OPINION OF ADVOCATE GENERAL TESAURO

delivered on 18 June 1996 *

1. In this appeal, Mr de Compte ('the appellant') is asking the Court of First Instance to set aside the judgment of 26 January 1995 [1] ('the contested judgment') by which the Court of First Instance rejected two actions for annulment brought by the appellant against two decisions adopted in relation to him by the European Parliament.

More specifically, the actions sought annulment of the decision of the European Parliament of 18 April 1991 revoking [2] with retroactive effect the decision of 24 January 1991 by which the European Parliament recognized that the appellant was suffering from an occupational disease, and annulment of the decision of 20 January 1992 by which the European Parliament definitively refused to recognize that he was suffering from an occupational disease.

Facts

2. The facts which give rise to this protracted, involved legal dispute go back to 1982 when, in his capacity as appointing authority, the President of the European Parliament initiated disciplinary proceedings against the appellant, who was at that time an official of Grade A 3 of the European Parliament, holding the post of accounting officer. The procedure ended with the adoption of a first decision (on 24 May 1984) by which the appointing authority imposed upon the appellant, who was held responsible for a number of irregularities in the exercise of his duties, the disciplinary measure of downgrading to Grade A 7, Step 6.

That decision was annulled by the Court of Justice on the ground that it was vitiated by a formal defect by judgment of 20 June 1985; [3] subsequently the procedure was reopened, to be brought to a conclusion by a decision of 18 January 1988. The appellant also brought an action for annulment of this second decision — in which the appointing authority reconfirmed the disciplinary measure of downgrading — before the Court of First Instance, which rejected the application by judgment of 17 October 1991. [4] The appellant appealed against that judgment to this Court, which rejected the appeal by judgment of 2 June 1994. [5]

* Original language: Italian.

1 — Joined Cases T-90/91 and T-62/92 *De Compte* v *Parliament* ECR-SC II-1; abstract in English at [1995] ECR-SC II-A-1.

2 — To avoid confusion, I shall use the term 'revoke' in my Opinion, as the Court of First Instance has already used it on other occasions and in the earlier stages of the *De Compte* case. In Italian legal terminology, however, the term generally refers to the withdrawal of administrative acts on grounds other than their validity, and since this case concerns the withdrawal of an act that was invalid from the outset, it would be more appropriate to speak of 'annulment'.

3 — Case 141/84 *De Compte* v *Parliament* [1985] ECR 1951.

4 — Case T-26/89 *De Compte* v *Parliament* [1991] ECR II-781.

5 — Case C-326/91 P *De Compte* v *Parliament* [1994] ECR I-2091.

3. In the meantime, on 14 June 1988, the appellant lodged a complaint with the European Parliament in which he stated that he had contracted an occupational disease during the course of the disciplinary procedure and claimed payment of benefits under Article 73 of the Staff Regulations in accordance with Article 17(1) of the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease (hereinafter 'the Rules'). [6]

In an initial report, drawn up pursuant to Article 19 of the Rules, the doctor appointed by the European Parliament refused to recognize the occupational nature of the appellant's disease. The appointing authority therefore served upon the appellant a draft decision rejecting his claim. When the appellant challenged that draft, the Invalidity Committee was duly convened in accordance with Article 23 of the Rules. On 22 January 1991, the Invalidity Committee found as follows:

'1. Henri de Compte is suffering from severe anxio-depressive decompensation, in the form of melancholia and paranoia, the cause of which is occupational, the condition having been generated by stress which was occasioned by accusations perceived as malicious, and which has led to the downgrading of his career and to mental problems.

2. The subject contracted this illness through having encountered in the performance of his duties exceptional circumstances of such a nature as to induce illness.

3. (...)

4. The causal factors responsible for the illness are the subjective and the objective experiences ensuing from the accusations made against the subject. Those two forms of experience have in equal measure had a decisive effect on a person predisposed towards paranoia.

(...)

6. The rate of invalidity is 40% (forty per cent).

(...)'.

On the basis of that report, the appointing authority adopted a decision on 24 January 1991 in which the appellant's disease was held to be occupational in nature and it was decided to pay him the sum of

6 — Article 73 of the Staff Regulations establishes the criteria for calculating the amount of compensation payable to officials in respect of the various kinds of occupational disease or accident at work, while Article 17 of the Rules lays down procedures governing submission of the relevant claim.

BFR 9 147 091 by way of compensation for the permanent partial invalidity caused by the disease itself.

