From that point of view, the Court has jurisdiction to examine whether the opinion of the Invalidity Committee contains reasons enabling the reader to assess the considerations on which the conclusions which it contains were based and whether it has established a comprehensible link between the medical findings which it contains and the conclusions which it reaches.

5. Although Article 18 of the Rules on Insurance against the Risk of Accident and Occupational Disease allows the administration to obtain any expert medical opinion necessary for the implementation of those rules and the administration is free to disregard the opinion issued by an expert appointed by it and, where appropriate, to seek further expert opinions, it is not the case that the administration is entitled to appoint new medical experts indefinitely without giving reasons for its decision, merely because it does not agree with opinions reached by the previous experts.

In such a case, the administration is using its powers for a purpose other than that for which they were conferred on it and thereby commits a misuse of its powers.

6. The non-material damage suffered by an official owing to an administrative fault of such a kind as to make the administration liable entitles the official concerned to damages where, taking account of the circumstances of the case, the annulment of the unlawful contested measure cannot in itself provide adequate compensation for that damage.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
27 February 1992 *

In Case T-165/89,

Onno Plug, a former temporary servant of the Commission of the European Communities, residing in Thônex (Switzerland), represented by Georges Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 62 Avenue Guillaume,

applicant,

* Language of the case: French.

Commission of the European Communities, represented by Sean Van Raepensbusch, acting as Agent, assisted by Jean-Luc Fagnart, of the Brussels Bar, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of the Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision of 25 April 1989 to close the file relating to the request for recognition that the applicant was suffering from an occupational disease and for damages for the material and non-material damage that he considers he has suffered, amounting to the equivalent of five years' salary, calculated as at the day on which judgment is pronounced,

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
(Fourth Chamber),

composed of: R. Schintgen, President, D. A. O. Edward and R. García-Valdecasas, Judges,

Registrar: J. M. Muriel Palomino, Legal Secretary,

having regard to the written procedure and further to the hearing on 28 May 1991,

gives the following

Judgment

The facts

1 The applicant was employed by the European Association for Cooperation (hereinafter referred to as 'the Association') from 1966 to 1976 under a contract for an indeterminate period. Under that contract, he was director of the project to combat onchocercosis which the EEC proposed to finance in Upper Volta, Mali and the Ivory Coast. In 1968 he was appointed resident controller of the European Development Fund in Dahomey and he subsequently headed the delegation of the Commission of the European Communities in Benin and Zambia.

2 After terminating his contract with the Association at the beginning of 1977, Mr Plug was recruited by the Commission, by contract of 9 June 1977 taking effect from 23 May 1977, as a temporary servant in order to perform the duties of Head of Division, with the classification of Grade A 3, Step 4. That contract, which expired on 23 May 1978, was extended until 22 September 1978, but was not renewed.

3 A fresh temporary staff contract was concluded on 15 November 1978 for the period 23 September 1978 until 30 June 1980, whereby the applicant was recruited as a legal adviser, with the classification of Grade A 3, in order to take up the duties of adviser with the Commission's delegation in Geneva within the framework of the United Nations Conference on Trade and Development. Upon the expiry of that second temporary staff contract, Mr Plug was re-engaged by a contract of 22 August 1980, with effect from 1 July 1980, as a temporary servant, this time for an indefinite period, but with the classification of Grade A 4, in so far as he was recruited as a principal administrator, charged with performing his duties with the Commission's delegation in Geneva.

4 On 22 November 1980, Mr Plug submitted a complaint under Article 90(2) of the Staff Regulations of Officials of the European Communities (hereinafter referred to as 'the Staff Regulations'), seeking the annulment of his classification in Grade A 4 and of the description of his duties contained in the contract of 22 August 1980 and also the recognition in that contract of his duties as an adviser in Grade A 3. That complaint remained unanswered.

5 By a letter of 9 January 1981 the Director-General of DG VIII informed the applicant that a new official in Grade A 3, Mr G., was to arrive in Geneva where he would perform the duties previously entrusted to the applicant and that in future he himself was only 'to assist' in the performance of the duties assigned to the delegation, 'under the authority' of Mr G.. Because of that decision, on the arrival of the new official, Mr Plug's accreditation to the international organizations in Geneva was withdrawn. On 20 January 1981, the applicant submitted a further complaint under Article 90(2) of the Staff Regulations, seeking, first, the restoration of his accreditation, which he considered indispensable even for the

performance of the new, more limited, duties assigned to him and the withdrawal of which was, in his view, harmful to his reputation and professional standing, and, secondly, a detailed description of the duties which he was to perform in future.

6 A reply was given to that second point by a letter of 18 March 1981 from the head of the delegation in Geneva, confirming in detail the new duties assigned to the applicant. With regard to the first point concerning the applicant's accreditation, the Commission belatedly adopted on 23 June 1981 a decision rejecting the applicant's complaint. Meanwhile, Mr Plug had brought an application before the Court of Justice of the European Communities (hereinafter referred to as 'the Court of Justice'), which, by a judgment of 9 December 1982, dismissed it as unfounded (judgment in Case 191/81 *Plug* v *Commission* [1982] ECR 4229).

7 During 1983 the applicant's health deteriorated. His doctor, Dr Grandchamp, a specialist in internal medicine, referred the applicant to Professor Garrone, principal doctor at the University Psycho-social Centre at the Faculty of Medicine of Geneva. On 20 August 1983 Professor Garrone sent Dr Grandchamp a letter in which he told him:

'Thank you for referring your patient, Mr Onno Plug, to me. This patient is at présent suffering from chronic depression preventing him from performing duties involving intellectual or relational activity. The depression goes back several years. In my opinion, one of the significant triggering factors lies in the occupational situation in which the patient was placed as from 1976 . . . I believe that in the present circumstances this patient should be granted an extended rest from work for medical reasons, or better still, taking account of his age and of the fact that he has little hope of readjusting, that he should be invalided.'

8 On 24 January 1984 the applicant sent Mr Morel, Director-General of Directorate-General IX, the Directorate-General for Personnel and Administration (hereinafter referred to as 'DG IX'), a letter referring to previous correspondence

in which Mr Morel had informed him that the Committee for Staff Rotation had decided to place his name on the transfer list and that the Directorate-General for Development would be contacting him to decide a new assignment. The applicant stated the following:

'That interview took place on 11 and 12 April 1983 and concerned a new assignment as head of an ACP delegation.

It was recognized, however, that owing to the circumstances connected with the performance of my duties in that geographical area, I no longer had the necessary physical aptitude . . . In those circumstances, I wish to submit for your kind consideration this application to be invalided out pursuant to Article 73 of the Staff Regulations, on the ground of the aggravation of the diseases contracted in the performance of my duties in the service of the Commission.'

9 By letter of 1 February 1984 sent to the Director-General of DG IX, the applicant pointed out:

'The standard letter implementing the invalidity procedure — a copy of which was given to me at the talks on 1 and 2 December 1983 — distinguishes between so-called "occupational" disease (Article 73) and invalidity preventing an official from performing the duties assigned to him (Article 78). In order to remove any doubt, I wish to make it clear that my request of 24 January 1984 refers to invalidity arising from an occupational disease as defined in the second paragraph of Article 78 of the Staff Regulations (Article 33(2) of the Conditions of Employment of Other Servants).'

10 By letter of 24 February 1984 sent to the applicant, Mr Morel informed him that he had referred his case to the Invalidity Committee and asked him to inform him of the name of the doctor of his choice to represent him on the Invalidity Committee. Mr Morel also informed him of various aspects regarding the application of Articles 8 and 9 of Annex II to the Staff Regulations.

11 By letter of 15 March 1984 the applicant's adviser wrote to DG IX in the following terms: 'I must emphasize that, in my client's case, the request is essentially based on the recognition of invalidity on the ground of occupational disease, that is to say, on the basis of the second paragraph of Article 78 of the Staff Regulations. The procedure to be followed with regard to my client should thus be conducted along the appropriate lines'.

12 By memorandum of 30 March 1984 addressed to Mr Schwering, head of the Administrative and Financial Rights Division, Dr Semiller, head of the Medical Service for personnel outside Brussels, stated: 'Before the Invalidity Committee is asked to consider the matter from the aspect of the second paragraph of Article 78 of the Staff Regulations, I should be grateful if you would send me the conclusions of the procedure for recognition of invalidity on occupational grounds pursuant to Article 73 of the Staff Regulations'.

13 On 8 August 1984, the Accidents and Occupational Diseases Office drew up a summary of the Mr Plug's administrative and occupational situation, together with a 'Memorandum for File IX/B/2' worded as follows:

'At my request, Mr Pincherle, head of the Staff Regulations Division, and I examined the file on 1 August 1984. Although Mr Plug's lawyer intends to confine his client's application to the strict application of the second paragraph of Article 78 of the Staff Regulations, I pointed out to the head of the Staff Regulations Division the practice customarily followed by our administration (cf. Report IX/A/I No 590 of 01/09.1982 addressed to the President of the Medical and Administrative Committee), a practice confirmed by the content of a note from Dr Semiller to the Head of Division IX/B/I, dated 30 March 1984.

