duty implies in particular that when the appointing authority takes a decision concerning the situation of an official, it should take into consideration all the factors which may affect its decision and that when doing so it should take into account not only the interests of the service but also those of the official concerned. However, the protection of the rights and interests of officials must always be subject to compliance with the legal rules in force.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
16 March 1993 *

In Joined Cases T-33/89 and T-74/89,

David Blackman, a member of the temporary staff of the European Parliament, residing at Tervueren (Belgium), represented by Aloyse May, of the Luxembourg Bar, with an address for service at his Chambers, 31 Grand-Rue,

applicant,

v

European Parliament, represented by Jorge Campinos, Jurisconsult, Manfred Peter, Head of Division, and Didier Petersheim, of the Legal Service, acting as Agents, assisted by Francis Herbert, of the Brussels Bar, with an address for service at the General Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION in Case T-33/89, for the annulment of the decision of the President of the Socialist Group of the European Parliament of 4 February 1988 rejecting the applicant's complaint against the decision refusing the applicant 100% reimbursement from the sickness insurance scheme common to the institutions of the European Communities of the fees for special courses incurred for his daughter during the academic year 1986-1987 and, in Case T-74/89, the annulment of the decision of the European Parliament of 31 January 1989 rejecting the applicant's

* Language of the case: French.

complaint against the refusal of his request for prior authorization concerning his daughter's participation in special courses during the academic year 1987-1988,

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

composed of: R. García-Valdecasas, President, R. Schintgen and C. P. Briët, Judges,

Registrar: M. Fierstra, Legal Secretary,

having regard to the written procedure and further to the hearing on 20 May 1992,

gives the following

Judgment

The facts

1 The applicant, David Blackman, is a temporary servant of Grade A 3 of the European Parliament (hereinafter 'the Parliament'), attached to the Socialist Group at Brussels. In that capacity he is a member of the sickness insurance scheme common to the institutions of the European Communities ('the Joint Scheme'). His daughter, as an insured person, is covered by that scheme.

2 For many years the applicant's daughter has followed special courses which she needs owing to educational difficulties which she has and which are due to the consequences of meningitis during the neonatal period. At first she attended the European School and the American International School at Luxembourg. From January 1981 to July 1983 she attended courses at the British School of Brussels

and then, until the end of 1985, at Sibford School in England, where, in addition to the normal teaching provided, she took special courses (remedial teaching). At the end of 1985 she returned to Brussels, where she again attended the British School, also taking special courses.

3 From 1981 to 1985 the Luxembourg claims office agreed to meet 100% of the fees for the special courses taken by the applicant's daughter.

4 By a memorandum of 17 February 1986 the applicant requested that the fees for a special learning support programme adopted by the British School for his daughter owing to her particular educational problems be met by the sickness insurance fund. According to the memorandum, this programme, which was to last from January to July 1986, consisted, *inter alia*, of 'eight individual sessions per week of educational therapy'.

5 By a memorandum of 23 May 1986 the head of division attached to the Brussels claims office, to whom the applicant's memorandum had been sent for a decision owing to the absence of a head of the Luxembourg claims office, wrote to the applicant as follows:

'Concerning the special learning support programme, in particular one individual session per week of educational therapy, I spoke to our Medical Officer, who contacted the British School. His opinion, which in my view is reasonable, is that as the special programme consists partly of remedial courses and partly of special treatment, the sickness insurance fund should meet 50% of the fees'.

6 By decision of 16 September 1986 the appointing authority, acting pursuant to Article 72(1) of the Staff Regulations of Officials of the European Communities, granted the applicant, for the period 1 September 1986 to 31 August 1987, 100% reimbursement of the medical fees connected with his daughter's serious illness. A

similar decision had previously been adopted for the periods 1 September 1983 to 31 August 1985 and 1 September 1985 to 31 August 1986.

7 By a memorandum of 17 November 1986, the new head of the Luxembourg claims office, in answer to a letter to his predecessor from the applicant dated 24 September 1986, informed him that, as regards the fees for his daughter's educational therapy for 1986-1987, his claim for 100% reimbursement had been submitted to the Parliament's Medical Officer for an opinion. Without wishing to prejudge the outcome of the consultation, he stated that 'the fees for special courses, remedial teaching and individual educational therapy on compelling educational grounds are generally also covered by Article 67(3) of the Staff Regulations and Article 3 of Annex VII thereto, and also by the ad hoc budget heading "school fees"'.

8 By a memorandum of 9 March 1987, which the applicant received on 16 March 1987, the head of the Luxembourg claims office informed him that the Medical Council had confirmed at a meeting on 27 February 1987 that the fees for his daughter's educational therapy during the academic year 1986-1987 would be reimbursed, as for the previous year, as to 50%.

9 On 5 June 1987 the applicant lodged a complaint with the claims office against the Medical Council's decision of 27 February 1987. The complaint was returned to the applicant by the office on 16 June 1987 on the ground that it was not competent to entertain it, and the applicant submitted it to the appointing authority by memorandum of 29 June 1987, which was registered on 8 July 1987.

10 The complaint was rejected by decision of the appointing authority of 4 February 1988. The action in Case T-33/89 has been brought against that decision.

11 Meanwhile, on 18 October 1987, the applicant had submitted a request for prior authorization concerning the educational therapy programme which his daughter was to follow during the academic year 1987-1988. After obtaining the Medical Officer's opinion, the claims office informed the applicant by memorandum of 28 March 1988 that it refused to grant authorization. The reasons given were as follows:

'Since it is now clear from examining the file that the request for prior authorization concerns remedial classes in mathematics and that courses of this type do not form part of medical treatment, there are no grounds for conferring a right to reimbursement for such services. Services of this type provided in an educational institution by persons who are not medical or paramedical practitioners are excluded by the provisions for the interpretation of sickness insurance rules adopted by the heads of administration on 10 September 1987, which specify that "the treatments specified in the Annexes to these Rules must be administered by a person or persons legally authorized to exercise a medical or paramedical profession or by approved medical or paramedical establishments."'

12 On 30 May 1988 the applicant lodged a complaint against the decision of 28 March 1988 of the claims office. In accordance with Article 16 of the Rules on Sickness Insurance for Officials of the European Communities (hereinafter 'the Insurance Rules'), the complaint was referred to the Management Committee for the Joint Scheme, which, by Opinion No 16/88 of 28 September 1988, confirmed the decision of the claims office. On 6 September 1988 the central office for the Joint Scheme also delivered an unfavourable opinion. By decision of 31 January 1989 the appointing authority rejected the complaint. The action in Case T-74/89 is directed against that decision.

