JUDGMENT OF THE COURT (FIRST CHAMBER)
5 APRIL 1973 [1]

Marie Noé-Dannwerth v the European Parliament

Case 51/72

1. *Officials — Social Security — Insurance — Affiliation — Conditions — Contributions — Payment by the insured — Obligations of the Administration*
   (Staff Regulations of Officials of the EC, Art. 72)
2. *Officials — Social Security — Insurance — Illness — Unjustified absences from work — Medical expenses — Right to benefits*
   (Staff Regulations of Officials of the EC, Art. 72)
3. *Officials — Social Security — Particularly difficult position — Gifts, loans or advances — Grant — Optional nature*
   (Staff Regulations of Officials of the EC, Art. 76)

1. In the absence of provision in the Staff Regulations to the contrary, affiliation of an official to the social insurance scheme established by the Community cannot be questioned as long as he remains an official. Although it is true that it is a contributory scheme, payment of the contributions nevertheless does not constitute an essential condition of affiliation, as the administration may, in the event of the official losing the benefit of his remuneration, either call on him to continue payment of his contributions or pay the contributions directly and thereafter recover them by recourse to law.
2. If absences from work are not justified by the illness from which the official suffers, this does not necessarily mean that all the expenses incurred through that illness are themselves unjustifiable and do not give rise to a right to benefits.
3. Article 76 imposes no specific obligation on the Community authorities, but aims at giving them the option of coming to the assistance of officials or former officials who find themselves in difficulty.

In Case 51/72

MARIE NOÉ-DANNWERTH, official of the European Parliament in Luxembourg, represented by Victor Biel, a lawyer practising before the Cour Supérieure de

1 — Language of the Case: French.

Justice, in Luxembourg, having chosen her address for service in his chambers at 71 rue des Glacis, Luxembourg,

applicant,

v

EUROPEAN PARLIAMENT, represented by its Secretary General, Hans Robert Nord, acting as agent, with the assistance of Alex Bonn, of the Luxembourg Bar, having chosen its address for service in his chambers at 22 Côte d'Eich, Luxembourg,

defendant,

Application for

— annulment of the refusal of the European Parliament to pay the applicant the amount of her salary from 15 June 1970 to 12 December 1970,

— reimbursement for the same period of the expenses for sickness incurred by the applicant.

THE COURT (First Chamber)

composed of: R. Monaco (Rapporteur) President of Chamber, A. M. Donner and J. Mertens de Wilmars, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The underlying facts and procedure may be summarized as follows:

1. Mrs Marie Noé-Dannwerth was engaged at the European Parliament as a secretary/shorthand-typist on 12 February 1963 and established in that post on 1 June 1963 in grade C 3. On 17 November 1966, she was promoted to grade C 2.

In August 1969, in view of the frequency of the applicant's absences on account of sickness, the Eurpean Parliament decided

to convene the Invalidity Committee, with a view to verifying the state of health of Mrs Noé-Dannwerth and her capacity for carrying out her work. In its report, drawn up on 29 December 1969, the Invalidity Committee concluded that Mrs Noé-Dannwerth was not suffering from any permanent and total invalidity preventing her from exercising her duties as a secretary/shorthand-typist.

On the basis of this report, the Parliament requested the applicant by letter dated 26 January 1970, to resume her work. But the applicant, disputing the opinion of the Invalidity Committee, asked to be subjected to a new examination to be performed at a German university clinic. By a letter dated 30 January 1970, the Parliament rejected this claim and gave her notice until 2 February 1970 to resume her duties, under the threat of the penalties provided by Article 60 of the Staff Regulations.

By a letter of 2 February 1970, Mrs Noé-Dannwerth sent the administration a certificate from Dr Marx-Molitor, which stated 'she cannot yet take up work again.' The Parliament replied on 16 February 1970, specifying, *inter alia,* that it was not accepting and would not accept any further medical certificate referring to the same sickness and that from 26 February the applicant would lose her remuneration.

