JUDGMENT OF THE COURT (Second Chamber)
16 March 2000 *

In Case C-284/98 P,

European Parliament, represented by J.L.R. Quintana and E. Waldherr, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 26 May 1998 in Case T-205/96 *Bieber* v *Parliament* [1998] ECR I-A-231 and II-723, seeking to have that judgment set aside,

the other party to the proceedings being:

Roland Bieber, a former official of the European Parliament, residing in Lausanne, Switzerland, represented by G. Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson SARL, 30 Rue de Cessange,

* Language of the case: French.

THE COURT (Second Chamber),

composed of: R. Schintgen (Rapporteur), President of the Chamber, G. Hirsch and V. Skouris, Judges,

Advocate General: G. Cosmas,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 23 September 1999,

gives the following

Judgment

1 By application lodged at the Court Registry on 24 July 1998, the European Parliament brought an appeal, pursuant to Article 49 of the EC Statute and the corresponding provisions of the ECSC and EAEC Statutes of the Court of Justice, against the judgment of the Court of First Instance of 26 May 1998 in Case T-205/96 *Bieber* v *Parliament* [1998] ECR-SC I-A-231 and II-723 ('the judgment under appeal'), by which that Court annulled the decision implicitly rejecting the application for reinstatement and compensation made by Mr Bieber on 18 October 1995 and ordered the Parliament to compensate him for the material damage suffered by him as a result of not having been reinstated.

2 The facts of the dispute are described as follows in the judgment under appeal:

'2 The applicant entered the service of the European Parliament in 1971 as an official in the General Secretariat and was appointed head of division in Grade A 3 in 1981 and counsellor in the Legal Service in 1986.

3 In a memorandum of 1 March 1987 for the attention in particular of the directors-general and the jurisconsult, the Secretary-General of the Parliament pointed out that reinstatement took priority over any other method of filling a post, provided that the official to be reinstated satisfied the requirements of the post in question.

4 By decision of the appointing authority of 26 September 1991, the applicant was granted leave on personal grounds from 15 November 1991 to 15 July 1992. This leave was subsequently extended by a number of decisions, the last of which authorised an extension to 15 November 1994.

5 During his leave on personal grounds the applicant lectured in European law at the University of Lausanne.

6 Following the death of the jurisconsult of the Parliament, Mr Jorge Campinos, the applicant informed the President of the Parliament by letter of 4 August 1993 that he would be available if required to that institution during his leave on personal grounds.

7 As the applicant had received no offer of reinstatement since expiry of his leave, he requested the Director-General of Personnel and Finance, by letter of 21 February 1995, and the Secretary-General of the Parliament, by letter of 21 March 1995, to examine the possibility of reinstating him in the Parliament, preferably with effect from 15 June 1995.

8 On 18 October 1995 the applicant submitted a request pursuant to Article 90(1) of the Staff Regulations for reinstatement and for compensation for the damage suffered because of his non-reinstatement.

9 By letter of 7 December 1995 the Secretary-General of the Parliament informed the applicant that he intended to reinstate him to the post of head of division responsible for the secretariat of the Committee for Institutional Affairs. In that letter he stated that he would be inclined to make that proposal only on three conditions: (i) reinstatement must take place on 1 January 1996 at the latest; (ii) the applicant could not have any commitments outside the institution; (iii) reinstatement could not be followed "in the short or longer term" by relinquishing the duties proposed or similar duties in the General Secretariat.

10 By letter of 11 December 1995 and at a meeting with the Secretary-General of the Parliament on 13 December 1995, the applicant said that he did not wish to decline the proposal, while criticising the conditions to which it was subject. Following the meeting the Secretary-General and the applicant decided by common agreement not to follow up the letter of 7 December 1995 and stated that the applicant retained the right to refuse an offer within the meaning of Article 40(4)(d) of the Staff Regulations without losing his right to reinstatement.

11 By letter of 21 February 1996 the Secretary-General proposed to the applicant, by way of first offer, that he be reinstated in a post of adviser in

Grade A 3 to the director responsible for political affairs in the Directorate-General for Research.

