JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
3 March 2004 *

(Officials – Occupational disease – Article 73 of the Staff Regulations – Claim for damages – Irregularities in the procedure for recognition of the occupational origin of a disease – Damage – Damage suffered by the spouse of a former official)

In Case T-48/01,

François Vainker, former official of the European Parliament and **Brenda Vainker**, his wife, resident in Middlesex (United Kingdom), represented by J. Grayston and A. Bywater, solicitors,

applicants,

v

European Parliament, represented by H. von Hertzen and D. Moore, acting as Agents, and D. Waelbroeck, lawyer, with an address for service in Luxembourg,

defendant,

APPLICATION for damages pursuant to Article 236 EC and the second paragraph of Article 288 EC, in order to make good damage allegedly suffered, first, by the applicant, Mr Vainker, by reason of the fact that he has contracted an occupational disease and, second, by the applicants as a result of the mishandling by the defendant institution of the claim for compensation under Article 73 of the Staff Regulations of Officials of the European Communities,

* Language of the case: English.

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

composed of: N.J. Forwood, President of Chamber, J. Pirrung and A.W.H. Meij, Judges,

Registrar: H. Jung,

having regard to the written procedure and following the hearing of 29 January 2003,

gives the following

Judgment

Legal background

1 The first subparagraph of Article 73(1) of the Staff Regulations of Officials of the European Communities (hereinafter 'Staff Regulations') provides that an official is insured, from the date of his entering the service, against the risk of occupational disease and of accident. Under Article 73(2)(b) and (c) of the Staff Regulations, the benefit payable in the event of total permanent invalidity consists of a lump sum equal to eight times the annual basic salary of the official concerned calculated on the basis of the monthly amounts of salary received during the 12 months before the accident and, in the event of partial permanent invalidity, of a proportion of that sum, calculated by reference to the scale laid down in the rules referred to in Article 73(1) of the Staff Regulations. The rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease (hereinafter 'the Rules') establish, pursuant to Article 73 of the Staff Regulations, the conditions under which an official is insured against such risks and the procedure to be applied to claims for compensation.

2 Under Article 17(1) of the Rules, an official who requests application of the Rules on grounds of an occupational disease must submit a statement to the administration of the institution to which he belongs within a reasonable period following the onset of the disease or the date on which it was diagnosed for the first time. The statement may be submitted by the official or, where the symptoms of the disease allegedly caused by his occupation become apparent after the termination of his service, the former official.

3 Article 17(2) of the Rules provides: '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.'

Background to the dispute

4 Mr Vainker, who was born in 1952, entered the service of the European Parliament in 1979. Since then he has held various legal posts within that institution. On 1 April 1991 he was appointed to the Legal Service and was there promoted to Grade A 3 in November 1992. Mrs Vainker is his wife.

5 In 1997 Mr Vainker suffered a nervous breakdown. In that year he took sick leave twice. The second period of sick leave began on 23 October 1997 and he has not resumed work since then.

6 By letter of 14 November 1997 Mr Vainker submitted a request for recognition of the occupational nature of his disease and for the calculation of due compensation under Article 17 of the Rules. In support of his request, he sent the Parliament's Medical Officer the report of his doctor, Dr Rehling, of 17 November 1997, which recommended Mr Vainker's retirement on medical grounds.

7 In a letter of 13 January 1998 Mr Vainker set out the link between his illness and the performance of his duties for the Parliament. That letter was supplemented by a second one of 4 February 1999.

8 In accordance with Article 17(2) of the Rules, the Parliament held 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 the circumstances in which it arose. It is clear from the court file that the only administrative document obtained in the course of that inquiry was a note from the Jurisconsult of Parliament, Mr Garzón Clariana, of 8 July 1998, in which he states inter alia that 'the conditions under which Mr Vainker's duties were performed were similar to those of the other heads of division in the Legal Service' ('the note of the Jurisconsult').

9 Mr Vainker, his doctor, Dr Rehling, and Mrs Vainker took action on several occasions to have the claim expedited.

10 Mr Vainker sent a second medical report to the Parliament, drawn up on 3 May 1998 by another specialist, Dr Thomas, confirming the conclusions already reached by Mr Vainker's usual doctor, Dr Rehling.

11 By letter of 17 July 1998, the Parliament informed Mr Vainker that the inquiry had been concluded and, in response to his request for a copy of the result of the inquiry, informed him that the report on the administrative inquiry was intended for the doctor appointed by the institution.

12 Between that date and 16 November 1998, Mr Vainker was examined by two doctors appointed by the Parliament, that is to say, first, on 21 August 1998, by Dr Boquel in Nancy (France), and then, on 20 and 29 October 1999, by Dr Van Acker in Brussels.

13 By letter of 5 November 1998, Mr Vainker informed the Parliament of irregularities in the two medical examinations by Dr Van Acker, notably the fact that Dr Van Acker did not have a copy of his medical file. Moreover, Dr Van Acker had arranged a third examination for 16 November 1998, whereas Mr Vainker took the view that Dr Van Acker had enough information to decide whether he was capable of working and asked the Parliament whether it was necessary for him to be examined again by that doctor.

14 By letter of 16 November 1998, the Parliament sent to Mr Vainker the draft decision provided for in Article 21 of the Rules. That draft decision stated that the disease from which he was suffering was of an occupational nature; that he was suffering from a hitherto unrecognised, but indisputable 'pre-existing condition'; that Mr Vainker's condition had not stabilised and that he should be re-examined in 12 to 18 months. Mr Vainker was given notice that he had 60 days in which either to accept the draft decision or to request the consultation of the Medical Committee under Article 23 of the Rules.

15 Following several requests by the applicants, copies of the report of Dr Boquel and of the note of the Jurisconsult were sent to Mr Vainker's doctor on 25 November 1998.

16 Having seen those two documents, Mr Vainker informed the Parliament, by letter of 1 December 1998, that he could not accept the draft decision. In that letter he expressed the view that the note of the Jurisconsult, the applicant's immediate superior, the contents of which he did not accept, did not represent an adequate administrative inquiry. He also stated that, to his knowledge, there was no report drawn up following the inquiry as laid down by Article 17 of the Rules. In his view, by conducting itself as it did, the Parliament had not properly discharged its obligation to hold an administrative inquiry under Article 17 of the Rules. He alleged, further, that the report by Dr Boquel — on the basis of which Dr Helmer, the doctor appointed for the purposes of the inquiry procedure, drew up the final expert's report — was vitiated by errors. Consequently, he asked the Parliament to annul the procedure and commence a new procedure.

17 That request was refused by letter of 19 April 1999, inter alia because the Rules make no provision for annulment and reopening of the inquiry procedure.

18 By letters of 4 February, 8 May and 20 June 1999, Mrs Vainker contacted the Parliament to defend the interests of her husband in the handling of his request for recognition of the occupational nature of his disease. In particular, she asked that the procedure be expedited as its completion was crucial for her husband's recovery. In that correspondence mention is made of further contact made by Mrs Vainker with the Parliament in writing and, on several occasions, by telephone.

19 In the meantime, by decision of 29 April 1999, the Parliament retired Mr Vainker and granted him a pension for permanent total invalidity pursuant to Article 78 of the Staff Regulations with effect from 1 May 1999.

20 By letter of 15 June 1999 the Parliament sent Mr Vainker a new draft decision, replacing that of 13 November 1998, which omitted the reference to a 'pre-existing condition' but confirmed that the disease had not stabilised. On 14 July 1999, Mr Vainker lodged a complaint under Article 90(2) of the Staff Regulations against that draft decision and the decision of the Parliament of 19 April 1999 refusing the annulment of the procedure. He annexed to the complaint sent to the Parliament a medical report certifying that his condition had stabilised within the meaning of the first paragraph of Article 20 of the Rules (report by Dr Bamber of 17 June 1999).

21 On 10 September 1999, the Parliament adopted a final decision confirming the draft decision mentioned in the previous paragraph. On 17 October 1999, Mr Vainker lodged a further complaint under Article 90(2) of the Staff Regulations against that decision.

22 By letter of 12 November 1999, the Parliament upheld Mr Vainker's complaints and decided to annul the decisions taken previously pursuant to Article 19 of the Rules (the draft decisions and the final decision of 10 September 1999 recognising that he was suffering from an occupational disease), to recommence the administrative and medical inquiry in order to determine whether Mr Vainker's illness resulted from his occupation and to withdraw Dr Boquel's and Dr Helmer's reports from the file.

23 In the course of this new procedure for recognition that Mr Vainker was suffering from an occupational disease, following a request from his lawyer, on 15 March 2000 the Parliament sent Dr Rehling (Mr Vainker's doctor) the file which had been sent to Dr Lipsedge, the doctor appointed for the purposes of the new inquiry procedure to examine Mr Vainker. He was examined by Dr Lipsedge on 31 May 2000.

24 In the meantime, by letter of 17 March 2000, Mr Vainker submitted a request pursuant to Article 90(1) of the Staff Regulations asking the Parliament, first, to compensate him for the material and non-material damage resulting from its breach of its obligation to provide a safe place of work and its obligation to make arrangements to protect his health, breaches which, he alleges, caused his illness and, second, to compensate Mr Vainker, his wife and their children for the non-material damage suffered as a result of the mismanagement of the procedure for recognition that Mr Vainker was suffering from an occupational disease.

25 As the Parliament did not reply to that request within the period prescribed, on 22 July 2000 Mr Vainker submitted a complaint pursuant to Article 90(2) of the Staff Regulations against the implied refusal of his request.

26 By letter of 28 August 2000, the Parliament notified Mr Vainker of its express refusal of his request of 17 March 2000.

