Provided that the Medical Committee does not rely on a misconception of what is an occupational disease and establishes a comprehensible link between the medical findings and the conclusions in its report, neither the report nor the decision of the institution refusing, on the basis of that report, to recognize that the official's disease results from his occupation is vitiated by a failure to state the reasons on which it is based.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
12 July 1990 *

In Case T-154/89,

Raimund Vidrányi, a former official of the Commission of the European Communities, residing in Luxembourg, represented by Blanche Moutrier, of the Luxembourg Bar, with an address for service in Luxembourg at her Chambers, 16 avenue de la Porte-Neuve,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, J. Griesmar, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision of 13 January 1989 refusing to recognize that the applicant's disease resulted from his occupation,

* Language of the case: French.

THE COURT OF FIRST INSTANCE (Third Chamber)

composed of: A. Saggio, President of Chamber, C. Yeraris and K. Lenaerts, Judges,

Registrar: H. Jung

having regard to the written procedure and further to the hearing on 27 June 1990,

gives the following

Judgment

Facts and procedure

1 The applicant is a former official in Grade LA 5 of the Commission of the European Communities, last assigned to the German Division of the translation service in Luxembourg; he was retired on grounds of invalidity with effect from 1 March 1979 following a procedure initiated in accordance with the final subparagraph of Article 59(1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'). The applicant's pension is not in dispute.

2 By a letter of 30 May 1980 the applicant requested the opening of the inquiry provided for in the first subparagraph of Article 17(2) of the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease referred to in Article 73 of the Staff Regulations (hereinafter referred to as 'the Rules'). Under Article 17(2) of the Rules, 'the Administration shall hold an inquiry 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'.

3 By letters of 30 November 1981, 6 and 27 July 1982 the administration asked the heads of department who had had the applicant under their authority since his

entry into service for their observations regarding the conditions under which the applicant had worked. On 12 and 14 July, 24 September and 10 October 1982 they sent their assessments of those conditions to the Administration.

4 Moreover, on the basis of Article 18 of the Rules the Commission obtained an expert medical opinion regarding the applicant. Dr Simons, the doctor designated by the European Communities, asked Professor De Waele of Vrije Universiteit Brussel to produce the expert medical opinion. In his report of 10 January 1983, Professor De Waele stated that the applicant's disease could not have resulted from his occupation. By a letter of 25 February 1983, Dr Simons endorsed that opinion. Professor De Waele's medical examination of the applicant lasted for three and a half hours and took place in German.

5 By a letter of 29 March 1983, sent pursuant to Article 21 of the Rules, the administration notified the applicant of a draft decision refusing to apply Article 73 of the Staff Regulations in his favour, having regard to the opinion of Professor De Waele, sent to the applicant on the same day. Moreover, the applicant was informed that he could request that Professor De Waele's full report (15 pages) be communicated to a doctor chosen by him, and that, within a period of 60 days, he could request that the Medical Committee provided for in Article 23 of the Rules be consulted.

6 By a letter of 27 May 1983, the applicant requested the convening of that Medical Committee and named Professor Rose, a psychiatrist in Hanover, as the doctor of his choice to sit on the Committee.

7 The appointing authority then chose Professor De Waele to sit on the Medical Committee. The third doctor, Professor Pierloot, of the Université catholique de Louvain, was appointed by agreement between Professors Rose and De Waele.

8 The Commission sent each member of the Medical Committee a document setting out the Committee's terms of reference, to which were appended the text of

Article 3 of the Rules, defining occupational disease within the meaning of the Rules, and the 'European List of Occupational Diseases' within the meaning of the Commission Recommendation of 23 July 1962 (*Journal officiel* 1962, No 80, p. 2188). The first part of the Medical Committee's terms of reference was worded as follows:

'The medical experts shall examine Mr Raymond Vidrányi, hear his explanations and any statements of the doctors assisting the parties, obtain all documents relating to the examinations, treatment and operations carried out on him, describe their course and the treatment given; they shall then:

(i) describe Mr Vidrányi's disease;

(ii) state in a reasoned report whether the performance of Mr Vidrányi's duties with the Communities was the basic or principal cause of the disease or of the aggravation of a pre-existing disease affecting Mr Vidrányi;

(iii) if so, (omissis).'