Furthermore, I pointed out that any decision of the Invalidity Committee regarding the existence of an occupational disease could found a claim for compensation submitted by Mr Plug pursuant to Article 73 of the Staff Regulations and thus possibly entail recourse to our insurers, at the request of financial control.

In order to cover that possibility, Mr Pincherle and I finally agreed that the proceedings regarding the file which I had opened should, as a precaution, be conducted in accordance with Article 73 and that we should, at the appropriate time, ask Dr Semiller to cooperate as fully as possible with Dr Simons, the doctor appointed by the appointing authority for that purpose.'

14 By memorandum of 21 September 1984, Mr Reynier, Head of Division, informed Dr Semiller on behalf of the Accidents and Occupational Diseases Office that 'it [had] been agreed to comply with the administrative practice customarily followed and to examine the case pursuant to Article 73 of the Staff Regulations'.

15 The Invalidity Committee, composed of three doctors, Dr Semiller, of Brussels, appointed by the Commission, Professor Garrone, of Geneva, appointed by Mr Plug, and Dr Vonlanthen, of Geneva, a specialist in internal medicine, appointed by agreement between Dr Semiller and Professor Garrone, issued its opinion on 8 November 1984. It concluded:

'After examining Mr Onno Plug, born on 7 January 1928, a temporary servant of the Commission of the European Communities, we conclude that he is suffering from total permanent invalidity. In reaching that determination no opinion is given regarding the cause of the total invalidity.'

16 On 13 December 1984, the Director-General of DG IX decided to retire Mr Plug and to grant him an invalidity pension fixed in accordance with the third paragraph of Article 33(1) of the Conditions of Employment of Other Servants of the European Communities (hereinafter referred to as 'the Conditions of Employment'), with effect from 1 January 1985. That decision referred in its citations to 'the decision of the appointing authority of 24 February 1984 to refer to the Invalidity Committee the case of Mr Onno Plug, a temporary servant of Grade A 4 in the Permanent Delegation to the international organizations in Geneva . . .' and to the 'opinion of the Invalidity Committee dated 8 November 1984 declaring that Mr Onno Plug is suffering from total permanent invalidity preventing him for performing the duties corresponding to a post in his career bracket'.

The applicant was informed of that decision by a letter of 13 December 1984 from Mr Morel, which stated:

'With regard to the origin of your invalidity to which you referred in your letter of 1 February 1984, I have to inform you that the Invalidity Committee will be unable to reach a decision regarding the link of cause and effect between your invalidity and an occupational disease until the procedure laid down in Article 73 of the Staff Regulations and its implementing rules, to which you appealed, has been completed.'

17 The Commission, meanwhile, had already initiated the procedure laid down by Article 73 of the Staff Regulations and Dr Simons, the Commission's medical officer and a specialist in orthopaedic and remedial surgery, had been appointed by the appointing authority to assemble the details necessary for the evaluation of Mr Plug's case.

18 On 12 November 1984, that is 30 days after the appointing authority's decision, Dr Simons sent a letter to the doctor treating the applicant, Dr Grandchamp, requesting him to send him a full medical report on the applicant's health. On 18 April 1985, Dr Simons again wrote to Dr Grandchamp requesting 'as much information as possible regarding ... the disease or aggravation of a pre-existing disease whose causal relationship with the performance or the occasion of the performance of his duties is, in your opinion, sufficiently established'.

19 By letter of 28 April 1985, Dr Grandchamp replied to Dr Simons as follows:

'I have treated Mr Plug since 1980, the time when the working conditions to which he was subjected became really intolerable, as attested by the progressive aggravation of the diseases existing at the time of his recall to Brussels in 1977, the state of stress due to those impossible working conditions and the additional depressive state which was entirely a reaction to that situation.'

After a lengthy examination of Mr Plug's medical history, Dr Grandchamp concluded:

'In my opinion it is established with a probability bordering on certainty that there is a causal relationship between the aggravation of the physical symptoms . . . and his working conditions in Africa and, in particular, on his return to Brussels, then to Geneva. Those ailments were thus aggravated by the performance of his duties. As for his reactive depression, it is entirely and exclusively due to his working conditions.'

By letter of 22 January 1986, Dr Vonlanthen, appointed by agreement between the applicant's doctor and the Commission's doctor as a member of the Invalidity Committee, which, on 8 November 1984, had reached a decision on Mr Plug's health, replied to a letter from Dr Simons of 14 November 1985 whereby Dr Simons had consulted him as an expert regarding a possible causal relationship between the diseases from which Mr Plug was suffering and his duties with the European Communities.

Dr Vonlanthen stated the following:

'Following a detailed assessment of that complicated history, I find:

1. *Diabetes*: this was diagnosed in 1968 (. . .)

Since 1977 he has worked in Europe, but the conditions of his occupational duties (wherever the responsibilities in that respect may lie) were to provoke a depression which was to have a negative effect on the treatment of diabetes, until he was retired in November 1984. It is found that the development and effects of diabetes (kidneys, eyes, etc.) are more severe in the medium and long term in proportion to the lack of proper treatment, which has apparently been the case owing to Mr Plug's working conditions.

2. *Depression*: this has been evident since 1980. Again, without prejudging the question of responsibility, this severe and debilitating disease developed in the service of the Communities, owing to the particular working conditions which seriously disturbed Mr Plug. The view may reasonably be taken that this disease has its origin in the working conditions experienced by Mr Plug and that it would not otherwise have developed.

3. *Cervical osteoarthritis and cephalalgia*: these conditions arose in the aftermath of a road accident which occurred during a mission for the Communities.'

Dr Vonlanthen concluded that:

'two serious diseases and a significant handicap developed and were aggravated in Mr Plug's case in the performance of his duties and owing to the conditions in which those duties were performed in the service of the European Communities. In my opinion the relationship is:

1. aggravating for diabetes (possible premature onset, insufficient treatment),

2. causal for depression,

3. causal for osteoarthritis and cephalalgia'.

21 By letter of 31 July 1986, bearing the stamp of the Staff Regulations Division and that of the Legal Department, Mr Smidt, Deputy Chef de Cabinet of Mr Christophersen, a member of the Commission, replied to a letter from the applicant's adviser as follows:

'Mr Plug clearly stated on 1 February 1984 that his request to be invalided out referred to the second paragraph of Article 78 of the Staff Regulations, ruling out

the application of Article 73 of the Staff Regulations. By letter of 15 March 1984, you also maintained that your client's request should essentially be based on the application of the second paragraph of Article 78(2).

Please confirm that Mr Plug's request is indeed confined to the application of that article, it being understood, moreover, that the procedure under Article 73 alone is used for the sole purpose of fully briefing the Invalidity Committee established under Article 78.'

On 29 September 1986 Dr Simons appointed a third doctor, Dr Chantraine, of Brussels, in order to have a neuropsychiatric report on Mr Plug prepared. In view of the difficulties experienced by the applicant in travelling to Brussels to be examined by that doctor, the administration agreed that he should be replaced by Dr Cherpillod, of La Chaux-de-Fonds, in Switzerland. However, that doctor, by a letter of 4 May 1987, declined to accept the commission on the ground that an attentive examination of the applicant's situation would require a number of consultations and that Mr Plug would have to make long journeys to reach his consulting rooms. He in turn suggested the name of Dr Delaitte, of Geneva, who was unable to accept the commission because of an overburden of work.

By letter of 9 July 1987 the head of the Accidents and Occupational Diseases Office suggested that the President of the Court should be called upon to appoint an expert. However, the applicant pointed out that this was admissible only in the case of dispute, which was clearly not the case. On the other hand, he suggested that the appointing authority should ask the Geneva Medical Association to approach a consultant practising in that city. That suggestion was taken up and the president of that association indicated that Dr Leuenberger would accept the task; by letter from Dr Simons dated 22 December 1987 Dr Leuenberger was commissioned to prepare a 'general report on the possible causal relationship between the disease from which Mr Plug [was] suffering and the performance of his duties', within the express context of Article 3(2) of the Rules on the Insurance of Officials against the Risk of Accident and of Occupational Disease (hereinafter referred to as 'the Insurance Rules').

24 The report was lodged on 23 April 1988. Dr Leuenberger made the following diagnosis of the applicant's disease:

'Depression occurring as a reaction to a severe blow to his image linked to the loss of his professional and social status.'

The expert found that the essential cause of the applicant's incapacity was

'the extremely degrading psychological and social conditions imposed on him in his occupation'.

The expert stated that

'any individual placed in similar circumstances would react with a type of depression at least as serious as that found in this case, probably even more serious'.