The procedure

13 In these circumstances, by application lodged at the Registry of the Court of Justice on 26 April 1988, the applicant brought the first action, which was registered under number 127/88. The entire written procedure took place before the Court of Justice. On hearing the report of the Judge-Rapporteur, the Court asked the parties to answer a number of questions. Only the Parliament complied with the request within the specified period.

14 By application lodged at the Registry of the Court of Justice on 14 March 1989, the applicant brought a second action, which was registered under number 84/89.

15 By letter of 15 March 1989 the applicant asked to Court to suspend the procedure in Case 127/88 and to join it with the new case. On 7 April 1989 the President of the First Chamber of the Court of Justice decided to suspend the procedure in Case 127/88 pending the completion of the written procedure in Case 84/89. The entire written procedure in that case took place before the Court of Justice.

16 By order of 15 November 1989 the Court of Justice (First Chamber), pursuant to Article 14 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities, referred the cases to the Court of First Instance, where they were registered as Cases T-33/89 and T-74/89 respectively.

17 On application by the applicant, and after requesting the defendant to submit its observations, on 22 February 1990 the Court of First Instance ordered the joinder of the cases for the purposes of the oral procedure and the judgment.

18 By order of 12 July 1990 the Court ordered the parties to appear in person. They did so at the hearing on 8 November 1990. In the light of the documents produced in the written procedure and the information received when the parties appeared in person, the Court considered it necessary to obtain an expert opinion and, by order of 1 July 1991, it appointed a panel of experts for this purpose. As the experts found it impossible to contact one another and failed to carry out the task entrusted to them by the Court, on 9 January 1992 it ordered that Dr Marc Boel and Jack Gillman be heard as witnesses. The witnesses were examined at the hearing on 25 March 1992.

19 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure.

20 The oral procedure took place on 20 May 1992. The parties' representatives made their submissions to the Court and gave their replies to the Court's questions.

Forms of order sought by the parties

21 In Case T-33/89 the applicant claims that the Court should:

— formally admit the action as having been brought within the prescribed time-limit;

— declare unlawful and annul the decision adopted by the President of the Socialist Group of the European Parliament on 4 February 1988 refusing the applicant 100% reimbursement by the Joint Scheme of the costs of special paramedical education for his daughter incurred between May 1986 and August 1987;

— declare that the applicant is entitled to 100% reimbursement, in accordance with Article 72 of the Staff Regulations, of the medical and paramedical expenses relating to the serious illness of his daughter, for special paramedical courses followed by her;

— declare that the defendant must reimburse the applicant for the balance of 50% not met during the period in question;

— order the defendant to pay the arrears owed on the basis of the new calculation;

— order the defendant to pay the costs.

22 In Case T-33/89 the Parliament contends that the Court should:

— principally, dismiss the action as inadmissible;

— in the alternative, dismiss the action as unfounded;

— in either event, order the applicant to pay the costs.

23 In Case T-74/89 the applicant claims that the Court should:

— declare the action admissible;

— declare unlawful and annul the decision adopted by the appointing authority of the Parliament on 31 January 1989 expressly rejecting the applicant's complaint of 30 May 1988 and refusing to grant the prior authorization requested by the applicant on 18 October 1987 concerning the programme of educational therapy — remedial teaching to be followed by the applicant's daughter;

— declare that the applicant is entitled to 100% reimbursement of the medical and paramedical expenses incurred in 1987-1988 in respect of his daughter's serious illness, in accordance with Article 72(1) of the Staff Regulations;

— declare that the defendant must reimburse all expenditure incurred by the applicant for the programme of educational therapy — remedial teaching followed by his daughter in 1987-1988, with interest from the date on which reimbursement fell due to the date of actual payment;

— order that this case be joined with Case T-33/89;

— order the defendant to pay the costs.

24 In Case T-74/89 the Parliament contends that the Court should:

— dismiss the action as devoid of purpose, after declaring that the contested decision falls within Article IX or, alternatively, Article XV of Annex I to the Insurance Rules, while the third and fourth heads of claim submitted in the action are covered by Article IV of Annex I;

— in the alternative, after declaring that those heads of claim did not form the subject-matter of a prior complaint, dismiss them as inadmissible pursuant to Article 91(2) of the Staff Regulations;

— in the further alternative, after declaring that the Court is not competent to take the place of the administration and to address directions to it, dismiss that part of the action as inadmissible;

— for the rest, declare the action admissible but unfounded;

— order the applicant to pay the costs.

Admissibility of the action in Case T-33/89

Arguments of the parties

25 The Parliament contends that this action is inadmissible. Firstly, observing that under Article 20(3) of the Insurance Rules the claims office accepts and processes applications for reimbursement, the Parliament points out that the memorandum of 23 May 1986 from the Brussels claims office informing the applicant that the sickness insurance fund would meet only 50% of the fees for the special courses taken by his daughter at the British School is the first measure adversely affecting

the applicant and that a complaint should have been lodged with the appointing authority within three months of the notification of the memorandum, but no complaint was lodged. Secondly, the Parliament begins by denying that the applicant's subsequent complaint could have been validly directed at the letter of 9 March 1987 from the head of the Luxembourg claims office, as the letter followed up a memorandum of 17 November 1986 in which the office had confirmed the decision adopted for the previous year and informed the applicant that it was consulting the Medical Officer regarding the decision for the current year. The Parliament adds that, even assuming that the complaint could be validly directed at the letter, which the applicant stated that he received on 16 March 1987, the complaint is out of time in any case as it was not registered until 8 July 1987, that is after the three-month period laid down by the Staff Regulations. The applicant's original complaint of 5 June 1987, which was returned to him on 16 June 1987, was irregular because it was addressed to the welfare service and not the appointing authority.

26 The applicant contends, firstly, that the memorandum of 23 May 1986 does not constitute a decision within the meaning of Article 90(2) of the Staff Regulations. According to him, it formed part of an exchange of correspondence between the administrative department of an institution and one of its officials regarding the question of his individual rights. The memorandum of 23 May 1986 should therefore be regarded as administrative information within the meaning of the judgment of the Court of Justice in Case 17/78 *Deshormes* v *Commission* [1979] ECR 189, paragraph 23. Secondly, the applicant contends that although his complaint was originally addressed in error to the welfare service, that was done on the basis of information provided by the official in charge of that service. The applicant explained at the hearing that he had submitted his complaint on 5 June 1987 after telephoning the head of the welfare service to ask him how he should proceed and that he had been told to send his complaint to the welfare service, which would follow it up.

