# REPORT FOR THE HEARING
delivered in Case 257/85 *

## I — Facts and procedure

1. The applicant was recruited by the European Parliament (the Liberal and Allies Group, now the Liberal and Democratic Group) on 1 July 1973 as a member of the temporary staff in Grade B3 to stand in for another employee, Miss Starquit, during her absence. By a rider added on 31 January 1975, her contract was converted into a contract of indefinite duration.

2. In April 1981 the Liberal and Democratic Group proposed to the applicant an amendment to the terms of her contract, involving her regrading in Grade C2, which she accepted by signing a further rider to the contract on 7 April 1981. She was regraded with effect from 1 November 1980 and she reimbursed the difference between the salary she received in Grade B3, Step 4 and in Grade C2, Step 5.

3. By letter of 15 October 1984, the President of the Liberal and Democratic Group terminated her contract as a member of the temporary staff as from 1 December 1984 on the ground that there had been a change in the political composition of the Parliament.

4. The applicant carried out her duties in Paris throughout her employment.

5. On 11 April 1985 she submitted a 'request through official channels' to the Parliament, to which she received no reply. She therefore brought this action on 18 August 1985.

6. The written procedure followed the normal course. On hearing the Report of the Judge-Rapporteur and the views of the Advocate General, the Fourth Chamber of the Court decided to open the oral procedure without any preparatory inquiry.

## II — Conclusions of the parties

1. As is clear from the application, the *applicant* claims that the Court should:

(a) Order the Parliament to pay her, by way of additional notice, the equivalent of seven months' salary calculated on the basis of her last salary, so as to bring her within the scope of Article 47 of the Conditions of Employment of Other Servants of the European Communities;

(b) Order the Parliament to reinstate her in Category B, having regard to the normal development of her career, with all the attendant consequences in law, in particular as regards the acquisition of pension points in respect of the periods before and after her dismissal;

(c) Order the Parliament to make good the damage caused, in the first place, by the loss of her salary before dismissal and, secondly, from the date of her dismissal. The applicant calculates the damage caused by the loss of her salary for the period between 1981 and 1984 as amounting to approximately FF 200 000. The damage caused by her dismissal cannot, in her view, be assessed at less than a year's salary, namely FF 200 000. The amount of damages should in both cases be calculated by an expert.

* Language of the Case: French.

2. The *defendant* contends that the Court should:

(a) Dismiss the application as inadmissible, or as unfounded;

(b) Make an order as to costs in accordance with the relevant provisions of the Staff Regulations.

**III — Submissions and arguments of the parties**

*Admissibility*

A — *First claim*

1. According to the Parliament, the decision to dismiss the applicant was implemented on 1 December 1984. By that date at the latest, the applicant should have taken cognizance, in the absence of other indications, of the letter of 15 October 1984 dismissing her. As she lodged her complaint on 11 April 1985, the three-month period prescribed by Article 90 of the Staff Regulations, which is applicable by analogy to members of the temporary staff by virtue of Article 46 of the Conditions of Employment of Other Servants of the European Communities ('the Conditions of Employment'), had expired and this claim is therefore inadmissible.

2. The applicant maintains that Article 90 (2) of the Staff Regulations cannot be pleaded against her as it is contrary to Article 6 of the European Convention on Human Rights. Furthermore, she contends that she was treated unfairly by comparison with other employees working in France for any other employer since, under French legislation, they are allowed a period for lodging complaints which is longer than the three-month period prescribed by Article 90 (2) of the Staff Regulations.

3. In reply to that argument, the Parliament contends that Article 6 of the European Convention on Human Rights is concerned with the right to a fair hearing and the applicant has not furnished any proof that that right has been violated. With regard to the difference in the treatment accorded to the applicant by comparison with that accorded to other employees working in France, that is the result of the application of the Conditions of Employment, which alone govern the applicant's position. French law is wholly inapplicable in this case.

B — *Second claim*

1. According to the *Parliament*, the second claim, concerning the applicant's regrading, of which she has been aware ever since she signed the additional rider to the contract 7 April 1981, is also out of time.

2. The *applicant* reiterates her argument to the effect that the period prescribed by Article 90 of the Staff Regulations is inapplicable to her.

3. The Parliament puts forward a *second objection of inadmissibility*: by signing the rider dated 7 April 1981, the applicant accepted the decision regrading her.

4. The *applicant* maintains that she was compulsorily downgraded since, in the event of a refusal to sign, the only option left in her case would have been forced resignation.