27 The Parliament did not respond to the complaint of 22 July 2000 within the prescribed period.

28 On 23 November 2000, the Parliament sent Mr Vainker another draft decision recognising the occupational nature of his disease within the meaning of Article 19 of the Rules. In that draft decision it was acknowledged that the illness from which Mr Vainker was suffering was a result of the performance of his duties at the Parliament but that it had not stabilised in so far as his condition may be reversible.

29 At the request of Mr Vainker, the report of Dr Lipsedge of 25 September 2000 on the basis of which the draft decision was drawn up was sent to his doctor. That report reproduced certain passages from a report by Dr Van Acker, one of the doctors appointed by the Parliament to examine Mr Vainker.

30 Having received that draft decision and the final report of Dr Lipsedge, Mr Vainker, first, on 7 December 2000, refused to accept the draft and requested that the Medical Committee, provided for by Article 21 of the Rules in the case of disagreement, be convened.

31 Second, by letter of 12 December 2000, he asked the President of the Parliament to apologise for remarks made about Mrs Vainker and also pointed out that the report by Dr Van Acker was not included in the list of documents in the file sent to Dr Lipsedge, of which he was notified by letter of 15 March 2000 from the Parliament.

32 By letter of 6 February 2001, the Parliament informed Mr Vainker that the report by Dr Van Acker was included in his medical file which was sent to Dr Lipsedge following a request by Dr Lipsedge to which Mr Vainker's written authorisation was attached.

33 Subsequently, the Medical Committee, which was convened solely to decide the question of the stabilisation of the illness from which Mr Vainker was suffering and the resultant rate of permanent invalidity, concluded unanimously, in its report of 6 August 2001, that the illness had stabilised about a year previously and that the rate of invalidity imputed solely to the illness Mr Vainker suffered during and in connection with the performance of his duties at the Parliament was 75%.

Procedure and forms of order sought

34 By application lodged at the Registry of the Court of First Instance on 28 February 2001, Mr and Mrs Vainker brought this action.

35 By separate document lodged at the Registry of the Court of First Instance on 25 April 2001, the Parliament raised an objection of inadmissibility against the action.

36 Following changes in the membership of the Chambers of the Court of First Instance from 20 September 2001, the Judge-Rapporteur was moved to the Second Chamber and the present case was, therefore, assigned to that Chamber.

37 By order of 19 October 2001, the Court of First Instance (Second Chamber) reserved its decision on the objection of inadmissibility for the final judgment.

38 On 27 November 2001, the Parliament adopted a decision pursuant to Article 73 of the Staff Regulations fixing the rate of partial invalidity at 75% and granting Mr Vainker lump-sum compensation of EUR 617 617.94.

39 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber) decided to open the oral procedure and adopted measures of organisation of procedure by asking the parties to reply to certain written questions and to produce certain documents. The parties complied with those requests.

40 By order of 7 January 2003, the Court of First Instance, pursuant to Article 68 of its Rules of Procedure, ordered the summoning of 12 witnesses and an advance of the funds necessary in connection with the examination of those witnesses by the cashier of the Court of First Instance. On application by the applicants the Court of First Instance (Second Chamber) decided that the witnesses would be heard in camera. The 12 witnesses summoned were: Mrs Delia Borelli, assistant to the Jurisconsult in the secretariat of the Legal Service of the Parliament in Brussels from 1 January 1986 to 1 March 1999, Mr Garzón Clariana, Jurisconsult of the Parliament, Mr Anders Neergaard, administrator in the Legal Service of the Parliament since 1 November 1996, Mr Poul Runge Nielsen, administrator in the Legal Service of the Parliament from 16 July 1997 to 1 May 2000, Mr Christian Pennera, Head of Division in the Legal Service of the Parliament from 1 June 1991, Mr Ezio Perillo, Head of Division in the Legal Service of the Parliament from 1 April 1993 to 30 April 1999, Mr Manfred Peter, Head of Division in the Legal Service of the Parliament from 1 January 1986 to 1 May 1999, Mr Didier Petersheim, administrator in the Legal Service of the Parliament from 1 January 1986 to 1 November 1997, Mr Johann Schoo, Head of Division in the Legal Service of the Parliament from 1 January 1992 to 30 June 1999, Mrs Chris Strelkova, secretary to Mr Vainker between March 1996 and December 1997, Mrs Els Vandenbosch, administrator in the Legal Service of the Parliament between 1992 and 1999, and Mr Enrico Vinci, former Secretary-General of the Parliament.

41 The witnesses were heard at the hearing of 28 January 2003.

42 The parties presented oral argument and answered questions put to them by the Court of First Instance at the public hearing on 29 January 2003.

43 The applicant Mr Vainker, claims, at the stage of the reply, that the Court should:

- order the defendant to compensate him for the material and non-material damage resulting from the fact that he is suffering from an occupational disease caused by the alleged conduct of the defendant. Accordingly, Mr Vainker claims payment of:
  - EUR 628 329.10 for loss of earnings;
  - EUR 200 000 for loss of career, or, such sum as the Court may fix ex aequo et bono;
  - an annuity from the age of 62 to compensate him for loss of pension rights, or, such capital sum as the Court may fix ex aequo et bono;
- order the defendant to pay EUR 100 000 for the material and non-material damage caused to Mr Vainker as a result of the errors allegedly made by the defendant during the course of the procedure for recognition that he is suffering from an occupational disease and for compensation in respect thereof,
- order the defendant to pay GBP 8 244.94 to reimburse legal costs paid whilst Mr Vainker was seeking the compensation provided for by Article 73 of the Staff Regulations and by the Rules,
- and to pay default interest at a rate of 8% on the amount eventually awarded under the said Rules and any other award of interest payment which the Court thinks just and appropriate.

44 The applicant, Mrs Vainker, claims that the Court should:

- order the defendant to pay her EUR 50 000 in damages for the material and non-material damage caused her by the defendant's conduct during the procedure brought by Mr Vainker for recognition that he is suffering from an occupational disease and for compensation in respect thereof,

- and to pay her GBP 1 145 compensation to reimburse medical expenses which are not reimbursed under other provisions of the Staff Regulations.

45 The applicants claim that the Court should

- order the defendant to pay all the costs.

46 The defendant contends that the Court should:

- declare the application to be inadmissible and in any event manifestly unfounded;

- award costs in accordance with Article 88 of the Rules of Procedure.

Admissibility

47 The Parliament calls on the Court to conclude that the actions for damages brought by Mr Vainker are manifestly premature and, as such, inadmissible.

48 The Parliament submits that, since, at the time when the action was brought, the procedure for recognition that Mr Vainker was suffering from an occupational disease and for determination of the lump-sum compensation was not completed, the need for additional compensation was a purely hypothetical matter and there was, accordingly, no real dispute between the parties for the Court to resolve.

49 At the hearing, in reply to a question by the Court, the Parliament stated that it was discontinuing its objection of inadmissibility.

50 It must be observed that the pre-litigation procedure was conducted properly in the present dispute, both as regards the case stated and its objective. Although the decision of the Parliament of 27 November 2001, referred to in paragraph 38 above, granting lump-sum compensation to Mr Vainker under Article 73 of the Staff Regulations, was made during the course of proceedings, it altered neither the reasons why the applicant considered the Parliament had caused him damage nor its nature. Its sole effect was to reduce the amount of the compensation which the applicant considers he can claim. The applicant took account of that new element by reducing the amount claimed. In the circumstances, this action cannot be considered premature or inadmissible on that basis.

Substance

A – *Preliminary observations*

51 The application concerns, first, reparation for the material and non-material damage suffered by Mr Vainker as a result of the occupational disease he contracted whilst an official of the Parliament. Given that lump-sum compensation of EUR 617 617.94 has in the meantime been granted to him under the applicable procedure under the Staff Regulations, Mr Vainker, in his reply, reduced the amounts claimed under that head to the three elements listed in paragraph 43 under Mr Vainker's first head of claim. Next, the second, third and fourth heads of claim concern reparation for the material and non-material damage suffered by Mr Vainker as a result of the manner in which the Parliament conducted the administrative procedure for recognition that he was suffering from an occupational disease and for setting the amount of the lump-sum compensation ('the procedure'). Then, in its fifth and sixth heads of claim, the application seeks compensation for the material and non-material damage suffered by Mrs Vainker during the procedure.

52 According to settled case-law, the Community will incur legal liability only if a set of conditions, regarding the illegality of the allegedly wrongful act committed by the institution concerned, the suffering of actual harm and the existence of a causal link between the act and the alleged damage, are satisfied (Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraph 42, and Case T-165/95 *Lucaccioni* v *Commission* [1998] ECR-SC I-A-203 and II-627, paragraph 56).

53 It must be considered, first, whether the first of those conditions which are required for the liability of the Community to be incurred is met by the claim for compensation made in the first head of claim of the applicants (see below, under B). Next, the second group of claims falls to be considered, set out in the second and third heads of claim (see below, under C), and in the fourth head of claim (see below, under D). Finally, the claims for compensation made by Mrs Vainker, in the fifth and sixth heads of claim, must be addressed separately (see below, under E).

B – *The request for reparation of the damage suffered by Mr Vainker by reason of the fact that he is suffering from an occupational disease caused by the alleged conduct of the Parliament*

1. *The unlawful conduct of the Parliament*

a) Arguments of the parties

54 Mr Vainker submits that the occupational disease from which he suffers is the result of the Parliament's failure to provide a safe place of work and to put in place or apply any procedures that might have identified and prevented his illness. He points out that the Community institutions are obliged to respect all the rules in force in relation to the health and safety of workers at work, inter alia, those deriving from Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1). At the hearing, while he acknowledged that Directive 89/391/EEC was addressed to the Member States, Mr Vainker pointed out that the directive was also applicable to the European institutions under its Article 2(1).