4. By decision of 18 April 1991, the appointing authority revoked the decision of 24 January 1991 with retroactive effect, on the ground that it was based on an erroneous interpretation of the concept of occupational disease. The appointing authority justified its revocation of the decision by applying the principle, expressly laid down by the Court of Justice in *Rienzi*, [7] according to which an illness of an official may only be classed as occupational if it arises in connection with lawful performance of the duties of the person concerned. In this case, as stated in the very report of the Invalidity Committee, it was undisputed that the disease had its origin in the appellant's state of depression following the accusations made against him and the disciplinary measure imposed on him, rather than in the performance (still less the lawful performance) of his duties.

In the operative part of the decision of 18 April 1991, the appointing authority also stated that a new decision would be adopted following delivery of the judgment of the Court of First Instance in Case T-26/89, which, as I have mentioned, was concerned with the legality of the disciplinary measure of downgrading.

5. On 4 June 1991, the appellant lodged a complaint against the decision of 18 April 1991, which the appointing authority rejected by decision of 23 September 1991. The appellant brought an action against that decision and the decision rejecting his complaint before the Court of First Instance (Case T-90/91).

On 20 January 1992, that is to say after the Court of First Instance had confirmed by judgment of 17 October 1991 that the disciplinary measure imposed upon the appellant was lawful, the appointing authority adopted the decision provided for in the operative part of the decision of 18 April 1991 which was intended to replace the decision of 24 January 1991. The decision of 20 January 1992, confirming the application of the judgment in *Rienzi* to the instant case, held that the appellant's disease was not occupational in origin within the meaning of the Rules.

On 10 April 1992 the appellant brought an appeal against the decision of 20 January 1992, which the appointing authority rejected on 4 June 1992. The appellant also challenged that decision, together with the rejection of his complaint, before the Court of First Instance (Case T-62/92).

6. By judgment of 26 January 1995, against which this appeal has been brought, the Court of First Instance rejected both claims, but ordered the European Parliament to pay the appellant the sum of BFR 200 000 by way of compensation for non-material damage sustained by him as a result of the failure

7 — Case 76/84 *Rienzi* [1987] ECR 315, paragraphs 10 and 11.

of the competent officers to observe the duty to have regard for his welfare in implementing the procedure.

The appeal

7. The appellant claims that the Court should:

— annul the judgment, save in so far as it orders the European Parliament to pay the appellant the sum of BFR 200 000 by way of compensation for the non-material damage he has suffered;

— declare the claims brought by the appellant before the Court of First Instance well founded, and uphold them.

The appeal is based on an alleged infringement of Community law, more especially: (a) infringement of Article 33 of the Statute of the Court of Justice of the EEC concerning the obligation to give grounds for decisions; (b) infringement of Article 73 of the Staff Regulations and Article 3 of the Rules with regard to the benefits payable to officials in the event of occupational disease and the concept of occupational disease; (c) infringement of a number of general principles of law, including the principles of legal certainty; good faith; protection of legitimate expectations; the duty to have due regard for the welfare of officials; the principle that administrative measures should be annulled within a reasonable time and should be based on reasons which are 'legally permissible' (sic!).

In formal terms, the appeal is made up of five different pleas, which, by and large, reiterate the criticisms already raised before, and rejected by, the Court of First Instance.

The first plea

8. In his first plea, the appellant claims that Article 33 of the Statute of the Court of Justice, which requires that judgments are to state the reasons on which they are based, has been infringed. In point of fact, far from relying on a defective statement of reasons, the appellant is challenging the substance of the judgment of the Court of First Instance, in particular where it confirmed that the decision of 24 January 1991 was invalid and, at the same time, upheld the validity of the subsequent decision revoking it.

In paragraphs 42 and 47 of the judgment, the Court of First Instance, citing the relevant case-law, stressed the limits to the powers conferred on the Medical Committee referred to in Article 23 of the Rules, its assessments having to be confined to medical matters. Legal assessments of the consequences to be drawn from the medical

findings are in fact a matter for the administrative authority, subject possibly to judicial review. [8]

9. As far as this case is concerned, the Court of First Instance found that while the Medical Committee's report of 22 January 1991 identified the origin of the appellant's disease as the disciplinary procedure and the nature of the charges made against him, it went on to classify the disease as occupational, thereby making a legal assessment that exceeded its powers as defined above.

The report drawn up by the Medical Committee is therefore based, in the view of the Court of First Instance, on a misconception of the notion of occupational disease. Therefore the appointing authority's decision, which in turn is based on the report's findings, is for that reason invalid and consequently apt to be revoked.

10. For his part, the appellant submits, in the first place, that in defining the disease as occupational in nature, the Medical Committee did not make a legal assessment but confined itself to the task assigned to it by the European Parliament itself, namely to determine whether the 'disease was of an occupational nature', and, secondly, that the report by the Invalidity Committee was not vitiated by any irregularity.