He added:

'It is very important to bear in mind that Mr Plug had no psychiatric or psychopathological episodes before the start of the conflicts with his superiors and the institution employing him which he had to endure, first in Brussels and then, especially, in Geneva.'

In reply to the question contained in the terms of reference concerning the possible effect of Mr Plug's former state, of pre-existing illnesses or of congenital or acquired diseases, the expert answered:

'With regard to the effect of the patient's previous state of health, I confirm the absence of prior diseases or psychopathological factors. The depression has been directly caused by the occupational experiences and the discrediting and humiliating conditions imposed on Mr Plug.'

In reply to the question regarding the date of the onset of Mr Plug's disease, the expert answered:

'... it may be put at the time of his appointment in Brussels, then in Geneva, when his working conditions deteriorated'.

In reply to the question regarding the date of the applicant's recovery, the expert suggested that

'if he were to resume work performing his former duties, this could contribute to his recovery and to the restoration of his image in his own eyes'.

In reply to the question whether or not there would be permanent invalidity due to his working conditions and, if so, the rate at which that invalidity must be fixed, on the basis of, or by analogy with, the scale annexed to the Insurance Rules, the expert stated that

'Mr Plug would certainly be capable of working if he were to be reinstated in a position in which he performed all his former duties and allowed time to readjust'.

and that

'if that is not done, it is to be feared that Mr Plug will remain in this depressed state in reaction to his troubles and to the withdrawal of his duties, and his rate of incapacity in that case will be 100%'.

In reply to the question concerning

'the granting of compensation for any injury which, while not affecting his capacity for work, affects his physical integrity and creates real harm in his social relationships',

which was accompanied by a statement according to which

'the compensation is to be determined by analogy with the rates laid down in the scales of invalidity . . . ',

the expert replied that

'in spite of the absence of organic injuries, the psychological effects combined with the loss of occupational functions and the corresponding loss of self-esteem have actually had an impact on Mr Plug's social relationships, both in terms of loss of friends and relationships and in terms of the deterioration in the family atmosphere'.

25 By letter of 20 May 1988 sent to the applicant's adviser, Mr Reynier informed him that Dr Leuenberger's report had concluded that there was

'a direct and exclusive causal relationship between the disease from which [the applicant] was suffering and his work with the Communities'.

That letter stated that for the purposes of Article 73,

'the question of the rate of PPI to be recognized in Mr Plug's case remains open, however, as Dr Leuenberger concludes that the rate is to be 100%; ... whereas the scale annexed to the Insurance Rules provides that a rate of invalidity of 100% is to be recognized only in the event of incurable insanity, which ... does not apply in your client's case'.

He therefore disclosed his decision to refer the matter back to Dr Leuenberger in order to quantify the rate of partial permanent invalidity to be accepted in Mr Plug's case, having regard to his 'depression in reaction to a severe blow to his image linked to the loss of his occupational and social status'.

6 By letter of 14 June 1988 sent to Mr Reynier, the applicant's adviser stated '... that there is no longer anything to prevent the Commission from fulfilling its obligations to Mr Plug under the employment regulations' and asked the Commission to grant Mr Plug '— an invalidity pension equal to 70% of his last basic salary (instead of the present 36, 62500%; second paragraph of Article 78); — a lump sum equal to eight times the last basic salary received from 1 January to 31 December 1984 (Article 73(2)(b)]'.

7 By letter of 15 September 1988, the applicant's adviser objected to the Commission's interpretation of the application of Article 73 of the Staff Regulations and expressly requested the Commission to observe its obligations under the employment regulations, both those arising from the application of Article 73(2)(b) of the Staff Regulations and those under Article 12 of the Insurance Rules.

8 By letter of 23 November 1988, Dr Leuenberger, in reply to a letter of 31 October 1988, explained:

'It is impossible for me to change the rate of invalidity, since the cause of invalidity is directly linked to the loss of duties and since a diminution in total invalidity would be possible only if those duties were to be resumed.'

29 By letter of 21 December 1988, Mr Reynier informed the applicant that he considered that

'Dr R. Leuenberger had not observed the scope of the relevant regulatory provisions and that at this stage of the procedure, the administration is not bound by the conclusions of the doctors appointed by it'.

He also informed him that the Commission had appointed Dr Graber, a neuropsychiatrist, as 'the appointing authority's new doctor'. That doctor was thus the seventh appointed to examine the applicant, and his report would be the fourth.

30 The applicant's adviser strenuously objected on 5 January 1989. On 2 February 1989 Mr Reynier informed the applicant's adviser that if Mr Plug continued to refuse that new examination, the appointing authority would be obliged to

'adopt a decision based only on the evidence available to it and, accordingly, to conclude that the application made by Mr Plug should be dismissed'.

31 By letter of 22 February 1989, the applicant's adviser pointed out to Mr Reynier that Dr Leuenberger had performed his task correctly and fully and that the only authority competent to reach a decision on the expert report drawn up by that doctor was not the Commission but the Invalidity Committee which had given its first opinion on 8 November 1984.

32 By letter of 22 February 1989 addressed to the principal doctor of the Commission's medical service, the applicant himself stated that this fresh calling in question of the procedure commenced five years earlier had profoundly affected his health, that he disputed 'the lawfulness, the independence and the objective impartiality of the appointment of a further doctor for the appointing authority' to carry out a new neuropsychiatric examination and that he refused to undergo a

new examination. He added that he had showed his willingness to cooperate and his respect for the decisions adopted by the appointing authority, in spite of his doubts about the lawfulness of some of them, but that it was no longer possible to accept that the appointing authority should be abused in that way by an official determined to prevent the procedure from being closed.

On 28 February, Mr Reynier communicated to the applicant the draft decision referred to in Article 21 of the Insurance Rules, which was worded as follows:

'Your continued refusal to undergo a further examination which alone would enable the Commission to reach a decision regarding your application obliges me to dismiss your application. ... After 60 days, unless you have lodged an application for consultation of the Medical Committee provided for in Article 23 of those rules, this notification is to be regarded as a final decision.'

By letter of 22 March 1989, the applicant expressed his consent to the urgent convening of the Invalidity Committee which had already reached a decision on 8 November 1984. He asked that the committee should be provided with, 'apart from the complete medical file (including Dr Leuenberger's report), every document, item of correspondence and rule of employment capable of guiding it in carrying out its task'.

That suggestion was rejected on 6 April 1989 by Mr Reynier, in the following words:

'The Medical Committee to which you may appeal against my draft decision is the one provided for in Article 23 of the rules implementing Article 73 of the Staff Regulations and not the one charged with reaching a decision on your case under Article 78 of the Staff Regulations.'

36 On 15 April 1989 the applicant again wrote to Mr Reynier, asking him 'to convene the Invalidity Committee in order that it reach a decision regarding the relationship of cause and effect between my occupational disease and recognized total permanent invalidity'.

37 On 25 April 1989 the Commission, under signature of Mr Reynier, announced that the applicant's Article 73 case-file would be closed if by 15 May 1989 he had not indicated the name of the doctor appointed to represent his interests on the medical panel established under Article 23 of the Insurance Rules. Mr Reynier added:

'I shall then have to notify the Invalidity Committee of the results of the procedure conducted under Article 73, which will be that the Commission has not been put in a position to reach a decision concerning your application. It will be for that committee to draw the inferences it considers relevant for the performance of its task.'

38 On 9 May 1989 the applicant again wrote to Mr Reynier, urging him for the last time to abandon his attempt to prolong the procedure unnecessarily by convening the Medical Committee provided for in Article 23 of the Insurance Rules.

39 By letter of 17 May 1989, whose receipt was recorded at the Commission on 18 May, the applicant submitted a complaint under Article 90(2) of the Staff Regulations against the decision of 25 April 1985 by which the Commission had dismissed his application of 1 February 1984 for recognition of an occupational disease within the meaning of the second paragraph of Article 78 of the Staff Regulations. In that complaint he described the harm that he had suffered from the severe deterioration of his health owing to the cumulative effect of the Commission's slow action and evasiveness.

The Invalidity Committee, composed of Dr Hoffmann, Professor Garrone and Dr Volanthen — the same committee which had issued the opinion of 8 November 1984, with the exception of Dr Hoffmann, who replaced Dr Semiller, who had died in the meantime — sat on 12 and 13 September 1989. Following that meeting, it issued the following undated opinion:

'After reading the expert report of Dr Leuenberger, after carrying out a psychological examination of Mr Plug, after examining all the documents contained in his medical file, and without prejudice to any future opinion of a Medical Committee taking a decision pursuant to Article 21 of the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease, the Invalidity Committee considers that Mr Plug's total permanent invalidity is persisting, but that it has not been sufficiently established that there is an essential or predominant causal relationship between the duties performed by Mr Plug for the Commission of the European Communities and his invalidity.'

