Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (First Chamber)

7 May 2013 *

(Civil service — Officials — Invalidity pension — Article 78, fifth paragraph, of the Staff Regulations — Refusal to recognise that invalidity arose from an occupational disease)

In Case F-86/11,

ACTION brought under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof,

Robert McCoy, former official of the Committee of the Regions of the European Union, residing in Brussels (Belgium), represented by L. Levi, lawyer,

applicant,

v

Committee of the Regions of the European Union, represented by J.C. Cañoto Argüelles, acting as Agent, and by B. Wägenbaur, lawyer,

defendant,

THE CIVIL SERVICE TRIBUNAL (First Chamber)

composed of H. Kreppel, President, E. Perillo (Reporteur) and R. Barents, Judges,

Registrar: J. Tomac, Administrator,

having regard to the written procedure and further to the hearing on 16 October 2012,

gives the following

Judgment

1 By application lodged at the Registry of the Tribunal on 8 September 2011, Mr McCoy brought the present action seeking annulment of the decision of the Bureau of the Committee of the Regions of the European Union of 10 September 2010, in so far as the Bureau of the Committee of the Regions refused to recognise that the applicant's invalidity arose from an occupational disease within the meaning of the fifth paragraph of Article 78 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), and an order against the Committee of the Regions to pay the sum of EUR 10 000 as compensation for the non-material damage which the applicant considers he suffered and to reimburse all the expenses connected with the invalidity procedure.

* Language of the case: French.

Legal context

2 Article 53 of the Staff Regulations provides:

‘An official to whom the Invalidity Committee finds that the provisions of Article 78 apply shall automatically be retired on the last day of the month in which the appointing authority recognises his permanent incapacity to perform his duties.’

3 Article 59(4) of the Staff Regulations provides:

‘The Appointing Authority may refer to the Invalidity Committee the case of any official whose sick leave totals more than 12 months in any period of three years.’

4 Article 73 of the Staff Regulations provides:

‘1. An official is, from the date of his entry into the service, insured against the risk of occupational disease or accidents in the manner provided for in rules drawn up by common agreement of the Institutions of the [European] Union after consulting the Staff Regulations Committee. …

2. The benefits payable shall be as follows:

…

(b) [i]n the event of total permanent invalidity:

[p]ayment to the official of a lump sum equal to eight times his annual basic salary calculated on the basis of the amounts of salary received during the twelve months before the accident

(c) [i]n the event of partial permanent invalidity:

[p]ayment to the official of a proportion of the sum provided for in subparagraph (b), calculated by reference to the scale laid down in the rules referred to in paragraph 1.

As provided in these rules an annuity may be substituted for the payments provided for above.

The benefits listed above may be paid in addition to the benefits provided for in Chapter 3.

3. The following shall also be covered in the manner provided for in the rules referred to in paragraph 1: medical, pharmaceutical, hospital, surgical, prosthesis, radiography, massage, orthopaedic, clinical and transport expenses and any other similar expenditure incurred as a result of the accident or occupational disease.

Reimbursement shall, however, only be made where the amount paid to the officials under Article 72 does not fully cover the expenditure incurred.’

5 Article 78 of the Staff Regulations provides:

‘An official shall be entitled, in the manner provided for in Articles 13 to 16 of Annex VIII, to an invalidity allowance in the case of total permanent invalidity preventing him from performing the duties corresponding to a post in his function group.

…

The invalidity allowance shall be equal to 70% of the official's last basic salary. However, it may not be less than the minimum subsistence figure.

The invalidity allowance shall be subject to contributions to the pension scheme, calculated on the basis of that allowance.

Where the invalidity arises from an accident in the course of or in connection with the performance of an official's duties, from an occupational disease, from a public-spirited act or from risking his life to save another human being, the invalidity allowance may not be less than 120% of the minimum subsistence figure. In such cases, moreover, contributions to the pension scheme shall be paid in full from the budget of the institution or body referred to in Article 1b [of the Staff Regulations].'

6 Article 7 of Annex II to the Staff Regulations provides:

'The Invalidity Committee shall consist of three doctors:

— one appointed by the institution to which the official concerned belongs;

— one appointed by the official concerned; and

— one appointed by agreement between the first two doctors.

Should the official concerned fail to appoint a doctor, the President of the Court of Justice of the European [Union] shall appoint one.

In the event of failure to agree on the appointment of a third doctor within two months of the appointment of the second doctor, the third shall be appointed by the President of the Court of Justice of the European [Union] at the request of one of the parties concerned.'

7 Article 8 of Annex II to the Staff Regulations provides:

'Expenses incurred in connection with the proceedings of the Invalidity Committee shall be borne by the institution to which the official concerned belongs.

Where the doctor appointed by the official concerned is resident elsewhere than at the place where the official is employed, the official shall bear the cost of the additional fees entailed, with the exception of first-class travel expenses, which shall be refunded by the institution.'

8 Article 9 of Annex II to the Staff Regulations provides:

'The official may submit to the Invalidity Committee any reports or certificates from his regular doctor or from any medical practitioners whom he may have consulted.

The Invalidity Committee's conclusions shall be communicated to the appointing authority and to the official concerned.

The proceedings of the Committee shall be secret.'

9 Article 3, entitled ‘Occupational diseases’, of the common rules on insurance against the risk of accident and of occupational disease, referred to in Article 73(1) of the Staff Regulations (‘the Insurance Rules’), provides:

‘1. The diseases contained in the “European schedule of occupational diseases” annexed to the [European] Commission Recommendation [2003/670/EC] of 19 September 2003 (OJ 2003 L 238, p. 28) and any supplements thereto shall be considered occupational diseases to the extent to which insured parties have been exposed to the risk of contracting them in the performance of their duties with the European [Union].

2. Any disease or aggravation of a pre-existing disease not included in the schedule referred to in paragraph 1 shall also be considered an occupational disease if it is sufficiently established that such disease or aggravation arose in the course of or in connection with the performance by the official of his duties with the [European Union].’

10 Article 16 of the Insurance Rules, entitled ‘Statement of occupational disease’, provides:

‘1. Insured parties who request application of these rules on grounds of an occupational disease shall submit a statement to the administration of the institution to which they belong within a reasonable period following the onset of the disease or the date on which it is diagnosed for the first time. ...

The statement shall specify the nature of the disease and be accompanied by medical certificates or any other supporting documents.

Where an occupational disease is confirmed, the benefits provided for in Article 73(2) of the Staff Regulations shall be calculated on the basis of the monthly salary paid in the 12 months preceding the date on which the disease is first diagnosed or, failing that, the date on which the insured party first becomes incapable of working as a result of the disease or, failing that, the date of submission of the statement.

For insured parties no longer in active service at the institutions, benefits shall be calculated on the basis of salary during the final year of active service. That salary shall be updated as at the date taken into account in the third subparagraph.

2. The Administration shall hold an enquiry in order to obtain all the particulars necessary to determine the nature of the disease, whether it has resulted from the insured party’s occupation and also the circumstances in which it has arisen.

…

After seeing the report drawn up following the enquiry, the doctor(s) appointed by the institutions shall state his/her/their findings as provided for in Article 18’.

11 Article 18 of the Insurance Rules provides:

‘Decisions recognising the accidental cause of an occurrence, be it an occurrence attributed to occupational or non-occupational risks, and decisions linked thereto, recognising the occupational nature of a disease or assessing the degree of permanent invalidity shall be taken by the appointing authority in accordance with the procedure laid down in Article 20:

— on the basis of the findings of the doctor(s) appointed by the institutions;

and

— where the insured party so requests, after consulting the Medical Committee referred to in Article 22.'

12 Article 22(3) of the Insurance Rules, concerning the Medical Committee, provides:

'The Medical Committee shall examine collectively all the available documents liable to be of use to it in its assessment and all decisions shall be taken by majority vote. … The third doctor shall be responsible for providing the secretariat and drafting the report. The Medical Committee may request additional examinations and consult experts in order to complete the case or obtain opinions which are necessary for carrying out its task.

The Medical Committee may deliver medical opinions only on the facts submitted to it for examination or which are brought to its attention.

If the Medical Committee, whose task is limited to the purely medical aspects of the case, considers that it may entail a legal dispute, it shall declare that it does not have competence to deal with the matter.

On completing its proceedings, the Medical Committee shall set out its opinion in a report to the appointing authority.