The applicant persisted in asserting that she was sick, and not having resumed her duties under the conditions prescribed by the appointing authority following the opinion of the medical officer, she sent the administration a medical certificate drawn up in Madrid on 15 June 1970. By a letter dated 18 June 1970, the Director-General of the administration, having pointed out the applicant's absence, informed her that:

'from Monday 15 June 1970, and for the duration of your absence, you will lose the benefit of your remuneration.'

Following a new medical examination carried out by the medical officer of the institution, the applicant was recognized as suffering from an invalidity of 30 %, and able to perform light office work.

Having contested the validity of these conclusions, Mrs Noé-Dannwerth on 3 February 1971 put forward two certificates signed respectively by Doctor Schumacher of Cologne and by Doctor Rene Collier of Morsum/Sylt. The certificate of this latter doctor, dated 12 December 1970, certified a complete incapacity for work, provisionally for an indeterminate period.

Having regard to these factors, the administration decided to reconvene the Invalidity Committee, in order to clarify definitively the position of the party concerned. This new Committee concluded, in its report dated 6 September 1971, that:

'following the clinical examination and in view of the documents collected in Mrs Noé-Dannwerth's file, the Committee declares that it agrees unanimously that Mrs Noé-Dannwerth is suffering from a complete and total invalidity.'

On the basis of this report, the Secretary-General of the Parliament decided, on 17 September 1971, to terminate Mrs Noé-Dannwerth's duties, and to grant her the benefit of the invalidity pension, taking effect from 1 October 1971. In notifying this decision to the party concerned, by a letter dated 11 October 1971, the administration notified her that *inter alia* she would receive her salary for the period from 6 September 1971 to 30 September 1971. By a letter dated 22 October 1971, the administration informed her that her position was regarded as regularized from 12 December 1970, the date on which a medical certificate uncontested by the administration had declared her incapable of working.

2. By a letter dated 7 December 1971, the applicant replied to the Director-General of the administration that she was unable to accept the conditions accompanying her retirement and requested, *inter alia,*

— the payment of her salary from 15 June 1970 until 11 December 1970,

— the reimbursement of the medical expenses.

The Director-General of the administration having rejected this claim by a letter dated 7 January 1972, the applicant's lawyer sent him a letter, dated 23 March 1972, in which, after having pointed out that:

'you do not consider the letter written on 7 December 1971 by Mrs Noé-Dannwerth to be a request submitted under provisions of Article 90 of the Regulations . . .'

he concluded as follows:

'I am not going to ask you forthwith to consider the present request as an administrative complaint. However, and to the extent that you cannot accede to the present claim, I beg you to inform me if, for your part, you consider this as a request within the meaning of Article 90 of the Staff Regulations. If that is your attitude, I must obviously bring before the Court the two points submitted in the present claim: the payment of the salary wrongly withheld and the assumption of responsibility for all medical expenses.'

The Director-General replied by a letter of 19 May 1972, expressed in the following terms:

'. . . I have not found in your correspondence any new factor which permits me to alter the terms of my letter dated 7 January 1972 which itself referred back to the terms of my letter dated 22 October 1971. I would be obliged if you would kindly refer back to these two letters. In addition, I think I should call your attention to the fact that the decision which you ask to be altered dates from 18 June 1970.'

On 17 July 1972, Mrs Noé-Dannwerth brought the present action.

3. The Court (First Chamber), on the report of the Judge-Rapporteur and upon hearing the Advocate-General, decided to open the oral procedure without any preparatory inquiries.

The oral observations of the parties were made at the hearing on 21 February 1972.

The Advocate-General presented his opinion at the hearing on 14 March 1972.

II — Submissions of the parties

The *applicant* asks the Court:

'— To accept the present action as in proper from and to declare that it is brought within the time limits, consequently to declare it admissible,

— to declare that it is well-founded and justified as to merits and consequently,

— to declare that the communication sent on 18 June 1970 to the applicant does not constitute a decision within the meaning of the Staff Regulations of the European Communities,

— to declare that this communication could not therefore deprive the applicant of her salary as an official,

— to declare that the applicant has a right to the reimbursement of medical expenses even if the decision on the suspension of the salary can be considered valid and justifiable,

— to declare moreover that the Administration of the European Parliament has contravened its duty of assistance and aid towards an official finding herself within the conditions for application of Article 76 of the Staff Regulations,