Since no reply to the applicant's complaint was received within the period of four months laid down in Article 90(2) of the Staff Regulations, it was thus the subject of an implied decision rejecting it which came into effect on 18 September 1989.

Procedure

It was in those circumstances that, by an application lodged at the Registry of the Court of First Instance on 15 December 1989, Mr Plug brought this application, which was entered under number T-165/89.

Upon hearing the report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure without any preparatory inquiry.

44 The oral procedure took place on 28 May 1991. The representatives of the parties were heard in their oral submissions and in their replies to the questions put by the Court.

45 The applicant concludes that the Court should:

(i) declare his application admissible and well founded;

(ii) annul the Commission's decision, signed by Mr Reynier, of 25 April 1989 to close the file concerning his request that he be recognized as suffering from an occupational disease;

(iii) in compensation for the material and non-material damage harm suffered, award him the equivalent of five years' salary, calculated as at the day on which judgment is delivered;

(iv) order the defendant to pay the costs in their entirety.

46 The Commission concludes that the Court should:

(i) declare the application inadmissible or at least unfounded;

(ii) order the applicant to pay the costs of the proceedings.

47 In support of his application for compensation, the applicant's adviser submitted to the Court on 10 July 1990 a medical certificate issued on 14 March 1990 by

Dr Stucki, a specialist in psychiatry, of Geneva, in which that doctor noted 'the pernicious and pathogenic effect which the prolonging of the procedure has on the physical and psychological health of the patient. In my opinion, further examinations and delays in that procedure entail grave risks for Mr Plug'.

At the Court's request, on 6 June 1991 the defendant lodged a summary of Mr Plug's administrative and occupational situation as at 8 August 1984, Dr Grandchamp's report sent to Dr Simons on 28 April 1985, Dr Volanthen's report sent to Dr Simons on 22 January 1986, the letter of 22 December 1987 from Dr Simons to Dr Leuenberger and a copy of the terms of reference given to Dr Leuenberger by Dr Simons.

Admissibility

The Commission points out that the application seeks the annulment of the Commission's decision of 25 April 1989 to close the file relating to the application for recognition of the applicant's occupational disease, and also for an award of damages and interest as compensation for the material and non-material damage that the applicant considers he has suffered. It observes that the first part of the decision of 25 April 1989 was taken in application of Article 19 of the Insurance Rules and definitively dismisses the applicant's request for recognition of an occupational disease under Article 73 of the Staff Regulations, the applicant not considering it necessary to ask for the Medical Committee to be convened, as he was entitled to do pursuant to Article 19 of the Insurance Rules. The Commission considers that the application is admissible in so far as it is directed against that first part of the decision concerning the closing of the file with regard to Article 73 of the Staff Regulations.

However, the Commission points out that the decision of 25 April 1989 provides in its second part for the results of the procedure under Article 73 to be notified to the Invalidity Committee. That notification, it says, is intended to allow the Invalidity Committee to draw from those results the evidence it considers relevant for the performance of the task assigned to it under Article 78 of the Staff Regulations. In the Commission's view, the decision of 25 April 1989, in its second part, constitutes only a preparatory act which cannot be the subject of an action before the Court, while the forwarding of the documents to the Invalidity

Committee necessarily refers to a decision to be adopted by the appointing authority at a later date. Accordingly, the Commission considers that the application is inadmissible in that it refers to the examination by the administration of the application for an increased pension for invalidity resulting from an occupational cause pursuant to the second paragraph of Article 78 of the Staff Regulations. No adverse act with regard to the applicant was taken in that respect or, *a fortiori*, was the subject of a complaint within the meaning of Article 90(2) of the Staff Regulations within the prescribed period.

51 In reply, the applicant states that the Commission cannot raise that plea of partial inadmissibility which reflects the way in which the Commission has deliberately and unlawfully twisted the case from the beginning by seeking to make the opening of the procedure laid down in Article 78 of the Staff Regulations subject to the prior completion of the procedure laid down in Article 73. Referring to the rule *nemo auditur propriam turpitudinem allegans*, the applicant considers that, since it is responsible for that confusion, the Commission cannot rely on its own fault in raising an objection of inadmissibility based precisely on the ground that the contested decision is only an act prior to or preparatory to the performance of the Invalidity Committee's task pursuant to Article 78 of the Staff Regulations. The application must therefore be recognized as admissible as against the decision at issue, both in so far as that decision closes the file with regard to Article 73 of the Staff Regulations — as the Commission desired — and in so far as, following numerous faults committed by the Commission, it does not grant the request made by the applicant pursuant to the second paragraph of Article 78 of the Staff Regulations.

52 The Court considers that the admissibility of the application must be considered in the light of the content of the application of 1 February 1984 and of the administrative complaint of 17 May 1989. That complaint was lodged against the decision of 25 April 1989, on the ground that it refused, after five years of procedure, to recognize that the applicant's invalidity had its origin in an occupational disease.

53 The Court considers that the answer to the question whether the decision of 25 April 1989 constitutes, at least in part, a preparatory act, which as such cannot form the subject of an action, depends on the answer to be given to the substantive question raised by these proceedings: Did the Commission, in refusing to examine

the applicant's case on the basis of the second paragraph of Article 78 of the Staff Regulations until the procedure laid down in Article 73 had been completed (a procedure which in the event lasted for five years), act in accordance with the provisions of the Staff Regulations? The question of the admissibility of the application is thus inseparable from the substantive questions which it raises.

Substance

The claim for annulment

In support of his claim for annulment, the applicant puts forward a number of submissions concerning, on the one hand, the regularity of the procedure for establishing the origin of the total permanent invalidity from which he is suffering:

— infringement of the second paragraph of Article 78 of the Staff Regulations;

— infringement of Annex II, Section 4, to the Staff Regulations;

and, on the other hand, the regularity of the procedure followed by the Commission pursuant to Article 73 of the Staff Regulations:

— infringement of Article 73(2) of the Staff Regulations;

— infringement of Articles 12 and 19 of the Insurance Rules;

and, finally, two submissions concerning both procedures:

— misuse of powers;

— infringement of the general principles of good management and sound administration.

55 Before the arguments put forward by the parties are set out, the provisions constituting the general legal framework of this case must be looked at.

56 Article 73 of the Staff Regulations, applicable by analogy to temporary staff pursuant to Article 28(2) of the Conditions of Employment, and Article 78 of the Staff Regulations, the essential provisions of which have been reproduced verbatim in Article 33(1) of the Conditions of Employment, have different aims and are based on different concepts. Article 73 forms part of Chapter II of Title V of the Staff Regulations and provides that an official is to be insured, from the date of his entering the service, 'against the risk of occupational disease and of accident'. It provides for certain benefits in the event of death, in the event of total permanent invalidity and in the event of partial permanent invalidity caused by accident or occupational disease. The conditions for the application of that article are laid down by the Insurance Rules, which, in Article 12, distinguish between benefits payable in the event of total permanent invalidity and those payable in the event of partial permanent invalidity. The procedure for establishing permanent invalidity is the same in both cases and is laid down in Articles 16 to 25 of the Insurance Rules. Article 25 states that recognition of total or partial permanent invalidity pursuant to Article 73 of the Staff Regulations and of the Insurance Rules is in no way to prejudice the application of Article 78 of the Staff Regulations and vice versa.

57 Article 78 of the Staff Regulations appears in Chapter 3 ('Pensions') of Title V of the Staff Regulations. It concerns pensions and provides that an official is to be entitled to an invalidity pension 'in the case of total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket'. The invalidity pension referred to in that article is thus granted only in the event of total permanent incapacity for work. Where the invalidity is the result of an occupational disease, the rate of the pension is to be 70% of the basic salary of the official. Article 78 refers to Annex VIII to the Staff Regulations ('Pension Scheme'), more specifically to Articles 13 to 16, for a definition of the conditions for recognition of an invalidity pension. According to Article 13, it is for the Invalidity Committee to determine whether the official is suffering from total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket.

The submission alleging infringement of the second paragraph of Article 78 of the Staff Regulations

The applicant states that in January/February 1984 he submitted an application to be invalided out on the grounds of occupational disease as defined in the second paragraph of Article 78 of the Staff Regulations and that, as a result, this case is governed by the provisions relating to the pension scheme, which is governed by Chapter 3 of Title V of the Staff Regulations. In his opinion, it follows from Article 25 of the Insurance Rules and from the judgment given by the Court of Justice in Case 257/81 *K.* v *Council* [1983] ECR 1 that findings as to the existence of total permanent invalidity preventing an official from performing duties corresponding to a post in his career bracket as well as findings as to the cause of such invalidity should be made in accordance with the rules and procedure laid down in the regulations relating to the pension scheme, in this case Article 13 of Annex VIII to the Staff Regulations, which confers exclusive competence in such matters on the Invalidity Committee, and not pursuant to the Insurance Rules. He states that, since the abovementioned judgment was delivered before the file relating to his application to be invalided out was opened, the Commission was not justified in making the following of the procedure laid down in the second paragraph of Article 78 of the Staff Regulations depend on the completion of the procedure laid down in Article 73 and that it could not claim that in taking that course it was relying on a lawful prior administrative practice. The applicant concludes that the contested decision must be regarded as unlawful in so far as, following an invalid procedure, it wrongfully precludes any reference to Article 78 of the Staff Regulations, in order to refer only to the completion of the procedure laid down by Article 73 of the Staff Regulations.