The appellant further submits that, by confirming the invalidity of the revoked decision, the Court of First Instance in fact unlawfully substituted its assessment of the occupational origin of the disease for that of the Medical Committee, which alone was competent to decide the matter. Furthermore, the concept of occupational disease adopted in the judgment is incorrect, in so far as a disease that is not caused by circumstances relating to the private life of an individual (sporting activities, holidays, family life, etc) has by definition to be classified as occupational.

11. However, the approach adopted by the Court of First Instance seems to me to be correct in so far as what is at issue here is not an exclusively medical assessment. In actual fact, for a disease to be classified as occupational, further considerations outside the medical field may need to be taken into account, in addition to medical assessments. Therefore the Medical Committee normally carries out only the technical/medical assessments, leaving it to the administration to draw the appropriate administrative and legal conclusions. But, even if the Medical Committee itself were to draw conclusions or make assessments other than ones of a purely medical nature, those assessments would be at most irrelevant and in no way prejudice the ability of, first, the appointing authority and, subsequently, the Court to make assessments.

8 — Case C-185/90 P *Gill* [1991] ECR I-4779, paragraph 24; see also *Rienzi*, paragraph 9.

In other words, the power of the administration to review from the legal point of view the findings of the analysis carried out by the Medical Committee remains completely unaffected. Take, for example, the condition concerning the *lawful* exercise of his duties by the person concerned — the subject of the judgment in *Rienzi*; it is clear that it is the administration which has to decide whether that condition has been satisfied, as it possesses the information and is familiar with the factual and legal issues relating to the particular case. It is also clear that, as far as the concept of occupational disease is concerned, the Court is also competent to review either the assessment of the Invalidity Committee or that of the appointing authority.

12. Seen in that perspective, the contention that the Court of First Instance 'encroached upon' the competence of the Medical Committee by substituting itself for the Committee in assessing the occupational origin of the disease is not even worth commenting upon. The Court of First Instance in fact merely took issue with the fact that the Medical Committee classified the appellant's disease as 'occupational'; it did not thereby take issue with its medical findings.

13. On the question of the correctness of the concept of occupational disease adopted in the judgment, the appellant's contention that any disease that does not arise in a private context is by definition an occupational disease manifestly flies in the face of common sense, and is, in any event, incompatible with the *Rienzi* judgment. It would be paradoxical to claim — as is being claimed in these proceedings — that a person can 'benefit' by an occupational disease in regard to the exercise of duties performed in breach of his obligations under the Staff Regulations.

In other words, to conclude what I have to say on this point, the Medical Committee's classification of the disease as occupational in origin cannot be definitive, in the sense that it binds the administration. If that were to be the case, there would be no further scope for review by the administration (and, if necessary, the Court) of these and other factual and legal matters which could prove decisive for the very purposes of classifying the disease.

14. Again, in the context of his first plea, the appellant challenges paragraph 45 of the judgment, in which the Court of First Instance found that the disease contracted by the appellant could not be classified as occupational in nature even if it were found to have been caused by 'improper' acts or conduct by the European Parliament *vis-à-vis* the appellant. According to the Court of First Instance, in so far as such acts or conduct are not linked to the normal exercise of the official's functions, the most that could be envisaged would be non-contractual liability on the part of the institution.

Suffice it to say that since that statement — which moreover is in the nature of an *obiter dictum* — did not determine whether the application for annulment brought by the appellant was upheld or rejected, it cannot alter the terms of the problem. I therefore consider that criticism to be completely irrelevant.

The second plea

15. In his second plea, the appellant challenges paragraph 48 of the judgment, in which the Court of First Instance held that the institution's power to rely on the illegality of an earlier decision in order to withdraw that decision is inherent in its very illegality, in the sense that that illegality constitutes the condition for revoking a measure which has created personal rights in its addressee. In that vein, the Court of First Instance went on to state that the appellant's claim that 'the invalidity of the decision has to be able legitimately to be relied upon' had no independent relevance, since that condition was satisfied once the measure was revoked within a reasonable time and account was taken of the legitimate expectations of addressee of the decision.

The appellant, however, argues that the aforementioned two conditions are not sufficient and therefore accuses the Court of First Instance of having merged the possibility of legitimately relying upon the invalidity of an act in order to revoke it with the two conditions of a reasonable time and legitimate expectations, whereas he considers these to be separate criticisms. The appellant avers, in particular, that the European Parliament was not entitled to rely on the invalidity of the decision in so far as reference to *Rienzi*'s case, with which it ought to have been acquainted, was made at too late a stage in the procedure.