55 Mr Vainker points out that the working conditions to which he was exposed and the errors he attributes to the Parliament are set out in detail in Dr Lipsedge's report, in his letters to the Parliament of 13 January 1998 and 4 February 1999 and in the statements of his former colleagues annexed to the administrative report drawn up after the second administrative inquiry.

56 He considers that his workload in the Legal Service of the Parliament was clearly heavier than that borne by a number of his colleagues and that he had to deal with some very sensitive files, which placed him under constant strain, in particular a staff case, the 'de Compte' case, which was in principle outside his remit, and a property matter, on which the ad hoc support of colleagues made available to him by Parliament was insufficient. He adds that he did not have the support of his superiors, notably the Jurisconsult of Parliament, over the difficulties he encountered in performing his duties. Rather, he alleges that the Jurisconsult showed a total lack of understanding and interest regarding the climate of tension in which he worked, for example, by handing opinions drafted by Mr Vainker to his colleagues to be checked, without mentioning this to him. He was also required to travel every week between Brussels and Luxembourg to attend departmental meetings held on a Friday or a Monday morning, regardless of the fact that he travelled to the United Kingdom from Brussels every weekend to be with his family. In conclusion he states that the Jurisconsult's conduct during this time was felt by him to amount to harassment and bullying.

57 In this connection, Mr Vainker gives many examples typical of the difficulties he encountered in carrying out his duties.

58 Further, he states that he went to see the Parliament's Medical Officer in October 1996 because he feared that he was going to have a breakdown. At the hearing, Mr Vainker added that he asked the Medical Officer to take the measures necessary to improve his poor state of health. He takes the view that the Parliament, having been put on notice of his state of health at the time of that medical appointment, should have transferred him out of the Legal Service either between November 1996 and May 1997 or when the applicant returned from sick leave on 15 September 1997.

59 Mr Vainker also states that, in November 1996, he approached the Director-General for Personnel, the Budget and Financial Control, with a request to the then Secretary-General for a transfer out of the Legal Service, and that, following that approach, the Secretary-General informed him that he was trying to obtain the Jurisconsult's consent for his secondment to his (the Secretary-General's) office. Just before the Christmas holiday that year, the Jurisconsult summoned him to a meeting at which he told him that he had not acceded to the request that he be seconded to the office of the Secretary-General on the basis that he was needed by the Legal Service. Mr Vainker informed the Jurisconsult on that occasion that he was over-burdened, that the workload in other sectors of the Legal Service was far less onerous than his own and that he was exhausted and much in need of a holiday.

60 Further, Mr Vainker maintains that, during his first spell of sick leave between 26 May 1997 and 14 September 1997, the Director-General for Personnel, the Budget and Financial Control, told Mr Vainker by telephone that in light of his situation a transfer was called for.

61 He complains that, despite all his entreaties, the Parliament had no internal procedures in place to ensure compliance with its general obligations and to assist him, in particular when he went back to work after his first spell of sick leave. He submits that any official who is carrying out all the duties expected of him is entitled to the support and help of his superiors, the Medical Service and the Staff Committee, whatever his grade.

62 Mr Vainker seeks compensation from the Parliament for several counts of damage alleged to have been caused by its 'failure to provide [Mr Vainker] with a safe place of work and to put in place, or apply, any procedures that might have identified and ... prevented his invalidity'. First, he seeks compensation for financial loss equivalent to the loss of salary as a result of his early retirement reduced by the amount paid to him by way of lump-sum compensation, in other words EUR 617 617.94. He considers that his loss of salary is equivalent to the difference between his invalidity pension and the basic salary he would have received as an official between the date his early retirement began and the date of his 62nd birthday, increased by a percentage taking account of future increases in salary for officials and reduced by an actuarial factor to be determined. He also seeks the payment of an annuity from the age of 62 to compensate him for loss of pension rights, or, such capital sum as the Court may fix ex aequo et bono. Second, Mr Vainker seeks compensation for the non-material damage he

allegedly suffered by reason of the loss of his career. On that basis he claims compensation of EUR 200 000 for loss of career, or, in the alternative, such sum as the Court may fix ex aequo et bono.

63 The Parliament denies any liability for Mr Vainker's illness. It contends that there is no evidence that the defendant failed to exercise the diligence required of it qua employer in this respect (Joined Cases 169/83 and 136/84 *Leussink-Brummelhuis* v *Commission* [1986] ECR 2801, paragraph 15).

64 First, the report of the Medical Committee of 6 August 2001 did not, contrary to Mr Vainker's allegations, establish that the defendant failed to exercise the diligence required of it qua employer. Moreover, that committee had no power to do so. Indeed, Articles 19 et seq. of the Rules allow the Medical Committee only to give an opinion, upon the express request of the official, on the occupational nature of the disease and the resulting rate of invalidity and not on any additional liability of the institution.

65 Next, as regards the force of the statements in the report by Dr Lipsedge of 25 September 2000, the Parliament contends that Dr Lipsedge merely expresses his personal view on the basis of the statements by Mr Vainker and a number of interviews with his colleagues. Dr Lipsedge, as an expert on medical matters, had no authority to establish any negligence, as a matter of law, on the part of the Parliament. In any event, when reading this report, attention should be paid to Annex 3, according to which Mrs Strelkova, one of Mr Vainker's colleagues, stated that he was advised by his doctor to come back on half time, but that he did not follow that advice and resumed his duties on a full time basis.

66 The Parliament contends, moreover, that Mr Vainker was by no means subject to more particular stress than his colleagues, as is apparent inter alia from a statement by his superior, the Jurisconsult, according to which: 'The conditions under which Mr Vainker's duties were performed were similar to those of other heads of division in the Legal Service.'

67 What is more, by note dated 22 October 1997, the Jurisconsult had advised the applicant's colleagues in the Legal Service that his responsibilities would be strictly limited to three files (financing of buildings in Brussels, status of assistants of MEPs and questions relating to the pension fund for MEPs), it being

expressly stated that the applicant should not be consulted on any other files, including the Court cases in which he had acted as agent of the Parliament.

68 Accordingly, there is no evidence that the defendant failed to exercise the diligence required of it qua employer vis-à-vis Mr Vainker.

b) Findings of the Court

69 It must first be considered whether the Parliament acted unlawfully as alleged by Mr Vainker during the period between the onset of his illness, at the end of 1996, and his second spell of sick leave, in October 1997.

Mr Vainker's workload

70 As regards Mr Vainker's workload, there is no evidence that there was a substantial difference between his workload and that of his fellow heads of division in the Legal Service.

71 According to Mr Vainker's staff report for the period from 1995 to 1997 his duties in the Legal Service of the Parliament covered the following: 'Coordination of the "contracts" sector. Follow-up to the "Espace Léopold" buildings project. Acting for the European Parliament before the Court of Justice, the Court of First Instance and the national courts, in cases involving contracts and staff cases. Debt recovery. Negotiation and assistance in debt cases involving the Parliament or its Members, political groups and officials of the institution'.

72 It is also apparent from the court file, in particular from the statements by Mr Vainker's colleagues annexed to the inquiry report of 7 February 2000 and the statements of several witnesses, that the task of coordinating in the contract sector involved the management of files which were weighty and difficult to manage, both in terms of their legal complexity and their economic importance, especially the Espace Léopold buildings file. It therefore cannot be ruled out that the nature of the files which Mr Vainker had to deal with at the material time made his work in that Service particularly stressful. On the other hand, nothing in the file or in the witness statements suggests that the workload allocated to Mr Vainker was greater than that borne by his colleagues in the Legal Service of the Parliament.

73 It hardly need be pointed out that, given the essentially subjective nature of an official's ability to manage his professional commitments, the fact that the working conditions of an official, such as the number and complexity of the files to be managed, are more burdensome that those of his colleagues with the same level of seniority, cannot, in itself, constitute unlawful conduct on the part of the institution.

74 As regards the alleged lack of assistance from colleagues, according to the witness statements, Mr Vainker had the support of Mrs E. Vandenbosch on the Espace Léopold buildings file in Brussels, that of Mr D. Petersheim on the buildings file in Strasbourg and that of Mr A. Neergard on the Parliament's dispute before the Luxembourg Courts. According to the witness statements, each head of division generally shared the assistance of two Grade A officials with another head of division. In this case, Mr Vainker shared his staff, Mrs E. Vandenbosch and Mr D. Petersheim, with Mr E. Perillo, head of division in the Legal Service, at the material time. It cannot be ruled out that, because of its complexity and the amount of money at stake, the Brussels buildings file might have needed the assistance of other lawyers in the Legal Service. However, it does not appear from the file or the witness statements that Mr Vainker made any request to that effect to his superiors at the material time.

75 As regards the 'de Compte' case, it must be observed that, according to Mr Vainker's staff report for 1995 to 1997, his duties in the Legal Service comprised, inter alia, 'acting for the European Parliament before the Court of Justice, the Court of First Instance and the national courts, in cases involving contracts and staff cases'. As, in 1996 and 1997, the 'de Compte' case involved an appeal brought before the Court of Justice against a judgment of the Court of First Instance in a staff case, it cannot be considered that that case was not within his duties in the Legal Service. Moreover, Mr Vainker himself mentioned that he was in charge of that file in 1982, in other words even before he took up his duties in the Legal Service of the Parliament, yet he has never taken steps at any stage in his career at the Parliament to have the file taken away from him.

