measure. Since it did not arise under any obligation under the Staff Regulations, it did not in any way constitute an acknowledgement of a right for the applicant to have an Invalidity Committee constituted. Thus the authority has not failed to conform with the ruling of the Court in Joined Cases 58 and 75/72.

(c) On the second submission as to substance

The *applicant* claims that the disciplinary proceedings were vitiated by reason of the absence, as from 5 December 1972, of one of the members of the Disciplinary Board. The authors of the Staff Regulations provided that the members of the Board shall be appointed from two lists, and this means that divergent interests are represented on the Board: the authority and the Staff Committee. The prolonged absence of a member of the Board seriously jeopardizes the independence and impartiality which should characterize it.

The *Council* recalls the reasons why the Disciplinary Board did not consider it necessary to replace the member who was prevented from taking part in its proceedings, and states that:

- the Staff Regulations do not require this as a matter of necessity;
- the way in which a member is appointed does not mean that the Disciplinary Board is a body in which different interests are represented with a certain balance between them;
- to have replaced the member unable to attend would have been unfortunate from the point of view of the efficient conduct of the proceedings, because it would have been necessary to have started it all over again.

The *applicant* replies with numerous observations on the two following questions:

- Did the Disciplinary Board have the right to decide, in the absence of any specific provision, whether it was or was not desirable to replace the member unable to attend?

— Are the reasons why the Disciplinary Board did not replace the member unable to attend well founded?

In the opinion of the *Council:*
— The Disciplinary Board had the right to take a decision, subject to review by the Court of Justice.
— The disciplinary proceedings were not vitiated by any infringement of an essential procedural requirement by reason of the absence, as from a certain date, of one of the members of the Disciplinary Board from the deliberations thereof; according to the legal doctrine and to the case-law of the Member States having a disciplinary procedure system similar to the procedure in the Communities, it is only in cases where the rules as to a quorum are not observed that the composition of the Disciplinary Board is considered irregular.
— In any event the applicant cannot be heard to say that there was a procedural irregularity because she is unable to prove that it has done her any harm.

(d) On the third submission as to substance

The *applicant* argues that the medical report drawn up upon examination of the applicant by doctors acting for both parties is of no scientific value:
— Dr Godenne is usually appointed by the insurance company with which the insurance policy of the Communities has been taken out. There is thus a conflict of interests.
— The report is incomplete: it does not mention an opinion of Dr Michez of 26 November 1973, communicated by Dr. D'Avanzo to the other two doctors. Nor does the report note the opinions of two other doctors who treated the applicant. The applicant's own doctor did not sign the report.

The *Council* replies first that this submission cannot possibly have a bearing on the infringement of any rule of law for no rule requires the obtaining of an expert medical opinion in cases where there is a failure to comply with the requirements of the Staff Regulations. Is the submission therefore to the effect that there has been a misuse of powers in so far as the appointing authority has allegedly based itself on an expert medical opinion of no scientific value?
— There is no conflict of interest in so far as the doctor in question was appointed by agreement between the two other doctors.
— The reports mentioned by the applicant were transmitted to Dr Godenne and to Dr Castiaux.
— In its before-mentioned judgment in Joined Cases 42 and 62/74, the Court rejected the proposition that a member of an Invalidity Committee, appointed by one of the interested parties, may render the application of the provisions of the Staff Regulations impossible, and accordingly it declared that the expert opinion representing the majority of the members of such a committee is valid.

The *applicant* replies that the authority, which had called for a medical report, ought to have noted the omission of certain medical opinions favourable to the applicant. It ought either to have concluded that the medical report was void and to have taken no account of it in respect of the dispute, or to have decided to call for a further report. The refusal of Dr D'Avanzo to sign the report was based on medical considerations. For he stated: 'My opinion on the Perinciolo case is as follows: According to the opinion of Professor Michez, Dr Tainmont and Dr Fosset, she suffers from a Barré-Liéou syndrome. This is also the opinion of certain specialists whom she has consulted in Italy. I am in agreement with their opinion.'

In the two cases to which the defendant refers, the opinion had been submitted by the Invalidity Committee which had been called upon to act pursuant to

Article 59. In the present case, the defendant itself is saying that what is involved is a medical procedure at which both parties are represented, and which has not been described as being the proceedings of an Invalidity Committee as such. When Dr D'Avanzo refused to sign the report, the importance of the legal consequences attaching to his refusal were not foreseeable because the Court stated the rules of law to which reference is made on 12 March and 9 July 1975.

The *Council* answers that it can scarcely be argued that the report of a committee of specialists called upon to reach a finding as to whether the applicant 'is fit to perform the duties attaching to her post as a shorthand-typist assigned to the typing pool' may be considered as 'of no scientific value' on the grounds that it does not expressly mention the opinion of one or other of the applicant's doctors or because to the applicant's mind it gives too much or too little weight to the opinions of one or another of those doctors.