On the basis of that report, the appointing authority shall notify the insured party or those entitled under him/her of its decision together with the findings of the Medical Committee. The insured party and those entitled under him/her may request that the Committee's full report be transmitted to a doctor of their choice or that it be communicated to them'.

13 Article 25 of the Insurance Rules, entitled 'Independence of Article 73', provides:

'Recognition of total or partial permanent invalidity pursuant to Article 73 of the Staff Regulations and to [the Insurance Rules] shall in no way prejudice application of Article 78 of the Staff Regulations and vice versa.'

Background to the dispute

14 The applicant initially performed the duties of financial controller within the Committee of the Regions, from 1 January 2000 to 31 December 2002, and subsequently those of internal auditor, from 1 January 2003.

15 In the course of his duties, the applicant noted irregularities in the management of the budget of the Committee of the Regions. He reported them first to the administration and the Secretary-General of the Committee of the Regions and then to the Committee on Budgetary Control of the European Parliament ('Cocobu'), before which he spoke on 19 March 2003.

16 Having been alerted by a Member of the European Parliament and by a member of Cocobu, the European Anti-Fraud Office (OLAF) investigated the irregularities reported by the applicant and issued an investigation report on 8 October 2003 ('the OLAF report'). OLAF interviewed the applicant in connection with its investigation report.

17 It was found in the OLAF report that various irregularities had been committed in the management of the budget of the Committee of the Regions and a recommendation was made inter alia that consideration should be given to bringing disciplinary proceedings against some members of staff, in particular, Mr X and Ms Y. OLAF also noted that Mr X had warned the applicant that if he did not

stop acting as if he were still the financial controller of the Committee of the Regions Mr X would ask for an administrative inquiry to be launched into his conduct, and also that the applicant had sensed increasing hostility on the part of his superiors.

18 It is noted, generally, in the findings of the OLAF report that the Committee of the Regions had attempted to 'discourage or destabilise' the applicant in the performance of his duties as financial controller and as internal auditor, and that the Committee of the Regions seemed to have disregarded Article 2(3) of Decision No 294/99 of the Bureau of the Committee of the Regions of 17 November 1999 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests, which provides that '[o]fficials or servants of the General Secretariat must in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in the first and second paragraphs'.

19 On 6 November 2003, the applicant sent the Bureau of the Committee of the Regions, in its capacity as the appointing authority, a request for assistance under Article 24 of the Staff Regulations, stating, inter alia, that by reason of performing the control functions assigned to him he was being subjected to psychological harassment, pressure, intimidation attempts and threats of disciplinary proceedings by his superiors. In that request he sought the adoption of 'appropriate measures [to bring to a speedy] end the attacks' to which he considered he was being subjected, the launch of an administrative inquiry and compensation for the damage he considered he had suffered.

20 On 22 December 2003, Cocobu presented its discharge report in respect of the implementation of the European Union general budget for the financial year 2001, Section VII of which concerns the Committee of the Regions ('the Cocobu report'). Taking the OLAF report inter alia as its basis, Cocobu not only 'condemned the official obstruction, [to which] … the financial controller/internal auditor and his staff had been subjected by the administration of the Committee [of the Regions]' but also stated that it 'expect[ed] the reform measures [under consideration by the Committee of the Regions] to allow open reporting of irregularity and fraud without risk of individual or institutional harassment as [had] occurred in the past'.

21 In the light of the OLAF report and the Cocobu report, the Parliament, acting under the powers assigned to it by Articles 275 EC and 276 EC to give discharge in respect of the implementation of the Union general budget, adopted on 29 January 2004, a resolution 'containing observations accompanying the decision concerning discharge in respect of the implementation of the general budget of the European Union for the 2001 financial year — Section VII — Committee of the Regions' ('the Parliament's discharge resolution'). In particular, in paragraphs 14, 22 and 24 of that resolution, the Parliament '[condemned], without prejudice to the outcome of the proceedings initiated by the internal auditor under Article 24 of the Staff Regulations, the official obstruction to which [he] and his staff [had] been subjected', and 'the individual or institutional harassment' to which the applicant had been subjected and '[demanded] that the internal auditor receive a formal apology from the Committee of the Regions'.

22 By letters of 17 February and 9 March 2004, the Bureau of the Committee of the Regions rejected the applicant's request for assistance, on the ground that the documents he had supplied did not prove that the alleged harassment or intimidation were genuine. The applicant did not lodge a complaint against the rejection of the request for assistance.

23 By letter of 26 April 2004, the Secretary-General of the Committee of the Regions informed the applicant that the Bureau of the Committee of the Regions had decided 'not to bring disciplinary proceedings against him'.

24 The applicant, who suffered from anxiety and depression and showed symptoms of post-traumatic stress disorder, was placed on sick leave from 28 April 2004. The applicant's sick leave was extended until 31 December 2006, and then from 22 February 2007 to 30 June 2007, the date on which the applicant was automatically retired on invalidity grounds.

25 The applicant states that whilst he was on sick leave he went to the Committee of the Regions on 31 August 2005 to retrieve his personal effects, that he fainted as a result of the poor reception he received and that he was taken to the first-aid room.

26 Having found that the applicant had accumulated sick leave totalling more than 12 months over the preceding three years, the Secretary-General of the Committee of the Regions decided on 22 February 2006 to initiate, under Article 59(4) of the Staff Regulations, the procedure to establish the applicant's invalidity and requested the applicant to appoint a doctor in order to constitute the invalidity committee.

27 The invalidity committee was initially composed of Dr T., appointed by the Committee of the Regions, Dr Ra., appointed by the applicant, and Dr Gr., appointed by agreement between the first two doctors. In January 2007, the applicant withdrew the mandate which he had given to Doctor Ra. In view of the applicant's failure to appoint a doctor, Dr Go. was appointed by the President of the Court of Justice of the European Union to represent the applicant. Subsequently, Dr Gr. resigned from the invalidity committee and was replaced by Dr O., appointed by agreement between Dr T. and Dr Go.

28 The applicant resumed work on 1 January 2007. He states that he was assigned to new duties, namely those of Adviser to the Secretary-General of the Committee of the Regions. His new office was isolated, his tasks undefined and his staff report contained negative assessments for the period during which he was on sick leave. The applicant worked until 21 February 2007, that is to say for six weeks, and then he was again placed on sick leave.

29 On 27 February 2007 the applicant made to the Secretary-General of the Committee of the Regions a request under Article 73 of the Staff Regulations and Article 16 of the Insurance Rules, seeking recognition that he was suffering from an occupational disease. The applicant moreover informed the Secretary-General of the Committee of the Regions that, since an invalidity committee had already been appointed to make a finding on his incapacity for work for the purposes of Article 78 of the Staff Regulations, he had asked for that invalidity committee to consider not only examining his incapacity for work but also the relationship that might exist between that incapacity and his occupation.

30 By letter of 10 April 2007, the Secretary-General of the Committee of the Regions informed the applicant that his request under Article 73 of the Staff Regulations had been forwarded to the European Commission in its capacity as the appointing authority *ad hoc* for the application of Article 73 of the Staff Regulations and that his request that the invalidity committee already constituted also make a finding as to whether his possible invalidity arose from an occupational disease had been duly forwarded to that committee.

31 At the end of its meeting on 23 May 2007 the invalidity committee concluded, having examined the applicant on two occasions, that he was in a state of total permanent invalidity preventing him from performing his duties ('the conclusions of 23 May 2007 concerning the existence of invalidity'). However, as regards the origin of the invalidity, the invalidity committee stated that it did not have sufficient evidence to enable it to make a finding also on whether the invalidity arose from an occupational disease and was waiting for the administration to provide it with 'genuine evidence' enabling it to make a finding in that regard.

32 It is apparent from the minutes of the meeting of the invalidity committee of 23 May 2007 ('the minutes of 23 May 2007') that, although the conclusions of 23 May 2007 on the existence of invalidity were adopted unanimously, the doctors were not in agreement as to the diagnosis, the doctor

appointed by the Committee of the Regions, Dr T., and the third doctor, Dr O., being of the opinion that the applicant was suffering from paranoid disorders, whilst the doctor appointed to represent the applicant, Dr Go. disagreed with that diagnosis, on the basis of the reports from the hospital doctor, Dr V.A. and those from Dr Ra., and also of the psychological assessment carried out by Prof. D.M..