The applicant maintains that it was for the appointing authority, after finding on the basis of the report of the Invalidity Committee that he was suffering from total permanent invalidity, to decide, with the minimum of delay, whether he was entitled to the increased pension provided for by Article 78 of the Staff Regulations in the event of total permanent invalidity of occupational origin. Through its persistent avoidance of this course the Commission deliberately complicated and delayed as much as possible an already delicate procedure and thereby committed a fault which caused him definite harm.

The Commission's evaluation of the facts is different from that put forward by the applicant. It observes that, by a letter of 15 March 1984, the applicant's lawyer stated that 'the request is essentially based on the recognition of invalidity on the ground of an occupational disease, that is to say on the basis of the second

paragraph of Article 78 of the Staff Regulations'. According to the Commission, the very words of that letter show that the application was not based exclusively on the second paragraph of Article 78. The Commission adds that it therefore considered it appropriate to examine the case using the procedure laid down by Article 73 of the Staff Regulations and, in that respect, it claims that by letter of 24 February 1984 Mr Morel informed the applicant 'that, at his request, the Commission had instituted a procedure on the basis of both Article 73 and Article 78 of the Staff Regulations'. The Commission points out that, furthermore, the applicant, by a letter of 15 September 1988 sent by his lawyer to Mr Reynier, even expressly extended his request for the grant of an invalidity pension calculated pursuant to the second paragraph of Article 78 to include the grant of benefits pursuant to Article 73 of the Staff Regulations.

61 Secondly, the Commission points out that the letter sent to the applicant by Mr Morel on 13 December 1984 clearly informed him of the decision to make the application of the procedure laid down by the second paragraph of Article 78 of the Staff Regulations subject to the prior completion of the procedure laid down by Article 73 of the Staff Regulations. It notes that neither that decision nor the decision contained in Mr Morel's letter of 24 February 1984 to join the two procedures was the subject of an administrative complaint made by the applicant in the form and within the period laid down by Article 90 of the Staff Regulations, so that the applicant's objections to those decisions must be declared inadmissible.

62 Faced with those arguments, the Court considers it appropriate to examine first of all the purpose of the applicant's original request. While it is true that the applicant's first letter of 24 January 1984 contained 'a request to be invalided out according to Article 73 of the Staff Regulations on the ground of the aggravation of the diseases contracted in the performance of [his] duties under contract to the Commission', it is equally true that, in his letter of 1 February 1984, the applicant stated that 'in order to remove any doubt' his application of 24 January 1984 'refers to invalidity arising from an occupational disease as defined in the second paragraph of Article 78 of the Staff Regulations'. With regard to Mr Morel's letter of 24 February, appended by the Commission to its defence, it must be stated that, contrary to what the Commission claims, it does not refer to Article 73 of the Staff Regulations; on the contrary, Mr Morel informed the applicant that he was going to refer his case to the Invalidity Committee and asked him to let him know the name of the doctor of his choice to sit on that committee.

63 Moreover, the content of the letter of 15 March 1984, in which the applicant's lawyer stated that 'the application was essentially based on recognition of invalidity on the ground of occupational disease, that is to say on the basis of the second paragraph of Article 78 of the Staff Regulations', does not support the conclusion, as the Commission contends, that the application was not based exclusively on the second paragraph of Article 78 of the Staff Regulations. On the contrary, that letter shows that the application was indeed based on that provision and that the applicant was insisting that 'the procedure followed that path'. The fact that four-and-a-half years after the opening of that procedure, when three medical reports had found that there was a link between the applicant's disease and the performance of his duties, the applicant's lawyer, by a letter of 14 June 1988 sent to Mr Reynier — and not only by letter of 15 September 1988, as the Commission claims — asked the Commission to fulfil its obligations owed to Mr Plug under the employment rules and grant him, in addition to the invalidity pension provided for in the second paragraph of Article 78 of the Staff Regulations, a lump sum calculated according to the rules laid down in Article 73, cannot in any event alter the nature and effect of the application originating the procedure. Even supposing that the letter of 14 June must be regarded as a new application widening the subject-matter of the first application, such an application does not in any way alter the nature of the previous application, let alone replace it. It is thus necessary to interpret the applicant's letter of 24 January 1984 as containing an application for recognition of total permanent invalidity originating in the performance of his duties.

64 With regard to the Commission's point that no administrative complaint was made against the two letters of 24 February 1984 and 13 December 1984 sent by Mr Morel to the applicant, in which he informed him of the decision to make the application of Article 78 subject to the prior completion of the procedure laid down in Article 73, it should be pointed out that, as the Court has already stated, the letter of 24 February 1984 does not in any event have the tenor claimed by the Commission.

65 As for the fact that the applicant did not lodge an administrative complaint against the letter of 13 December 1984, the Court considers that, since a procedure for the recognition of invalidity consists of a number of interdependent acts, the persons concerned cannot be required to bring as many complaints as the number of acts adopted in the procedure capable of adversely affecting them (judgment of the Court of Justice in Case 3/66 *Alfieri* v *Parliament* [1966] ECR 437, 452). Since

the various acts of which that procedure is composed form a whole, the fact that he did not bring a complaint in respect of one of them cannot bar the applicant from pleading the irregularity of subsequent acts having a direct link with it.

66 With regard to the question whether the course taken by the Commission in making pursuit of the procedure laid down in Article 78 subject to the prior completion of the procedure laid down in Article 73 was in accordance with the employment rules applicable, it should be pointed out that, as the Court of Justice has held on a number of occasions, a comparison between Articles 73 and 78 reveals that the benefits provided for by those two provisions are different and independent of one another, although they may overlap. That interpretation is confirmed by Article 25 of the Insurance Rules, which provides that the recognition, pursuant to Article 73, of even total permanent invalidity 'shall in no way prejudice application of Article 78 of the Staff Regulations and vice versa'. It follows that there are two separate procedures which may give rise to separate decisions independent of each other (judgments in Case 731/79 *B.* v *Parliament* [1981] ECR 107, paragraph 9, and in Case 257/81 *K.* v *Council*, cited above, paragraph 10). It also follows that findings as to the existence of total permanent invalidity preventing an official from performing duties corresponding to a post in his career bracket as well as findings as to the cause of such invalidity are to be made in accordance with the rules and procedure laid down in the regulations relating to the pension scheme, in this case Annex VIII to the Staff Regulations, and not according to the Insurance Rules. Article 13 of that annex makes it quite clear that it is for the Invalidity Committee to make the relevant findings (judgment in Case 257/81 *K.* v *Council*, cited above, paragraph 11).

67 It follows from the foregoing considerations that by making pursuit of the procedure laid down in the second paragraph of Article 78 of the Staff Regulations subject to the prior completion of the procedure laid down in Article 73 when the applicant had requested a finding, in accordance with the second paragraph of Article 78, that his invalidity had its origin in the performance of his duties, the Commission failed to observe the provisions of Article 78. The first Invalidity Committee, which met in November 1984, ought to have decided on the origin of the applicant's invalidity. The fact that the applicant, patiently and out of a desire to cooperate, put up with the Commission's misconduct for a period of five years does not alter that assessment.

The first submission must therefore be upheld.

The submission alleging infringement of Annex II to the Staff Regulations

That submission has two parts. First, the applicant points out that Article 9 of Annex II to the Staff Regulations provides that the Invalidity Committee's conclusions are to be communicated to the appointing authority and to the official concerned. In his view, that provision implies that those conclusions are to be communicated simultaneously to both parties by the Invalidity Committee at the end of its deliberations: it is accepted medical practice that any decision must be duly reasoned and communicated to the person concerned. In the practice followed by the Commission, however, the person concerned receives a copy of an ad hoc form containing only the conclusion adopted by the Invalidity Committee, which is, however, reproduced as such in the decision of the appointing authority. That practice has the effect of depriving the official of an essential means of assessment with regard to the correctness of the decision. The applicant maintains that the secrecy in which the Invalidity Committee's deliberations must be conducted cannot be invoked to detract from the rule on the transparency of a decision adopted against an official. He considers that, in the case between *K.* v *Council* (Case 257/81, cited above), both parties had at their disposal the reports of the Invalidity Committee. In this case, the two reports of 8 November 1984 and 12 September 1989 were not communicated to him.