— to order the European Parliament to bear all the costs and expense of the action,

— as a subsidiary plea, to order an expert medical report to verify, on the basis of the medical file, if not by any other means, whether or not on 15 June 1970 Mrs Noé-Dann-

werth was sick, and if it is established that she was sick whether she could have interrupted immediately the treatment she was undergoing at that time in Madrid.'

the *defendant* asks the Court:

'— to declare the action inadmissible under its different headings;

— as a subsidiary plea, to declare it unfounded;

— to dismiss it;

— to dismiss ... more particularly the applicant's subsidiary offer of proof by an expert medical report as superfluous and irrelevant;

— to make an order as to costs in accordance with the applicable provisions.'

III — Pleas and arguments of the parties

The pleas and arguments of the parties may be summarized as follows:

Admissibility

The applicant explains firstly that the act adversely affecting her, and constituting the foundation of the action, is not the letter of 18 June 1970. That letter is not a 'decision' within the meaning of the Regulations. Firstly, it does not satisfy the conditions of Article 25 (1) of the Regulations, since it does not indicate the grounds justifying the loss of the right to salary. Secondly, the decision emanates from an authority, the Director-General of the administration, in whose favour the internal regulations of the Parliament dated 12 December only provide for a delegation of an administrative nature of powers exercised by the appointing authority, whereas the suspension of salary is a measure which because of its scope and its seriousness goes beyond a simple administrative act. Lastly, the alleged decision was conveyed to the party concerned by a simple letter, unregistered and without acknowledgment of receipt.

The *defendant* on the other hand asserts that the decision adversely affecting the applicant, being precisely the one contained in the letter dated 18 June 1970, the action is inadmissible, as it was commenced outside any relevant time limit.

Such decision is adequately reasoned, since it recalls all the facts, both past and recent, by reason of which the applicant has lost her right to her salary. In the second place, the administrative authority from which it emanates — the Director-General of the administration — had complete power to take the decision. The reply to the objection raised by the applicant on this point emerges from the very nature of such communication. Article 60 of the Regulations on which such 'letter-decision' is based, does not require a decision by the appointing authority, but a simple finding of the existence of unauthorized absences. In the case in issue, such finding was made and conveyed to the knowledge of the party concerned by the letter dated 18 June 1970. As for the circumstance that such decision was conveyed by a mere letter, unregistered and without acknowledgment of receipt, the Regulations do not provide special formalities for a finding that the conditions exist for applying Article 60.

Moreover, even supposing that as to the loss of the right to reimbursement of medical expenses the adverse decision is contained in the letter dated 7 January 1972, the action is no less inadmissible on that account, the letter of 23 March 1972 from the applicant's lawyer being incapable of suspending the time limit for bringing the action.

Lastly as for the submissions relating to Article 76, the action is admissible also on this point, by reason of the very nature of this provision which does not impose any obligation on the

administrative authority and does not in any respect restrict its powers as to the grant of extraordinary aid provided by this provision.

The *applicant* points out that, if the letter of 18 June 1970 had been a decision, it could not have taken effect on 15 June 1970, but at the earliest on the day of its receipt by the addressee. Once the time limit for bringing the action had expired, this alleged decision would have had the force of law: it would have bound the Parliament in such a manner that it could not have paid *'ex post facto'* the salary accruing from 12 December 1970. Supposing on the other hand that Article 60 of the Regulations is really, in the way the defendant appears to assert, a 'self-executing' provision, so that the letter from the Director-General of the administration amounts to a pure 'finding' of fact, it cannot be maintained at the same time that this letter constituted a decision.

Lastly, the fact that the Regulations do not prescribe any formalities for the 'finding' envisaged by Article 60 of the Regulations can only show up the dangerous and injurious nature, for officials, of this kind of finding which should be regulated by the principle 'contra non valentem agere non currit praescriptio'.

The applicant concludes by noting that the principle of the restraint of powers *(compétences liées)* and that of the duty of assistance towards servants are such as to justify her action based on Article 76 of the Regulations so that the action is on this point not only well-founded but also admissible.