33 It is also stated in the minutes of 23 May 2007 that the invalidity committee proposed to make a finding with regard to the origin of the invalidity 'after obtaining answers to the questions put by each [of its members] to the [a]dministration', and that the committee 'also needed to be informed of [the outcome of] the inquiry by the [s]ervice of the European Commission which had been asked for by the Secretary-General of the Committee of the Regions], at the request [of the applicant]'. In other words, it must be held, as was confirmed at the hearing, that the invalidity committee was waiting for the completion and the outcome of the procedure initiated under Article 73 of the Staff Regulations before making a finding, under Article 78 of the Staff Regulations as to whether the applicant's invalidity arose from an occupational disease.

34 By decision of 11 June 2007, the Bureau of the Committee of the Regions decided to retire the applicant on the grounds of invalidity, under Article 53 of the Staff Regulations, with effect from 30 June 2007.

35 In January 2008, in the context of the procedure initiated under Article 73 of the Staff Regulations, the Office for the Administration and Payment of Individual Entitlements (PMO) considered that there was no need to proceed to an administrative inquiry, 'since the documents on the file contained sufficient administrative evidence to enable the [PMO] doctor to make his analysis'.

36 By decision of 9 January 2009, the PMO recognised the occupational origin of the applicant's disease under Article 73 of the Staff Regulations on the basis of medical reports prepared or requested by the PMO doctor, Dr J., namely a report of 8 May 2008 and the latter's findings of 20 November 2008, and a report by Dr Ra. of 18 September 2008. Moreover, the PMO doctor's report of 8 May 2008 referred to six other medical reports, prepared by Dr V.A. and by other hospital doctors, which were produced by the applicant, and a number of non-medical documents, including the Parliament's discharge resolution. Dr Ra.'s report of 18 September 2008 referred, in addition, to a psychological assessment report prepared by Prof. D.M., dated 3 September 2008.

37 In his report of 8 May 2008, the PMO doctor states, in the light of the evidence on the file, that OLAF established, first, the existence of mismanagement within the Committee of the Regions and attempts to sideline the applicant, thereby preventing him from carrying out his work as financial controller properly, and, secondly, the existence of serious interpersonal conflicts between the applicant and his superiors. In conclusion, according to the PMO doctor, subject to the psychiatric opinion requested from Dr Ra., it was necessary to accept that there was, inter alia, 'the gradual onset of a syndrome … linked to the reprehensible professional conduct of certain officials from the Committee of the Regions'.

38 In the findings of 20 November 2008, the PMO doctor concluded that the applicant 'is no longer fit to carry out any kind of occupation within the European Communities, especially since his clinical mental state is linked to the psychological harassment he has experienced at work and the ensuing burn-out', and the 'psycho-emotional disorders [he displays] are related directly and definitely to [his] occupation'.

39 On 8 December 2008, the PMO informed the invalidity committee of its decision to recognise the occupational origin of the applicant's disease under Article 73 of the Staff Regulations. It is apparent from the file that the PMO doctor's report and findings, dated 8 May and 20 November 2008, respectively, and Dr Ra.'s report of 18 September 2008 were also sent to the invalidity committee.

40 By letter of 13 February 2009, Dr Go., the member of the invalidity committee appointed for the applicant, made a request to Dr T., the doctor appointed by the Committee of the Regions, for the resumption of the work of the invalidity committee.

41 On 20 April 2009, the third doctor, Dr O., appointed by mutual agreement between Dr T. and Dr Go., sent Dr T. a series of questions which he wanted to be put to the Committee of the Regions, concerning inter alia the content of the OLAF report and the existence of a resolution of the European Parliament requiring the Committee of the Regions to apologise to the applicant. Those questions were sent by Dr T. to the Secretary-General of the Committee of the Regions.

42 The Committee of the Regions replied to the questions put by the invalidity committee by reference to the OLAF report and the report of an administrative inquiry conducted by the Committee of the Regions following the OLAF report ('the report of the administrative inquiry'). It also confirmed that the Parliament had in fact demanded, in its discharge resolution, that the Committee of the Regions should formally apologise to the applicant.

43 On 2 March 2010, the PMO decided, in accordance with Article 73 of the Staff Regulations, to fix at 10% the rate of the applicant's invalidity caused by the disease, which was recognised as being of occupational origin. That decision was adopted on the basis of a number of additional medical reports requested by the PMO: a psychologist's report prepared on 12 August 2009 by Dr D., a neuro-psychological assessment report prepared on 17 October 2009 by Dr Me., a 'psychiatric assessment report' prepared on 3 November 2009 by Dr Re. and the findings of the PMO doctor of 11 February 2010, which also report the existence of disorders arising in response to workplace conflict. Following the report prepared by Dr Re. on 3 November 2009, the PMO doctor described the applicant's occupational disease as 'anxiety and depressive disorders arising in the context of significant conflict of an administrative nature equivalent to psychological harassment' and assessed the resulting invalidity rate at 10%. All those findings and medical reports were sent to the invalidity committee.

44 By letter of 1 June 2010 addressed to the Secretary-General of the Committee of the Regions, Dr T., the doctor appointed by the Committee of the Regions, stated that the invalidity committee had met that day and had asked to be sent the OLAF report and the report on the administrative inquiry, stating that the committee would resume its work when it had acquainted itself with those documents.

45 The three members of the invalidity committee met again on 2 July 2010. The invalidity committee concluded, by a majority, — only Dr T. and Dr O. having signed that conclusion — that the applicant's invalidity did not arise from an occupational disease ('the conclusions of 2 July 2010 on the origin of the invalidity'). Dr Go., the doctor appointed for the applicant, signed a separate conclusion, also dated 2 July 2010, finding that the applicant's invalidity did arise from an occupational disease.

46 At a meeting on 10 September 2010, the Bureau of the Committee of the Regions, in its capacity as the appointing authority, 'ratified [the conclusions of 2 July 2010 on the origin of the invalidity] according [to which] the [applicant's] invalidity [did] not arise from an occupational disease within the meaning of the [fifth paragraph] of Article 78 of the Staff Regulations'. That decision ('the decision of 10 September 2010' or 'the contested decision') was communicated to the applicant by letter of 12 October 2010, received on 22 October 2010.

47 In a summary medical report into the origin of the disease from which the applicant's invalidity arose, sent by Dr T. to Dr Go. by letter of 16 September 2010 ('the invalidity committee's report'), Dr T. and Dr O. stated that, at the meeting on 1 June 2010, the invalidity committee had acquainted itself with the answers to the questions put to the Committee of the Regions and the findings of the PMO doctor of 20 November 2008 and 11 February 2010, and that '[t]he examination of [those] documents

[had shown] that acceptance [by the PMO] of the occupational origin [was] based solely on the patient's own account'. Furthermore, the invalidity committee's report states that 'during psychological assessment[, using a] test to objectify the symptoms, the clinical readings all [proved] to be considerably above normal [and that] this indicated a suspiciously pronounced lack of candour', adding that '[t]he [applicant's] history of psychopathological disorders dates back to well before the time when he occupied the post of internal auditor'. Mention is also made in the invalidity committee's report that, at the meeting on 2 July 2010, the invalidity committee examined the OLAF report and found that it did not contain 'any description of threats, or act[s] of intimidation or harassment against [the applicant]'. Lastly, according to the invalidity committee's report, 'at the time of the internal administrative inquiry conducted [by the Committee of the Regions, the applicant] did not provide any examples of acts to which he had been … subjected'.

48 The final paragraph of the invalidity committee's report states, lastly, that '[w]hilst [Dr Go.] states that he is convinced that the invalidity arose from an occupational disease, [Dr T. and Dr O.], despite their efforts to seek out the truth, find no evidence, subject to what might be revealed in subsequent discussion, leading them in that direction'.

49 Dr Go., appointed to represent the applicant on the invalidity committee, had for his part already stated in a report of 13 September 2010 ('Dr Go.'s report'), sent to Dr T. and Dr O. in October 2010, that the applicant's invalidity arose from an occupational disease. In particular, in that report, Dr Go. noted that 'Article 78 [of the Staff Regulations] provides "social security" cover for [an] official, [who] does not need to show liability on the part of his employer in order to obtain it' and quoted inter alia extracts from the OLAF report and the Parliament's discharge resolution together with a number of medical reports on the file, taking the view that, even though those medical reports 'have no binding value', they have 'undeniably indicative [value]'. All those medical opinions, which it was necessary to follow, stated, according to Dr Go., that the applicant's health problems had been caused by psychological harassment and pressure suffered in connection with his occupation.