Findings of the Court

27 The Court observes that the effect of the combined provisions of Articles 90(2) and 91 of the Staff Regulations, to which Article 16 of the Insurance Rules refers and which, under Article 46 of the Conditions of Employment of Other Servants of the European Communities, apply by analogy to temporary staff, is that, for an action under Article 179 of the EEC Treaty to be admissible, the contested act must adversely affect the applicant. The only acts which may be regarded as adversely affecting an individual are those which are capable of directly affecting a specific

legal situation. The mere manifestation of an intention to adopt a specific decision in the future is not capable of creating corresponding rights or obligations on the part of the official or officials concerned. Furthermore, it is settled case-law that for an act to be capable of being described as an act adversely affecting an official within the meaning of Article 90(2) of the Staff Regulations it must have been specifically adopted by the appointing authority (see, in particular, the judgments of the Court of Justice in Case 806/79 *Gerin* v *Commission* [1980] ECR 3515 and in *Deshormes* v *Commission*, cited above).

28 In the present case the Court finds that the memorandum of 23 May 1986, on which the Parliament relies in support of its submission that the action is inadmissible, was sent to the applicant by the Brussels claims office in reply to his memorandum of 17 February 1986, which concerned the reimbursement of fees to be incurred during the period January to July 1986, a period which is not covered by this action.

29 Furthermore, the memorandum of 23 May 1986 refers to the opinion of the Medical Officer, who took the view that 'as the special programme consists partly of remedial courses and partly of special treatment, the sickness insurance fund should meet 50% of the fees'. The head of division who wrote the memorandum added that in his view this opinion is 'reasonable'. There is nothing in the wording of this memorandum, therefore, to indicate that a decision on the rate of reimbursement of the fees for the academic year 1986-1987 had already been taken. On the contrary, the wording makes it clear that a decision is to be taken which will take account of the Medical Officer's opinion.

30 The same applies to the later correspondence regarding the fees in question, as the new head of the Luxembourg claims office at first informed the applicant, by memorandum of 17 November 1987, that he had requested the Medical Officer's opinion and then, by memorandum of 9 March 1987, informed him of the decision taken on his application.

31 It follows from these considerations as a whole that there is no foundation for the Parliament's argument that the memorandum of 23 May 1986 from the Brussels claims office in this case constitutes the first act adversely affecting the official, and that therefore a complaint concerning it should have been lodged within three months of notification.

32 It also follows that the first act of the nature of a decision, within the meaning of Article 90(2) of the Staff Regulations, concerning the reimbursement of the fees for 1986-1987 — the period to which the present action refers — is the memorandum of 9 March 1987 from the head of the Luxembourg claims office. The applicant stated, without being contradicted on this point by the defendant, that he received this memorandum on 16 March 1987. Pursuant to Article 90(2) of the Staff Regulations, the period of three months for submitting a complaint to the appointing authority starts to run on the date of notification of the decision to the person concerned. It has consistently been held, however, that a failure to comply with time-limits laid down in that article does not prevent an application from being admissible where the applicant has been in excusable error (see the judgments of the Court of Justice in Case 25/68 *Schertzer* v *European Parliament* [1977] ECR 1729 and Case 117/78 *Orlandi* v *Commission* [1979] ECR 1613, and of the Court of First Instance in Case T-12/80 *Bayer* v *Commission* [1991] ECR II-219).

33 It is appropriate first to note the scope of the concept of excusable error, which, in exceptional circumstances, may have the effect of prolonging the period prescribed for initiating proceedings.

34 In the context of time-limits for initiating proceedings, which have consistently been held to be a matter of public policy and not subject to the discretion either of the court or of the parties (see, for example, the judgments of the Court of First Instance in Case T-54/90 *Lacroix* v *Commission* [1991] ECR II-749, paragraph 24, and Case T-129/89 *Offermann* v *Parliament* [1991] ECR II-855, paragraph 31), the concept of excusable error must be strictly construed and can concern only exceptional circumstances in which, in particular, the conduct of the institution concerned has been, either alone or to a decisive extent, such as to give rise to a pardonable confusion in the mind of a party acting in good faith and exercising all the diligence required of a normally experienced trader. In such an event, the administration may not rely on its own failure to observe the principles of legal certainty

and the protection of legitimate expectations out of which the party's error arose (judgment of the Court of First Instance in *Bayer* v *Commission*, cited above).

35 In the present case the applicant already indicated in the complaint which he sent to the appointing authority on 29 June 1987 that he had lodged a complaint with the Parliament's welfare service on 5 June 1987 on the basis of information provided by that service. At the hearing the applicant stated that he had sent his first complaint to the welfare service after telephoning the head of the service to ask him how to proceed and that he had been told to send the complaint to the welfare service, which would follow it up. However, the welfare service did not forward the complaint to the competent department, but merely returned it to the applicant. When the applicant learnt that it was not the welfare service, but the appointing authority, which was competent to entertain his complaint, he brought the matter before the appointing authority by a memorandum of 29 June 1987, which was registered on 8 July 1987.

36 In the light of the applicant's explanations, which are not contradicted by the Parliament, the Court considers that the applicant's error as to the authority competent to entertain his complaint is excusable and that his first complaint, which was submitted within the time-limit of three months laid down in the Staff Regulations, had the effect of extending his right to bring an action.

37 It follows that the plea of inadmissibility raised by the Parliament must be dismissed.

Substance

Case T-33/89

38 The Court considers it necessary to distinguish in substance four pleas in law in the applicant's arguments in support of his action: (1) breach of Article 72(1) of the Staff Regulations; (2) no legal basis for the contested decision, manifest error, misuse of powers and lack of competence of the person who adopted the decision;

(3) breach of Article 72(3) of the Staff Regulations; (4) breach of the duty to have regard to the interests of officials.