Practices in the Legal Service

76 As regards the fact that the Jurisconsult handed Mr Vainker's completed opinions to colleagues to be checked, and even changed, in a statement attached to the inquiry report of 7 February 2000, one of Mr Vainker's colleagues, a head of division in the Legal Service of the Parliament at the material time, acknowledged

that he had, at the request of the Jurisconsult, examined the files entrusted to Mr Vainker and discussed them with the Jurisconsult. Furthermore, according to the statements made by certain witnesses, the checking of the opinions of one head of division by another head of division at the request of the Jurisconsult, without informing the head of division concerned, was not a common practice in the Legal Service, and Mr Vainker was the only head of division subject to such treatment.

77 Although such a practice certainly does not seem likely to foster a relationship of trust between the head of division concerned and his immediate superior, it cannot be considered that that conduct is, in itself, such as to give rise to the liability of the Community for the occupational disease from which Mr Vainker suffers.

78 Finally, more specifically, the Jurisconsult's conduct towards Mr Vainker cannot be considered to have amounted to harassment and bullying. It is true that, according to the statements made by certain witnesses, there was some tension in the professional relationship between the two people. On that point, the Jurisconsult himself admitted, in the statement he made as a witness, that he had made clear to Mr Vainker the professional disadvantages he felt were entailed in his family's move to the United Kingdom, a matter on the subject of which Mr Vainker was very sensitive, as the Jurisconsult acknowledged at the hearing. Moreover, it cannot be ruled out that, at least at times, the Jurisconsult's conduct towards Mr Vainker fell short of the respect due to a subordinate, as observed in paragraphs 76 and 77 above.

79 However, there is no evidence that the conduct of the Jurisconsult exceeded the proper limits of a relationship between superior and subordinate to such an extent that it constituted an unlawful act on the part of the administration, particularly as the facts alleged against him relate to a period prior to Mr Vainker's first spell of sick leave when only a limited group of people were aware of his state of health.

80 As regards the submission concerning the departmental meetings, the Parliament cannot be criticised for organising departmental meetings in Luxembourg given that, apart from Mr Vainker, all the Grade A 3 administrators attending were posted to the Legal Service there. Moreover, as regards the fact that those meetings were held on a Monday or a Friday, whilst it emerged from the witness statements that a considerable number of them were held on those days of the

week, Mr Vainker has not made clear whether he informed his superiors of the inconvenience arising as a result for him or whether he made any attempt, in consultation with the Jurisconsult, to balance his professional obligations and his family responsibilities. Furthermore, it must be observed that it is not apparent from the witness statements that those meetings were held every week as Mr Vainker alleged.

The possibility of a transfer for Mr Vainker

81 Mr Vainker also takes the view that the Parliament should have arranged his transfer to another department, either between November 1996 and May 1997, or from 15 September 1997, the date on which he returned from his first spell of sick leave.

82 First, the extent to which the Parliament was aware or should have been aware of the adverse effect on Mr Vainker's health of his assignment to the Legal Service must be considered in respect of the first period mentioned in the previous paragraph.

83 As regards the action the institution's doctor was asked to take in October 1996, it must first be observed that, in the light of Article 25 of the Staff Regulations, that doctor cannot be considered to be the competent authority within the institution to receive a request from an official or to take measures, other than those of a medical nature, to remedy the harmful effect on his health, alleged by him to result from his working conditions, especially where such measures concern the transfer of an official within the institution.

84 In any event, Mr Vainker did not make clear what measures he asked the institution's doctor to take and in particular whether those measures involved his transfer to another department.

85 It follows that Mr Vainker has not established that he put the institution in a position to take a decision on any request.

86 As regards the alleged request for a transfer to the general secretariat of the Parliament, made to the Director-General for Personnel, the Budget and Financial Control, in November 1996, it is settled case-law that the institutions enjoy a broad discretion to organise their departments to suit the tasks entrusted to them and to assign staff available to them in the light of such tasks, on condition, however, that the staff are assigned in the interests of the service and in conformity with the principle that assignment must be to an equivalent post (see, by analogy, Joined Cases T-78/96 and T-170/96 *W.* v *Commission* [1998] ECR-SC I-A-239 and II-745, paragraph 87).

87 Moreover, any problems which might be caused to an official's department by his departure and the benefit to his new department which might be obtained from his reassignment are considerations which are governed by the discretionary power which the institutions enjoy in organising their departments. Accordingly, the review undertaken by this Court must be confined to the question whether the appointing authority remained within the bounds of that discretion and did not use it in a manifestly wrong way (*W.* v *Commission*, cited above, paragraph 92, and the case-law cited).

88 According to Mr Vainker, his transfer to the general secretariat was refused by his immediate superior, in other words, the Jurisconsult. He submits that the Jurisconsult justified that refusal by claiming that he was indispensable to the Legal Service.

89 It is common ground that Mr Vainker did not think he would be formally transferred to a vacant post in the general secretariat but wished none the less to be moved to that department. Moreover, he states himself that he was well aware of how difficult it was for administrators in Grade A 3 to be transferred within his institution.

90 Moreover, Mr Vainker points out that the transfer he wanted consisted in his being 'loaned' to the cabinet of the then Secretary-General. He states that, in that connection, the Secretary-General explained that, as he was nearing retirement, he was unfortunately not in a position formally to help him in this way, but that he was trying to make an arrangement with the Jurisconsult. Moreover, in his witness statement, the former Secretary-General of the Parliament confirmed that the transfer of Mr Vainker to the general secretariat would have entailed the cancellation of his post in the Legal Service and the creation of a new post in the

general secretariat. Finally, it must be noted that Mr Vainker does not dispute that the Jurisconsult refused his transfer to the general secretariat in the interest of the service.

91 On that point, even if the Jurisconsult had been contacted by the relevant department or the Secretary-General of the Parliament to authorise Mr Vainker's transfer to the general secretariat, he cannot be criticised for having refused such a transfer in the interests of the service, given that such a transfer would have entailed the cancellation of a post in the service for which he was responsible.

92 However, it would be a different matter if it should prove that the administration was aware, in good time, of the seriousness of Mr Vainker's illness, of the fact that it was occupational in origin and of the risk, from the point of view of the aggravation of Mr Vainker's state of health, entailed in his assignment to the Legal Service.

93 In the event, Mr Vainker did not adduce any clear evidence to show that he sent to the Director-General for Personnel, the Budget and Financial Control a clear request for a transfer based on medical grounds. In that connection, it must be observed that the file contains no such request nor any other request for transfer which may have been submitted to the administration. Moreover, Mr Vainker does not allege in his submissions that he cited medical reasons as the grounds for his request for a transfer. Apart from the medical certificates presented by Mr Vainker at the time of his sick leave, the file contains no other medical certificates specifically recommending that the administration take administrative measures with a view to improving his state of health, such as his transfer to another department of the Parliament. In that connection, the only document from the administration contained in the file concerning Mr Vainker's request for a transfer is the letter from the Director-General for Personnel of 19 April 1999, a date subsequent to the period at issue. In that letter, the Director-General for Personnel stated, first, that his Directorate-General was aware of the difficulties Mr Vainker was experiencing in performing his duties and which led him to request, several times, to be transferred to another post and, second, that the administration's refusal of those requests was always based on the requirements of the service.

94 Furthermore, according to the file and the witness statements, no one, apart from those working most closely with Mr Vainker in the Legal Service in Brussels, was aware of the seriousness of his state of health until the time of his first spell of sick leave on 26 May 1997.

95 Moreover, according to the statement by the former Secretary-General of the Parliament, he was not aware of the reasons which led Mr Vainker to request a transfer to the general secretariat.

96 Against that background, the Parliament cannot be criticised for not transferring Mr Vainker before his first spell of sick leave.

97 As regards the initial period after Mr Vainker's return to the Legal Service on 15 September 1997, it must be observed that Mr Vainker has not established that he informed the administration that there were medical grounds for his request for a transfer. Thus, the medical certificate of Dr Rehling of 3 September 1997 certifies that Mr Vainker was able to resume work on 15 September 1997, but it does not state that it was necessary to transfer Mr Vainker to another department for medical reasons.

98 Moreover, the Jurisconsult, by note of 22 October 1997, limited the number of files allocated to Mr Vainker to three. That note is worded as follows:

'In response to the concern expressed by Mr PETER and in an endeavour to ensure clarity, I confirm that Mr VAINKER is from now on to concentrate on the three files I have allocated to him (financing of buildings in Brussels, status of assistants of MEPs and questions relating to the pension fund for MEPs).

Consequently, he is not to be consulted on other files, including those relating to the litigation in which he has acted as [the] Parliament's agent and for which new agents must therefore be appointed immediately.

These provisions do not, of course, prevent consultation between colleagues where this is genuinely necessary.

The above instructions are to be applied strictly, as they are issued not only in the interests of the service but also, it should be noted, for the benefit of the person concerned.'

99 At the hearing, the Parliament contended that the note of the Jurisconsult of 22 October 1997 merely confirmed the measures adopted by the Jurisconsult and implemented prior to 22 October 1997.

100 In that connection, even if the measures set out in the note of the Jurisconsult were only applied from 22 October 1997, it should be borne in mind that, on that date, Mr Vainker had resumed his duties following his first spell of sick leave a little over a month previously. That amount of time cannot be considered excessive for the adoption by the institution of measures intended to enable Mr Vainker to deal with the difficulties he experienced, given that he has not established that he had explained clearly to the administration the impact of his working environment on his state of health.

101 Against that background the Parliament cannot be criticised for not transferring Mr Vainker to another department from 15 September 1997.