50 By letter of 21 January 2011, the applicant lodged a complaint, on the basis of Article 90(2) of the Staff Regulations, against the decision of 10 September 2010. In his complaint, the applicant also requested, on the basis of Article 90(1) of the Staff Regulations, an award of EUR 10 000 euros by way of compensation for non-material damage and reimbursement of all the expenses connected with the invalidity procedure.

51 By decision of 20 May 2011, received by the applicant on 1 June 2011, the appointing authority rejected the complaint ('the decision rejecting the complaint').

Procedure and forms of order sought

52 By letter of 26 July 2012, the Registry of the Tribunal told the applicant that the Tribunal proposed to award him anonymity of its own motion. The applicant replied on 16 August 2012 that he did not wish to be given anonymity.

53 The applicant claims that the Tribunal should:

— annul the decision of 10 September 2010 in so far as the appointing authority refused to recognise under the fifth paragraph of Article 78 of the Staff Regulations that his invalidity arose from an occupational disease;

— in so far as is necessary, annul the decision rejecting the complaint;

— order the Committee of the Regions to pay a sum of EUR 10 000 by way of compensation for non-material damage;

— order the Committee of the Regions to reimburse all the applicant's expenses connected with the invalidity procedure from its commencement, including those connected with the complaint;

— order the Committee of the Regions to pay the costs.

54 The Committee of the Regions contends that the Tribunal should:

— dismiss the action as unfounded;

— order the applicant to pay the costs.

Law

1. *Subject-matter of the action*

55 According to established case-law, claims for annulment formally brought against a decision to reject a complaint have the effect, where that decision lacks any independent content, of bringing before the Tribunal the act against which the complaint was submitted (see, to that effect, judgment of 17 January 1989 in Case 293/87 *Vainker* v *Parliament*, paragraph 8).

56 In the present case, the decision rejecting the complaint confirms the contested decision by providing details as regards its grounds. In such circumstances, it is indeed the legality of the initial act adversely affecting the official or staff member that must be examined, taking into account the grounds given for the decision rejecting the complaint, those grounds being supposed to coincide with that act (see, to that effect, judgment of 18 April 2012 in Case F-50/11 *Buxton* v *Parliament*, paragraph 21 and the case-law cited).

57 Consequently, the claims for annulment directed against the decision rejecting the complaint lack any independent content and the action must be regarded as being directed against the contested decision, the grounds for which are stated in the decision rejecting the complaint (see, to that effect, judgment of 10 June 2004 in Case T-258/01 *Eveillard* v *Commission*, paragraphs 31 and 32).

2. *The claim for annulment*

58 The applicant puts forward three pleas in law in support of his claim for annulment:

— first: failure to comply with procedure and breach of collegiality;

— second: breach of the obligation to state reasons, manifest error of assessment, infringement of the fifth paragraph of Article 78 of the Staff Regulations and of the terms of reference of the invalidity committee and misinterpretation of the concept of occupational disease;

— third: breach of the duty to have regard for the welfare of officials, misuse of powers and procedural irregularity.

First plea: failure to comply with procedure and breach of collegiality

Arguments of the parties

59 The applicant contends that the appointing authority made its finding, on 10 September 2010, on the basis of the conclusions of 2 July 2010 on the origin of the invalidity, which were not final and were unlawful because they were drawn up prior to both the invalidity committee's report and Dr Go.'s report. The reports in question were prepared, signed, and communicated on 16 September 2010 and in October 2010, respectively, that is to say, after the adoption of the contested decision on 10 September 2010. It follows that there was a breach of the collegiality of the proceedings of the invalidity committee.

60 The Committee of the Regions considers that the invalidity committee conducted its proceedings in a collegial manner, each of its members having the opportunity effectively to make known his view. The applicant does not deny that there were discussions between the three doctors at the meetings of the invalidity committee on 1 June and 2 July 2010. Moreover, there is no legal rule precluding doctors from drawing up their reports, if necessary, after sending their conclusions to the appointing authority.

Findings of the Tribunal

61 It is settled case-law that the invalidity committee must conduct its proceedings in a collegial manner, each of its members being in a position effectively to make known his view (see, to that effect, judgments of 22 November 1990 in Case T-54/89 *V* v *Parliament*, paragraph 34, and of 27 February 2003 in Case T-20/00, *Camacho-Fernandes* v *Commission*, paragraph 45 et seq.).

62 In the present case, it is apparent from the documents on the file that the three members of the invalidity committee, Dr T., Dr Go. and Dr O., met on 1 June and 2 July 2010 and that they discussed and exchanged views on the origin of the applicant's invalidity. Dr Go., representing the applicant, moreover, confirmed in his report that he had been able to express his view at the meetings of the invalidity committee, stating that he 'firmly maintained his positive opinion'.

63 Hence, the members of the invalidity committee, having had access to all the medical and non-medical documentation on the applicant's file and, in particular, to the OLAF report and the Parliament's discharge report, were able effectively to make known their views as regards the origin of the applicant's invalidity and, thus, the invalidity committee conducted its proceedings in a collegial manner.

64 Moreover, that finding is not called into question by the mere fact that the invalidity committee's report and Dr Go.'s report were prepared and exchanged after the invalidity committee adopted its conclusions of 2 July 2010 on the origin of the invalidity. The doctors on an invalidity committee are perfectly entitled to make their conclusions following their oral collegial discussions and prepare their reports subsequently in some cases, since that is not an essential condition for the validity of such a committee's deliberations (see, by analogy, judgments of 10 December 1987 in Case 277/84 *Jänsch* v *Commission*, and of 19 June 1992 in Case C-18/91 P *V* v *Parliament*, paragraph 20).

65 Moreover, Article 9 of Annex II to the Staff Regulations provides that the invalidity committee's conclusions are to be communicated to the appointing authority and to the official concerned. However, the proceedings of the invalidity committee are secret, by reason of their nature, content and implications of a medical origin, and must not be communicated either to the appointing authority or to the official concerned (see, to that effect, judgment of 3 June 1997 in Case T-196/95 *H* v *Commission*, paragraph 95, judgment of 6 November 2012 in Case F-41/06 RENV *Marcuccio* v *Commission*, paragraph 151, which is the subject of an appeal before the General Court in Case

T-20/13 P). The summary medical report which the invalidity committee prepares in support of its conclusions is part of the committee's 'proceedings' and is not therefore communicated either to the appointing authority or directly to the official concerned. That medical report appears on the medical file of the official concerned, to which the latter has access under Article 26a of the Staff Regulations.

66 Accordingly, it is necessary to distinguish the conclusions of the invalidity committee, which must necessarily be communicated to the appointing authority before it takes a decision, from the medical analyses and considerations that may be contained in the summary medical report, or reports, of the invalidity committee or of some of its members, which appear on the medical file of the official concerned but which are not communicated to the appointing authority.

67 It is clear from the foregoing that the invalidity committee, meeting in the context of a procedure concerning recognition, under the fifth paragraph of Article 78 of the Staff Regulations, of the occupational origin of the invalidity of the person concerned, is not required to prepare, for the attention of the appointing authority and before the adoption of the latter's administrative decision, a summary medical report relating to its proceedings, since the appointing authority cannot, in any event, have access to that report, which is covered by the secrecy of the proceedings of the invalidity committee.

68 In the present case, following the second meeting, which was held in Brussels (Belgium) on 2 July 2010 in the presence of the three members of the invalidity committee, only Dr T. and Dr O. signed, on that day, the conclusions as to the origin of the invalidity, in which it is stated that the applicant's invalidity did not arise from an occupational disease. Dr Go., representing the applicant, who did not support those conclusions, therefore signed separate conclusions (see paragraph 45 above) on 2 July 2010. It is common ground that the conclusions of 2 July 2010 on the origin of the invalidity were sent to the appointing authority, which ratified them by decision of 10 September 2010. The fact that, subsequently, both the invalidity committee's report and Dr Go.'s report were prepared and communicated, the first to Dr Go. and the second to the other two members of the invalidity committee, after the adoption of the decision of 10 September 2010, does not render that decision unlawful on grounds of failure to respect the principle of collegiality. As found in paragraph 63 above, the members of the invalidity committee had the opportunity to make known their views throughout the procedure within the invalidity committee and at any event at its final meeting on 2 July 2010, at the end of which Dr T. and Dr O., for their part, adopted, by two votes to three, the conclusions of 2 July 2010 on the origin of the invalidity, which alone were to be communicated to the appointing authority.