C — *Third claim*

1. With regard to the claim for compensation for the damage suffered by the applicant as a result of her dismissal, the Parliament contends that it is based on the alleged illegality of the decision to dismiss her. According to the case-law of the Court (judgment of 21 February 1974 in Joined Cases 15 to 33, 52, 53, 57 to 109, 116, 117, 123, 132 and 135 to 137/73 *Schots-Kortner* [1974] ECR 177; judgment of 12 December 1967 in Case 4/67 *Muller* [1967] ECR 365; and judgment of 24 June 1971 in Case

53/70 *Vinck* [1971] ECR 601), an action for damages based on the alleged illegality of the decisions complained of cannot be distinguished from an action for annulment. Accordingly, an action for damages is also conditional on a prior complaint having been lodged within the three-month period prescribed by Article 90 of the Staff Regulations.

2. In response to that objection of inadmissibility, the applicant relies in her defence on the same argument as before to the effect that Article 90 of the Staff Regulations is inapplicable to her.

*Substance*

A — *First claim*

1. The *applicant* claims that as she was employed under a contract for an indefinite period, the period of notice terminating the contract was necessarily 10 months, that is to say the maximum period provided for by Article 47 (2) (a) of the Conditions of Employment.

2. The *Parliament* considers the claim to be unfounded. The maximum period of notice provided for in Article 47 (2) (a) is three months. A period of 10 months is provided for only in the case of employees covered by Article 2 (d) of the Conditions of Employment, that is to say staff engaged to fill a permanent post paid from research and investment appropriations, which is not the case of the applicant who is covered by Article 2 (c).

3. The applicant submits, in her reply, that the Parliament has failed to etablish that she was not engaged to fill temporarily a permanent post paid from research and investment appropriations. In view of the ambiguity in the definition of her duties, she should not have been given only three months' notice.

4. The *Parliament* considers that it has nothing to prove. The applicant cannot deny that she was recruited as a member of the temporary staff in the service of a political group. Furthermore, appropriations for engaging staff paid from research and investment appropriations are available only to the Commission.

B — *Second claim*

1. The *applicant* claims that, after being automatically downgraded to Grade C2, Step 5, she continued to perform the duties demanded of an employee in her previous grade, that is to say Grade B3, Step 4. Accordingly, having regard to the normal development of her career, she should have advanced to Step 5 in Grade B3 on 1 July 1981 and to Step 6 in Grade B3 on 1 July 1983. She therefore claims that she should be reinstated in Category B with retroactive effect.

2. According to the *Parliament*, that claim must be based on proof that her classification in Grade C2 was illegal or open to challenge on another ground, and no such proof has been furnished. On the contrary, she was regraded for reasons connected with the service, and in the interests of the service.

3. In her reply, the *applicant* submits that the defendant has not furnished any proof of the reasons connected with the service on the basis of which she was compulsorily downgraded, notwithstanding the fact that she protested at the time. She maintains that the Conditions of Employment make no provision for a situation of that kind or even for the payment of compensation where an employee is compelled to resign, or is dismissed owing to a change in the political composition of the European Parliament. Accordingly, the Court of Justice must fill that legal gap in the Conditions of Employment. The applicant considers that

she is justified in asking for the application of French law to her case, in order to claim compensation for the damage which she has suffered.

4. The Parliament repeats that the applicant was regraded in Grade C2, Step 5, for reasons connected with the service and in the interests of the service. That is clear from the letter which the Secretary-General of the Liberal and Democratic Group sent to the applicant on 11 July 1980. According to that letter the nature of the duties which an official in that post was required to perform was modified following the reorganization of the Secretariat of the Liberal and Democratic Group in Paris, which was necessitated by the changes resulting from the outcome of the first direct election held in June 1979.

C — *Third claim*

1. Finally, the *applicant* claims to have suffered damage, in the first place as a result of her unlawful regrading, and secondly as a result of her sudden dismissal for reasons that were neither serious nor genuine.

2. In reply, the *Parliament* states that the applicant was lawfully classified and, in addition, accepted her classification. As for her dismissal, that too was in conformity with the requirements of the Staff Regulations as set out in Article 47 of the Conditions of Employment and — although the point is superfluous — it was based on appropriate and sufficient reasons, namely a change in the composition of the Parliament following the election which had taken place. In that regard, it refers to the case-law of the Court, namely the judgments of 26 February 1981 in Case 25/80 *De Briey* [1981] ECR 637 and of 18 October 1977 in Case 25/68 *Schertzer* [1977] ECR 1729.

C. Kakouris
Judge-Rapporteur