12 On 8 March 1996 the applicant accepted the post, requesting that the detailed arrangements for his return to duty, in particular the date on which he was to take up his duties, should be determined by common agreement.

13 By decision of the appointing authority of 19 April 1996, the applicant was reinstated in that post in Grade A 3, step 6, from 1 June 1996.

14 By letter of 22 April 1996 the head of the personnel division in the Personnel/Budget/Finance Directorate-General of the Parliament asked the applicant to report to the Parliament on Monday 3 June 1996 to resume his duties.

15 On 10 May 1996 the applicant submitted a complaint against the implied rejection of his claim for compensation of 18 October 1995.

16 On 13 September 1996 the President of the Parliament informed him that his complaint had been rejected.

17 On 9 October 1996 the applicant submitted a request for release, stating that he wished to terminate his service definitively on 1 February 1997.

18 By letter of 2 December 1996 he confirmed his request for release and applied, in the alternative, for early retirement in accordance with Article 52 of the Staff Regulations.

19 By an undated decision of the defendant, the applicant was granted early retirement from 1 April 1997 and a retirement pension with immediate effect.'

3 Under Article 40(4)(d) of the Staff Regulations of Official of the European Communities:

'On the expiry of his leave an official must be reinstated in the first post corresponding to his grade which falls vacant in his category or service, provided that he satisfies the requirements for that post. If he declines the post offered to him, he shall retain his right to reinstatement when the next vacancy corresponding to his grade occurs in his category or service, subject to the same proviso; if he declines a second time, he may be required to resign after the Joint Committee has been consulted. Until effectively reinstated he shall remain on unpaid leave on personal grounds.'

4 Those were the circumstances in which Mr Bieber, by application lodged with the Registry of the Court of First Instance on 12 December 1996, brought an action for annulment of the decision of the Parliament of 13 September 1996 rejecting his complaint against the implied rejection of his request of 18 October 1995 for compensation for the damage suffered as a result of his non-reinstatement, and for the Parliament to be ordered to make good the material damage suffered as a result of his non-reinstatement.

The judgment under appeal

5 With respect, first, to the claim for annulment, Mr Bieber's single plea in law alleging breach of Article 40(4)(d) of the Staff Regulations complained that the Parliament had failed to reinstate him when the first post fell vacant and had refused to make good the material damage resulting from that failure.

6 The Parliament submitted that, in accordance with the judgment in Joined Cases 126/75, 34/76 and 92/76 *Giry* v *Commission* [1977] ECR 1937, the administration is not obliged to reinstate in the first vacancy an official whose leave on personal grounds has expired, if that official's conduct could raise doubts as to his intention to make himself available to the institution. In the present case, Mr Bieber's conduct had persuaded the administration that he had no real and serious wish to be reinstated.

7 The Parliament put forward a number of arguments to show the alleged lack of a real intention of the applicant to be reinstated.

8 On this point, the Court of First Instance found, first, in paragraph 36 of the judgment under appeal, that it followed from the wording of Article 40(4)(d) of the Staff Regulations that the obligation on the administration to reinstate an official whose leave on personal grounds has expired is subject to no condition other than that of a vacant post for which the official satisfies the requirements. It then observed, in paragraph 37 of the judgment, that apart from that condition reinstatement did not depend on any additional condition such as an indication on the part of the official of interest in being reinstated, and that with respect to reinstatement the discretion of the authorities concerned related only to the abilities of the official to be reinstated and did not extend to the advisability of reinstating him.

9 In paragraph 39, the Court of First Instance stated that even supposing that the Parliament could have had doubts as to Mr Bieber's genuine intention of being reinstated, it was none the less required to offer him the first vacant post for which he was duly qualified. It would then have been for Mr Bieber to refuse the post if he did not wish to be reinstated. The Court of First Instance found, in paragraph 41 of the judgment under appeal, that the Parliament had acknowledged that a post for which Mr Bieber satisfied the requirements had been vacant on 1 January 1995.