69 The first plea must therefore be rejected as unfounded.

Second plea: breach of the obligation to state reasons, manifest error of assessment, infringement of the fifth paragraph of Article 78 of the Staff Regulations, infringement of the terms of reference of the invalidity committee and misinterpretation of the concept of occupational disease

70 The second plea comprises, in essence, four separate parts. In the first part of the plea the applicant claims a breach of the obligation to state reasons. In the second, he criticises the medical committee for manifestly disregarding the evidence on the administrative and medical files. In the third, he claims infringement of the terms of reference of the invalidity committee. In the fourth, he complains that the invalidity committee misconstrued the concept of occupational disease.

First part of the second plea: breach of the obligation to state reasons

– Arguments of the parties

71 The applicant contends that it is incumbent on the invalidity committee, in view of the discretion it has in medical matters, to state the reasons for its opinions in such a way that it may be verified that there is a comprehensible link between its medical findings and its conclusions. That obligation to state reasons is particularly important where there are differences between the opinion of the invalidity committee and some earlier medical reports.

72 In the present case, the invalidity committee should have explained on what grounds it proposed to differ from the medical considerations of the medical experts who had been consulted, at the request of the PMO, in the context of the procedure initiated by the latter under Article 73 of the Staff Regulations, especially since it waited until the end of that procedure before making a finding on the origin of the applicant's invalidity.

73 According to the applicant, the invalidity committee's report did not contain any reasoning, nor any explanation of the reasons which led that committee, *a fortiori* without conducting any proper clinical study of his case, to differ from the PMO's decision of 9 January 2009 recognising the occupational origin of the disease under Article 73 of the Staff Regulations or from all the other medical reports which show there was medical unanimity as regards the occupational origin of the applicant's invalidity.

74 The passage in the invalidity committee's report stating that 'acceptance of the occupational origin [in the context of recognition of the occupational disease under Article 73 of the Staff Regulations] is based solely on the patient's own account' is not sufficient to provide grounds for the conclusions of 2 July 2010 on the origin of the invalidity, which rule out the occupational origin of the applicant's invalidity. In short, the opinion given by the invalidity committee that the applicant's invalidity does not arise from an occupational disease is, the applicant alleges, incomprehensible.

75 The Committee of the Regions contends that there is no requirement that the report of an invalidity committee should be a model in terms of its formal drafting. It is sufficient that it establishes a comprehensible link between the medical findings and the conclusions reached by the invalidity committee.

76 Recognition of permanent invalidity, whether or not total, under Article 73 of the Staff Regulations in no way prejudices application of Article 78 of the Staff Regulations and, consequently, there can be no question of any contradiction between the conclusions adopted in the context of the procedure under Article 73 of the Staff Regulations and those adopted under the procedure in Article 78 of the Staff Regulations.

77 Lastly, according to the Committee of the Regions, the invalidity committee, in any event, explained on what ground it differed from the decision of the PMO of 2 January 2009, which recognised the occupational origin of the disease under Article 73 of the Staff Regulations, stating that the causes of the invalidity lay elsewhere than in the applicant's working conditions. The Committee of the Regions refers to extracts from several medical reports and to the invalidity committee's report, which makes reference to the structure of the applicant's personality, stating that 'during psychological assessment[, using a] test to objectify the symptoms, the clinical readings all [proved] to be considerably above normal [and that] this indicated a suspiciously pronounced lack of candour'. The appraisals contained in those different extracts illustrate the comprehensible link between the medical findings and the conclusions of the invalidity committee.

– Findings of the Tribunal

78 As a preliminary point, it should be noted that the provisions of the Staff Regulations relating to the invalidity committee are designed so as to confer upon medical experts the task of definitively appraising all medical questions, which no appointing authority, because of its internal administrative composition, could do. In that context, judicial review may not extend to medical appraisals properly so-called, which must be considered definitive, provided that the conditions in which they are made are not irregular. On the other hand, judicial review may extend to questions concerning the constitution and proper functioning of the invalidity committee and also the regularity of the opinions which they issue. From that point of view, this Tribunal has jurisdiction to examine whether the opinion contains reasons enabling the reader to assess the considerations on which the conclusions which it contains were based and whether it has established a comprehensible link between the medical findings which it contains and the conclusions reached by the invalidity committee concerned (judgments of 27 February 1992 in Case T-165/89 *Plug* v *Commission*, paragraph 75, and of 23 November 2004 in Case T-376/02 *O* v *Commission*, paragraph 29 and the case-law cited).

79 On the basis of that settled case-law, it must be held first of all, in relation to the present case, that the conclusions of 2 July 2010 on the origin of the invalidity, ratified by the appointing authority in the decision of 10 September 2010, merely state that the applicant's invalidity 'did not arise from an occupational disease' without giving any explanation to substantiate that statement.

80 However, according to case-law, where the administration has provided in its response to the complaint explicit reasons to justify its decision, relating to the individual case, such reasons are deemed to be identical to those for the decision to refuse and must be regarded as relevant information for assessing the lawfulness of that decision (judgment of 9 December 2009 in Case T-377/08 P *Commission* v *Birkhoff*, paragraphs 55 and 56 and the case-law cited).

81 In the present case, the appointing authority states in the decision rejecting the complaint, first, that it 'is required to comply with the medical findings … unless [it can] detect the formal defects or a link that is not comprehensible between the committee's conclusions and the medical data which led to those conclusions'. Secondly, the appointing authority considers that 'the sufficiency of the statement of reasons must be assessed by reference to the circumstances of the case and therefore in the light not just of its wording but also of the factual and legal context in which the contested act was adopted, therefore of the content of the measure in question and the nature of the reasons given'. Thirdly, the appointing authority contends that 'the question whether the disease [from which the invalidity arose] originates from one fact rather that in another is a scientific question and not an administrative or legal one'.

82 Those premisses having thus been established, in the decision rejecting the complaint, the appointing authority states that it asked Dr T. 'to confirm that the conclusions of the invalidity committee [were effectively] substantiated by medical and administrative data [contained in the] medical file'. Hence, the appointing authority contended, again according to the wording of the decision rejecting the complaint, 'that it had ensured … that the invalidity committee [had] taken good care to explain in its report the reasons why it considered, from a medical view point, that it was not possible to envisage recognising that the [applicant's] invalidity arose, even partially, from an occupational disease under the fifth paragraph of Article 78 of the Staff Regulations'. The decision rejecting the complaint also states that Dr T. replied to the appointing authority, on an unspecified date, that 'the conclusions of the invalidity committee [that the invalidity] did not arise from an occupational disease [were] substantiated [by] medical and administrative data [contained in] the medical file of the person concerned, namely: a clinical study of the [applicant's] case and medical history; the personal medical findings of the doctors; the study of the medical reports and of the results of the expert reports and specialist tests; and analysis of the official administrative documents'.

83 However, despite the reply given to the appointing authority by Dr T., a reply which, as was noted above, is mentioned in the decision rejecting the complaint, all the medical data and, with one exception, all the administrative documents mentioned by Dr T. substantiate, by their content, the opposite conclusion, namely, that the disease from which the applicant's invalidity arose is of occupational origin.

84 In that regard, there are three factual findings which provide grounds for such a conclusion.

85 First of all, it should be noted that, where the invalidity committee is dealing with complex medical issues concerning the causal link between the condition suffered by the person concerned and his occupation with an institution, it is for that committee to indicate the information on the file on which it relies and, in the event of significant divergence, to give the reasons why it differs from certain earlier and relevant medical reports, more favourable to the person concerned (judgment of 15 December 1999 in Case T-300/97 *Latino* v *Commission*, paragraphs 77 and 78; judgment of 11 May 2011 in Case F-53/09 *J* v *Commission*, paragraph 92 and the case-law cited).

86 Moreover, even though an invalidity committee to which reference has been made under Article 78 of the Staff Regulations may reach conclusions that are different from those adopted by the medical committee to which reference has been made under Article 73 of the Staff Regulations (*J* v *Commission*, paragraphs 56 to 61), where, as in the present case, the invalidity committee dealing with the case of the official concerned wishes to wait for the result of the procedure under Article 73 of the Staff Regulations it is necessary for it to give the reasons which led it to differ from the assessments contained in the medical reports which allowed recognition to be given of the occupational origin of the disease under Article 73 of the Staff Regulations and to provide those reasons clearly and comprehensibly (see, to that effect, judgment of 14 September 2010 in Case F-79/09 *AE* v *Commission*, paragraphs 66, 67 and 72), either in its conclusions communicated to the appointing authority, or in a summary medical report which it may subsequently prepare.