The *defendant* replies that supposing the applicant's reasoning to be correct, one can no longer see against what decision the action is directed. Moreover, the defendant certainly did not intend to refer to Article 60 as a 'self-executing' provision. Rather the defendant drew attention to the fact that, in the sphere of this provision, the administration must limit itself to a finding of the official's unauthorized absence, and the application of the sanction provided arises solely from the Regulations themselves.

Merits

(a) Loss of the right to salary

The *applicant* maintains that the letter dated 18 June 1970, even supposing, by pure hypothesis, that it is considered a 'decision', is completely irregular for, in claiming that the contested absences were not justified, the decision is founded on an incorrect ground. The medical certificate issued in Madrid on 15 June 1970 proves that the absence of Mrs Noé-Dannwerth was due solely to the precarious state of her health.

Besides, by suspending the payment of her salary, the letter dated 18 June 1970 wrongly applied Article 60 of the Regulations, for this provision, while providing that the absence of the official must receive prior permission, makes, in sub-section 1, a precise and express exception in the case 'of sickness or accident' and does not envisage, in sub-section 2, imposing on the sick official the loss of his salary.

The *defendant* replies on the other hand that the absences of Mrs Noé-Dannwerth were unauthorized. The medical certificate sent from Madrid has no importance with regard to the circumstances of the case in issue. Mrs Noé-Dannwerth, not having obtained permission for her absence from work, still less permission to leave Luxembourg, and to go to Madrid, cannot justify her absence 'a posteriori' by producing a certificate issued by a doctor in the place where she was staying. All the facts preceding the adoption of the decision dated 18 June 1970, show that the administration has always scrupulously observed the provisions of the Regulations which assure the protection of the rights of officials, whereas the applicant has not complied in any way with the rules laid down in the Regulations, especially those of Article 59.

The *applicant,* after having completed the summary of the facts as contained in the statement of defence, which in her opinion is incomplete and sometimes misleading, recalls that the Invalidity Committee convened in 1971 gave its opinion not only 'following the clinical examination', but also 'having regard to the documents collected in Mrs Noé-Dannwerth's file'. That is why the Committee should have been asked *since when* the invalidity they recognized had existed, for it is obvious that such complete invalidity did not just come about on 6 September 1971, the date when the Committee gave its opinion. On the contrary, the physical state of the applicant must not have changed considerably since June 1970, since which date there have been no new developments. Moreover, the defendant is guilty of an obvious confusion between two distinct concepts; that of 'invalidity' on the one hand and that of 'sickness' on the other. In its letter dated 22 October 1971, the administration in effect declared itself prepared to pay to the applicant the amount of the salary falling due between the date when she was recognized as an invalid (1 October 1971) and the date of the certificate issued by Dr Renate Collier on 12 December 1970, confirming her invalidity, whereas, in order to justify paying the arrears of salary over this period, the Parliament ought to have based itself on a certificate of sickness. On a strictly logical basis, once it was admitted that the invalidity of Mrs Noé-Dannwerth dated back to 12 December 1970, Parliament ought from this date to have paid the invalidity pension alone.

On the other hand, according to the *defendant,* it is the applicant herself who has confused sickness and invalidity, by having claimed for years that her state of sickness made her unable to work. The applicant's sickness had already been recognized by the Invalidity Committee in 1969, who nevertheless did not declare her totally incapable of working. In these circumstances, one cannot see how Parliament could have recognized this invalidity in the absence of an appropriate opinion expressed by the said Committee. Moreover, one must not confuse an acute and temporary sickness, rendering the official temporarily incapable of working, with a chronic sickness, involving permanent incapacity. The latter state can only be admitted when the provisions of the Regulations, especially those of Article 78, are complied with.

Moreover, it must be emphasized that the alleged delay on the part of the Parliament in declaring the applicant's invalidity was financially advantageous to Mrs Noé-Dannwerth, so that one cannot understand at the present time her interest in raising this point.

(b) Reimbursement of all the medical expenses

The applicant considers that the administration's refusal to reimburse all her medical expenses is unacceptable both as a matter of equity and as a matter of law.