The plea of breach of Article 72(1) of the Staff Regulations

Arguments of the parties

39 The applicant contends that the appointing authority has, since 1983, consistently accepted that his daughter's illness is a serious illness within the meaning of Article 72(1) of the Staff Regulations and paragraph IV of Annex I to the Insurance Rules. He points out that for the period 1 September 1983 to 31 August 1986 the appointing authority granted him 100% reimbursement of the medical fees connected with that illness, which, according to the applicant, included the fees for special educational therapy courses such as those provided by various psychologists and specialist teachers at Sibford School and the British School of Brussels. The medical, or at least paramedical, nature of these special courses is borne out by the numerous medical certificates annexed to the application to the Court. The applicant states that the special programme of remedial teaching, although consisting of various types of treatment divided into special courses, as a whole forms an overall therapy all the components of which are designed to improve his daughter's health.

40 The Parliament observes, first of all, that it has been consistently held (see, for example, the judgment of the Court of Justice in Case 2/87 *Biedermann* v *Court of Auditors* [1988] ECR 143) that the Court's review may not extend to medical appraisals properly so-called and is confined to questions concerning the proper functioning of the competent bodies. Although the appointing authority granted the applicant reimbursement of the medical fees connected with his daughter's serious illness for the period 1 September 1983 to 31 August 1986, and although the Luxembourg claims office actually met 100% of those medical fees, those decisions in no way imply that non-medical fees, such as fees for special teaching, would be met. The answer to the question whether the special courses which the applicant's daughter took are medical in nature is a matter for the unfettered assessment of medical experts, who alone are competent in that area.

41 According to the Parliament, only expenses for treatment whose actual content reflects its medical nature are medical expenses. The medical nature of treatment is shown by the fact either that it requires the direct intervention of a person with medical qualifications or that it is carried out in a medically recognized institution or establishment. These are completely objective criteria which are not satisfied in the present case by the special courses taken by the applicant's daughter.

Findings of the Court

42 The Court observes that Article 72(1) of the Staff Regulations provides that

'An official, ..., [and] his children ... are insured against sickness [for] up to 80% of the expenditure incurred ... [This rate] shall be increased to 100% in cases of tuberculosis, poliomyelitis, cancer, mental illness and other illnesses recognized by the appointing authority as of comparable seriousness, and for early detection screening and in cases of confinement ...'

In this connection Annex I to the Insurance Rules, entitled 'Rules Governing the Reimbursement of Medical Expenses', provides in paragraph IV, 'Special cases', that

'In cases of tuberculosis, poliomyelitis, cancer, mental illness and other illnesses recognized by the appointing authority as of comparable seriousness, expenses shall be reimbursed at the rate of 100%.

...

The appointing authority, or the office responsible for settling claims if the requisite powers have been delegated to it by the said authority, shall take its decision after consulting the Medical Officer of that office, whose opinion shall be based on general criteria drawn up by the Medical Council.'

43 It is common ground that on 16 September 1986 the appointing authority adopted a decision on the basis of Article 72 of the Staff Regulations and paragraph IV of Annex I to the Insurance Rules granting the applicant 100% reimbursement of the medical expenses in respect of his daughter's serious illness for the period 1 September 1986 to 31 August 1987.

44 Before the applicant's complaint is examined, it must be observed that the remedies provided for by the Staff Regulations may in principle be employed in this field only in order to obtain a review by the Court confined to questions concerning the constitution and proper functioning of the competent medical bodies. The Court's review may not extend to medical appraisals properly so-called, which must be regarded as definitive provided that the conditions in which they are made are not irregular (judgment of the Court of Justice in *Biedermann* v *Court of Auditors*, cited above, and judgment of the Court of First Instance in Case T-154/89 *Vidrányi* v *Commission* [1990] ECR II-445).

45 The next question is whether the claims office, after consulting the Parliament's Medical Officer, could legitimately decide that only half the cost of the programme of remedial teaching for the applicant's daughter at the British School of Brussels, taking into account the different components of the programme, could be regarded as medical expenses.

46 As regards the programme of remedial teaching for the applicant's daughter at the British School during the academic year 1986-1987 (and 1987-1988), Jack Gillman, an educational psychologist attached to the British School, who was examined as a witness by the Court, answered the questions put to him as follows:

— regarding the component parts or elements of the programme:

'... the subjects of which the remedial teaching programme consisted were: geography, biology, human biology, physiology, home economy and nutrition.

Mathematics was one of the subjects of the remedial teaching programme. [The applicant's daughter] continued to study with her class: domestic science, history and English';

— regarding the persons carrying out the programme:

'... two teachers taught [the applicant's daughter] ... Both teachers are qualified, but they do not have medical qualifications ... [The first teacher] ... is a teacher of mathematics. [He] has no special medical qualifications. The other teacher ... is a graduate in zoology and botany of the University of London ... and has a teaching diploma, but ... no medical training. They are ... teachers';

— and, regarding the persons responsible for the programme:

'I have a degree in psychology. Both teachers are employed [at the British School] for [the applicant's daughter] under my supervision. The programme was basically devised by the two teachers under my supervision. I did not communicate with outside agencies in order to develop this particular programme, and therefore it was not supervised by a doctor. [Dr Boel was not in contact] with me.'

47 Dr Marc Boel, a paediatric neurologist and Reader at the University of Louvain, was also examined as a witness and answered the questions put by the Court. Regarding the persons responsible for the programme, he stated:

'I was not on the spot, at the British School. Mr Gillman is himself responsible for the pupils enrolled with him. I have no part to play in his school. I cannot interfere in his programme. I am not familiar with the standards of the British School of Brussels.'

48 These statements show that the applicant's daughter followed a programme of remedial teaching at the British School which was carried out on the sole responsibility of an educational psychologist attached to that school, that the teaching methods used were specially devised to help the applicant's daughter to overcome her specific difficulties and that the special teaching provided for her was given by two persons without medical training.

49 In these circumstances the Court considers that, as the programme in question was neither devised nor carried out by persons legally authorized to practise a medical or paramedical profession or by a duly recognized medical or paramedical institution, the programme is not of a medical or paramedical nature. It follows that the claims office was justified in refusing to reimburse 100% of the fees for the programme and was not in breach of Article 72(1) of the Staff Regulations.