87 In the present case — and this is the first of the findings of fact allowing it to be stated that the medical data and the administrative documents referred to by Dr T. support the conclusion that the disease from which the applicant's invalidity arose is of occupational origin — it is clear from the file submitted to the Tribunal that the medical reports examined in the context of the procedure initiated under Article 73 of the Staff Regulations, which were available to the invalidity committee when it adopted its conclusions of 2 July 2010 on the origin of the invalidity, or at least 10 medical reports (namely the hospital reports of 16 January 2006, Prof. D.M.'s report of 16 October 2006, Dr Ra.'s report of 26 October 2006, the report by the PMO doctor of 8 May 2008, Dr Ra.'s report of 18 September 2008, the findings of the PMO doctor of 20 November 2008, Dr D.'s report of 12 August 2009, Dr Me.'s report of 17 October 2009, Dr Re.'s report of 3 November 2009 and the findings of the PMO doctor of 11 February 2010), showed, to mention but a few passages by way of example, that the applicant had been subjected to deliberate, organised ostracism, mistreatment, work-place conflict leading to burn-out, mentally challenging working conditions, frustration and major administrative conflict amounting to psychological harassment.

88 In relation to the findings contained in the medical reports mentioned in the preceding paragraph, it should be noted that the invalidity committee, in its report, stated both that the findings of the PMO doctor of 20 November 2008 and of 11 February 2010 '[based] acceptance of the occupational origin of the disease' under Article 73 of the Staff Regulations solely on the 'words of the patient', and that 'during psychological assessment[, using a] test to objectify the symptoms, the clinical readings all [proved] to be considerably above normal [and that] this indicated a suspiciously pronounced lack of candour'.

89 However, the assertion that the PMO's recognition of the occupational origin of the applicant's disease was based on 'the patient's own account' does not explain, even if that were correct, why the invalidity committee took a different view from that of 10 earlier medical reports, and, especially, on what

evidence it based its assertion, departing from the medical and administrative reports available to it, that the applicant's invalidity was not of occupational origin (see, to that effect, judgments of 15 December 1999 in Case T-27/98 *Nardone* v *Commission*, paragraphs 95 to 98, and of 27 June 2000 in Case T-47/97 *Plug* v *Commission*, paragraphs 117 and 118).

90 Moreover, the assertion that 'during psychological assessment[, using a] test to objectify the symptoms, the clinical readings all [proved] to be considerably above normal [and that] that indicated a suspiciously pronounced lack of candour', is ambiguous and difficult to understand.

91 If it should be inferred from this that, according to the authors of the invalidity committee's report, the applicant lied or exaggerated his symptoms and thus succeeded in eluding the vigilance of a number of experts and producing false results for a number of psychological tests, it would have to be stated that such an assertion still does not explain why the invalidity committee reached the conclusion that the invalidity could not arise, even in part, from an occupational disease (see, to that effect, judgments of 27 February 1992 in *Plug* v *Commission*, paragraph 81; *O* v *Commission*, paragraphs 70 and 73; and *J* v *Commission*, paragraph 93). In any event, if that was the meaning of that phrase, it would conflict with the minutes of 23 May 2007, which state that 'the detailed aspects [of the applicant's personality] are revealed during [psychological assessment, using a test to objectify the symptoms, t]he validity readings demonstrate his genuine cooperation[and t]he symptom readings, which are all high, are particularly indicative of psychosis'.

92 If, on the other hand, it is to be inferred from that assertion that, according to the invalidity committee, the results of the psychological test carried out on the applicant are not reliable, it should be noted that, given the existence of the 10 earlier medical reports and of several consistent official documents, which, moreover, were expressly requested by the invalidity committee before it could make a finding on the occupational origin of the applicant's invalidity, it was for the invalidity committee to ensure that it had all the data necessary for it to carry out its task, and in particular, to ask for a new psychological test to be carried out (see, to that effect, *Latino* v *Commission*, paragraph 70). However, the invalidity committee did not ask for any additional psychological tests.

93 The invalidity committee's assertion that it 'indicated a suspiciously pronounced lack of candour' therefore remains ambiguous, difficult to understand and contradictory and, as a result, does not enable the Tribunal to determine whether there is a comprehensible link between the medical findings of the invalidity committee and its conclusions, or to assess the considerations on which those conclusions are based.

94 As regards, moreover, the consideration, contained in the invalidity committee's report, that '[the applicant's] history of psychopathological disorders dates back to well before the time when he occupied the post of internal auditor', it must be found — and this is the second of the findings of fact allowing it to be held that the medical data and the administrative documents mentioned by Dr T. in his reply to the appointing authority support the finding that the disease from which the applicant's invalidity arose is of occupational origin — that such a consideration was expressed but was not followed up by any analysis or conclusion and that, in any event, it is not sufficient to explain why the numerous medical analyses and the facts contained in the medical and administrative reports were not such as to support, in full or in part, a finding that the applicant's invalidity arose from an occupational disease.

95 Next, if it were necessary to interpret that phrase as meaning that the applicant was already suffering from a condition before taking up the post of internal auditor, that finding alone would not be sufficient to rule out, in the examination of the origin of the applicant's invalidity, the occupational origin of his disease within the meaning of Article 78 of the Staff Regulations, since an occupational disease may consist in the aggravation of a pre-existing condition whose origin is to be found elsewhere (*O* v *Commission*, paragraphs 67 and 68).

96 As regards, lastly, the third of the findings of fact, the invalidity committee quotes an extract from the Parliament's discharge resolution, which denounces the 'individual and institutional harassment' to which the applicant was subjected, but provides no analysis of that harassment and draws no conclusions from it. In a case such as the present case, in which mention is made of the existence of a workplace conflict between the applicant and his superiors, as well as a working environment that is hostile to the applicant, not only in 10 medical reports but also in 3 official documents originating from external institutions or external review bodies, such as the Parliament's discharge resolution, the Cocobu report and the OLAF report — although it is generally difficult to produce written evidence to demonstrate the existence of mistreatment on the part of superiors — it was incumbent on the invalidity committee to give clear and precise reasons for its decision not to take into account the abovementioned evidence, which it failed to do in the present case.

97 In short, it follows from the above that, first, the invalidity committee did not provide to the necessary legal standard explanations as to the reasons which led it to differ from the earlier medical reports providing clear evidence of the occupational origin of the applicant's disease and, secondly, it did not give sufficient explanation of the reasons why the applicant's invalidity could not have arisen from an occupational disease, if only in part. In that regard, the invalidity committee did not, in particular, give any explanation as to why it did not take into account the Parliament's discharge resolution, which moreover clearly refers to serious workplace conflict and 'harassment' of the applicant.

98 Accordingly, since it failed to establish a comprehensible link between the medical findings of the invalidity committee and the conclusions of 2 July 2010 on the origin of the invalidity, the invalidity committee's report contains inadequate reasoning in that regard which affects the abovementioned conclusions transmitted to the appointing authority and the contested decision. The first part of the second plea must therefore be upheld.

Second part of the second plea: manifest error of assessment

– Arguments of the parties

99 The applicant considers that the assessment contained in the invalidity committee's report, that 'acceptance of the occupational origin [in the context of recognition of an occupational disease under Article 73 of the Staff Regulations] is based solely on the patient's own account' contains a manifest error. The findings of the PMO doctor are based, on the contrary, on medical reports and official documents.

100 Furthermore, the invalidity committee's statement that the applicant was not 'in a position to explain clearly to OLAF what sort of pressure he felt he had been subjected to' was manifestly erroneous. Likewise, the invalidity committee's statement that 'after reading the OLAF report … the members of the invalidity committee [found] that it did not contain any description of threats, act[s] of intimidation or harassment against [the applicant]' and that 'during the internal administrative inquiry … [the applicant] did not provide any examples of acts to which he had been subjected, despite the express insistence of the investigators' constitutes manifest disregard for the evidence on the administrative and medical file. The OLAF report does not merely reiterate the applicant's statements, but finds that acts of harassment and intimidation were carried out against him. The European Parliament's discharge resolution, which is an act having binding legal effects, required the Committee of the Regions to apologise to the applicant and protect him against acts of harassment. The Parliament actually conducted its own inquiry, through Cocobu, and appraised the matter. The applicant argues that that resolution constitutes at least one piece of evidence demonstrating the unlawful and highly conflict-ridden working conditions to which he was subjected.