Conclusion

102 In the light of all the foregoing, and regrettable as it is that Mr Vainker, a model official in the Legal Service of the Parliament, should have contracted an occupational disease, it must be held that Mr Vainker has not established that the Parliament has committed an unlawful act in connection with the onset of that disease such as to give rise to the liability of the Community.

C – *The claim for compensation for the material and non-material damage suffered by Mr Vainker as a result of the irregularities allegedly attributable to the Parliament in the procedure for recognition of the occupational origin of his disease*

1. *The unlawful conduct of the Parliament*

a) Arguments of the parties

103 Mr Vainker complains that the Parliament made errors during the procedure which constitute breaches of the duty to have regard to the welfare of officials (Joined Cases T-112/96 and T-115/96 *Séché* v *Commission* [1999] ECR-SC I-A-115 and II-623, paragraph 147) and of the principle that administrative procedures affecting the interests of officials should be completed within a reasonable time (Case T-226/89 *de Compte* v *Parliament* [1991] ECR II-781, paragraph 88). Moreover, the combination of errors made by the Parliament amounts to a breach of the general principle of sound administration. The conduct of the Parliament suggests that it sought chiefly to protect its own interests and those of the Jurisconsult at the expense of the health and well-being of Mr Vainker. That unsatisfactory conduct on the part of the Parliament is all the more serious given that it was put on notice on numerous occasions of the fact that Mr Vainker's state of health meant that he could not cope with the prolongation of the procedure.

104 He points out that the procedure was still unfinished at the time the present action was brought. That was a result of the Parliament's dilatory behaviour, its inability to apply correctly the procedure under the Rules and its supplying misleading and erroneous information. In that connection, Mr Vainker presented his version of the facts which can be summarised as follows.

105 Between receipt of Mr Vainker's letter of 13 January 1998, setting out the link between his illness and the exercise of his duties at the Parliament, and the Parliament's note of 18 May 1998 to the Jurisconsult in which the latter is asked to describe the duties of the applicant in the Legal Service and the conditions under which those duties were performed, the Parliament did nothing about drawing up its report on the administrative inquiry. The Parliament began to do something only once the applicant had submitted a second medical report by Dr Thomas.

106 Moreover, the note of 8 July 1998 of the Jurisconsult was totally inadequate as it made no attempt to reply to Mr Vainker's letter of 13 January 1998 and made no objective appraisal of his working conditions. Furthermore, Mr Vainker was refused a copy of this report, without justification, before going to Nancy to see Dr Boquel.

107 In addition, the total inadequacy of the report following the inquiry meant that neither Dr Helmer nor Dr Boquel was given a true picture of Mr Vainker's working conditions by the Parliament. That influenced Dr Boquel's report, which was unacceptable.

108 What is more, Mr Vainker claims that he would not have made the journey to Nancy in August 1998 to be examined by Dr Boquel if he had seen that report beforehand. He criticises the Parliament for the fact that he was only given a copy of that report via his doctor, which he received on 25 November 1998, after Mrs Vainker had threatened to seek independent legal advice.

109 Mr Vainker also alleges that he was obliged to request the reopening of the procedure by letter of 1 December 1998. That request was initially refused by the Secretary-General's office on the basis that the draft decision of 13 November 1998 was not an act adversely affecting him, which he disputed. Subsequently Mrs Vainker told her husband that she had been informed in a telephone call from the Secretary-General's office that the procedure would be restarted. However, this was then contradicted by the letter from Mr Cointat, Director-General for Personnel, of 25 March 1999 which stated that the Parliament was legally unable to restart the procedure, a statement which the applicants consider to be erroneous.

110 Further, he alleges that the Parliament gave him false information in the letter of 19 April 1999, from the Director-General for Personnel, in which it was stated that 'there is no such concept as a partial occupational disease', whereas the Court of First Instance has recognised this concept in its judgment in Case T-4/96 *S.* v *Court of Justice* [1997] ECR-SC I-A-179 and II-533, ECR II-1125. Mr Cointat encouraged Mr Vainker to accept the draft decision which alleged a 'pre-existing condition'. However, such a condition, if found, would serve to reduce any capital sum payable under the Rules. In light of this, Mrs Vainker, who was by then looking after her husband's interests due to his incapacity, felt obliged to seek independent legal advice.

111 Moreover, after two complaints were lodged under Article 90(2) of the Staff Regulations the appointing authority finally acceded to Mr Vainker's request and ordered the recommencement of the procedure by letter of 12 November 1999. Thus, after two years the procedure had not advanced in any significant way and was effectively back to square one.

112 The Parliament is alleged to have then drawn up a second defective report following an administrative inquiry.

113 What is more, the Parliament did not advise Dr Lipsedge that he had to take account of Dr Bamber's medical report and determine the rate of partial permanent invalidity.

114 Finally, Dr Lipsedge was not expressly asked whether Mr Vainker's disease had stabilised, with the result that the Parliament erroneously interpreted the words 'potentially reversible' in his report to justify the finding in the draft decision that Mr Vainker's disease had not yet stabilised.

115 The Parliament takes the view that it committed no errors during the procedure.

116 In response to Mr Vainker's allegation that the duration of the procedure was excessive, the Parliament contends that the duration of the procedure is a direct result of the fact that Mr Vainker's medical condition had not yet stabilised. The rate of invalidity and the amount of lump-sum compensation as required by Articles 73(2)(b) or (c) of the Staff Regulations could not be determined as long as the consolidation of the applicant's illness was not established.

117 The Parliament contends that the diagnosis of the applicant's medical condition, a psychiatric illness occasioned by stress, is by its very nature a particularly complex matter. The fact that there have been legitimate differences of expert medical opinion because of the complexity of this field of medical science could not give rise to the non-contractual liability of the Parliament because of the time it had taken to sort out these differences (judgment in *Lucaccioni* v *Commission*, cited above, paragraphs 153 and 154).

118 On the question of the stabilisation of Mr Vainker's condition, the Parliament points out that it based its position, as it was required to, on an independent expert medical report, which is clear inter alia from the letter of 5 October 2000 from Dr Lipsedge in reply to a request from the Parliament. It also states that the Medical Committee, provided for by Article 21 of the Rules, concluded unanimously, in its report of 6 August 2001, that the applicant's state of health had stabilised and that the rate of his permanent invalidity amounted to 75% and that 'this stabilisation occurred approximately one year ago', that is to say, in August 2000 and almost one year later than the date set by Dr Bamber, in his report of 17 June 1999, according to which Mr Vainker's condition had stabilised at the time that report was drawn up, in other words, in 1999.

119 In the circumstances, the consolidation of Mr Vainker's medical condition was only firmly established on 6 August 2001, so that only as from that time could the amount of lump-sum compensation be calculated as required by Articles 73(2)(b) or (c) of the Staff Regulations.

120 Immediately following the receipt of the Medical Committee's findings on 21 August 2001, the Parliament wrote to the insurer, Axa-Royale Belge SA, to request payment of the sum of EUR 669 624.57 to Mr Vainker as soon as possible.

121 On 27 November 2001 the Parliament took a decision based on the Medical Committee's report, on the amount of the compensation payment. The compensation was set at EUR 617 617.94.

122 The Parliament contends that it is clear from the report by Dr Lipsedge of 25 September 2000 that, contrary to Mr Vainker's allegations, Dr Lipsedge was aware of Dr Bamber's report establishing the date of stabilisation of Mr Vainker's illness.

b) Findings of the Court

123 Mr Vainker relies on a single plea, alleging breach of the duty to have regard for the welfare of officials, of the principle that administrative procedures affecting the interests of officials should be completed within a reasonable time and of the principle of sound administration. The plea is in two parts, one relating to irregularities in the procedure and the other to the excessive length of that procedure.

The first part of the plea, alleging irregularities in the procedure

– Preliminary observations

124 The irregularities in the procedure consist, according to Mr Vainker, in the inadequacy of the first report on the inquiry, the failure to forward that report to Mr Vainker before his visit to Dr Bocquel, the giving of false information by the Parliament, the unsuitability of the second inquiry report and the failure to ask Dr Lipsedge to take account of the report by Dr Bamber and to take a position on the stabilisation of Mr Vainker's condition.

125 Before those five submissions are considered in turn, it must be observed that, according to settled case-law, 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 public servants. That duty implies in particular that when such an authority takes a decision concerning the position 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 (Case 321/85 *Schwiering* v *Court of Auditors* [1986] ECR 3199, paragraph 18; Case T-133/89 *Burban* v *Parliament* [1990] ECR II-245, paragraph 27, and Joined Cases T-33/89 and T-74/89 *Blackman* v *Parliament* [1993] ECR II-249, paragraph 96).

– The first submission: the inadequacy of the first report following the inquiry

126 As regards the first allegation, that the first inquiry report was flawed, it must be observed, first, that the purpose of the inquiry conducted by the administration, referred to in Article 17(2) of the Rules, is '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'.

127 In the present case, the first inquiry merely served to obtain, in addition to the medical documents and the documents produced by Mr Vainker, the note of the Jurisconsult.

128 According to the expert medical report, of 30 September 1998, by Dr Helmer, the doctor appointed by the institution for the purposes of the first procedure, the documents and medical reports on the file examined by that doctor and forwarded to Dr Bocquel comprised:

'Request for recognition of an occupational disease submitted by Mr François VAINKER on 14.11.1997, received on 17.11.1997.

Full report of the professional career of and difficulties encountered by Mr VAINKER, drawn up by him on 13.01.1998.

Letter sent by Dr REHLING to Dr DI PAOLANTONIO on 17.11.1997.