9 Each member of the Medical Committee also received from the Commission a voluminous confidential file containing:

(i) the applicant's request of 30 May 1980;

(ii) a medical report (three pages) of 2 June 1980 by Professor Schmidt of the Department of Neuropsychiatry of the University Clinic, Trier, who regularly treated the applicant;

(iii) the text of a memorandum (nine and a half pages) — a copy of which had been submitted by the applicant to the administration in June 1981 — sent in June 1977 by the applicant to the other doctor treating him regularly, Dr Thilges, a psychiatrist and psychotherapist, of Luxembourg (with a copy to Professor Schmidt);

(iv) a copy of a memorandum (six pages) of 2 December 1980 sent by the applicant to the Commission's mediator and summarizing the abovementioned memorandum of June 1977;

(v) a medical opinion drawn up by Dr Thilges on 12 November 1980;

(vi) the results of the administrative inquiry carried out among the applicant's superiors concerning his working conditions since his entry into service;

(vii) Dr Simons' medical report of 25 February 1983;

(viii) the conclusions of the medical report (15 pages) prepared on 10 January 1983 by Professor De Waele;

(ix) the draft decision refusing to apply Article 73 of the Staff Regulations in favour of the applicant, as notified to him on 29 March 1983;

(x) the applicant's letter of 27 May 1983 requesting that the Medical Committee be consulted;

(xi) a neuropsychiatric report (61 pages) of 16 July 1985 by Professor Rose.

10 After examining the applicant on 14 June 1988 for one and a half hours and studying the documents listed above, the doctors constituting the Medical Committee drew up their report, the original of which, signed by the three doctors, was sent to the appointing authority on 23 December 1988, pursuant to the last subparagraph of Article 23(1) of the Rules. Under the same provision, the report was also sent to the applicant on 13 January 1989, the date on which the appointing authority informed him that, having regard to the opinion of the Medical Committee, the provisions of the Staff Regulations relating to insurance against the risk of occupational disease were not applicable to him.

11 On 6 April 1989 the applicant submitted a complaint against the 'refusal of 13 January 1989', requesting that the procedure which led to the Medical Committee's report should be repeated. In support of his complaint, he made various criticisms of the way in which the report had been drawn up and of its content, namely:

(i) the fact that, contrary to Article 26 of the Staff Regulations, the file forwarded to the Medical Committee had not been communicated to him;

(ii) the fact that, during his examination on 14 June 1988, he had not been able in the hearing of one and a half hours to give a complete description of his disease, to provide evidence, to discuss the lack of assistance which he had encountered on the part of the Commission's Medical Service when his disease first appeared;

(iii) the fact that the Medical Committee's report merely summarized the principal points of his request for recognition that his disease resulted from his occupation and that the report was, therefore, 'unbalanced, inadequately justified and not objective';

(iv) the fact that Professor Pierloot had seen him only once, namely on 14 June 1988, so that he could not have possessed the minimum direct information necessary to enable him to form an independent opinion.

12 The Commission did not reply to that complaint, which was deemed to have been rejected by an implied decision of 6 August 1989.

13 On 5 September 1989, relying on Article 26 of the Staff Regulations, human rights and the 'openness' advocated in the Contrat social de progrès, the applicant requested the administration to send him all documents relating to the internal investigation carried out by the Commission made available to the Medical Committee. He also asked for an assurance that the documents which would be sent to him were in fact complete and that the Medical Committee had not been given information, orally or by telephone, not indicated in the abovementioned documents.

14 On 13 October 1989 that request, which the Commission describes as a complaint, was expressly rejected by a decision notified to the applicant by a registered letter with acknowledgement of receipt of 3 November 1989, which the applicant received on 7 November 1989.

15 By an application lodged at the Registry of the Court of First Instance on 6 November 1989 the applicant brought the present action for the 'annulment, or alternatively amendment, of Decision No IX. C. I/AA (89) 013 MP of 13 January 1989 refusing to recognize the applicant's disease as an occupational disease so that he can qualify for the benefits provided for in Article 73 of the Staff Regulations of Officials'.

16 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure without any preparatory inquiry. The parties' representatives presented oral argument and their replies to the questions asked by the Court of First Instance at the hearing on 27 June 1990.

Conclusions of the parties

17 The applicant claims that the Court of First Instance should:

' (i) declare the application admissible and well founded;

(ii) annul, or alternatively amend, the decision of the Director-General of the Accident and Occupational Diseases Department of the Commission of the European Communities of 13 January 1989 refusing to recognize the applicant's disease as an occupational disease;

(iii) order, if necessary, a new medical report to be drawn up;

(iv) make an appropriate order as to costs'.

The Commission contends that the Court of First Instance should:

' (i) dismiss the application as unfounded;

(ii) make an appropriate order as to costs'.

Substance

18 The applicant essentially raises two objections to the contested decision. The first relates to the lawfulness of the procedure adopted and the second concerns the content of the Medical Committee's report.