Secondly, the applicant disputes the regularity of the opinion issued by the Invalidity Committee following the meetings of 12 and 13 September 1989. He inquires whether that Invalidity Committee was given a clear picture of its task, taking account of that fact that it gave its opinion 'without prejudice to any future opinion of a Medical Committee taking a decision pursuant to Article 21 of the Insurance Rules'. The applicant expresses his surprise that a purely medical report should contain a reservation of a legal nature, which he does not regard as naïve, judging it to be part of the Commission's procedural to-ing and fro-ing; according to Article 19 of the Insurance Rules, the Medical Committee can be convened only at the request of the person concerned and never at the request of the Commission, so the reservation concerning a future opinion of a Medical Committee has no basis.

71 The applicant further considers that after the expert report of Dr Leuenberger had been drawn up on 23 April 1988, in which his disease was described as occupational, the Invalidity Committee clearly had the task of reaching a decision on that report in the express context of the terms of reference on the basis of which it had been drawn up. Since the expert had answered the precise questions contained in the terms of reference, the Invalidity Committee should have reached a determination solely on the answers given to the questions contained in the terms of reference. Here again he doubts whether the Invalidity Committee was sufficiently informed about its task.

72 The Commission points out that the decision challenged by the applicant is in fact the decision contained in Mr Morel's letter of 13 December 1984. It takes the view that this submission is not admissible since the action is directed against the decision of 25 April 1989 and not against the decision of 13 December 1984, which the applicant failed to contest in good time and which he is now barred from challenging. Moreover, the decision of 13 December 1984 does not constitute an infringement of Article 9 of Annex II to the Staff Regulations because it is confined to announcing the intentions of the appointing authority and thus does not come within the rules laid down by that provision. The Commission thus concludes that the submission is unsubstantiated.

73 It must be pointed out, with regard to the first part of the submission, that, according to the argument put forward by the applicant, the reports on which the Invalidity Committee's conclusions were based, even supposing that such reports did exist, should have been communicated to him. That argument must be considered invalid in so far as Article 9 of Annex II to the Staff Regulations requires only the Invalidity Committee's conclusions to be communicated to the appointing authority and to the official concerned, and not its proceedings, which are secret. In the present case, it is not disputed that the conclusions of both Invalidity Committees were sent to the applicant.

74 That complaint cannot therefore be upheld.

75 With regard to the second part of the submission, concerning the regularity of the opinion issued by the Invalidity Committee following its meetings on 12 and 13 September 1989, it should be pointed out that it is established in case-law that the provisions relating to the Medical Committee and the Invalidity Committee are designed so as to confer upon medical experts the task of definitively appraising all medical questions. The Court of Justice has inferred from this that judicial review may not extend to medical appraisals properly so-called, which must be considered definitive, provided that the conditions in which they are made are not irregular. On the other hand, judicial review may extend to questions concerning the constitution and proper functioning of those committees (see the judgments in Case 156/80 *Morbelli* v *Commission* [1981] ECR 1357, paragraphs 18 and 20; Case 265/83 *Suss* v *Commission* [1984] ECR 4029, paragraph 11; Case 2/87 *Biedermann* v *Court of Auditors* [1988] ECR 143, paragraph 8; and Case C-185/90 P *Gill* v *Commission* [1991] ECR I-4779) and also the regularity of the opinions which they issue. From that point of view, this Court has jurisdiction to examine whether the opinion contains reasons enabling the reader to assess the considerations on which the conclusions which it contains were based (judgment in Case 257/81 *K.* v *Council*, cited above, paragraph 17) and whether it has established a comprehensible link between the medical findings which it contains and the conclusions reached by the committee (judgment in Case 277/84 *Jänsch* v *Commission* [1987] ECR 4923, paragraph 15).

76 It is in the light of those principles that the applicant's objections to the Invalidity Committee's opinion must be examined.

77 First of all, it should be pointed out that two of the three doctors making up the Invalidity Committee, Professor Garrone and Dr Vonlanthen, had previously reached the decision that the applicant's disease had its origin in the duties which he had performed. In his letter of 20 August 1983 (see paragraph 7, above), Professor Garrone said, with regard to Mr Plug's disease:

'One of the significant triggering factors appears to me to lie in the occupational situation in which the patient was placed as from 1976.'

With regard to Dr Volanthen's report of 22 January 1986, set out in more detail at paragraph 20 above, the conclusion was entirely clear:

'Two serious diseases and a significant handicap developed and were aggravated in Mr Plug's case in the performance of his duties and owing to the conditions in which those duties were performed in the service of the European Communities. In my opinion the relationship is:

1. aggravating for diabetes (possible premature onset, insufficient treatment),

2. causal for depression,

3. causal for osteoarthritis and cephalalgia.'

Finally, Dr Grandchamp's report of 28 April 1985 had also concluded that there was a causal relationship between the applicant's disease and his working conditions (see paragraph 19, above). Moreover, Dr Leuenberger, in his report, reached a decision to the same effect (see paragraph 24, above).

78 The Court finds, on the other hand, that the committee's opinion contains only the simple statement that 'it is not sufficiently established that there is an essential or predominant causal relationship between the duties performed by Mr Onno Plug within the Commission of the European Communities and his invalidity'. The Court points out that the Invalidity Committee's opinion contains no explanation of the evident contradiction between the conclusions of the Invalidity Committee, on the one hand, and the conclusions previously reached by the doctors forming part of that committee and also those appearing in the reports of Dr Grandchamp and of Dr Leuenberger, on the other hand.

79 Furthermore, the opinion contains no statement of the reasons which would enable an assessment to be made of the considerations on which its conclusions are based, nor does it contain any medical finding whatsoever, except that relating to the existence of permanent invalidity. The opinion thus does not establish any comprehensible link between that medical finding and the conclusion which the

committee reached, namely that there is not any essential or predominant causal relationship between the duties formerly performed by Mr Plug and his invalidity. In those conditions, the Court considers that the Invalidity Committee's conclusions are vitiated by a lack of sufficient reasoning rendering them irregular.

80 With regard to the words 'without prejudice to any future opinion of a Medical Committee taking a decision pursuant to Article 21 of the Insurance Rules' contained in the Invalidity Committee's opinion, the Court considers that they form a reservation of a legal nature, which has no place in a medical report, and that they are objective evidence justifying an inference that the Invalidity Committee was not clearly informed of its task under the second paragraph of Article 78 of the Staff Regulations.

81 The Court observes, moreover, that according to the very words of the opinion 'it has not been sufficiently established that there is an essential or predominant causal relationship between the duties performed by Mr Onno Plug within the Commission of the European Communities and his invalidity'. In that respect, it must be pointed out that no provision of the Staff Regulations requires the existence of an 'essential' or 'predominant' causal relationship between the invalidity from which the person concerned is found to be suffering and the performance of his duties. According to the interpretation given by the Court of Justice to the relevant provisions of the Staff Regulations, it is necessary only that the pathological condition of the person concerned should show a 'sufficiently direct relationship' with the duties which he performed (see the judgments in Case 76/84 *Rienzi* v *Commission* [1987] ECR 315, paragraph 10, and in Case 257/81 *K.* v *Commission*, cited above, paragraph 20). That reference to an 'essential' causal relationship, like the reservation previously examined (see paragraph 80, above), constitutes objective evidence justifying the conclusion that the Invalidity Committee was not sufficiently informed about the task it had under Article 78 of the Staff Regulations.

82 It follows from all the foregoing that the opinion issued by the Invalidity Committee following the meetings of 12 and 13 September 1989 is vitiated by substantial irregularity, in so far as it does not contain a proper statement of the

reasons on which it is based, and by manifest error, in so far as it was based on wrong legal views.

83 The second part of this submission must therefore be upheld.

The submission alleging misuse of powers

84 The applicant maintains that the Commission misused its powers by failing to act in accordance with the general interest and the relevant provisions. It was principally — if not exclusively — guided by a desire to delay the procedure and to deprive the applicant of his rights. It systematically refused to draw the consequences from the medical opinions recognizing the existence of occupational disease in his case; it diverted the procedures from their true purpose and wielded arguments that were inappropriate and contrary to the case-law of the Court of Justice with the sole aim of discouraging the applicant by subjecting him to medical examinations as numerous and unnecessary as they were belated. In particular, it substituted itself for the competent medical authority in order to dismiss Dr Leuenberger's conclusions, after he had confirmed them, and in order to proceed to appoint a new expert when it had at its disposal, at that date, all the details to enable it to reach a decision, as it was required to do by Article 19 of the Insurance Rules.

85 At the hearing, the applicant maintained that that conduct constituted a misuse of procedure because the procedure was excessively prolonged by the Commission itself. He points out that five-and-a-half years after having issued its first opinion the same Invalidity Committee considered the question of the existence of a causal relationship between his invalidity and previous duties and ruled out any causal link, when it could have resolved that question at the very outset.