10 In paragraph 42, the Court of First Instance rejected the arguments put forward by the Parliament to show that Mr Bieber had no real wish to be reinstated and that in those circumstances it was not obliged to reinstate him at the first opportunity. It considered, first, that the Parliament was relying on facts which occurred after 21 February 1996 and that, since the appointing authority could not have been aware of those matters before that date, they could not have determined its conduct or obligations before that date. It found, second, that the fact that the Parliament had reinstated Mr Bieber without indicating the factors which showed a change of intention on his part was such as to discredit the other arguments adduced by it to show that he had no real intention of making himself available to the institution.

11 In the light of those considerations, the Court of First Instance held, in paragraph 43 of the judgment under appeal, that the failure to offer Mr Bieber the post which was vacant on 1 January 1995 constituted a breach of Article 40(4)(d) of the Staff Regulations, so that the contested decision had to be annulled.

12 With respect, second, to the claim for compensation, Mr Bieber submitted that the period to be taken into account for calculating the alleged damage should be the period from 16 November 1994, the date on which he ought to have been reinstated, to 1 June 1996, the date on which he was actually reinstated.

13 The Parliament submitted that, should the Court of First Instance find that the administration had acted unlawfully, it would have to be examined, in order to

determine the period to be taken into account for calculating the alleged damage, whether Mr Bieber's conduct had contributed to further delaying his reinstatement. According to the Parliament, that period should not start before 15 June 1995, the date on which Mr Bieber expressed the wish to be reinstated, and should not extend beyond 13 December 1995, the date on which he rejected the content of the letter of the Secretary-General of the Parliament of 7 December 1995.

14 In the alternative, the Parliament submitted that the period should not start before 1 January 1995, since the first vacant post in which Mr Bieber could be reinstated had been advertised only from 4 December 1994.

15 On this point, the Court of First Instance first pointed out, in paragraph 48 of the judgment under appeal, that it is settled case-law that non-contractual liability on the part of the Community supposes that the applicant proves the illegality of the allegedly wrongful act committed by the Community institution, the actual damage suffered, and the existence of a causal link between the act and the damage which is alleged to have been suffered (Case T-3/92 *Latham* v *Commission* [1994] ECR-SC II-83, paragraph 63, and Case T-589/93 *Ryan-Sheridan* v *EFILWC* [1996] ECR-SC II-77, paragraph 141).

16 The Court of First Instance then observed, in paragraph 49, that the Parliament had acted unlawfully by failing to reinstate Mr Bieber in the first vacant post for which he satisfied the requirements. It held that such an illegality constituted a wrongful act which had caused Mr Bieber damage for which he was entitled to claim compensation.

17 Finally, in paragraph 50, the Court of First Instance noted that, according to the case-law, the compensation owed to an official for loss of income as a result of belated reinstatement is in principle equal to the net remuneration he would have been entitled to, less the net income received from other employment during the

same period (Case 58/75 *Sergy* v *Commission* [1976] ECR 1139, paragraph 40, and Case 785/79 *Pizziolo* v *Commission* [1983] ECR 1343, paragraph 12).

18 The Court of First Instance then determined the period to be taken into account for calculating the compensation for the alleged loss of income. In paragraph 57 of the judgment under appeal, it took 1 January 1995 as the start of that period, on the following grounds:

'53 In his letters of 21 February and 21 March 1995, the applicant did no more than ask the defendant to consider the possibility of reinstatement in the Parliament, preferably with effect from 15 June 1995. The mere expression of such a preference cannot be regarded as constituting even a concurrent cause of the damage suffered between the date of the first vacant post for which the applicant satisfied the requirements (1 January 1995) and 15 June 1995.

54 It appears from the defendant's answers to the questions put by the Court in writing and at the hearing that reinstatement did not take place in post No 2948, on 1 January 1995, or in post No 1936, which was filled on 1 June 1995, that is, at a date close to that on which the applicant had wished to be reinstated ... The applicant was in fact not reinstated until over a year later.

55 Moreover, that preference was expressed only from 21 February 1995. It cannot be concluded that, at the time of the first vacancy (1 January 1995), the applicant likewise preferred to be reinstated on 15 June 1995 or that he was not able to make himself available to the institution before 15 June 1995.

56 It follows that the cause of the damage suffered by the applicant was the failure to offer him a post with a view to reinstatement when an appropriate post was vacant.'