The lawfulness of the procedure adopted: the failure to communicate documents

19 The applicant criticizes the fact that by not entering in his personal file, contrary to Article 26 of the Staff Regulations, and by refusing to communicate to him directly, the documents sent to the doctor appointed by the institution and, subsequently, to the members of the Medical Committee, the Commission denied him the opportunity of commenting on those documents before the Medical Committee sent its opinion to the appointing authority. The applicant adds that the Commission cannot justify its refusal by the need to protect medical confidentiality. In his reply, he claims, in particular, that the inquiry provided for in Article 17(2) of the Rules must, by its very nature, be included in the official's personal file even if Article 17(2) does not require such documents to be communicated directly to the official. He maintains that the proof that those documents were an integral part of his personal file is that having been refused communication of the file for more than 10 years, in spite of a request which he claims to have submitted to the appointing authority by a letter of 27 May 1983, the applicant was finally able to learn the results of the administrative inquiry during these proceedings.

20 The Commission contends that the documents to which the applicant's criticisms relate should be divided into three categories before consideration is given to the question whether the Commission was under an obligation to enter those documents in the applicant's personal file or to communicate them to him directly.

21 The first category comprises correspondence between the applicant and the administration.

22 The Commission contends that the absence of such documents from the applicant's personal file cannot vitiate the procedure adopted in the present case with regard both to the work of the Medical Committee and to the contested decision resulting therefrom. Relying on the case-law of the Court of Justice, the Commission claims that the purpose of Article 26 of the Staff Regulations is to 'guarantee an official's right of defence by ensuring that decisions taken by the appointing authority affecting his administrative status and his career are not based on matters concerning his conduct which are not included in his personal file' (judgments in Case 88/71 *Brasseur* v *European Parliament* [1972] ECR 499, paragraph 11, and Case 140/86 *Strack* v *Commission* [1987] ECR 3939, paragraph 7). However, it is evident in the present case that the applicant did not have to exercise any 'right of defence' with regard to documents which originated from him or were sent to him.

23 It must be pointed out that Article 26 of the Staff Regulations does not permit the applicant to rely on the fact that his personal file does not contain documents which he sent to the administration or which the administration sent to him, in order to challenge the validity of a decision of the appointing authority adopted pursuant to the Rules. Those Rules provide for a special procedure whose regularity is not in question in the present case.

24 Moreover, no provision of the Rules requires the Commission to communicate directly to the applicant all their correspondence.

25 The second category of documents comprises all the medical reports drawn up for the purposes and in the context of the procedure instituted by Articles 17 to 23 of the Rules.

26 The Commission states that those documents constitute the 'medical findings recorded by doctors and experts' and that they 'are unquestionably of an exclusively medical nature'. As such, the Commission claims that according to the estab-

lished case-law of the Court of Justice such documents did not have to be placed in the applicant's personal file but had to be made accessible to him through the doctor chosen by him to whom the applicant could have asked the appointing authority to send the documents pursuant to Article 21 of the Rules (judgment in Case 140/86 *Strack*, cited above, paragraphs 9 to 13).

27 The purpose of that indirect means of access to the documents is to reconcile the requirements arising from respect for the official's rights — which means that the official must be able to examine the reasons for the decision which the appointing authority proposes to adopt and to judge whether that decision is in conformity with the provisions of the Staff Regulations — 'with the requirements of medical confidentiality which make every doctor the judge of whether he can inform persons whom he is treating or examining of the nature of the illnesses from which they may be suffering' (see the judgments in Case 121/76 *Moli* v *Commission* [1977] ECR 1971, Case 75/77 *Mollet* v *Commission* [1978] ECR 897, and Case 140/86 *Strack* cited above, at paragraph 11).

28 Therefore, according to the Commission, it was for Professor Rose, the doctor appointed to the Medical Committee by the applicant, who, as a member of that committee, was in possession of all the documents in question, to judge whether it was possible to communicate to the applicant the documents falling into this second category. The Commission emphasizes, moreover, that the applicant did not avail himself of his right under Article 21 of the Rules to request the appointing authority to communicate to Professor Rose the results of the medical examination carried out by Professor De Waele on 10 January 1983.

29 It must be pointed out that the Commission was correct in its view that the exclusively medical nature of the medical reports in question precluded their being put on the applicant's personal file or communicated directly to him. Otherwise, the applicant would gain the right to direct access to the documents by consulting his individual file or by other means. Such right of direct access is contrary to the medical confidentiality which the procedure established by Articles 17 to 23 of the Rules seeks to protect and to reconcile with the official's rights by allowing him access to medical documents relating to him through the doctor chosen by him.

