OPINION OF ADVOCATE GENERAL GULMANN

delivered on 15 December 1991 *

Mr President,
Members of the Court,

1. On 22 November 1990 the Court of First Instance gave judgment [1] on an application brought by Mrs V., a former member of the temporary staff of one of the political groups of the European Parliament, against the European Parliament, in which she had claimed *inter alia* that a decision of the Invalidity Committee and the termination of her contract by the appointing authority should be declared void. The Court of First Instance gave judgment in favour of the Parliament. By application of 18 January 1991 Mrs V. brought before the Court of Justice an appeal against that judgment.

The facts of the case and the parties' legal arguments are set out in the judgment under appeal and the report of the Judge-Rapporteur. Reference is made to them and I shall hereinafter examine only the arguments put forward by Mrs V. in support of her appeal.

The appointment of the Invalidity Committee

2. Mrs V. claimed primarily that in a telephone conversation on 12 October 1987 between the doctor appointed by her and the doctor appointed by the Parliament agreement had been reached as to the third doctor on the Invalidity Committee. The contents of the subsequent letter of 17 October 1987 from the doctor appointed by Mrs V. could not alter that fact. The oral agreement was definitive and binding on both parties. In the alternative Mrs V. also claimed that the letter of 17 October 1987, on a reasonable interpretation and regard being had to the fact that it was written by a doctor and not by a lawyer, cannot be understood as containing conditions for acceptance.

The alternative argument must clearly be rejected. The letter can only be understood as meaning that the acceptance of the third doctor proposed was conditional upon the other party's accepting specified obligations. That implies the rejection also of the principal argument. A party who has imposed conditions in writing for the conclusion of a definitive agreement cannot subsequently claim that before sending the conditional acceptance he had agreed to a definitive acceptance. That must be especially obvious in a situation in which the oral agreement in question was referred to for the first time only after the Invalidity Committee, allegedly appointed contrary to an oral agreement, had concluded its work.

* Original language: Danish.

1 — Judgment in Case T-54/89 *Mrs V.* v *European Parliament* [1990] II-659.

Communication by the administration of the Invalidity Committee's conclusions

3. Mrs V. claims that the letter by which the administration of the Parliament sent her the Invalidity Committee's conclusions is to be regarded as a decision and that that decision is invalid because it was not taken by the competent authority, namely the appointing authority. Mrs V. stated that all instruments having legal effect in the relationship of employment between the institution and its employees must emanate from the appointing authority unless power is expressly conferred on some other body. In that connection I shall only remark that Article 33(2) of the Conditions of Employment of Other Servants of the Communities provides that 'invalidity' ('l'état d'invalidité' in the French version) 'shall be established by the Invalidity Committee provided for in Article 9 of the Staff Regulations'. The appointing authority has therefore no power to regard an employee as affected by invalidity if the Invalidity Committee has come to the opposite conclusion. If the appointing authority has thus no power, the communication of the Invalidity Committee's conclusions cannot be described as a decision. That argument must therefore be rejected.

The validity of the Invalidity Committee's conclusions

4. Mrs V. claims that the Invalidity Committee's conclusions are invalid because they do not state the reasons on which they are based and refers in support of this claim to the judgment of the Court of Justice in the *Jänsch* case. [2] She states that the conclusions of the Invalidity Committee consist exclusively of a printed form containing practically nothing but her personal data and on which the passages not applicable have been deleted; the conclusions thus contain no statement of reasons. Mrs V. states that it follows from the *Jänsch* judgment that the committee's report must establish 'a comprehensible link between the medical findings which it contains and the conclusions which it draws'.

5. This argument, which was put forward by Mrs V. in her pleadings before the Court of First Instance, and which was indirectly rejected by the finding that the committee's work was not vitiated by any defect, is unfounded.

It may be seen from Article 9(2) of Annex II to the Staff Regulations that 'the Invalidity Committee's conclusions shall be communicated to the appointing authority and to the official concerned'. The Invalidity Committee therefore followed the procedure laid down in the Staff Regulations. It merely communicated the conclusions of the report it had drawn up.