19 The Court of First Instance, in paragraph 63 of the judgment under appeal, fixed the end of the period at 8 March 1996, the date on which Mr Bieber accepted the post offered to him by the Secretary-General of the Parliament in his letter of 21 February 1996. On this point the Court thus did not accept the arguments of either of the parties.

20 It considered, first, in paragraphs 59 and 60, that the date of 13 December 1995, on which Mr Bieber was said to have rejected the content of the letter of the Secretary-General of the Parliament of 7 December 1995, could not be taken as the end of the period, since that letter, as its object was to prepare a possible offer of a post, did not constitute an offer of a post for the purposes of Article 40(4)(d) of the Staff Regulations and it had not been considered by the parties as constituting a first offer of a post within the meaning of that provision.

21 It considered, second, in paragraph 63 of the judgment under appeal, that as Mr Bieber had agreed to defer his reinstatement until 1 June 1996 and thus to remain on leave on personal grounds between 8 March and 1 June 1996, he could not claim to have suffered damage from 8 March 1996.

22 In those circumstances, the Court of First Instance ruled as follows:

'1. The implied decision rejecting the claim for reinstatement and compensation submitted by the applicant on 18 October 1995 is annulled.

2. The Parliament is ordered to compensate the applicant for the material damage which he suffered as a result of not being reinstated on 1 January 1995 to Grade A 3, step 6, to the post of Legal Adviser to the Parliament which was the object of Vacancy Notice No 7580 of 5 December 1994.

3. The amount to be paid to the applicant by way of compensation for his loss of income is equivalent to the difference between the net remuneration which he would have received between 1 January 1995 and 8 March 1996 and the total net income which he received from other employment.

4. That sum will be increased by the amount corresponding to the loss resulting from the absence of automatic advancement in step.

5. The total amount defined in paragraphs 3 and 4 above will attract interest at 4.5% per annum from 12 December 1996 until the date on which it is paid to the applicant.

6. The Parliament is ordered to restore the applicant's pension rights in such a way as to compensate for the difference between the rights to which he would have been entitled if he had been reinstated on 1 January 1995 and those to which he was actually entitled.

7. The amounts due under paragraph 6 above shall attract interest at 4.5% from the date on which they were payable.

8. To enable the amount of compensation payable to the applicant by the defendant to be determined: (a) the parties will forward to the Court, within three months from delivery of this judgment, their common agreement, first, on the amount of compensation thus payable to the applicant and, second, on the restoration of his pension rights and the interest payable in respect thereof; (b) failing such agreement, the parties will forward to the Court, within the same period, their detailed claims, stating the precise reasons why they dispute the other party's proposal.'

The appeal

23 In its appeal, the Parliament claims that the Court should:

— set aside the judgment under appeal;

— in the alternative, annul points 2, 3 and 6 of the operative part of that judgment so as to reduce the period in respect of which the Parliament is ordered to compensate Mr Bieber to the period from 15 June 1995 to 13 December 1995;

— in any event, rule on costs in accordance with the applicable provisions of the Rules of Procedure.

24 Mr Bieber contends that the Court should:

— dismiss the appeal as manifestly inadmissible;

— in the alternative, dismiss the appeal as unfounded as regards both pleas in law;

— order the Parliament to pay the costs.

25 The Parliament puts forward two pleas in law in support of its appeal: the first alleges misinterpretation of Article 40(4)(d) of the Staff Regulations, and the second alleges errors of law in determining the period taken into account to calculate the damage allegedly suffered by Mr Bieber.

The first plea in law

26 By its first plea the Parliament essentially criticises the Court of First Instance for erring in law by adopting, in paragraphs 36 and 37 of the judgment under appeal, a literal interpretation of Article 40(4)(d) of the Staff Regulations which contradicts the case-law of the Court of Justice on that provision, in particular *Giry* v *Commission.*

27 In its opinion, it follows clearly from *Giry* v *Commission* that an institution is not obliged to reinstate an official at the first opportunity as long as that official's conduct may raise doubts as to his intention to make himself available to the institution.