30 It follows that the Commission cannot be criticized for not having communicated directly to the applicant, by placing them in his personal file or otherwise, medical documents which are confidential specifically as regards him and also the appointing authority.

31 The third category of documents concerns the administrative inquiry carried out in 1981 and in 1982 among the applicant's immediate superiors pursuant to Article 17(2) of the Rules.

32 The Commission states that the report drawn up following the inquiry, which was intended to establish in particular whether the disease resulted from the official's occupation, is sent to the doctor appointed by the institution, who, having regard to the report, drafts the findings provided for in Article 19 of the Rules. The Commission points out that at that stage of the procedure there is no provision requiring the report to be made known to the official himself. It adds that medical confidentiality precludes such disclosure, in so far as findings of fact relating to events arising during work must also be recognized as being of a medical nature when established in the context of a procedure for recognition of an occupational disease. The Commission concludes that only if the applicant had made a request pursuant to Article 21 of the Rules — which he did not — that the 'full medical report' be communicated by the institution's doctor to the doctor chosen by him, would it have been permissible to send the report drawn up following the inquiry to the doctor chosen by the applicant.

33 It must be stated that the Commission is right in saying that there is no provision in the Rules requiring the report drawn up following the inquiry to be communicated to the official directly and that, as the Court of Justice has held, those 'documents relating to the findings of fact concerning an incident at work which may serve as a basis for the procedure for the recognition of the existence of an accident at work or an occupational disease within the meaning of the Rules must also be recognized as being of a medical nature' (judgment in Case 140/86 *Strack*, cited above, paragraph 13). The medical nature of the documents precludes the direct communication of such documents to the applicant in the context of the procedure established by the Rules.

34 However, it should be observed that it is not only 'permissible', as the Commission has pointed out, but indispensable that the 'full medical report', which the official may ask to be communicated to the doctor of his choice and which must be communicated to the members of the Medical Committee provided for by Article 23 of the Rules, should include the report drawn up following the inquiry. Indeed, it is 'by providing for indirect access to documents of a medical nature through the interposition of a medical examiner appointed by the official [that] the Rules reconcile the rights of the official . . . with the requirements of medical confidentiality' (judgment in Case 140/86 *Strack*, cited above, paragraph 12).

35 Thus, if he has submitted the appropriate request, the official can, through a doctor chosen by him, decide his position regarding the findings contained in the report drawn up following the inquiry and assess whether it is appropriate to request that the Medical Committee give its opinion. In that regard, it must be pointed out that the applicant did not submit any request to that effect to the appointing authority, no such request being contained in his letter of 27 May 1983.

36 With regard to the applicant's argument that the documents in question ought to have been placed in his personal file pursuant to Article 26 of the Staff Regulations, it must be observed that, as the Court of Justice held in its judgment in *Strack*, the fact that they are of a medical nature 'does not mean that such documents may not, in an appropriate case, affect the official's administrative status in so far as the facts which they recount form the basis of reports concerning the ability, efficiency or conduct of the official. If that is the case then those documents must appear in the personal file' (Case 140/86 *Strack*, cited above, paragraph 13).

37 It follows that, having regard to the purpose of Article 26 of the Staff Regulations, it is only if the findings contained in those documents can, outside the context of the procedure established by the rules, affect the official's administrative status in so far as the facts which they recount form the basis of reports concerning the ability, efficiency or conduct of the official, that such documents must appear in the official's personal file.

38 However, it must be concluded that in the present case it has not been proven that the findings of fact relating to the applicant's working conditions have affected his

administrative status, which came to an end before the said documents were drawn up. It follows that the Commission was right not to place those documents in the personal file provided for in Article 26 of the Staff Regulations.

39 As regards the applicant's argument, in his reply, that the fact that the report drawn up following the inquiry was communicated to him in the context of the present dispute constitutes proof that it is an integral part of his personal file, it must be pointed out that, in the context of the procedure established by the Rules, the report drawn up following the inquiry did not, for the reasons stated above, have to be communicated to the applicant other than through the doctor chosen by him and that, therefore, the applicant cannot use that to argue that the said document is an integral part of his personal file.

40 It follows from the above that Article 26 of the Staff Regulations may not be used, outside the framework established by the Rules, in order to introduce an adversary procedure for documents of a medical nature.

The lawfulness of the procedure adopted: the Medical Committee's hearing

41 The applicant calls in question the way in which the Medical Committee performed its task in so far as its hearing of his views was not sufficient to enable it to decide in full knowledge of the facts and allow him to put forward his own 'belief'.