86 The Commission replies that the applicant's allegations are both disagreeable and inaccurate and that he does not even attempt to establish the truth of the charges that he makes with reprehensible levity. According to the Commission, the submission is thus unsubstantiated.

87 The Court finds that the applicant's assertions regarding the duration of the procedure concern facts which are obvious and indisputable. Between 24 January 1984, the date on which the applicant submitted his application, and 25 April 1989, the date on which the Commission adopted the contested decision, more than five years elapsed.

88 The Court also finds that the Commission appointed three medical experts in succession, asking them to prepare a report regarding the applicant's disease and its origin. The three reports — Dr Grandchamp's report of 28 August 1985, Dr Volanthen's of 22 January 1986 and Dr Leuenberger's of 22 April 1988 — concluded that there was a relationship of cause to effect between the applicant's disease and the performance of his duties. It is true that, in the words of Article 18 of the Insurance Rules, 'the Administration may obtain any expert medical opinion necessary for the implementation of these Rules' and that 'at that stage in the procedure the administration is not bound by the opinion issued by a doctor appointed by it; it is free to decide whether or not to follow such an opinion or to seek further expert opinions' (judgments of the Court of Justice in Case 265/83 *Suss* v *Commission* [1984] ECR 4029, paragraph 18, and in Case 150/84 *Bernardi* v *Parliament* [1986] ECR 1375, paragraph 35). It may not however be inferred from the provisions and the case-law cited that the administration is entitled to appoint new medical experts indefinitely without giving reasons for its decision, merely because it does not agree with their opinions. From that aspect, the Court finds that no reasons were given by the Commission to justify its refusal to accept the reports drawn up by Dr Grandchamp and Dr Vonlanthen.

89 With regard to Dr Leuenberger's report, the Commission refused to take account of it on the ground that the expert had fixed the rate of the invalidity from which the applicant was suffering at 100% and because, in so doing, he had not observed

the provisions applicable to this case. In that respect, it must be pointed out that the Commission did not take into consideration the fact that Dr Leuenberger's report answered with great precision the questions put to him in the terms of reference of 22 December 1987; in particular, with regard to the applicant's rate of invalidity, the expert appointed was requested to decide 'whether or not permanent invalidity owing to his working conditions would persist and, in the affirmative, the rate at which that invalidity must be fixed, on the basis of, or by analogy with, the scale annexed hereto'. Dr Leuenberger's reply could not have been clearer:

'Mr Plug would certainly be capable of working if he were to be reinstated in a position in which he performed all his former duties and allowed time to readjust'.

and that

'if that is not done, it is to be feared that Mr Plug will remain in this depressed state in reaction to his troubles and to the withdrawal of his duties, and his rate of incapacity in that case will be 100%.'

Dr Leuenberger's reply is much more precise than the question put to him. That question inextricably mixed problems relating to Articles 73 and 78 of the Staff Regulations: permanent invalidity preventing the person concerned from performing his duties, that is to say incapacity for work, is governed by Article 78, while the determination of a rate of partial permanent invalidity, that is to say injury to physical integrity, is governed by Article 73. The doctor fixed the rate of incapacity on the basis of the finding that the applicant is suffering from total permanent invalidity preventing him from performing his duties, which had the consequence that his incapacity for work was clearly 100%. At that point in his reply, the expert did not refer to invalidity due to physico-psychological injury, consisting in harm to physical integrity, which is the type of damage which is indemnifiable pursuant to Article 73 of the Staff Regulations. It was in his reply to the question concerning the grant of compensation for any injury which, while not affecting his capacity for work, affected the applicant's physical integrity, that the doctor stated that there was no organic injury, only psychological harm. In those circumstances, and in the absence of any reason justifying recourse to another

expert, the Commission should then have adopted the decision provided for in Article 19 of the Insurance Rules.

90 Furthermore, it should be pointed out that it follows from the words of the note drawn up on 8 August 1984 for File IX/B/2 (see paragraph 13, above) that the real reason why the Commission chose to follow the procedure laid down by Article 73 was its desire to be prepared for the involvement of its insurers in the event that Mr Plug made a claim under that provision, and that the Commission was in no doubt that the applicant was requesting only the strict application of the second paragraph of Article 78 of the Staff Regulations.

91 It follows from all the foregoing considerations that the Commission used its powers for a purpose other than that for which they were conferred and thus committed a misuse of powers.

92 This submission must therefore be upheld.

The submission alleging infringement of Article 73(2) of the Staff Regulations

93 The applicant considers that in deciding to suspend the procedure laid down by Article 78 in favour of that laid down by Article 73 of the Staff Regulations, the Commission deprived him of his right to have his application for recognition of an occupational disease dealt with in the shortest possible time. As a result of that decision, the Invalidity Committee could not perform its task, namely to reach a decision regarding the existence of a possible causal relationship between the total permanent invalidity from which he was suffering and the performance of the duties undertaken by him.

94 The Commission points out that the decision called into question in this submission was notified to the applicant on 13 December 1984 and that it is

extraneous to the contested measure. That decision was accepted by the applicant, who did not appeal against it for almost five years. The Commission considers that this submission is thus inadmissible on the same grounds as those which it indicated in its reply to the first submission.

95 In that respect, it is sufficient to observe that when examining the first submission, which it declared admissible, the Court held that the Commission failed to observe the employment rules applicable in the circumstances of this case by making the implementation of the procedure laid down in the second paragraph of Article 78 of the Staff Regulations subject to the prior completion of the procedure laid down in Article 73 of the Staff Regulations and its implementing provisions.

96 Accordingly, this submission must be upheld.

The submission alleging infringement of Article 12 of the Insurance Rules

97 The applicant is of the opinion that, in order to dismiss Dr Leuenberger's report, the Commission was not entitled to refer to the scale annexed to those rules, namely the scale of the rates of permanent partial invalidity, when he was, he claims, suffering from total permanent invalidity, the existence of which had been recognized by the decision of 13 December 1984 and the occupational origin of which had, moreover, been duly established by the independent neuro-psychiatric analysis carried out on 23 April 1988. He adds that the application of such a scale is justified only where an official sustains partial permanent invalidity as a result of an accident or an occupational disease (Article 12(2) of the Insurance Rules). He states that, according to Article 12 of those rules, in the event of total permanent invalidity, the official is to be paid the lump sum provided for in Article 73(2)(b) of the Staff Regulations; in the event of partial permanent invalidity, he is to be paid a lump sum calculated on the basis of the rates laid down in the invalidity scale contained in the annex to those rules. The decisive factor for the calculation of the compensation for invalidity is thus whether the permanent invalidity found is partial or total. The Commission was thus wrong to refer to that scale in order to draw from it an argument to compel Dr Leuenberger to go back on the conclusions of his expert report.

98 The Commission considers that this submission is inadmissible because the decision of 25 April 1989 to terminate the procedure commenced under Article 73 of the Staff Regulations is not in any way based on Article 12 of the Insurance Rules. According to the Commission, that decision is based on the finding that the applicant did not put it in a position to recognize that the disease from which he was suffering had an occupational origin. The Commission further observes that, contrary to what the applicant presumes, the Invalidity Committee, in taking its decision of 13 December 1984, did not reach its decision within the framework of Article 73 of the Staff Regulations. It confined itself to recognizing that the applicant was suffering not from invalidity, but from total permanent incapacity. The Commission points out that decisions concerning the fixing of the degree of permanent invalidity are taken by the appointing authority, in accordance with Articles 19, 21 and 23 of the Insurance Rules.

99 As this Court has already held, the reply given by Dr Leuenberger, in his report of 28 April 1988, was in accordance with the question which had been put to him by the Commission, which must be interpreted as having referred to the existence of permanent invalidity in the applicant's case due to the conditions in which he had performed his duties. It was the Commission itself that caused the confusion by wrongly mixing the references to the procedures under Articles 73 and 78. Furthermore, it is clear that, in order to determine the origin of the applicant's invalidity, no reference to the scale annexed to the Insurance Rules was necessary, that scale referring to the injuries in respect of which compensation is payable under Article 73. Consequently, the Commission was not justified in referring to that scale — not because the applicant was suffering from total invalidity, as he maintains — but because that scale, according to Article 12(2) of the Insurance Rules, is intended to determine the degree of partial permanent invalidity in the event of attack on an official's physical or psychological integrity, in respect of which compensation is payable under Article 73, which, according to Dr Leuenberger, was not the case of the applicant.