28 Moreover, that interpretation by the Court of First Instance gave rise, first, to its erroneous and incomplete assessment of the facts in paragraphs 40 and 42 of the judgment under appeal and, second, to the error of law it committed in paragraph 39 by failing to recognise that the filling of a vacant post in an administration is justified by the exigencies of the public service and not by the personal convenience of officials (Case 108/79 *Belfiore* v *Commission* [1980] ECR 1769).

29 Mr Bieber claims that, as the Parliament is seeking only to have the facts re-examined, this plea is inadmissible.

30 On this point, it must be noted that under Article 168a of the EC Treaty (now Article 225 EC) and Article 51 of the EC Statute of the Court of Justice an appeal is limited to points of law and must be based on the grounds of lack of competence of the Court of First Instance, breach of procedure before it which adversely affects the interests of the appellant, or infringement of Community law by the Court of First Instance (see, *inter alia*, Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraph 47, and Case C-7/95 P *Deere* v *Commission* [1998] ECR I-3111, paragraph 18).

31 It also follows from the above provisions that an appeal may be based only on grounds relating to the infringement of rules of law, to the exclusion of any appraisal of the facts. The Court of First Instance has exclusive jurisdiction, first, to establish the facts except where the substantive inaccuracy of its findings is apparent from the documents submitted to it and, second, to assess those facts. When the Court of First Instance has established or assessed the facts, the Court of Justice has jurisdiction under Article 168a of the Treaty to review the legal

characterisation of those facts by the Court of First Instance and the legal conclusions it has drawn from them (see, *inter alia*, *Brazzelli Lualdi*, paragraphs 48 and 49, and *Deere*, paragraph 21).

32 It follows that the interpretation of Article 40(4)(d) of the Staff Regulations, which is a question of law, may be reviewed by the Court of Justice in the context of an appeal.

33 In those circumstances, the first plea must be declared admissible.

34 As to the Court of First Instance's interpretation of Article 40(4)(d) of the Staff Regulations in paragraphs 36 and 37 of its judgment, it must be recalled, first, that it appears from the case-law of the Court of Justice that, while an institution has a discretion as regards the assessment of whether an official is qualified to fill a post which is vacant, the failure of an institution to reinstate an official where a post capable of being filled by him has fallen vacant shortly after the expiry of his leave on personal grounds nevertheless constitutes a breach of Article 40(4)(d) of the Staff Regulations (*Sergy* v *Commission*, paragraphs 13 to 15). The fact that an official has failed to draw the institution's attention to the fact that he was not being reinstated within the normal time is of no relevance for determining the date on which the institution had to comply with Article 40(4)(d) of the Staff Regulations (see *Sergy*, paragraphs 20 and 21).

35 In those circumstances, it must be held that, by finding in paragraphs 36 and 37 of the judgment under appeal that the obligation to reinstate at the first opportunity an official whose leave on personal grounds has expired is subject to no condition other than that which follows from the provision in question, namely a vacant post for which the official satisfies the requirements, and that reinstatement does not depend on any additional condition such as an expression

of interest by the official or whether he carries on a professional activity during his leave, the Court of First Instance did not err in law.

36 It should be pointed out, next, that the Court held in paragraphs 6 to 10 of *Giry* v *Commission* that in view of the facts of that case, namely the official's persistence with a written request for termination of his service which he had made before the expiry of his leave, the refusal of which he had contested by administrative complaint and application to the Court, an institution could have doubts as to the genuineness of the official's intention to make himself available to the institution, and the obligation to reinstate the official at the first opportunity became certain only once those doubts had been definitively dispelled.

37 The facts of the present case, as found by the Court of First Instance, differ clearly from those of *Giry* v *Commission*, since there was no written request by Mr Bieber for his service to be terminated and he took no administrative or judicial steps against any implied rejection of such a request.

38 Accordingly, the Court of First Instance did not err in law in its interpretation of Article 40(4)(d) of the Staff Regulations.

39 The first plea in law must therefore be rejected as unfounded, without there being any need to consider the other arguments put forward in relation to it.