Expert psychiatric report drawn up by Dr Roger THOMAS on 03.05.1998.

Certificate issued by Dr DI PAOLANTONIO on 12.06.1998.

Administrative note from Mr GARZON CLARIANA of 08.07.1998.'

129 In a case such as the present one, in which, inter alia, the workload and working conditions of the official concerned are under scrutiny as the alleged cause of the occupational illness at issue, the opinion of the official's immediate superior is, of course, one of the pieces of evidence the administration must obtain in an inquiry. However, given that, according to his letter of 13 January 1998, Mr Vainker took the view that the conduct of the Jurisconsult towards him was partly the cause of the onset of his illness, the administration could not accept such an opinion as sufficient on its own for an analysis of those working conditions. Since the

purpose of an administrative inquiry is to obtain, in an objective manner, all the particulars necessary to determine whether a disease has resulted from an official's occupation and the circumstances in which it arose, the inquiry should have included an analysis of the working conditions of the person concerned, if necessary including a hearing of his testimony, as thorough and objective as that of his illness as such.

130 It must therefore be held that the first administrative inquiry conducted by the Parliament does not fulfil the requirements of Article 17(2) of the Rules.

131 Moreover, there is no evidence on the file that the administration prepared the report provided for by Article 17(2) of the Rules following the administrative inquiry.

132 What is more, according to settled case-law, for a Medical Committee validly to issue a medical opinion, it must be in a position to have notice of all documents which may be useful for its assessments (Case T-187/95 *R* v *Commission* [1997] ECR-SC I-A-253 and II-729, paragraph 49, and Case T-27/98 *Nardone* v *Commission* [1999] ECR-SC I-A-267 and II-1293, paragraph 68). That reasoning must be applied by analogy to the findings of the doctor(s) appointed by the institutions under Article 19 of the Rules.

133 It follows from the foregoing that, in the absence of a full inquiry and without a full report on the inquiry conducted, the doctor appointed by the institution was not in a position validly to reach the findings provided for by Article 19 of the Rules.

134 It follows that, in not drawing up a report on the inquiry on the basis of a full and objective examination of the facts, the Parliament conducted itself unlawfully, with the result that the first submission is well founded.

– The second submission, that the first report on the inquiry was not sent to Mr Vainker in time

135 As regards the second submission, that the first report on the inquiry was not sent to Mr Vainker before his visit to Dr Bocquel, on 21 August 1998, it has been held, in paragraph 131 above, that there is no evidence on the file that the administration prepared a report following the first administrative inquiry. Moreover, according to the file, the only item obtained in the first administrative inquiry conducted by the Parliament, apart from medical documents and documents produced by Mr Vainker, was the note of the Jurisconsult. It follows that the Parliament did not draw up the report on the inquiry referred to in the third subparagraph of Article 17(2) of the Rules.

136 Furthermore, according to settled case-law, documents relating to the findings of fact concerning an incident at work which may serve as a basis for a 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 recognised as being of a medical nature (Case 140/86 *Strack* v *Commission* [1987] ECR 3939, paragraph 13, and Case T-154/89 *Vidrányi* v *Commission* [1990] ECR II-445, paragraph 33).

137 It must also be observed that, in the procedure for recognition of the occupational nature of a disease, observance of the rights of the official is ensured, having regard to the particular nature of the documents in question, by the possibility for the official concerned to acquaint himself with the particulars in the file prepared by the appointing authority by the interposition of the doctor of his choice and to appoint a doctor to defend his interests within the Medical Committee. 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 (Case C-283/90 P *Vidrányi* v *Commission* [1991] ECR I-4339, paragraph 23, *Strack*, cited above, paragraph 12, and the judgment of the Court of First Instance in *Vidrányi* v *Commission*, cited above, paragraph 34).

138 In the present case, it is not disputed that Mr Vainker's doctor received the note of the Jurisconsult on 25 November 1998.

139 It follows that the Parliament, in forwarding the note of the Jurisconsult to Mr Vainker's doctor, used the appropriate channel to meet the applicant's requests.

140 As regards the allegation that the note of the Jurisconsult was sent to Mr Vainker's doctor late, the Parliament was under no obligation to send the result of the administrative inquiry to Mr Vainker before his visit to Dr Bocquel, on 21 August 1998.

141 In the light of the foregoing observations, the second submission must be rejected.

– The third submission, that false information was given

142 As regards the third submission, that the Parliament gave false information, it must first be observed that, according to settled case-law, as a rule, the adoption of an incorrect interpretation of a provision of the Staff Regulations does not in itself constitute a service-related fault (Case 79/71 *Heinemann* v *Commission* [1972] ECR 579, paragraph 11, Case T-94/92 *X* v *Commission* [1994] ECR-SC I-A-149 and II-481, paragraph 52).

143 However, it must be pointed out that the Parliament repeatedly sent the applicants incorrect or contradictory information solely in order to refuse Mr Vainker's request for annulment of the procedure under way and without addressing the substantive objections he had raised against that procedure.

144 On that point, according to the file, in a letter of 25 March 1999 sent to Mrs Vainker, the Director-General for Personnel of the Parliament expressed the mistaken view that it was impossible to annul the procedure, on the ground that the Rules made no provision for such a possibility.

145 Then, by letter of 19 April 1999 to Mr Vainker, the Director-General for Personnel of the Parliament expressed the view that, in the absence of any specific provision in the Rules, the procedure could be annulled only if it were established that there had been a procedural defect, which he ruled out.

146 The letter of 1 December 1998, by which Mr Vainker requested annulment, inter alia because of irregularities in the administrative inquiry, constituted a complaint within the meaning of Article 90(2) of the Staff Regulations (Case T-205/95 *Cordiale* v *Parliament* [1998] ECR-SC I-A-177 and II-551, paragraphs 34, 35 and 38). The Parliament would thus have been able to accede to that request by Mr Vainker if it had, at that stage, acknowledged the irregularities in the inquiry which he alleged.

147 Second, by letter of 14 January 1999, the Secretary-General of the Parliament justified the refusal to reopen the procedure by the fact that the draft decision of the appointing authority of 13 November 1998 did not adversely affect Mr Vainker given that that draft decision recognised the occupational nature of his disease. However, that draft decision recorded the existence of an 'unrecognised but indisputable pre-existing condition', that is to say of a non-occupational element which triggered the onset of Mr Vainker's illness. If that decision had become definitive, as provided for in Article 21 of the Rules, it would have entailed the reduction of the payment provided for by Article 73 of the Staff Regulations (Case T-4/96 *S* v *Court of Justice* [1997] ECR-SC I-A-179 and II-533, ECR II-1125, paragraphs 80 and 87).

148 Finally it must be held that the statement by the Director-General for Personnel in his letter of 19 April 1999 that there is no such concept as a partial occupational disease, disregarded the case-law. In paragraphs 80 and 87 of the judgment in *S* v *Court of Justice* cited above, the Court of First Instance recognised the existence of non-occupational factors likely to trigger the onset of an official's illness and concluded that the appointing authority was required to take such factors into account, where they are recorded by the Medical Committee, in calculating the amount of the payment provided for by Article 73(2) of the Staff Regulations.

149 Thus, in repeatedly arguing against Mr Vainker, despite the valid observations of the applicants, the Parliament engaged in negligent conduct vis-à-vis Mr Vainker, in breach of its duty to have regard to the welfare of officials, conduct which was, therefore, unlawful and liable to cause damage to Mr Vainker. Consequently, the third submission in the first part of the plea is well founded.

– The fourth submission, that the second report on the inquiry was defective

150 As regards the fourth submission, that the second report on the inquiry was defective, it must be observed that Mr Vainker confines himself to alleging, in the application, that the second report on the inquiry was inappropriate, without clarifying, even in outline, in the body of the application, the reasons why he considers that the report is defective.

151 On that point, it must be borne in mind that, under the first paragraph of Article 19 of the Statute of the Court of Justice and Article 44(1) of the Rules of Procedure of the Court of First Instance the application initiating the proceedings must contain a summary of the pleas in law relied on. Since that requirement is mandatory, the issue of compliance with it may be raised by the Court of its own motion. The summary of the pleas relied on, it should be pointed out, must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the action, if necessary without any other supporting information. Similar requirements are called for where a submission is made in support of a plea in law. Moreover, it must be pointed out that it is not for the Court to seek and identify in the annexes the pleas and arguments on which it may consider the action to be based, since the annexes have a purely evidential and instrumental function (judgment in Case T-231/99 *Joynson* v *Commission* [2002] ECR II-2085, paragraph 254, and the case-law cited).

152 That submission is, therefore, inadmissible.

– The fifth submission, that no details were given to the doctor appointed by the institution for the purposes of the procedure

153 The fifth submission is that the Parliament did not ask Dr Lipsedge to take account of the report by Dr Bamber of 17 June 1999 and determine Mr Vainker's degree of partial permanent invalidity and did not ask that doctor to take a view on the stabilisation of Mr Vainker's condition.

154 As regards the alleged failure to ask Dr Lipsedge to take account of Dr Bamber's report of 17 June 1999, the Court of First Instance notes that, as the Parliament rightly points out, the report by Dr Lipsedge of 25 September 2000 mentions Dr Bamber's report of 17 June 1999 in the list of documents consulted in the drafting of the report.

155 Even if the Parliament did not expressly ask Dr Lipsedge to take account of Dr Bamber's report of 17 June 1999, that fact cannot constitute an irregularity, since the Parliament sent Dr Lipsedge that report by Dr Bamber for the purposes of reaching the findings provided for by the first indent of the first subparagraph of Article 19 of the Rules.