The administration never reacted to the requests presented by the applicant with a view to obtaining special sick leave, and this inertia is all the more inadmissible because the administration was aware that Mrs Noé-Dannwerth had already taken six months unpaid sick leave. Having regard to the very precarious financial position of the party concerned, the loss of the right to her salary should not have involved the applicant in the loss also of the right to reimbursement of medical expenses which she has in fact incurred.

Furthermore, this refusal is irregular by reference to the Regulations, in which Article 60, only provides, as a sanction, the loss of the right to remuneration, and in which Article 72 grants cover against medical expenses without reference to the payment of salary. One must not forget either, on this topic, that during the period for which her salary was suspended the applicant was actually an official of the Institution.

The *defendant* replies that the loss of the right to reimbursement of medical expenses is only the logical corollary of the loss of the right to salary, due to unauthorized absences from work. The loss of such latter right involved *ipso facto* the termination of the payment of contributions. Since, in a scheme which has a contributory nature, such as that of sickness insurance, there cannot be benefits without contributions, the loss of the right to salary necessarily entailed the suspension of affiliation to this scheme. Whilst the 'Regulations relating to insurance against sickness of officials of the European Communities' do not expressly provide for the case in which affiliation is suspended on grounds arising from the application of Article 60 of the Regulations, such a case is analogous with that provided by Article 3 S 1 of these Regulations, according to which the affiliation and insurance against sickness are suspended for officials on leave on personal grounds.

The fact that Mrs Noé-Dannwerth was still an 'official' during the course of the period in which she no longer received her salary in thus not the determining factor, the suspension of affiliation and insurance against sickness being the inevitable consequence of the loss of the right to her salary.

The *applicant* considers that the suspension of salary is not sufficient to justify the termination of the insurance against sickness. The Regulations prescribe that the 'official' is insured against such risks, without making the slightest limitation on this point. Nor is it possible to justify the forfeiture of the right to such insurance, which is to be interpreted strictly, on the basis of provisions provided for the official on leave on personal grounds. The two cases, that of the official who is sick and that of the official who is on leave on personal grounds, are not in any way comparable, for the official on leave on personal grounds knows the risk inherent in his new position. Lastly, as for the argument drawn from the termination of the payment of contributions, following the loss of her salary, the defendant forgets the possibilities of continued voluntary insurance. Supposing that the applicant was unable to continue her insurance, she would at least have been able to contract for insurance against sickness with another insurer, who would thus have paid the necessary contributions on her behalf.

The *defendant* maintains its position on this point.

(c) The application of Article 76 of the Regulations

The applicant maintains that by not granting her the benefit of Article 76 of the Regulations the defendant has not respected the limits attached to its discretionary power and has failed in its duty of assistance towards its staff.

The modern case-law no longer recognizes the principle that discretionary power is absolute and is dependant on the 'goodwill of the prince'. Thus, in the sphere of Article 76 of the Regulations, the Institution cannot refuse one official what it has granted to another. There is to be found here a fundamental principle to be respected, which excludes the possibility of an arbitrary act and restricts the powers of the administrative authority. The latter is moreover obliged to respect another principle, that of the duty of assistance towards its servants. Whilst this principle does not appear expressly in special provisions, it is nonetheless unquestionable. Moreover in Article 24 of the Regulations there is a definite example of the application of the principle.

The defendant replies that, if the power of the administration is limited, it is only so limited in a negative manner, in such a way that it is illegal to grant gifts, advances or loans, without the finding that the recipient is in a particularly difficult position.

But the administration is not obliged to grant aid in set situations.

Moreover, the applicant cannot in the case in issue allege the existence of a

misuse of power which the administration has committed to her detriment.

Lastly, one cannot connect the option open to the administration by Article 76 of the Regulations with the duty of assistance towards officials, for which the Regulations provide a case of definite application in Article 24. The two texts in view have nothing in common and are not based on the same principle.

Grounds of judgment

1 By an application received at the Court Registry on 17 July 1972, the applicant brought before the Court an action directed against the refusal of the European Parliament to pay her salary falling due between 15 June 1970 and 12 December 1970 and to reimburse the medical expenses incurred by her for the same period.