The second plea in law

40 By its second plea the Parliament criticises the Court of First Instance for making several errors of law in determining the period to be taken into account for calculating the damage allegedly suffered. This plea is divided into three parts.

First part of the second plea

41 By the first part of this plea the Parliament criticises the Court of First Instance for erring in law by failing to take into account, when determining the start of the period used to calculate the damage allegedly suffered by Mr Bieber, the fundamental principle that where non-contractual liability is concerned the injured party is obliged to take all appropriate and reasonable steps to limit the extent of the damage as much as possible. In the present case, in particular because of his letters of 21 February and 21 March 1995 in which he asked the Parliament to consider the possibility of reinstating him, preferably from 15 June 1995, Mr Bieber was partly responsible for the damage allegedly suffered as a result of his belated reinstatement.

42 On this point, it suffices to observe that the Court of First Instance showed sufficiently clearly, in paragraphs 53, 55 and 56 of the judgment under appeal, why that argument is completely unfounded.

43 In paragraph 53 of its judgment, the Court of First Instance stated that in his letters of 21 February and 21 March 1995 Mr Bieber had expressed only his preference for being reinstated from 15 June 1995 and that the expression of such a preference could not constitute even a concurrent cause of the damage Mr Bieber suffered between 1 January 1995, the date of the first vacant post for which he satisfied the requirements, and 15 June 1995.

44 In paragraph 55, the Court of First Instance further stated that the fact that Mr Bieber had expressed such a preference on 21 February 1995 did not permit the conclusion that on 1 January 1995 he likewise preferred to be reinstated on 15 June 1995 or that he was unable to make himself available to the institution before 15 June 1995.

45 Consequently, the Court of First Instance held, in paragraph 56 of the judgment under appeal, that the sole cause of the damage suffered by Mr Bieber was the failure to offer him a post with a view to reinstatement when a suitable post was vacant.

46 It follows that the first part of the second plea must be rejected.

Second part of the second plea

47 By the second part of this plea the Parliament claims that the Court of First Instance erred in law in considering, in paragraphs 59 and 60 of the judgment under appeal, that the letter of the Secretary-General of the Parliament of 7 December 1995 could not be characterised as an offer of a post within the meaning of Article 40(4)(d) of the Staff Regulations. Regarding the characterisation of that letter, the Parliament submits that the letter was sufficiently precise to be regarded as an offer of a post, that Mr Bieber understood the letter as an offer of a post within the meaning of Article 40(4)(d) of the Staff Regulations, and that it cannot be argued that because it was not taken into account by the parties it could not be characterised as an offer of a post within the meaning of that provision, since Mr Bieber had the possibility of accepting it.

48 On this point, it must be held that, by finding in paragraph 59 of the judgment under appeal that in view of its content, namely the statement of the Secretary-

General of the Parliament that he intended to propose Mr Bieber's reinstatement in the post of head of division but that that proposal could be carried out only on certain conditions and Mr Bieber should first inform him whether he was prepared to comply with those conditions, the object of the letter of 7 December 1995 was only to prepare a possible offer of a post, the Court of First Instance made an assessment of the facts which, for the reasons set out in paragraph 31 above, the Court of Justice has no jurisdiction to review.

49 However, the Parliament is essentially criticising the legal characterisation of the facts by the Court of First Instance in paragraph 59 of the judgment under appeal. As a question of law, the second part of the second plea is admissible.

50 It must be held, however, that, by finding in paragraph 59 of the judgment under appeal that the letter of the Secretary-General of the Parliament of 7 December 1995 could not be characterised as an offer of a post within the meaning of Article 40(4)(d) of the Staff Regulations, the Court of First Instance merely drew the legal consequences of its unchallengeable factual assessment that the object of the letter was to prepare a possible offer of a post, and did not make any error of law in the legal characterisation of the letter.

51 In those circumstances, the second part of the second plea must be rejected as unfounded.

Third part of the second plea

52 By the third part of the plea, the Parliament complains that the Court of First Instance erred in law, in paragraph 63 of the judgment under appeal, by taking as

the end of the relevant period for calculating the alleged damage 8 March 1996, the date when Mr Bieber accepted the offer of a post, rather than 21 February 1996, the date on which that post was offered to him. The view taken by the Court of First Instance did not take into account that by allowing over two weeks to elapse before responding to the offer of a post Mr Bieber contributed to the damage he claims to have suffered.