16. In this regard, I shall merely note the clear, solidly-established case-law of the Court of Justice, which was properly applied by the Court of First Instance, according to which the revocation of an invalid decision which has created rights in the addressee is subject to the requirements of a reasonable time and respect for legitimate expectations. [9] These then, and no others, are the only conditions to which the possibility of retroactively revoking a measure is subject. I therefore fully agree with the Court of First Instance's finding that the appellant's criticism in this regard is essentially covered by the alleged breach of the obligation to comply with a reasonable period of time and the principle of protection of legitimate expectations, the subject-matter of the subsequent (third and fourth) pleas. It therefore follows that the second plea also is without foundation.

9 — See, for instance, Case 14/81 *Alpha Steel* [1982] ECR 749, paragraph 10, and Case 15/85 *Consorzio Cooperative d'Abruzzo* [1987] ECR 1005, paragraph 12.

The third plea

17. In his third plea, the appellant contends that the Court of First Instance incorrectly regarded the period, of less than three months, within which the decision of 24 January 1991 was revoked as reasonable within the meaning of the case-law of the Court of Justice.

The appellant is in fact claiming, on the one hand, that that period ought to have started running, not on the date on which the decision at issue was adopted, but on the date on which the Medical Committee's report was drawn up (according to the appellant, 24 August 1990) and, on the other, that a three month period is in any case too long and unreasonable.

18. The first contention is manifestly unfounded. It is plain that, if for no other reason than reasons of legal certainty, the period at issue here must begin to run at the time when the defective decision began to have legal effects in regard to the addressee, that is to say, on the date when the decision itself was adopted.

But the second contention too is completely unfounded. In a similar case, the Court of Justice in fact held a six-month period to be reasonable; [10] furthermore, as pointed out by the European Parliament, the period did not exceed the time-limit laid down by the Staff Regulations for an addressee to lodge a complaint against an individual decision.

The fourth plea

19. The appellant then disputes, more generally, those paragraphs of the judgment (paragraphs 59 to 62) rejecting the argument alleging infringement by the institution of the obligation to take account of the addressee's legitimate expectations with regard to the validity of the revoked decision. According to the appellant, the fact that the European Parliament did not cite the *Rienzi* judgment from the start of the procedure inspired in him, not just a legitimate expectation, but 'absolute certainty' that he would be able to obtain recognition of the occupational nature of his disease.

That argument too should simply be disregarded. In the first place, I must reiterate that the point in time from which protection of the addressee's legitimate expectations as

10 — Joined Cases 7/56 and 3/56 to 7/56 *Algera* v *Common Assembly* [1957 and 1958] ECR 39.

to the validity of the decision revoked has to be assessed is the date of the decision itself and not the start of the procedure. It is in fact only from the date of its adoption that the act has definite legal effects such as may give rise to an expectation as to its validity. In any event, the decision was revoked precisely because it had incorrectly failed to apply the *Rienzi* case-law. As a result, the same complaint is involved.

20. Moreover, there is in addition an important factual circumstance, which was found by the Court of First Instance and is undisputed by the parties: it appears from the case-file that, as early as between 1 and 13 March 1991, the appellant had been warned by the competent departments of the Parliament that there were difficulties in paying over the sum which had been awarded to him because of doubts that had arisen specifically in regard to the validity of the decision at issue. [11] It is therefore clear that the applicant's alleged trust in the validity of the decision itself could in fact have lasted only for little over a month.

Lastly, it should be pointed out that, specifically in consideration of the damage suffered by the appellant as a result of the insufficient diligence shown by the competent departments of the European Parliament in carrying out the procedure, the European Parliament was ordered to pay the appellant compensation (of BFR 200 000) in respect of non-material damage. It therefore seems to me that the judgment affords the appellant more than adequate redress.

The fifth plea

21. The fifth plea concerns that part of the judgment of the Court of First Instance relating to Case T-62/92 only. The appellant disputes that the period that elapsed between the (revoked) decision of 24 January 1991 and the decision of 20 January 1992 by which the appointing authority refused once and for all to recognize the occupational nature of the appellant's disease, was reasonable. To that end, he reiterates 'the same arguments' already put forward in the third plea.

The judgment's reasoning on this point is, in my view, again perfectly sound. As the Court of First Instance in fact expressly pointed out, the appointing authority correctly awaited the outcome of Case T-26/89 (concerning the legality of the disciplinary measure) before adopting a final decision on the case, because the judgment in that case could have proved decisive in terms of the content of the definitive decision.

The last plea is therefore unfounded.

11 — See paragraphs 53 and 61 of the judgment.

22. In the light of the foregoing observations, I propose that the Court should:

— dismiss the appeal as unfounded;

— order the appellant to pay the costs.