156 That conclusion cannot be affected by the fact that the findings of the two reports differ on the subject of the stabilisation of Mr Vainker's illness.

157 As regards the Parliament's alleged failure expressly to ask Dr Lipsedge to take a view on the stabilisation of Mr Vainker's condition, it must be borne in mind that according to the first paragraph of Article 20 of the Rules the decision defining the degree of invalidity is to be taken after the official's injuries have consolidated. That provision is intended to prevent the degree of invalidity from being decided while the official's illness may still be subject to change, with implications for the degree of invalidity he suffers.

158 According to the file, in an undated fax to Dr Lipsedge, the Parliament noted that the report of 25 September 2000, drawn up by that doctor, did not calculate the degree of permanent invalidity suffered by Mr Vainker and asked Dr Lipsedge to confirm that the failure to calculate the degree of permanent invalidity in that report was due to the fact that Mr Vainker's illness was potentially reversible, as recorded in that report, which made it impossible to make such a calculation at that stage.

159 It is also apparent from the file that, by letter of 5 October 2000, Dr Lipsedge confirmed the Parliament's suggested ground for the failure to calculate a degree of permanent invalidity.

160 It follows that, in fact, the Parliament expressly consulted Dr Lipsedge as to whether he could take a view on the stabilisation of Mr Vainker's condition.

161 It follows from the foregoing that the fifth submission must be rejected.

The second part of the plea, that the procedure was unduly lengthy

162 As regards the second part of the plea, that the procedure was unduly lengthy, it must be observed, as a preliminary point, that the Parliament's conduct resulted in the repetition of most of the steps taken in the procedure initiated by Mr Vainker's letter of 14 November 1997 and concluded on 12 November 1999.

163 It appears from the file that, by letter of 12 November 1999, the President of the Parliament acknowledged that Mr Vainker had justifiably lodged complaints on 14 July 1999 and 17 October 1999 against the Parliament's refusal to reopen the procedure and against the draft decision of 15 June 1999 and the final decision of 10 September 1999. In his complaints, Mr Vainker criticised the Parliament, inter alia, for the fact that the administrative inquiry consisted solely of the note of the Jurisconsult.

164 It follows that the Parliament must be held liable for a delay of approximately two years in the procedure.

165 The Court of First Instance considers that the Parliament's argument that the length of the procedure is directly attributable to the fact that Mr Vainker's illness had not stabilised cannot be upheld.

166 Although it is true that the rate of Mr Vainker's invalidity and the amount of the payment provided for by Article 73(2)(c) of the Staff Regulations could not be determined as long as his illness had not stabilised, as the Parliament contends, it must be recognised that the irregularities in the procedure recorded above could not have helped to improve Mr Vainker's state of health and thereby ensure stabilisation of his illness.

167 Suffice it to observe, in that connection, that, by letter of 23 February 1999 to the Secretary-General of the Parliament, Mr Vainker's doctor, Dr Rehling, put that institution on notice of the serious repercussions on Mr Vainker's health entailed by the length of the procedure, in the following terms: 'I understand that Mr Vainker applied for recognition that his illness was work-related in November 1997. Fifteen months have passed and there has been no apparent progress in the administrative process relating to this application. This delay, and the Parliament's apparent failure to recognise and accept its responsibility for his

illness, continues in my opinion, to have a damaging effect on Mr Vainker's health, and the health and well being of his family. I would, therefore, urge you to hasten the resolution of this very difficult and sensitive problem.'

168 Furthermore, it is apparent from the file that Mr Vainker and Mrs Vainker wrote to the Parliament on several occasions to alert it to the damaging effect on Mr Vainker's health of the manner in which the procedure was being conducted.

169 Against that background, the Parliament's reliance on circumstances of which it was at least partly the cause to justify the length of the procedure is unfounded.

170 The second part of the plea is therefore well founded.

171 In the light of the irregularities found on examination of the first and third submissions in the first part of the single plea and the second part of that plea, that is, the facts that the administrative inquiry was conducted in breach of Article 17(2) of the Rules and that the Parliament gave the applicants false or contradictory information and the excessive length of the procedure, it must be held that, in the procedure for recognition of the occupational nature of Mr Vainker's disease, the Parliament engaged in unlawful conduct such as to give rise to the liability of the Community.

2. *Damage and causal link*

a) Arguments of the parties

172 Mr Vainker submits that the Parliament's misconduct during the course of the procedure from the time of his request of 14 November 1997 caused the applicants profound pain and suffering. That pain and suffering was a direct result of the wrongful acts of the defendant. He assesses the material and non-material damage caused at EUR 100 000.

173 Mr Vainker also states that while he was seeking the annulment of the procedure and had been given false information by the Parliament, Mrs Vainker, who was acting on his behalf as he was too unwell to take action, found it necessary to have recourse to the services of a lawyer. The legal costs of which reimbursement is sought amount to GBP 8 244.94.

174 The Parliament points out that Mr Vainker fails to identify the exact nature of the alleged 'pain and suffering', which is in violation of the settled case-law requiring an applicant to identify in his initial action the details of the alleged damage. Mr Vainker also fails to establish why an amount of EUR 100 000 can be regarded as an appropriate compensation.

175 The Parliament adds that Mr Vainker fails to establish that he was forced to incur the legal costs claimed and that, in order to obtain their reimbursement, it is not sufficient to establish that an amount of GBP 8 244.94 was effectively paid. It points out that, in so far as the costs are those of the proceedings before the Court of First Instance, if the applicant is successful in his application, those costs will be recoverable. As to the costs of previous legal advice or assistance, it is settled case-law that these are not recoverable costs (Case C-294/90 DEP *British Aerospace* v *Commission* [1994] ECR I-5423).

b) Findings of the Court

Preliminary observations

176 As a preliminary point, it must be observed that, by his second head of claim, Mr Vainker claims the payment of EUR 100 000 for material and non-material damage caused by the conduct of the defendant considered here under C. In that connection, a distinction must be made between the non-material damage alleged and certain aspects of the material damage. According to the file, the material damage caused by the conduct in question comprises the legal costs referred to in the applicants' third head of claim and the default interest referred to in the fourth head of claim and considered below under D (paragraphs 186 to192 below). As the applicants have not established or even alleged other aspects of material damage suffered by Mr Vainker, a distinction must be made at this stage between the non-material damage suffered by Mr Vainker and referred to in the applicants' second head of claim and the legal costs claimed in the third head of claim.

177 According to settled case-law, the burden of proving a causal link between a fault committed by an institution and the damage pleaded falls on the applicants (see Joined Cases C-363/88 and C-364/88 *Finsider and Others* v *Commission* [1992] ECR I-359, paragraph 25).

The non-material damage

178 It must be held that the irregularities in the procedure until the time when the Parliament informed Mr Vainker that the procedure would be reopened, not only had the consequences on the health and well-being of his family referred to in the letter of Dr Rehling cited in paragraph 167 above, but also resulted in suffering for Mr Vainker which was particularly serious in the context of the procedure at issue and liable to constitute non-material damage.

179 It follows that the causal link between the non-material damage suffered by Mr Vainker and the conduct of the Parliament is established.

180 In the light of the foregoing, the Court of First Instance, assessing ex aequo et bono the non-material damage suffered by Mr Vainker and taking account inter alia of the seriousness of the defendant's conduct towards Mr Vainker, considers that a sum of EUR 60 000 represents sufficient compensation.

Legal costs

181 As regards the claim for reimbursement of legal costs, it must be observed that the order in *British Aerospace* v *Commission*, cited above, to which the Parliament refers, and all the case-law to that effect in staff cases (see, for example, the orders of 5 July 1993 in Case T-84/91 DEP *Meskens* v *Parliament* [1993] ECR II-757, and of 25 June 1998 in Joined Cases T-177/94 DEP, T-377/94 DEP and T-99/95 DEP *Altmann and Others and Stott* v *Commission* [1998] ECR-SC I-A-299 and II-883), concern recoverable costs incurred for the purposes of the litigation before the Community Court. However, by this head of claim, Mr Vainker is seeking reimbursement of legal costs incurred during the pre-litigation procedure, while he was seeking the compensation provided for by Article 73 of the Staff Regulations, by way of a principal claim for damages, which cannot be confused with the head of claim concerning the costs of the case proper.

182 Here the sums claimed by Mr Vainker were incurred not as a result of the operation of the pre-litigation procedure as such but by the mishandling of that procedure.

183 In that regard, it should be borne in mind that the Court of First Instance has already held that, at the time when Mrs Vainker found it necessary to have recourse to the services of a lawyer, the procedure for the recognition of the occupational nature of Mr Vainker's disease was tainted by irregularities.

184 It follows that the causal link between the legal costs for the pre-litigation procedure and the conduct of the Parliament must be considered to be established.

185 As the Parliament has not disputed the amount of that damage as such it follows that the Parliament must be ordered to pay Mr Vainker the sum of GBP 8 244.94.

D – *The claim for payment of default interest*

1. *Arguments of the parties*

186 Mr Vainker seeks an order that Parliament pay default interest on the amount of the payment made under the Rules between the time when that payment ought reasonably to have been made and the time when it was paid. At the hearing Mr Vainker made clear, first, that his claim for default interest concerns in particular the delay in payment of the lump-sum compensation provided for by Article 73(2)(c) of the Staff Regulations and, second, that the rate of that interest should be in accordance with the Court's practice as revealed in its case-law.

187 The Parliament points out that Mr Vainker claims interest of 8% on the amount of the lump sum without establishing the date as from which this interest should run. Moreover, it considers that, if interest is due, it should be fixed at a maximum of 4.5% so as to reflect the rates most recently fixed by the Court of First Instance (Case T-231/97 *New Europe Consulting* v *Commission* [1999] ECR II-2403, paragraph 71).