101 The Committee of the Regions contends that the aim of the OLAF report was not to establish the existence of acts of psychological harassment against the applicant, but to enquire into possible financial irregularities affecting the budget of the European Union. The passages from the OLAF report quoted by the applicant do not show the existence of acts of intimidation and harassment against him. They are general criticisms of the approach of the Committee of the Regions vis-à-vis performance of the tasks of the financial controller and failure on the part of the Committee of the Regions to support the applicant.

102 The Committee of the Regions contends that the European Parliament's discharge resolution is not a binding act and does not provide actual, specific and consistent clarification as to the link between the occupational disease and the invalidity. The Committee of the Regions accepts, none the less, that the Parliament's discharge resolution contains express criticisms with regard to the failure to respect the institutional role of the financial controller.

– Findings of the Tribunal

103 It should be noted first of all that, in view of the limited judicial review which the Tribunal is required to exercise in the case of medical appraisals properly so-called, a criticism alleging manifest error of assessment in the opinion of the invalidity committee cannot succeed (judgment of 14 September 2011 in Case F-47/10 *Hecq* v *Commission*, paragraph 45 and the case-law cited).

104 That rule having been noted, it is apparent from the invalidity committee's report that, having 'become acquainted with [the findings of Dr J., the PMO doctor] of 20 [November] 2008 and … of 11 [February] 2010 finding [under Article 73 of the Staff Regulations] that an occupational disease was present, with 10% permanent invalidity', the invalidity committee took the view that '[t]he examination of [those] documents shows that acceptance of an occupational origin is based solely on the patient's own account', whereby 'the facts are presented in a subjective manner and one that is beneficial for [his] image'.

105 The view that acceptance by the PMO of the occupational origin of the disease is 'based solely on the patient's own account' is not, for the purposes of case-law, a medical appraisal properly so-called and is therefore open to review by the courts as regards its scope from an administrative point of view (see, to that effect, *Hecq* v *Commission*, paragraphs 96, 99 and 112).

106 In that regard, it is beyond doubt that the findings of the PMO doctor of 20 November 2008 and 11 February 2010 do not base acceptance of the occupational origin of the disease under Article 73 of the Staff Regulations solely on the applicant's own account. On the contrary, those findings base recognition of the occupational origin of the disease on a whole series of medical reports and on the official documents on the applicant's file.

107 Thus, first of all, the findings of the PMO doctor of 20 November 2008, which recognise the existence of an occupational disease, were adopted on the basis of a report by that doctor dated 8 May 2008 and of a psychiatric opinion prepared, at his request, by Dr Ra. on 18 September 2008, designed in fact to 'objectivise … the psychological situation' of the applicant and 'confirm whether there [was] a causal link between the current situation and his occupation'. Moreover, in his report of 8 May 2008, the PMO doctor refers to six other medical reports on the applicant's file. As regards the findings of the PMO doctor of 11 February 2010, they are based on a psychologist's report prepared on 12 August 2009 by Dr D., a report on neuro-psychological tests prepared on 17 October 2009 by Dr Me., and on a psychiatric report prepared on 3 November 2009 by Dr Re., which record the existence of disorders arising as a reaction to workplace conflict.

108 In the latter regard, in his report of 8 May 2008 the PMO doctor also refers to the Parliament's discharge resolution, from which he quotes a number of extracts, concerning serious workplace conflict and the behaviour of the Committee of the Regions towards the applicant. Similarly, in the psychologist's report of 12 August 2009, Dr D. states, inter alia, that in order to prepare his report he had acquainted himself with extracts from the Parliament's discharge resolution and the OLAF report.

109 Although the procedure initiated under Article 73 of the Staff Regulations, the purpose of which was to determine whether the applicant's disease was of occupational origin, is legally separate from the procedure initiated under Article 78 of the Staff Regulations in order to determine whether the applicant's invalidity was of occupational origin, the facts in both procedures are the same or, at any rate, those concerning the origin of the disease necessarily overlap with those concerning the origin of any invalidity.

110 Accordingly, the assertion that acceptance of the occupational origin of the disease under Article 73 of the Staff Regulations is based, *de facto*, 'solely on the patient's own account', an assertion on which the invalidity committee's report is based, contains a manifest error of assessment.

111 Moreover, as regards the non-medical documents on the applicant's file, namely the OLAF report, the Parliament's discharge resolution and the Cocobu report, only the report on the administrative inquiry fails to mention the conflictual relations between the applicant and his superiors or facts from which it may be established that the applicant was subjected to mistreatment, or indeed psychological harassment. The purpose of the administrative inquiry, the report of which the invalidity committee quotes in its own report, was to determine, following the recommendation to that effect by OLAF, whether the conditions for bringing disciplinary proceedings against several members of staff of the Committee of the Regions, and primarily the former Secretary-General, were met. The purpose of such an inquiry was therefore not to determine whether the applicant had been subjected to psychological harassment, within the meaning of the Staff Regulations.

112 Thus it should be noted that, in order to dismiss the OLAF report, the invalidity committee states that '[i]t is apparent, from reading it, that [the applicant] was not in a position to explain clearly to OLAF what sort of pressure he felt he had been subjected to'. That statement appears, more or less, in the report on the administrative inquiry, which reads '[the applicant] was not in a position to explain clearly what sort of pressure he may have been subjected to', and not in the OLAF report. The statement refers to the interview which the new Secretary-General of the Committee of the Regions had with the applicant, on 28 January 2004, in the context of the administrative inquiry. The applicant moreover refused to sign the record of that interview, arguing that it was null and void, and observed that, in that regard, the findings of the report on the administrative inquiry concerning the facts did not correspond to those of the OLAF report.

113 Accordingly, the invalidity committee was not entitled to state, without vitiating its report by a manifest error of assessment, that '[the applicant] was not in a position to explain clearly to OLAF what sort of pressure he had been subjected to' and that 'at the time of the internal administrative inquiry [the applicant had not provided] any examples of acts to which he had been subjected, despite the express insistence of the investigators', although it is common ground that, in its report, OLAF found that the Committee of the Regions had attempted to discourage or destabilise the applicant and that the Parliament, in its discharge resolution, went so far as to require the Committee of the Regions to apologise to the applicant specifically on account of its behaviour towards him.

114 Consequently, the invalidity committee's report, in so far as it took into account the Parliament's discharge resolution and the OLAF report, a document which it had itself requested from the appointing authority before adopting a final position on the origin of the applicant's invalidity, contains a manifest error of assessment.

115 In view of all the foregoing, the second part of the second plea must also be upheld.

Third part of the second plea: infringement of the terms of reference of the invalidity committee

– Arguments of the parties

116 The applicant contends that the invalidity committee should have examined his working conditions overall, including those which might have given rise to acts of harassment within the medical meaning of the term, without necessarily being required to find, in legal terms and under the conditions laid down in Article 12a(3) of the Staff Regulations, the existence of psychological harassment.

117 The applicant also states that, since the proceedings of the invalidity committee are of a medical nature, it is for that committee to make a finding as to the existence of a direct relationship between an official's performance of his duties and his state of health. The medical experts have an exclusive discretion which cannot be limited by the results of an administrative inquiry under Article 24 of the Staff Regulations. A report of an administrative inquiry constitutes one of the pieces of evidence which the doctors may take into consideration when exercising their discretion, although their powers are not circumscribed thereby.

118 The Committee of the Regions recalls that, since the decision rejecting the request for assistance made under Article 24 of the Staff Regulations was not challenged, that decision became final. The Committee of the Regions contends therefore that the applicant could not rely on a legal characterisation of harassment in the context of a procedure for the recognition that invalidity arose from an occupational disease under the fifth paragraph of Article 78 of the Staff Regulations, when at no time was a situation of harassment recognised from a legal point of view.

– Findings of the Tribunal

119 In so far as the third part of the second plea may be interpreted as alleging that the invalidity committee failed to comply with its terms of reference as regards examination of the origin of the applicant's invalidity, it should be noted first of all that it was for the invalidity committee, according to its terms of reference, to provide medical appraisals, and not appraisals of a legal nature, on the question of whether the invalidity arose from an occupational disease. It was therefore for the invalidity committee to ascertain whether or not, from the medical point of view, the applicant's invalidity arose from an occupational disease, the origin of which was to be found in the applicant's working conditions (judgment of 21 January 1987 in Case 76/84 *Rienzi* v *Commission*, paragraphs 9 and 12). From that perspective, it must therefore be held that the invalidity committee, strictly speaking, performed the task assigned to it, since, in the conclusions of 2 July 2010 on the origin of the invalidity, it stated, although providing no details, that the applicant's invalidity 'did not arise from an occupational disease' (see paragraph 45 above).