Since the provisions on composition and on the procedure for examining the medical evidence by the Commission, such as they appear in Section 4 of Annex II of the Staff Regulations, has been respected in every particular, it would appear difficult to accept the proposition that the absence of the designation 'Invalidity Committee' can cause the applicant any harm. Moreover, reasons based both on the necessity of applying the Staff Regulations uniformly and on mere common sense make it impossible to imagine that a refusal to sign on the part of a member of a duly constituted committee is permissible at one time but not at another.

It was upon the setting up of such a committee that the applicant had the right to arm herself with all the necessary guarantees. Since she did not challenge the composition of the committee, a majority verdict on its part is to be regarded 'as valid within the meaning of the Regulations, with all the legal consequences' (Judgment in Case 31/71, [1975] ECR 344, ground 14).

(e) On the fourth submission as to substance

The *applicant* stresses that when she was heard on 29 January 1975, the General Secretary refused to allow her advocate to speak: there was an infringement of the rights of the defence (cf. Annex IX on disciplinary proceedings).

The *Council* replies that the provisions of the Staff Regulations on disciplinary proceedings expressly say that the official shall have the right to be assisted in his defence, and that this assistance shall be rendered 'before the Disciplinary Board'. However there is no provision in the Staff Regulations to the effect that the defendant's advocate should have been summoned to the hearing of 29 January 1975. As the applicant's advocate had nevertheless accompanied her to that hearing, it appears from the note on the file drawn up by the General Secretary on 30 January 1975 that he was given the opportunity of expressing his point of view.

The *applicant* replies with a long exposition on the pre-eminence of the rights of the defence and on the necessity of permitting the assistance of an advocate even in cases where the relevant legal provisions are silent.

The *Council* answers that no ruling on this point is called for in the present case.

The parties presented oral argument at the hearing on 27 October 1976.

The Advocate-General delivered his opinion at the hearing on 25 November 1976.

Law

1 By application lodged in the Court Registry on 17 December 1975, the applicant, who entered the service of the Council on 16 January 1964 and who was established on the following 16 July as an official in Grade C 4 as a typist, claimed primarily that the decision of the defendant of 16 October 1972 initiating disciplinary proceedings against her and the decision of 24 February 1975 removing her from her post should be annulled.

2 As a result of an accident which she sustained while out horse-riding, the applicant was granted an invalidity benefit of 15 % under the insurance scheme established pursuant to the Staff Regulations against accidents arising in private life.

3 She requested that she be no longer required to do typing 'incompatible with her state of health', and was assigned to the accounts branch from January 1971 to January 1972.

4 A medical examination carried out by the institution's medical officer and by a specialist consulted by the institution found that the applicant was fit to carry out work as a typist and she was placed at the disposal of the typing pool by note of 24 May 1972.

5 The applicant refused to appear at her post and the appointing authority commenced disciplinary proceedings against her on 16 October 1972 for failure to comply with the duty of obedience (third paragraph of Article 21 of the Staff Regulations) and of the duty to be at all times at the disposal of the institution (first paragraph of Article 55 of the Staff Regulations).

6 In its opinion of 4 July 1973, the Disciplinary Board set up by the defendant recommended that a new medical examination of the applicant be carried out.

7 That examination took place on 25 July 1973, but since the applicant had submitted the opinion of a specialist whom she had consulted, the defendant decided to proceed to an additional medical inquiry at which the interests of both parties would be represented.

8 For that examination, the administration appointed Dr Castiaux, the applicant Dr d'Avanzo, and the two doctors so appointed agreed upon the name of Dr Godenne as a third doctor.

9 The report on the examination, which Dr d'Avanzo refused to sign, concluded that the applicant was fit for work as a typist.

Admissibility

10 In her application, the applicant claims that the Court should:

'1. Declare null and void the decision of 16 October 1972 by which the authority decided to initiate disciplinary proceedings against the applicant;

2. Declare the whole of the disciplinary proceedings void for defects of form and declare the opinion of the Disciplinary Board of 4 July 1973 void and of no effect;

3. Declare the medical report of 21 November 1974 concerning the state of health of the applicant to be void and of no sufficient scientific value;

4. Declare the hearing of the applicant on 29 January 1975 by the Secretary General to be of no effect owing to a violation of the rights of the defence;

5. As a result declare the decision of 24 February 1975 (No 146/75) removing the applicant from her post to be void and of no effect and rule that the applicant shall be re-established as from 1 March 1975 with all her rights as an official in Grade C 3 of the General Secretariat of the Council.'

11 The Council objects that the claims other than the claim for the annulment of the decision removing her from her post are inadmissible.

12 However, in her reply, the applicant limits her claims to this one only, stating that the others should be considered as mere grounds.