00 This submission must therefore be upheld.

The submission alleging infringement of Article 19 of the Insurance Rules

101 According to the applicant, the appointing authority, by its decision of 13 December 1984, prevented the Invalidity Committee from investigating the causes of the total permanent invalidity from which he is suffering. The applicant observes that the medical expert's report of 23 April 1988 closed the inquiry which had been conducted by the administration since 12 November 1984, in application of Article 17 of the Insurance Rules, 'in order to obtain all the particulars necessary to determine the nature of the disease, whether it has resulted from the official's occupation and also the circumstances in which it arose'. In the absence of a dissenting medical opinion, it was therefore, according to the applicant, for the appointing authority to give effect to the conclusions of the medical expert by following the procedure laid down in Article 19 of those rules. He maintains that the administration did not dispute the existence of a causal relationship, which was the very objective of the inquiry conducted pursuant to Article 17(2), but took the rate of invalidity found by the medical expert as an excuse for escaping the obligations arising under Article 19. The subsequent rejection of the report of 23 April 1988, and also of the application for recognition of an occupational disease of 24 January 1984, bear witness to that same desire to deprive the applicant of his rights under the employment rules.

102 The Commission states that the appointing authority, in the exercise of its discretionary power, was obliged to find that the doctor charged by the doctor appointed by the institution, Dr Leuenberger, with drawing up, 'in implementation of the provisions of Article 73 of the Staff Regulations', 'a summary report on the causal relationship capable of existing between the disease from which Mr Plug [was] suffering and his duties', adopted a reasoning irreconcilable with the concept of invalidity as defined in Article 73 of the Staff Regulations. The Commission adds that this submission does not state in what way the appointing authority failed to take account of Article 19 of the Staff Regulations. Owing to that lack of precision, it considers that the submission is inadmissible and, moreover, invalid, in so far as it has not been established that the appointing authority exceeded the powers conferred on it by Article 19.

103 As the Court has already held, Article 18 of the Insurance Rules is not to be interpreted as meaning that it authorizes the administration to ask for expert medical reports indefinitely without giving adequate reasons for doing so. In this case, the Commission, after having three expert medical reports drawn up, and in

the absence of reasons justifying the involvement of another medical expert, should have adopted the decision laid down in Article 19 of the Insurance Rules without demanding yet another medical expert's report.

04 The submission is therefore well founded.

05 It follows from all the foregoing considerations that, without its being necessary to examine the final submission advanced by the applicant, the Commission's decision of 25 April 1989, in so far as it provides for the results of the procedure carried out within the framework of Article 73 to be communicated to the Invalidity Committee, is not to be regarded as a mere preparatory measure and that, consequently, it must be declared that the application is entirely admissible. It also follows that that decision was adopted in breach of Article 73 of the Staff Regulations and of its implementing provisions contained in the Insurance Rules, and also of Article 78 of the Staff Regulations and Article 13 of Annex VIII to the Staff Regulations, and that, furthermore, it is vitiated by a misuse of powers. The decision of 25 April 1989 must therefore be declared void in that it allows recourse only to the Medical Committee provided for in Articles 19, 21 and 23 of the Insurance Rules, in that it refuses to convene without delay the Invalidity Committee provided for in Article 13 of Annex VIII to the Staff Regulations and in that it closes the applicant's file under Article 73 of the Staff Regulations by recording the fact that the Commission has not been put in a position to rule on Mr Plug's application.

The claim for compensation

The unlawfulness of the Commission's conduct

06 In the applicant's opinion, the Commission has committed a number of faults which engages its liability. He states that the Commission, failing to take account of the fact that the procedures laid down in Articles 73 and 78 of the Staff Regulations are independent of one another and ignoring the relevant case-law of the

Court, refused to refer immediately to the Invalidity Committee his request for recognition of an occupational disease. As a result, the procedure went along the wrong path, so that it could not be brought to an end until more than five years later. The applicant states that the Commission refused to draw the consequences, without however disputing them, of the report in which Dr Leuenberger concluded that there was a relationship of cause and effect between the permanent invalidity from which he is suffering and his former occupational activities. The Commission embarked upon legal argument which he regards as sterile and misconceived, concerning the distinction to be drawn between invalidity and incapacity, whereas it was in fact a question of total permanent invalidity, so that that distinction is pointless.

107 The Commission denies that it mixed up the two procedures. It points out that on 24 January 1984 it received an application for 'invaliding out under Article 73 of the Staff Regulations'. It was thus required to use the procedure laid down for the application of Article 73. Contrary to what the applicant claims, the matter was immediately referred to the Invalidity Committee by the letter of 24 February 1984 from the Director-General for Personnel and Administration. Moreover, the Commission always clearly distinguished between Article 73 and Article 78.

108 The Commission points out that it has already explained the grounds on which it had to reject the report of 23 April 1988 and to proceed to appoint another doctor, charged with giving an opinion on the determination of the degree of permanent invalidity and the origin of the disease from which the applicant was suffering. The Commission concludes that none of the faults alleged has been established.

Existence of damage

109 The applicant considers that the existence of the harm which he has suffered is attested by the opinion issued by the Invalidity Committee at the end of its meetings on 12 and 13 September 1989, in so far as that opinion declares that

'Mr Plug's total permanent invalidity is persisting'. The applicant confirms that all the twists and turns that have marked the procedure and which have gone on over such a long period have considerably affected his physical and psychological health. That deterioration since the time when he was invalided out was established by Professor Garrone at the meeting of 12 September 1989 and confirmed by the medical certificate of Dr Stucki of 14 March 1990, which the applicant attached to the file annexed to his reply to the statement of defence.

The Commission observes that the opinion of the Invalidity Committee does not establish that there was a deterioration in the applicant's health. It states only that his incapacity for work is persisting. The Commission adds that the production during the course of the procedure of a medical certificate seeking to establish a condition which already existed at the time when the application was made must be declared inadmissible pursuant to Article 42(1) and (2) of the Rules of Procedure of the Court of Justice, which are applicable *mutatis mutandis* to the procedure before the Court of First Instance.

The link of causality

The applicant states that the existence of a causal link between the unlawful conduct of the Commission, on the one hand, and the damage suffered, namely the deterioration of his health, on the other hand, is established.

The applicant therefore claims compensation for the mental and physical harm that he considers he has suffered. On account of the extent and great number of faults committed by the Commission, its uncooperative attitude and the state of his health and his age, he assesses that compensation at the equivalent of five years' salary, corresponding to the five years during which he relied on the Commission to recognize, in accordance with the procedures laid down in the employment regulations, that he was suffering from an occupational disease. The amount of compensation should be fixed by taking into account the amount of remuneration to which he would be entitled on the date on which judgment is pronounced.

113 The Commission considers that, even if there has been unlawful conduct on its part, it must none the less be stated that the duration of the procedure is the result of the conduct of the applicant himself, who obstinately refused to understand the concept of the recognition of occupational disease within the meaning of Article 73 of the Insurance Rules, in spite of a number of explanatory notes from the administration. In the Commission's opinion, his refusal to be examined by Dr Graber, which was the final attempt by the administration to finalize the procedure for recognition of occupational disease, made it impossible for the administration to assess the rate of invalidity in relation to which compensation could, where appropriate, be granted to the applicant under Article 73 of the Staff Regulations, and, consequently, led the administration to close the file.

Assessment by the Court

114 With regard to admissibility, it should first of all be pointed out that it has been consistently held that where there is a direct link between an action for annulment and a claim for compensation, as is the case here, the latter claim is admissible as ancillary to the action for annulment.

115 It has consistently been held that 'the Community can only be held liable for damages if a number of conditions are satisfied as regards the illegality of the allegedly wrongful act committed by the institutions, the actual harm suffered, and the existence of a causal link between the act and the damage alleged to have been suffered' (judgment in Case 111/86 *Delauche* v *Commission* [1987] ECR 5358, paragraph 30).

116 With regard to the first condition — the illegality of the institution's conduct — the Court has found that in this case the Commission committed a number of infringements of the Staff Regulations, which were manifested in the disputed decision of 25 April 1989. The Court considers that that conduct of the Commission appears to constitute an administrative fault of such a kind as to engage its liability.

7 With regard to the actual harm which the applicant allegedly suffered and the existence of a causal link with the Commission's conduct, the Court considers that, even though it is not established that the fact that the unlawful conduct went on for more than five years had a harmful effect on the applicant's physical and psychological health, it is none the less indisputable that the applicant thereby suffered non-material damage due to the state of uncertainty and anxiety in which he found himself and which the decision of 25 April 1989 unduly prolonged.

8 Having regard to the circumstances of the case, the annulment of the contested decision cannot in itself constitute adequate compensation for the non-material damage suffered by the applicant. The Court considers that fair compensation for that damage would be provided by the award of a sum of BFR 600 000.

Costs

9 Under Article 69(2) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs. Since the Commission has been unsuccessful in its submissions, it must be ordered to pay the applicant's costs besides its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Annuls the Commission's decision of 25 April 1989;

2. Orders the Commission to pay compensation of BFR 600 000 to the applicant;

3. Orders the Commission to pay all the costs.

Schintgen Edward García-Valdecasas

Delivered in open court in Luxembourg on 27 February 1992.

H. Jung
Registrar

R. García-Valdecasas
President