It may be seen moreover from the documents in the case that the committee's report was sent to the doctor appointed by Mrs V., as shown also by the Parliament's reply to Mrs V.'s complaint, included as an annex to the application in the case before the Court of First Instance. That is not contested by Mrs V.

2 — Case 277/84 *Jänsch* v *Commission* [1987] ECR 4923.

Mrs V. has not sought to contest the medical assessment on which the conclusions of the Invalidity Committee were based.

Accordingly Mrs V. cannot claim that the Invalidity Committee's decision is invalid because it contains no statement of reasons.

The judgment in the *Jänsch* case related to the question of the scope of a review by the Court of the report of a medical committee in a case concerning the recognition of an occupational disease and in this connection sets out the requirements which may be made as to the contents of the report. The judgment is not therefore relevant to the present case.

The appointment of a fresh Invalidity Committee

6. Mrs V. has stated that she has a legal claim to have her case submitted afresh to an Invalidity Committee.

In this connection I shall simply observe that Article 59(1) of the Staff Regulations provides that the appointing authority may refer to the Invalidity Committee the case of any official whose sick leave totals more than twelve months in any period of three years. It appears from the facts of this case that the appointing authority availed itself of this power and the outcome was that the Invalidity Committee found that Mrs V. was not affected by invalidity. This argument must therefore also be rejected.

The rejection of the medical certificates submitted by Mrs V.

7. Mrs V. claims that the Parliament was not justified in rejecting the medical certificates which she submitted on 23 February and 1 March 1988 and that it is not possible to demand a statement of the reasons on which medical certificates are based. I agree that the Staff Regulations do not authorize a demand that medical certificates shall state the reasons on which they are based and that it is quite correct that the judgment of the Court of Justice in Case 271/87 *Fedeli* v *European Parliament* [3] shows that an institution cannot reject a medical certificate on the basis of the conclusions of an Invalidity Committee concerning the same official. In this case, however, the position is that:

— the medical certificates were submitted immediately after the Invalidity Committee had concluded that the appellant was not affected by invalidity;

— the medical certificate which did state the reasons on which it was based gave the same diagnosis as the Invalidity Committee had rejected; and

— the Parliament's doctor concluded during a medical check-up at the appellant's home that she was in a position to perform her normal work.

3 — [1989] ECR 993.

In these circumstances I do not regard it as illegal for the administration of the Parliament to have rejected the medical certificates which the appellant had submitted.

Termination of Mrs V.'s contract

8. Finally Mrs V. claims that the implementation of the procedure with regard to a finding of invalidity suspends the right of the appointing authority to terminate the contract of a member of the temporary staff. She asserts, moreover, that the decision was the result of a misuse of power inasmuch as it was based, it is alleged, on Mrs V.'s poor state of health — a reason on which it would be illegal to base a termination of contract.

9. I agree with the appellant that the appointing authority cannot make an employee's access to an invalidity pension illusory by terminating the employee's contract. But in this case the position is that the appointing authority awaited the Invalidity Committee's conclusions. Only then, and at the same time as it notified the appellant of these conclusions, did the appointing authority terminate the appellant's contract. That course of action is not, in my view, illegal.

10. The appellant's argument of misuse of power must similarly be rejected. As stated in paragraph 48 of the judgment of the Court of First Instance, the dismissal satisfies the requirements of Articles 47 and 48 of the Conditions of Employment of Other Servants and there is no ground for supposing that the appointing authority took the decision of dismissal for reasons which are illegal.

Costs

11. All Mrs V.'s arguments must therefore be rejected. As regards costs, Article 69(2) of the Rules of Procedure, in conjunction with Article 122, provide that the unsuccessful party shall pay the costs of the case only if they have been asked for. The Parliament has not claimed payment of the costs of the case. Consequently both parties must bear their own costs.

Conclusion

12. On the basis of these observations I shall propose that the Court give judgment in favour of the Parliament and order the parties to bear their own costs.