50 Consequently the first plea in law must be dismissed.

The plea of no legal basis for the contested decision, manifest error, misuse of powers and lack of competence of the person who adopted the decision

Arguments of the parties

51 In his second plea the applicant contends, firstly, that there is no legal basis for the decision of 9 March 1987 as the Staff Regulations provide only for rates of reimbursement of 80, 85, 90 and 100% and make no provision for a rate of 50%. Secondly, he claims that it is manifestly mistaken in fact and in law as it was taken on the basis of a single medical opinion which was delivered in complete ignorance of the particular case of the applicant's daughter and which contradicted the other unanimous opinions of specialist doctors, and therefore the decision is a manifest misuse of powers. Thirdly, he contends that the Brussels claims office, to which the file had been sent owing to a vacancy in the structure of the Luxembourg office, was not competent to deal with the case.

52 The Parliament does not deny that there is no provision in the Staff Regulations for reimbursement at 50%, but it points out that the decision is based on the opinion of the medical officer, according to whom 'as the special programme consists partly of remedial courses and partly of special treatment, the sickness insurance fund should meet 50% of the fees'. The Parliament argues further that, regarding the reimbursement of medical fees, the Staff Regulations make no provision for the consultation of specialist doctors and the fact that the decision was adopted contrary to the opinion of such doctors is irrelevant. Furthermore, the fact that reimbursement claims by officials of the Parliament are generally dealt with by the Luxembourg claims office in no way implies that the Brussels office is not competent to deal with them. In the present case the latter took action because at the time there was no official at Luxembourg with authority to sign following the termination of service of the previous head of the office.

Findings of the Court

53 The Court observes, firstly, that the decision of 16 September 1986 adopted by the appointing authority granted the applicant, for the period 1 September 1986 to 31 August 1987 corresponding to the academic year 1986-1987, 100% reimbursement of the medical fees in respect of his daughter's serious illness. The decision of 9 March 1987 whereby the Luxembourg claims office undertook to meet 50% of the fees for the educational therapy programme is a measure executing the decision in principle of 16 September 1986. As the Parliament rightly observed, the initial decision of 16 September 1986 in no way implied that the administration would reimburse non-medical fees, which would in any case be contrary to Article 72 of the Staff Regulations. The decision of 9 March 1987 of the claims office in fact determines the proportion of the total fees for the remedial teaching programme which must be regarded as medical fees and which therefore come within the category of the sickness risks covered by the Staff Regulations. In that proportion, which in the present case was fixed by the administration at 50%, the fees are reimbursed in full in accordance with the decision in principle of 16 September 1986. It follows that the applicant's argument that there is no provision in the Staff Regulations for reimbursement at 50% is unfounded.

54 Regarding the applicant's second argument that the decision of 9 March 1987 is manifestly mistaken in fact and in law as it was adopted in ignorance of the

unanimous opinions of the specialist doctors who were familiar with his daughter's specific case, the Court notes first (see above, paragraphs 43 and 53) that the appointing authority, by decision of 16 December 1986, acknowledged that his daughter's illness was a serious illness within the meaning of Article 72(1) of the Staff Regulations. To the extent that the applicant complains that the Parliament took no account of those opinions when it adopted the decision to recognize only 50% of the fees for the remedial teaching programme as medical fees, the Court considers that the applicant is unjustified because the Staff Regulations in question do not provide for the consultation of external specialist doctors. It should be added that the claims office sought the opinion of the Medical Council, which was informed of all the special features of the present case. For the rest, it should be observed that the concept of abuse or misuse of power has a precisely defined scope. It refers to cases where an administrative authority has used its powers for a purpose other than that for which they were conferred on it (see the judgment of the Court of Justice in Case 817/79 *Buyl* v *Commission* [1982] ECR 245). The Court has consistently held that a decision may amount to an abuse or misuse of powers only if it appears, on the basis of objective and consistent evidence, to have been taken for purposes other than those stated (see, for example, Case 69/83 *Lux* v *Court of Auditors* [1984] ECR 2447). As the applicant has adduced no such evidence, it must be concluded that a misuse of powers has not been proved in the present case and the applicant's argument to that effect must be dismissed.

55 With regard to the applicant's third argument, that the Brussels claims office was not competent, the Court observes that Article 20 of the Insurance Rules provides that 'offices responsible for settling claims shall be opened or closed down by the Commission wherever it considers this to be necessary, taking into account in particular the places where officials are employed' and that 'each claims office shall accept and process applications for reimbursement of expenses submitted by members registered with it and make the relevant payments'. The purpose of Article 20 is therefore to allow the practical, efficient settlement of claims for reimbursement under the Joint Scheme. The distribution of claims among the different claims offices is on a strictly geographical basis and does not mean that the different offices have different powers or tasks. Consequently, and taking account of the defendant's explanations, which have not been challenged by the applicant, there is no objection to the original transmission of the applicant's claim to the Brussels office so that the claims for reimbursement could be processed without interruption. Consequently the applicant's argument must be dismissed.

56 It follows that the applicant's second plea in law is unfounded and must therefore be dismissed.

The plea in law concerning breach of Article 72(3) of the Staff Regulations

Arguments of the parties

57 In his third plea the applicant claims that he is entitled to special reimbursement under Article 72(3) of the Staff Regulations. He contends that the conditions laid down in Article 72(3) of the Staff Regulations and Article 8(2) of the Insurance Rules are fulfilled. He states that the enrolment fees of the British School in Brussels amounted to BFR 325 000 for the academic year 1986-1987, while the allowances which he received for that period came to BFR 140 000. The remedial teaching programme cost an additional BFR 112 200 for 1986-1987. Half of this additional financial burden is BFR 56 100, so that the total fees paid by him in the twelve-month period were BFR 241 100, which is more than half of his basic salary.

58 The Parliament observes that the applicant did not claim special reimbursement under Article 8(2) of the Insurance Rules and he cannot therefore complain that the appointing authority did not grant such reimbursement. Alternatively, the Parliament disputes the applicant's calculation. Article 72(3) of the Staff Regulations refers only to expenditure which can be reimbursed under Article 72. It follows that the fees of the British School cannot be included in the calculation. The fees of BFR 56 100 paid by the applicant for the remedial teaching programme therefore do not exceed one half of his basic monthly salary.

Findings of the Court

59 The Court observes that, according to Article 8(2) of the Insurance Rules, in the version applicable at the material time, the administrative procedure for obtaining

special reimbursement under Article 72(3) of the Staff Regulations had to be initiated by means of a claim by the official seeking such reimbursement.

60 Therefore it is necessary first to ascertain whether the applicant submitted a claim for special reimbursement under Article 72(3) of the Staff Regulations, as required by Article 8 of the Insurance Rules. On this point the Court finds that the applicant has not proved that he submitted such a claim.