53 Mr Bieber does not accept that the end of the period to be taken into account for calculating the alleged damage should be fixed at 21 February 1996, the date on which the offer of a post was sent. He considers that under Article 191(3) of the EC Treaty (now Article 254(3) EC) an act has no legal effect on a person until is has been communicated to him. In the present case, he received the Parliament's offer of a post only on 23 February 1996. However, he considers that a period of reflection of about two weeks is legitimate before accepting a somewhat imprecise offer of a post, so that the Court of First Instance did not err in law by fixing the end of the relevant period at 8 March 1996, the date on which he accepted the offer of a post.

54 On this point, the Court of First Instance rightly held, in paragraph 63 of the judgment under appeal, that since Mr Bieber had in his letter of 8 March 1996 expressed the wish to determine the date of his reinstatement by common agreement with the Parliament he was the cause of his loss of income between 8 March 1996 and the actual date of reinstatement, and that he could not therefore claim to have suffered damage after 8 March 1996.

55 However, by holding that the period to be taken into account for calculating the damage allegedly suffered by Mr Bieber ended on the date of acceptance of the offer of a post, without considering to what extent he had contributed to the damage allegedly suffered by allowing two weeks to elapse between receiving the offer of a post and accepting it, the Court of First Instance erred in law.

56 An official on leave on personal grounds who, in breach of Article 40(4)(d), has not been reinstated in the first vacant post for which he satisfies the requirements and who receives an offer of a post such as that at issue in the present case, namely one which does not contain any reinstatement date and therefore proposes the official's immediate reinstatement, must be considered solely responsible for the damage he suffers between the date of receiving the offer of a post and the date of accepting it.

57 To make the end of the period used to calculate the damage suffered correspond to the date of acceptance of the offer of a post would be to accept that an official may, by his failure to act, increase the damage he suffers, even though the institution which is at fault has taken all necessary steps to limit the damage flowing from its breach of Article 40(4)(d) of the Staff Regulations. The failure of the Court of First Instance to take this into account is manifestly contrary to the general principle recognised in the Court's case-law that, in the context of non-contractual liability, the injured party must show reasonable diligence in limiting the extent of the damage (see, *inter alia*, *Sergy* v *Commission*, paragraph 41, *Giry* v *Commission*, paragraph 19, and Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, paragraph 85).

58 It follows that the third part of the second plea is well founded and point 3 of the operative part of the judgment under appeal must be set aside.

59 Since the proceedings are ready for judgment on this point, it must be declared, in accordance with the first paragraph of Article 54 of the EC Statute of the Court of Justice, for the reasons stated in paragraphs 55 to 57 above, that the amount payable to Mr Bieber as compensation for his loss of income is equivalent to the difference between the net remuneration he would have received between 1 January 1995 and 23 February 1996 and the total net income he received from other employment.

Costs

60 Under Article 69(2) of the Rules of Procedure, which applies to the appeal procedure pursuant to Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since Mr Bieber has applied for costs and the Parliament has been essentially unsuccessful, the Parliament must be ordered to pay the costs of this appeal.

61 There is no need to rule on the costs of the proceedings before the Court of First Instance. Since those proceedings have not yet been concluded, that court must still rule on the costs incurred before it.

On those grounds,

THE COURT (Second Chamber),

hereby:

1. **Sets aside point 3 of the operative part of the judgment of the Court of First Instance of 26 May 1998 in Case T-205/96 *Bieber* v *Parliament*;**

2. Declares that the amount payable to Mr Bieber as compensation for his loss of income is equivalent to the difference between the net remuneration he would have received between 1 January 1995 and 23 February 1996 and the total net income he received from other employment;

3. Dismisses the remainder of the appeal;

4. Orders the European Parliament to pay the costs of this appeal.

Schintgen Hirsch Skouris

Delivered in open court in Luxembourg on 16 March 2000.

R. Grass

Registrar

R. Schintgen

President of the Second Chamber