2. *Findings of the Court*

188 As regards the determination of the period for which such interest must be paid, it must be observed, as a preliminary point, that it has been held that 'where the decision recognising that an official's disease is occupational in origin and fixing his rate of permanent invalidity is adopted late, owing to irregularities or negligence attributable to the institution in question, the official concerned may claim, by way of damages under the general system of non-contractual liability applicable in the context of Article 179 of the EC Treaty (now Article 236 EC), default interest on the lump sum to which he is entitled, under Article 73 of the Staff Regulations for the period between the date on which the institution should reasonably have been in a position to adopt the decision recognising his occupational disease if it had proceeded with all due diligence and the date on which the lump sum is paid' (judgment in Case T-300/97 *Latino* v *Commission* [1999] ECR-SC I-A-259 and II-1263, paragraph 99).

189 It should also be noted that it was held in paragraph 164 above that the Parliament must be held liable for the unduly lengthy procedure.

190 In the light of the case-law cited, the claim under consideration must first be reclassified as a claim for default interest on the capital sum at issue and then the period in respect of which that interest is to be calculated in accordance with that case-law must be determined.

191 Between the letter of 12 November 1999 from the Parliament informing Mr Vainker that the procedure had been reopened and the decision of the appointing authority of 27 November 2001, which fixed Mr Vainker's rate of invalidity and granted him compensation of EUR 617 617.94, a period of two years and 15 days elapsed. As the procedure was initiated by letter from Mr Vainker of 14 November 1997, a decision fixing the amount of the payment could have been made two years and 15 days after the start of the procedure, in other words on 29 November 1999. Accordingly, the period in respect of which default interest must be paid is that between 29 November 1999 and 9 January 2002, the date on which Mr Vainker received that sum.

192 As for the percentage of the annual rate of default interest to be applied, the Court considers that that rate must be calculated on the basis of the rate fixed by the European Central Bank for its main refinancing operations, in force from time to time during the period concerned, plus two percentage points.

E – *The claims for compensation for the damage allegedly suffered by Mrs Vainker*

1. *Arguments of the parties*

193 Mrs Vainker specifies that her claim is based on both Article 236 EC and Articles 235 EC and 288(2) EC. She submits that the material and non-material damage she has endured are a direct result of her dealings with the Parliament during its handling of the application for recognition of the occupational nature of her husband's disease and the procedure for compensation under the Rules, and that, in the circumstances, her situation is different from that analysed in *Leussink*, cited above.

194 She alleges that, as a result of the great difficulty Mr Vainker had in dealing with his application for recognition that he is suffering from an occupational disease and the claim for compensation arising out of this request, Mrs Vainker has had to deal with the application in place of her husband and to bear the brunt of dealing with the Parliament since November 1997. This in turn has had a significant detrimental effect on her health and well-being.

195 Mrs Vainker blames the Parliament for the fact that she has been obliged to exchange difficult correspondence with the Director-General for Personnel of the Parliament, that she has been supplied with erroneous information on the progress of her husband's application and, as that progress has been very slow, that she has had to telephone the Parliament to find out what was happening on numerous occasions.

196 She alleges, further, that she has suffered as a result of the medical report by Dr Van Acker whose comments as to the cause of Mr Vainker's illness were untrue and offensive. In that connection, she criticises the Parliament for submitting that medical report to Dr Lipsedge without a copy of Mr Vainker's letter of 5 November 1998. In her view, had the letter been attached it would have put any reader on notice to treat any report of Dr Van Acker with caution.

Furthermore, the Parliament's fault is compounded by failing to include Dr Van Acker's report in the list of documents submitted to Dr Lipsedge and by failing to supply the report to Mr Vainker's doctor, Dr Rehling, who was to sit on the Medical Committee.

197 What is more, she understands that the Parliament also permitted to be circulated within its confines, for translation purposes, Dr Van Acker's medical report containing those untrue and offensive comments without Mr Vainker's letter of 5 November 1998 being attached to it. As a result Mrs Vainker's reputation has been seriously diminished, thus causing suffering.

198 Moreover, Mrs Vainker points out that, towards the end of the year 2000, in large part as a result of the highly stressful time that they have endured because of the above events over the last few years, she and her husband have separated.

199 In conclusion, the past three years have caused Mrs Vainker considerable anxiety as she has had to care for her husband who has at times seemed to her to be suicidal. In addition, she has had to care for their three children who have inevitably been adversely affected by their father's protracted illness. In her endeavour to pursue her husband's claim for recognition of the occupational nature of his disease and in the knowledge from conversations with her husband's doctor, Dr Rehling, that Mr Vainker could not make any sort of recovery until the procedure had been completed, she has had to deal with very trying circumstances in attempting to make the Parliament expedite the matter.

200 She submits that the conduct of the Parliament has caused her material and non-material damage. Consequently, she has required the support of a clinical psychologist, who in December 1998 diagnosed her as suffering from clinical depression, caused both by her husband's deteriorating psychological state and the lack of resolution of his claim for compensation. Details of the condition of Mrs Vainker are to be found in the report of Dr Van Rooyen of 10 December 1998.

201 Therefore, Mrs Vainker claims compensation for the material and non-material damage caused to her and her non-reimbursed medical expenses relating to her psychotherapy sessions.

202 The Parliament contends essentially that the damage alleged by Mrs Vainker is the result of the occupational disease of her husband and that such damage does not constitute part of the harm for which an institution may be held liable in its capacity as employer (*Leussink*).

203 It follows from Mrs Vainker's own statement that the past three years have caused her considerable anxiety as she has had to care for Mr Vainker and for their three children. It is also clear from her own statement that she took upon herself, on her own initiative, the task of pursuing Mr Vainker's claim.

204 The Parliament accepts that, in actively assisting her husband in his contacts with the Parliament, Mrs Vainker may, herself, have become deeply and personally involved in the matter. However, the Parliament contends that the fact that she chose, voluntarily, to support her husband in his dealings with the Parliament does not, on its own, mean that it can be held in any respect directly liable vis-à-vis Mrs Vainker.

205 The Parliament further contends that Mrs Vainker has failed to establish any unlawful conduct on the part of the Parliament which could have caused the alleged damage to her health and well-being.

2. *Findings of the Court*

206 Mrs Vainker claims payment of damages of EUR 50 000 by way of compensation for material and non-material damage allegedly caused to her by the Parliament during the procedure for recognition of the occupational nature of the disease of her husband, Mr Vainker, and for the fixing of the lump-sum payment. She also claims payment of damages of GBP 1 145 by way of reimbursement of otherwise non-reimbursable medical expenses incurred for psychotherapy.

207 It must be acknowledged, as a preliminary point, that the repercussions on Mr Vainker's health of the irregularities recorded on the part of the Parliament during the procedure may have been the source of certain adverse effects on Mrs Vainker. That is clear inter alia from the report by Dr Van Rooyen of 10 December 1998.

208 However, the Court finds that Mrs Vainker has not succeeded in establishing a causal link between the wrongful conduct of the Parliament during the procedure and the damage she alleges to have suffered.

209 Although it cannot be disputed that Mrs Vainker had direct contact with the institution in an effort to bring about progress in the procedure, it must be observed that the only person that procedure concerned was her husband, Mr Vainker. Moreover, it must be held that Mrs Vainker has not succeeded in establishing that the Parliament's actions were the direct cause of the damage alleged. The existence of a causal link between the abovementioned facts alleged against the Parliament by Mrs Vainker and the damage she alleges cannot, therefore, be accepted.

210 Against that background, although there can be no doubt about the reality of the damage described by Mrs Vainker or about the existence of a link with her husband's illness, they are nevertheless the indirect result of the injury suffered by Mr Vainker and do not constitute part of the harm for which the Parliament may be held liable in its capacity as employer (*Leussink*, cited above, paragraph 22).

211 As regards the alleged distribution of Dr Van Acker's report for the purposes of translation, it must be observed that the Parliament cannot be held liable for an irregularity by reason of the forwarding of a medical report to its translation services, given that its officials, including those assigned to its translation service, are bound under Article 17 of the Staff Regulations by a duty of discretion with regard to the facts and information coming to their knowledge in the course of or in connection with the performance of their duties.

212 It follows from the foregoing that Mrs Vainker's claim must be rejected.

Costs

213 Under Article 87(3) of the Rules of Procedure, the Court may order that costs be shared or that each party is to bear its own costs if each party succeeds on some and fails on other heads. As the Parliament has failed on some heads, and having regard to the circumstances of the case, it must be ordered to bear its own costs and two thirds of the costs of the applicants.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. **Orders the Parliament to pay Mr Vainker the sum of EUR 60 000;**

2. **Orders the Parliament to pay the applicant, Mr Vainker, the sum of GBP 8 244.94 by way of reimbursement of legal costs incurred during the procedure for recognition of the occupational origin of Mr Vainker's disease;**

3. **Orders the Parliament to pay the applicant, Mr Vainker, default interest on the sum of EUR 617 617.94 from 29 November 1999 to 9 January 2 002. T he r ate of t hat i nterest m ust b e c alculated o n t he basis of the rate fixed by the European Central Bank for its main refinancing operations, in force from time to time during the period concerned, plus two percentage points;**

4. **Dismisses the remainder of the application;**

5. **Orders the Parliament to pay its own costs and two thirds of those of the applicants.**

Forwood Pirrung Meij

Delivered in open court in Luxembourg on 3 March 2004.

H. Jung
Registrar

J. Pirrung
President

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