61 It follows that, since the applicant did not submit the prior claim provided for by Article 8 of the Insurance Rules, he cannot in these proceedings plead that Article 72(3) of the Staff Regulations has been contravened.

The plea in law of breach of the duty to have regard to the interests of officials

Arguments of the parties

62 In the application initiating these proceedings the applicant's fourth plea alleges a clear and manifest breach of the appointing authority's duty to have regard to his interest. In his reply he stated that he had given details in his complaint of the extent of the harm which he suffered following the administration's decision to reimburse only 50% of the cost of the remedial teaching programme and that he had also answered the administration's argument concerning the existence of a 'specific budget heading for "school fees"'. In his opinion, the duty to provide assistance and to have regard to the interests of officials laid down in Article 24 of the Staff Regulations imposes on the institution an obligation to reimburse in full the medical and paramedical expenses paid by him.

63 The Parliament, after pointing out in its statement of defence that the applicant did not specify the nature of his plea, observed in its rejoinder that any submissions by an applicant concerning an act adversely affecting him must relate to that act. For the year to which the act adversely affecting him relates (1986-1987), the reference to the specific heading in the budget for 1987-1988 is irrelevant and the applicant's complaint is devoid of purpose.

Findings of the Court

64 The Court observes that pursuant to the first paragraph of Article 19 of the Statute of the Court of Justice of the EEC, which applies to the Court of First Instance by virtue of the first paragraph of Article 46 of the Statute, and under Article 38(1) of the Rules of Procedure of the Court of Justice, which was applicable at the time of the written procedure, which took place before the Court of Justice, the application must contain a brief statement of the grounds on which the application is based. This means that the application must specify the nature of the grounds on which it is based, so that a mere abstract statement does not alone satisfy the requirements of the Statute or the Rules of Procedure (see the judgments of the Court of Justice in Joined Cases 19/60, 21/60, 2/61 and 3/61 *Fives Lille Cail and Others* v *High Authority* [1961] ECR 281, at p. 295, and Case C-330/88 *Grifoni* v *Euratom* [1991] ECR I-1045, at p. 1067; and the judgment of the Court of First Instance in Case T-16/91 *Rendo and Others* v *Commission* [1992] ECR II-2417). Accordingly a mere reference to breach of the duty to provide assistance and to have regard to the interests of officials laid down in Article 24 of the Staff Regulations, like that in the present application, cannot be regarded as sufficient in the absence of specific allegations concerning the obligation allegedly breached.

65 It is true that the applicant indicated in his reply that he charges the Parliament with refusing to reimburse in full the cost of his daughter's remedial teaching programme and that he suffered harm as a result of that refusal. However, it follows from Article 42(2) of the Rules of Procedure of the Court of Justice that no new plea in law is to be introduced in the course of proceedings. As the applicant provided details of the present plea in law only at the reply stage, the plea must be dismissed for being out of time.

Case T-74/89

The admissibility of the applicant's claim that the Court should recognize his right to 100% reimbursement of the medical and paramedical expenses in connection with his child's serious illness, and the claim that the Court should recognize his right to reimbursement in full of the cost of the remedial teaching programme followed by his daughter

Arguments of the parties

66 The Parliament considers that the applicant's claim that the Court should acknowledge, in accordance with Article 72(1) of the Staff Regulations, that he is entitled to

100% reimbursement of the medical and paramedical expenses incurred in 1987-1988 in respect of his child's serious illness and the claim that the Court should acknowledge that he is entitled to reimbursement in full of the cost of the remedial teaching programme followed by his daughter in 1987-1988, with interest from the date on which reimbursement fell due to the date of actual payment, are devoid of purpose.

67 In this connection the Parliament contends that the action is directed at the decision of the claims office rejecting the request for prior authorization submitted by the applicant on 18 October 1987 concerning the remedial teaching programme which his daughter was to take in 1987-1988. The Parliament observes that this request was covered by paragraph IX or, alternatively, paragraph XV of Annex I to the Insurance Rules, whereas the claims in the present action are covered by paragraph IV of the said Annex. The Parliament concludes that the present action has, to that extent, a different subject-matter from the contested measure and was not preceded by a complaint.

68 The Parliament adds that in the context of judicial review based on Article 91 of the Staff Regulations, the Court could not in any event substitute its decision for that of the administration or issue directions to the administration (see the judgment of the Court of Justice in Case 192/88 *Turner* v *Commission* [1989] ECR 1017).

69 The applicant considers that it has been shown that he has always based his action on Article 72 of the Staff Regulations. He maintains that the cost of the remedial teaching programme must be regarded entirely as medical expenses and that they must therefore be reimbursed in full in the same way as other expenses for illnesses recognized as serious by the appointing authority. In his view his action is entirely admissible.

Findings of the Court

70 By these claims the applicant seeks various declarations of principle from the Court which in reality seek recognition of his right to full reimbursement of the cost of the programme of remedial teaching for his daughter, and thus seeks to persuade the Court to issue directions here and now to the authority responsible for complying with the judgment to be given in the present case.

71 However, it is not for the Court, in the context of judicial review, to issue directions to the Community authorities or to substitute its decision for that of those authorities. Accordingly these submissions must be declared inadmissible.

Substance

72 In support of his action in Case T-74/89, the applicant submits, firstly, that the contested decision has no legal basis. Secondly, he considers that it is based on unlawful grounds. Thirdly, he contends that it is mistaken in fact and in law. Fourthly, he pleads infringement of the principle of the protection of legitimate expectations and, fifthly, breach of the duty to have regard to the interests of officials.

— The pleas of lack of legal basis, unlawful grounds and error of fact and of law

Arguments of the parties

73 In his first plea, the applicant contends that the decision refusing reimbursement of the cost of the remedial teaching programme for his daughter in 1987-1988 has no legal basis and is contrary to Article 72(1) of the Staff Regulations, which provides that 100% reimbursement is to be granted to an official, his spouse and dependants in the event of illness recognized as of comparable seriousness to the other illnesses

specified in that article. He observes that he was granted 100% reimbursement for an unbroken period of more than five years without the slightest reservation being expressed, and considers that no provision of the Staff Regulations can justify reversing a decision in this way.