13 Therefore the objection of inadmissibility has ceased to be relevant.

Substance

14 The applicant claims first of all that the administration ought, in accordance with Article 59 (3) of the Staff Regulations, to have referred the case to the Invalidity Committee before setting up the Disciplinary Board.

15 She states that, having regard to the medical certificates produced by her, the administration was not within its rights in requiring her to comply with her assignment to the typing pool.

16 On the other hand, the difference between the opinions of the administration's medical adviser and of the specialist whom it consulted and those delivered in the certificates produced by the applicant should have caused the administration to refer to the Invalidity Committee under Article 59 (3) of the Staff Regulations.

17 Article 59 of the Staff Regulations deals, on the one hand, with sick leave for an official prevented from performing his duties because of sickness or accident and, on the other hand, with automatic leave on the decision of the institution.

18 Therefore, as the third paragraph of that article provides that cases of dispute shall be referred to the Invalidity Committee, it can only refer to cases of sick leave, without prejudice to the question of whether it refers only to the case laid down in paragraph (2) of the article or also to that referred to in paragraph (1).

19 It is sufficient for the purposes of the present case to state that it does not concern sick leave of the applicant but the situation created by the objections she raised, because of her state of health, to her assignment to the typing pool.

20 In any case Article 59, and especially paragraph (3) thereof, does not refer to such a situation and cannot therefore be invoked in the present case.

21 The applicant also criticizes the procedure followed by the Disciplinary Board, and claims that the opinion which it delivered should be annulled,

because one of the members thereof was absent as from 5 December 1972, and his signature did not appear at the foot of the opinion of the said board.

22 In so far as the facts stated by the applicant suggest that the opinion of the Disciplinary Board was prepared and delivered in irregular circumstances, that irregularity cannot, nevertheless, have adversely affected her.

23 In fact the opinion substantially accepts her complaints, and after proposing two alternative solutions, the Board recommends 'that a medical examination of the applicant be carried out in order to determine her present state of health'.

24 In acting thus, the Board, which is not itself qualified to make assessments of a medical nature, left the substance of the applicant's claims to be decided by the result of a new medical examination.

25 Since the appointing authority followed that recommendation and proceeded to set up a committee of doctors, the result of the disciplinary procedure was as favourable to the applicant as it could have been in the circumstances.

26 In these circumstances, the submission that the disciplinary procedure should be declared irregular and that the appointing authority should be obliged to repeat it is unreasonable because it is clear that such a measure could be of no advantage to the applicant.

27 Therefore the submission cannot be upheld.

28 The applicant also argues that the report of the medical committee, set up at the request of the Secretary-General to judge the applicant's fitness for work as a typist, should be considered as void for the following reasons:

(1) one of the members of that committee is usually appointed by the insurance company with which the insurance policy in favour of officials of the Communities against accidents in private life has been taken out, and therefore there is a conflict of interests as regards that person;

(2) the report does not mention in detail certain opinions of medical experts produced by the applicant;

(3) the report was not signed by Dr d'Avanzo.

29 As regards the first complaint, the facts alleged do not show the existence of a conflict of interests, for the medical committee had to give the Secretary-General an option on the applicant's fitness for work — a question which does not affect the liability of an insurance company.

30 Moreover, the doctor in question was chosen by common consent between the doctors appointed by the Council and by the applicant.

31 As regards the second complaint, it was not essential for the report of the medical committee to refer to a document submitted to it, the purpose of such a report being to furnish the appointing authority with an opinion on the state of health of the person concerned.

32 As regards the absence of a signature, it appears from the medical report that the members of the medical committee took part in the different stages of the examination and that it was only when it came to drafting the opinion that Dr d'Avanzo refused to take part in the work.

33 A member of a medical committee, appointed by one of the interested parties, cannot, by his refusal to sign, block the procedure and make the application of the provisions of the Staff Regulations impossible.

34 For these reasons, the submission relating to the validity of the report of the medical committee cannot be upheld.

35 Finally the applicant states that when she was heard on 29 January 1975, the Secretary-General refused to hear her application in infringement of the rights of the defence and of Annex IX to the Staff Regulations on disciplinary proceedings.

36 Article 4 of Annex IX entitles the official charged to be assisted in his defence by a person of his own choice before the Disciplinary Board, but no similar right is given to him in respect of a hearing by the appointing authority.

37 Therefore this submission is unfounded.

Costs

38 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

39 The applicant has failed in her submissions.

40 However, under Article 70 of the Rules of Procedure, the costs incurred by institutions in proceedings by servants of the Communities shall be borne by the former.

On those grounds

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders each party to bear its own costs.**

Donner O'Keeffe Bosco

Delivered in open court in Luxembourg on 16 December 1976.

A. Van Houtte
Registrar

A. M. Donner
President of the First Chamber