2 The action also submits that the applicant should be granted the benefit of Article 76 of the Staff Regulations.

The first head of the submissions

3 The defendant alleges the inadmissibility of those submissions, pleading that the decision adversely affecting the applicant is that contained in the letter dated 18 June 1970 from the Director-General of the administration, in respect of which the time limits for the commencement of the action have expired.

4 By a letter dated 18 June 1970, the Director-General of the administration informed the applicant that since the number of absences considered as unauthorized had exhausted the annual leave, under Article 60 of the Staff Regulations, she would lose the benefit of her salary from 15 June 1970.

5 Eventually, the applicant having been granted the benefit of an invalidity pension, with effect from 1 October 1971, the Director-General of the administration informed her by a letter dated 22 October 1971 that her absences from duty were considered as authorized from 12 December 1970 and that she would thus regain the benefit of her salary from that date.

6 Such letter constitutes a new decision, taken with regard to the change in the circumstances considered by the letter dated 18 June 1970.

7 In the latter letter, the Director-General of the administration applied to the applicant the provisions of Article 60 of the Regulations, providing for the official's loss of the benefit of his remuneration, whereas, in the decision dated 22 October 1971, he fixed the date from which, the disputed absences having been considered authorized, the applicant recovered such benefit.

8 This latter decision, instead of confirming a preceding act, thus constituted a new act, implying the limited withdrawal of the decision dated 18 June 1970.

9 The applicant having claimed, by a letter dated 7 December 1971, the total withdrawal from 15 June 1970 of the said decision, the Director-General of the administration in his letter of 7 January maintained his position on the limited withdrawal.

10 He specified however in that communication that he did not consider the applicant's letter dated 7 December 1971 as a complaint instituted by virtue of Article 90 of the Regulations.

11 In these circumstances and taking account of the equivocal nature of the above-mentioned communication, the applicant was able to conclude from it that she was still in a position to lodge a complaint within the prescribed time limits.

12 By a letter dated 23 March 1972, the applicant presented the Director-General with a claim, seeking, *inter alia,* to obtain the reimbursement of salary falling due between 15 June 1970 and 12 December 1970.

13 By reason of the submissions which it contains, such letter must be considered as a complaint within the meaning of Article 90 of the Regulations.

14 If the letter of 7 January 1972 which is the basis of the present dispute, only constituted a confirmation of the decision of 22 October 1971, the claim dated 23 March 1972 must be considered as having been presented within the time limits for contentious action and therefore suspended the time limits applicable thereto.

15 The Director-General of the administration having by a letter of 19 May 1972 refused to comply with this complaint, the action brought against this refusal on 17 July 1972 is thus admissible.

16 The European Parliament justified its decision to pay the salary falling due from 12 December 1970, by placing reliance on a medical certificate of the same date, issued by Dr Renate Collier and filed by the party concerned on 3 February 1971.

17 This certificate mentions a different disease from that mentioned in the previous certificates.

18 On 6 September 1971, the Invalidity Committee, convened again, declared the applicant to be an invalid on the basis of the same disease as in the certificate issued by Dr Renate Collier.

19 With regard to this finding, the appointing authority considered that the absences of the applicant could no longer be regarded as unauthorized from the date of the certificate of 12 December 1970.

20 On the other hand the applicant contends that her absences must be considered as authorized from 15 June 1970.

21 For this purpose, she invokes especially a medical certificate, issued in Madrid in June 1970, which she conveyed to the Parliament by a letter dated 15 June 1970.

22 This certificate mentions a disease different from the one which led the appointing authority to recognize the applicant's total invalidity.

23 In these circumstances, the appointing authority was right to base itself, when it took its decision, on the date of Dr Renate Collier's certificate.

24 The action must, on this first head, be dismissed unfounded.

The second head of the submissions

25 The defendant deduces, from the inadmissibility of the first head of the submissions, the inadmissibility of the submissions aiming to obtain reimbursement of the medical expenses incurred from 15 June 1970 to 12 December 1970.

26 The defendant contends that its refusal to pay out the salary falling due during this period inevitably involved the refusal to reimburse the medical expenses in question.