74 The Parliament does not deny that the applicant is entitled to 100% reimbursement, in accordance with Article 72(1) of the Staff Regulations, as specified in paragraph IV of Annex I to the Insurance Rules, but it stresses that reimbursement can be made only in respect of medical expenditure in accordance with the interpretation proposed by the Management Committee for the Joint Scheme. Even if the expenses in question here could be described as being for 'services which are not mentioned in the Annexes', in the words of paragraph XV of Annex I, they could still only be reimbursed on the conditions laid down in each case by the Management Committee. The Parliament also observes that the possibility of reimbursement in respect of 'services which are not mentioned in the Annexes' in no way implies an obligation to do so. Referring to the judgment in *Bayl*, the Parliament observes that each decision to reimburse expenditure is adopted on the merits of the case and that past practice in the present case cannot bind the administration in so far as it gave no undertaking to the applicant to adhere to a certain rate of reimbursement.

75 In its rejoinder the Parliament added that the reimbursement for 1983-1984 and 1984-1985 of 100% of the cost of the special courses for the applicant's daughter related to tuition at Sibford School, an institution well-known for the resources available to children with learning difficulties, particularly dyslexic problems. When the claims office refused, as from 1985-1986, to reimburse 100% of the cost of the special courses, the courses in question were provided at the British School of Brussels. In the light of the documents furnished by each of those schools, the claims office took the view that the British School, unlike Sibford School, was not a specialist institution.

76 In his second plea the applicant alleges that the decision is based on unlawful grounds because it justifies the refusal to reimburse the expenditure by the fact that

the expenditure in question was for remedial classes in mathematics. According to the applicant, the authority concerned ought to have determined whether his daughter's illness was within the category of 'other illnesses recognized ... as of comparable seriousness' allowing reimbursement at 100%. The applicant, who points out that the administration did not take account of the detailed comments of the representative of the British School of Brussels, contends that the expenses in question are within the category of medical or paramedical expenses, as the Parliament itself had previously acknowledged.

77 The Parliament replies that only point in issue is whether the disputed costs are medical expenses or not. The Parliament considers that they were not medical expenses within the meaning of Annex I to the Insurance Rules, according to the Management Committee's interpretation of the term. On the basis of eight documents, including a certificate from Dr Judith Themen of Sibford School, a report and a certificate from Dr Marc Boel and documents produced by the applicant himself, the Parliament contends that the courses in question are technical and not medical. The Parliament adds that, according to the provisions for the interpretation of the term 'medical expenses' adopted by the heads of administration on 10 September 1987, the treatments covered by that term 'must be administered by a person or persons legally authorized to exercise a medical or paramedical profession or by approved medical or paramedical establishments'. The British School is not an approved medical or paramedical establishment and the information provided by the applicant does not show that the treatment in issue was administered by a person or persons legally authorized to exercise a medical or paramedical profession. The defendant also points out that the qualifications of the persons responsible in the present case for the programme of remedial teaching are not mentioned in Council Directive 75/362/EEC of 16 June 1975 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate the effective exercise of the right of establishment and the freedom to provide services (OJ 1975 L 167, p. 1).

78 In his third plea in law the applicant argues that the contested decision is manifestly mistaken in fact and in law because it disregards that fact that all the persons, except Mrs P., who attend to his daughter are professionals in the medical or

paramedical field and because it fails to take account of the medical certificates produced by him, which clearly show that the two types of treatment, namely the psychological therapy and the remedial teaching-educational therapy, form an indivisible whole which is part of an overall rehabilitation programme. The contested decision conflicts with the numerous other proposals for reimbursement which were made, particularly by the Medical Officer. Furthermore, the applicant claims that the Medical Council's opinion of 8 February 1988, which formed the basis of, *inter alia*, the opinion of the Management Committee of 28 September 1988, was not communicated to him and that his daughter was never examined by a Medical Officer.

79 The Parliament insists that all the procedures for consultation and opinions provided for in the Staff Regulations were complied with and that all the bodies concerned examined the complete file, including the medical opinions delivered by Dr Marc Boel and the document setting out the professional qualifications of the staff of the British School participating in the special programme for the applicant's daughter.

Findings of the Court

80 The Court observes that the question underlying the first three pleas is essentially whether the cost of the remedial teaching programme for the applicant's daughter during 1987-1988 at the British School is medical expenditure within the meaning of Article 72(1) of the Staff Regulations and Annex I to the Insurance Rules. Consequently the three pleas must be examined together.

81 As the Court has judged that the remedial teaching programme taken by the applicant's daughter at the British School during 1986-1987 was not of a medical or paramedical nature (see above, paragraph 49), and as the applicant has not proved or even alleged that the programme for 1987-1988 was devised or organized differently, it must be concluded that the decision not to recognize the costs of the programme as expenditure covered by insurance against sickness within the meaning of Article 72(1) of the Staff Regulations is not mistaken in law or in fact.

82 With regard to the legality of the decision, in so far as the refusal to reimburse 100% of the expenditure in question constitutes a reversal of previous decisions, the Court considers that the appointing authority must, for every claim for reimbursement, determine whether the conditions for reimbursement laid down in Article 72(1) of the Staff Regulations are satisfied by reference to the matters of fact and of law disclosed by the person concerned, without being bound by a previous decision adopted on the basis of different or less complete information.

83 Furthermore, the Court observes that the administration did not give the applicant a specific assurance regarding the future reimbursement of the cost of the remedial teaching programme and therefore it in no way led the applicant to expect that the existing situation, regarding which the administration had a discretion, would continue.

84 So far as concerns the applicant's argument that he was not notified of the Medical Council's opinion of 8 February 1988, which was one of the factors taken into account by the Management Committee for the Joint Scheme in Opinion No 16/88 of 28 September 1988 confirming the claims office's decision of 28 March 1988, it should be observed that the Insurance Rules, in particular Chapter II, do not provide for the person concerned to be notified of an opinion of the Medical Council drawn up at the request of the Management Committee. The Court observes that the applicant has not stated how the failure to notify him of the opinion prejudiced his legal situation. On this point the Court notes that the applicant has had ample opportunity to put forward his arguments against the contested decision. It follows that the applicant's arguments must be dismissed.