42 It must be observed that the Commission is right to point out that it is for the Medical Committee to determine whether there is a need for a hearing of the person concerned and, if so, the length of that hearing, particularly having regard to the completeness of the medical file already before it, as the Court held in its judgments of 21 May 1981 in Case 156/80 *Morbelli* v *Commission* [1981] ECR 1357, paragraph 27 and of 19 January 1988 in Case 2/87 *Biedermann* v *Court of Auditors* [1988] ECR 143, paragraph 16. Moreover, 'in the light of the nature of the Committee's work, which is intended to produce medical findings and not to determine a dispute after hearing both sides, such a hearing is not required by the principles concerning the right to a fair hearing' (judgment in Case 2/87 *Biedermann*, cited above, paragraph 16).

43 Furthermore, it is sufficient to observe that in the present case the Medical Committee could reasonably have considered its hearing of one and a half hours to be sufficient since, firstly, the medical file containing all the documents presenting the various points of view was complete and, secondly, the applicant had already been examined for three and a half hours by the doctor appointed by the Commission to the Medical Committee and, on two occasions, for three hours by the doctor appointed by the applicant himself.

44 It follows that that submission cannot be upheld.

The content of the Medical Committee's report

45 The applicant accuses the Medical Committee of having attributed his disease to the make-up of his personality and of not having otherwise criticized in its report the role and the duties of the Medical Service whose failure to assist the applicant constitutes an infringement of Article 24 of the Staff Regulations and contributed to the aggravation of his disease. According to the applicant, the Medical Committee attributed his disease to the structure of his personality in order to extenuate and conceal the failings of the Medical Service.

46 The Commission replies first of all that, according to the consistent case-law of the Court (judgments in Case 265/83 *Suss* v *Commission* [1984] ECR 4029, paragraph 11, and Case 2/87 *Biedermann*, cited above, paragraph 8), the Court of First Instance's review may not extend to medical appraisals properly so called contained in the Medical Committee's report and, secondly, that there can be no question of any failing on the part of its Medical Service, which had not been asked for assistance by the applicant and which was aware that the applicant was already being treated by a specialist.

47 Before the applicant's submissions are considered, it is appropriate to determine the precise scope of the Court of First Instance's review of a decision refusing to recognize that an official's disease is an occupational disease after consultation of the Medical Committee provided for by Article 23 of the Rules.

48 It follows from the Court's consistent case-law (see, most recently, the judgment in Case 2/87 *Biedermann*, cited above, paragraph 8) that the Court of First Instance's review does not extend to medical appraisals properly so called, which must be regarded as definitive if they were made in a regular manner. That would not be the case if the Medical Committee had taken an erroneous view of the concept of 'occupational disease' or if its report did not establish a comprehensible link between the medical findings which it contains and the conclusions which it draws (judgment in Case 277/84 *Jänsch* v *Commission* [1987] ECR 4923, paragraph 15).

49 In that regard, it must be observed that the attribution of the applicant's mental disease to the make-up of his personality is a medical assessment of which the only aspects open to review by the Court of First Instance are the reasons upon which it is based. By attributing the cause of the applicant's disease to the make-up of his personality, and not to his working conditions or the attitude of his superiors, the Medical Committee has ruled out the possibility that the applicant's disease or its aggravation 'arose in the course of or in connection with the performance by the official of his duties with the Communities', within the meaning of Article 3(2) of the Rules.

50 It follows that since the Medical Committee's report was not based on a misconception of what is an occupational disease and since it establishes a comprehensible link between the medical findings which it contains and the conclusions which it draws, neither it, nor the decision of the Commission adopted on the basis thereof, is vitiated by a failure to state the reasons on which it is based.

51 Furthermore, it should be added that the Medical Committee's report was adopted unanimously by its three members, including the doctor appointed by the applicant.

52 That submission cannot therefore be upheld.

53 It follows from all the foregoing considerations that the application must be dismissed.

Costs

54 Under Article 69(2) of the Rules of Procedure of the Court of Justice, which are applicable *mutatis mutandis* to the Court of First Instance pursuant to the third paragraph of Article 11 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities, the unsuccessful party is to be ordered to pay the costs if they are asked for in the successful party's pleading. However, Article 70 of those rules provides that, in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the parties to bear their own costs.

Saggio Yeraris Lenaerts

Delivered in open court in Luxembourg on 12 July 1990.

H. Jung
Registrar

A. Saggio
President of the Third Chamber