27 It appears from the correspondence exchanged between the parties that it was by his decision of 7 January 1972 that the Director-General of the administration expressed his opinion, in an explicit and formal manner, on the reimbursement of the medical expenses incurred by the applicant before 1 October 1971 and on the date from which this reimbursement would be made.

28 The applicant having, in her claim of 23 March asked for the reimbursement of the said expenses, the Director-General of the Administration, by letter dated 19 May 1972, refused to concede this claim.

29 It follows from the preceding considerations that the action, in as far as it is directed against the refusal expressed in this letter has been instituted within the time limits and is thus admissible on this point.

30 The defendant maintains that since the scheme of sickness insurance established by the Communities is of a contributory nature, affiliation to this scheme terminates from the moment that the official loses the benefit of his salary and for this reason no longer pays the necessary contributions.

31 It appears from the express terms of Article 72 of the Regulations that affiliation to the said scheme of sickness insurance is based on the status of the official, within the meaning of the Regulations.

32 In default of provisions to the contrary in the Regulations, the affiliation of an official to the scheme of social insurance established by the Commission cannot be questioned, as long as he retains his status of official.

33 Whilst it is true that this scheme is of a contributory nature, the payment of contributions does not constitute an indispensable condition of affiliation, the administration being able, in the case where the official loses the benefit of his salary, either to put him in a position to continue his contributions or to pay directly the contributions which the administration will then be able to recover by recourse to legal measures.

34 Besides, the circumstance that the sickness which the official is suffering from does not justify his absences from duty, does not necessarily imply that all the expenses he has incurred by reason of this sickness are, themselves, unjustified and do not give rise to any right to benefits.

35 For these reasons, it must be concluded that, subject to verification of the justification for these expenses, the applicant can claim reimbursement of the

medical expenses incurred by her between 15 June 1970 and 12 December 1970.

36 Therefore, the refusal of the European Parliament to reimburse these expenses, for the sole reason that the applicant lost the benefit of her salary during this period, must be annulled.

The third head of the submissions

37 The applicant maintains that the European Parliament, by refusing to apply Article 76 of the Regulations to her case, has failed in the obligations which arise from this provision.

38 By Article 76 of the Regulations 'gifts, loans or advances may be made to officials, former officials or where an official has died, to those entitled under him who are in a particularly difficult position as a result *inter alia* of serious or protracted illness or by reason of family circumstances'.

39 By this provision, the Regulations impose no express obligation on the Community authorities, but aim to give them the option of helping officials or former officials who find themselves in difficulty.

40 Moreover, the exceptional aid provided by Article 76 can only be granted in appropriate cases where the party concerned is in a particularly difficult position.

41 If the circumstances in which the applicant found herself until the time when she was granted the benefit of the invalidity pension were, (had the occasion arisen) liable to create a particularly difficult position within the meaning of Article 76 of the Regulations, nevertheless the fact remains that the measures taken with regard to her following this grant had the effect of modifying these circumstances considerably.

42 Lastly, the argument that the applicant draws from the provisions of Article 24 of the Regulations is not relevant to the case in issue, these provisions applying to cases different from those falling under Article 76.

43 Under its third head, therefore, the action must be dismissed.

Costs

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

45 The applicant has failed in part of her pleas.

46 By Article 70 of the Rules of Procedure, the expenses incurred by the institutions in actions by Community servants shall be borne by the institutions.

47 In these circumstances, the defendant should be ordered to bear, besides its own expenses, half of those incurred by the applicant.

On those grounds

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the submissions of the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Staff Regulations of the European Communities and especially Articles 24, 60, 73, 74, 76, 90 and 91;
Having regard to the Protocol on the Statute of the Court of Justice;
Having regard to the Rules of Procedure of the Court of the European Communities;

THE COURT (First Chamber)

hereby:

1. **Annuls the decision of the European Parliament refusing to reimburse the medical expenses incurred by the applicant between 15 June 1970 and 12 December 1970.**
2. **Dismisses the other causes of action.**
3. **Orders the defendant to bear, besides its own costs, half of those incurred by the applicant.**

Delivered in open court on 5 April 1973

Monaco Donner Mertens de Wilmars

A. Van Houtte
Registrar

R. Monaco
President of the First Chamber