85 Regarding the applicant's complaint that the Parliament did not have his daughter examined by its Medical Officer, the Court observes that the Parliament stated, without being contradicted by the applicant, that all the decision-making bodies concerned were familiar with a complete file which contained, in particular, the

opinions of Dr Marc Boel concerning the applicant's daughter and a document setting out the professional qualifications of the staff of the British School participating in the special programme for the applicant's daughter. It follows that the Parliament took the contested decision with full knowledge of the applicant's daughter's health and of the qualifications of the staff of the British School. Therefore the applicant's arguments in this respect must be dismissed.

86 It follows that the first three pleas relied on by the applicant must be dismissed.

— The plea of breach of the principle of the protection of legitimate expectations

Arguments of the parties

87 In the fourth plea the applicant alleges breach of the principle of the protection of legitimate expectations. He criticises the defendant for failing to draw his attention to the provisions for the interpretation of the term 'medical expenses' adopted by the heads of administration on 10 September 1987 so as to enable him to take the necessary measures to prove that the persons attending to his daughter were legally authorized to practise a medical or paramedical profession. He also considers that the competent authorities ought to have taken the appropriate steps to approve the British School. According to the applicant, the Parliament's failure to do so is a breach of the principle of the protection of legitimate expectations which an institution should respect in relation to every official.

88 The Parliament observes that the details of the medical or paramedical qualifications of the persons involved in the special programme were given to the Medical Officer and were taken into consideration. It adds that only a medical or paramedical institution can be approved, which does not apply to the British School.

Findings of the Court

89 It is settled case-law that the right to rely on the principle of the protection of legitimate expectations extends to any individual who is in a situation in which it appears that the conduct of the Community administration has led him to entertain reasonable expectations. However, an official may not plead a breach of the principle of the protection of legitimate expectations unless the administration has given him specific assurances (see, in particular, the judgment of the Court of First Instance in Case T-20/91 *Holtbecker* v *Commission* [1992] ECR II-2599).

90 The Court notes that the provisions for the interpretation of the Insurance Rules adopted by the Management Committee and approved by the heads of administration are public rules which were brought to the notice of and are accessible to the officials and servants of the Community institutions.

91 It follows that, in failing to draw the applicant's attention to those provisions, the administration could not have led him to entertain a reasonable expectation that the appointing authority would reimburse the cost of the remedial teaching programme for his daughter in the 1987-1988 academic year. Likewise, the fact that the administration did not take steps to approve the British School as a medical or paramedical institution cannot as such constitute a breach of the abovementioned principle.

92 Consequently, the plea of breach of the principle of the protection of legitimate expectations cannot succeed.

— The plea of breach of the duty to have regard to the interests of officials

Arguments of the parties

93 The applicant contends that the Parliament failed to fulfil its duty to have regard to his interests by simply cancelling the reimbursement of the expenses which he has to meet, while the financial burden resulting from the special courses for his daughter is very heavy. He states that in 1987-1988 the total cost of the courses was BFR 198 000 and the basic school fees at the British School were BFR 341 000, whereas his basic monthly salary for July to December 1987 was BFR 312 226 and for January to June 1988 BFR 326 697.

94 The Parliament observes that the duty to have regard to the interests of officials means that, when it makes a decision concerning the situation of an official, the authority must consider all the factors which may affect its decision, taking account of the interests of the service and those of the official concerned. In this connection the Parliament considers that the applicant has not shown in what way the defendant failed to fulfil that duty, having regard, firstly, to the additional amounts granted by way of doubling the dependant child's allowance and the educational allowance and, secondly, to the additional monthly income arising from the supplementary tax deduction of BFR 13 015 per month. The Parliament adds that the applicant did not make a claim under Article 76 of the Staff Regulations on the ground that he was in a particularly difficult position as a result of his daughter's health, and that the appointing authority had no information in its possession to indicate that, having regard to the applicant's salary, he was in a particularly difficult position. Furthermore, according to the Parliament, the duty to have regard to an official's interests certainly did not mean that the cost of remedial education was to be borne by the Joint Scheme.

Findings of the Court

95 The Court observes, firstly, that the contested decision does not amount to a revocation of previous decisions to reimburse the cost of the special courses taken by the applicant's daughter, but refuses prior authorization for the programme of

educational therapy which the applicant's daughter was to take in the 1987-1988 academic year.

96 It has consistently been held that the duty of the administration to have regard for the interests of its officials reflects the balance of the reciprocal rights and obligations established by the Staff Regulations in the relationship between a public authority and civil servants. That duty implies in particular that when such an authority takes a decision concerning the situation of an official, it should take into consideration all the factors which may affect its decision and that when doing so it should take into account not only the interests of the service but also those of the official concerned (judgment of the Court of Justice in Case 321/85 *Schwiering* v *Court of Auditors* [1986] ECR 3199, paragraph 18; judgment of the Court of First Instance in Case T-133/89 *Burban* v *Parliament* [1990] ECR II-245, paragraph 27). However, the protection of the rights and interests of officials must always be subject to compliance with the legal rules in force (judgment of the Court of First Instance in Case T-123/89 *Chomel* v *Commission* [1990] ECR II-131, paragraph 32).

97 In the present case the appointing authority refused the applicant's request of 18 October 1987 for prior authorization regarding the programme of remedial teaching for his daughter in the 1987-1988 academic year on the ground, which the Court has judged legitimate, that in the light of the information available to the authority and on the basis of the provisions of the Staff Regulations in force it could not recognize the cost of that programme as expenditure covered by insurance against sickness within the meaning of Article 72(1) of the Staff Regulations. It follows that by adopting its decision in conformity with the rules in force, after carrying out a full appraisal of all the determining factors, the Parliament was not in breach of its duty to have regard to the applicant's interests.

98 Consequently the plea of breach of the duty to have regard to the applicant's interests must be dismissed.

99 It follows from all the foregoing that both actions must be dismissed in their entirety.

Costs

100 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Article 88 of those Rules provides that in proceedings between the Communities and their servants the institutions are to bear their own costs. The parties should therefore be ordered to pay their own costs in both cases.

101 According to Article 91 in conjunction with Article 74 of the Rules of Procedure, witnesses' travel and subsistence expenses and compensation for their loss of earnings are regarded as recoverable costs. In the present case the applicant should be ordered to bear the costs in connection with the examination of witnesses.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Dismisses the actions;

2. Orders each party to bear its own costs;

3. Orders the applicant to pay the costs in connection with the examination of witnesses.

García-Valdecasas Schintgen Briët

Delivered in open court in Luxembourg on 16 March 1993.

H. Jung

Registrar

R. García-Valdecasas

President