120 Moreover, there is no information on the file to indicate that the invalidity committee provided appraisals of a legal nature regarding facts or circumstances linked to the origin of the applicant's invalidity.

121 The third part of the second plea must therefore be rejected.

Fourth part of the second plea: misinterpretation of the concept of occupational disease and infringement of the fifth paragraph of Article 78 of the Staff Regulations

– Arguments of the parties

122 The applicant contends that, although the procedures and objectives of Articles 73 and 78 of the Staff Regulations are different and medical experts may make differing findings since the procedures are separate, inter alia, with regard to the question of the occupational origin of the disease, 'occupational disease' is defined in the same way in both provisions. It follows that the invalidity committee was bound by that definition.

123 The Committee of the Regions states that it does not dispute that, according to case-law, the definition of 'occupational disease' is the same for the purposes of both the procedure under Article 73 of the Staff Regulations and the procedure under Article 78 of the Staff Regulations. The applicant does not demonstrate, however, that the defendant disregarded the fact that the definition was the same. Moreover, according to the Committee of the Regions, since the two procedures are different they can give rise to separate decisions that are independent of one another.

– Findings of the Tribunal

124 It should be noted, first, that the concept of 'occupational disease' used in Articles 73 and 78 of the Staff Regulations, is that given in Article 3 of the Insurance Rules and, secondly, that that concept cannot have a different meaning depending on whether Article 73 of the Staff Regulations or Article 78 of the Staff Regulations is applied, even though those provisions each concern a system with its own particular features. That does not mean, however, that the medical committee provided for by the Insurance Rules is bound by the appraisals of the invalidity committee constituted in accordance with Article 78 of the Staff Regulations and vice versa. The two procedures may legitimately lead to differing medical results in the light of the same factual situation, and in particular as regards the question of the occupational origin of the disease affecting the same official (*J* v *Commission*, paragraphs 54 to 56).

125 Consequently, the mere highlighting of divergence between the conclusions adopted under Article 73 of the Staff Regulations and those of the invalidity committee is not sufficient to demonstrate misinterpretation of the concept of occupational disease (*J* v *Commission*, paragraph 61).

126 Since the applicant relied, in essence, in support of the complaint alleging misinterpretation of the concept of occupational disease, only on the divergence between the conclusions adopted under Article 73 of the Staff Regulations and those of the invalidity committee, the fourth part of the second plea must be rejected.

Third plea: breach of the duty to have regard for the interests of officials, misuse of powers and procedural irregularity

Arguments of the parties

127 The applicant contends that the procedure leading to the adoption of the contested decision is unlawful, firstly, owing to the failure to observe a reasonable period between the adoption by the invalidity committee of the conclusions of 23 May 2007 on the existence of invalidity and the adoption by the appointing authority, on 10 September 2010, of the contested decision. The invalidity committee had no reason to wait for the decision concerning the rate of invalidity under Article 73 of

the Staff Regulations, adopted by the PMO on 2 March 2010, when the decision on the occupational origin of the disease under Article 73 of the Staff Regulations had been adopted by the PMO on 9 January 2009.

128 Secondly, the procedure followed by the invalidity committee is unlawful by reason of the contributions made by Dr T. in the course of the procedure for the recognition of the occupational origin of the disease under Article 73 of the Staff Regulations, contributions which were intended to prevent the occupational origin of the applicant's disease being recognised. Such conduct demonstrates bias and lack of impartiality on the part of Dr T. in the context of the proceedings of the invalidity committee.

129 Thirdly, the third doctor, Dr O., put to Dr T. questions, for the attention of the Committee of the Regions, concerning aspects of the file which the applicant wished to substantiate by documents from their first meeting, with which Dr O. had refused to acquaint himself. The questions asked were, moreover, leading questions.

130 The applicant contends, lastly, that the appointing authority did not have any regard for his interests. Although the appointing authority was made aware of the irregularities in the procedure before the invalidity committee, described in paragraphs 127 to 129 above, the appointing authority did not intervene and even contributed to those irregularities.

131 For those same reasons, the appointing authority committed a misuse of powers.

132 The Committee of the Regions considers for its part that the applicant contributed substantially to the length of the procedure, which was not in any event unreasonable. The invalidity committee could legitimately have waited for the end of the procedure initiated under Article 73 of the Staff Regulations for the purpose of determining the rate of invalidity, which was scheduled for March 2010. Moreover, any excessive delay would not have had any effect on the content of the invalidity committee's opinion.

133 The Committee of the Regions considers, furthermore, that the procedure for the recognition of an occupational disease under Article 73 of the Staff Regulations does not fall within the ambit of the present dispute and that there is nothing to show that Dr T. committed irregularities in the context of the proceedings of the invalidity committee.

134 Lastly, Dr O. merely availed himself of the right of any member of an invalidity committee to request additional information.

Findings of the Tribunal

135 It should be noted, first, that the obligation to conduct administrative procedures within a reasonable time is a general principle of EU law which is enforced by the European Union Courts and set forth, as an element of the right to good administration, in Article 41(1) of the Charter of Fundamental Rights of the European Union (judgments of 11 April 2006 in Case T-394/03 *Angeletti* v *Commission*, paragraph 162, and of 6 December 2012 in Case T-390/10 P *Füller-Tomlinson* v *Parliament*, paragraph 115).

136 However, infringement of the reasonable time principle, assuming it is established, does not justify annulment of the contested decision on grounds of procedural irregularity. Any excessive delay in dealing with the applicant's request for recognition of the occupational origin of the disease under Article 78 of the Staff Regulations cannot, in principle, affect the content itself of the invalidity committee's opinion or of the final decision adopted by the appointing authority. Such a delay cannot, save in exceptional situations, alter the assessment, by the invalidity committee, of the occupational

origin of the invalidity under Article 78 of the Staff Regulations (*J* v *Commission*, paragraphs 113 to 116 and the case-law cited). Although it is true that the length of a medical procedure is liable to affect the assessment of the seriousness and the consequences of a medical condition and make it more difficult to examine its cause (*AE* v *Commission*, paragraph 102), in the present case it has not been established or even alleged that the excessive length of the procedure affected the fundamental elements in the light of which the invalidity committee delivered its conclusions. The fact that an excessive length of time passed, assuming it is established, is not therefore liable to affect the legality of the invalidity committee's conclusions or, therefore, that of the contested decision.

137 Accordingly, the complaint alleging infringement of the reasonable time principle, which was raised only in support of the claim for annulment, must be rejected.

138 Secondly, there is no information on the file which demonstrates that intervention by Dr T. was intended to prevent the occupational origin of the applicant's disease from being recognised under Article 73 of the Staff Regulations.

139 Thirdly, although it is true that it is apparent from the documents on the file that, at his first meeting with the applicant, Dr O. was reluctant to acquaint himself with certain official documents which the applicant proposed to submit to the invalidity committee, in particular the OLAF report and the Parliament's discharge resolution, that circumstance alone is not such as to create a procedural irregularity. Suffice it to note that it is clear from the invalidity committee's report that the committee did finally acquaint itself with the OLAF report and the Parliament's discharge resolution. As for the questions put by Dr O. to the Committee of the Regions, there is nothing to show that they were leading questions.

140 Lastly, it should be noted that the complaints alleging, first, breach of the duty to have regard for the interests of officials and, secondly, misuse of powers are based on the same arguments as the complaints that were rejected in the context of the examination of the first complaint of the present plea and in the context of examination of the first plea and must therefore be rejected as unfounded.

141 Accordingly, the third plea, alleging breach of the duty to have regard for the interests of officials, misuse of powers and procedural irregularity, must be rejected as unfounded.

142 It follows from the above that the first and second parts of the second plea have been upheld. The contested decision must therefore be annulled.

3. *Claim for compensation for non-material damage*

Arguments of the parties

143 The applicant contends that the alleged irregularities constitute wrongful acts on the part of the Committee of the Regions and that, in view of the exceptional circumstances of the case, the damage resulting therefrom cannot be compensated for by annulment of the contested decision. The applicant's career was abruptly brought to an end as a result of the working conditions imposed by the Committee of the Regions and the latter none the less persisted in refusing to recognise that the invalidity arose from an occupational disease. The invalidity committee's report is not unbiased and Dr T., the member appointed to the invalidity committee by the Committee of the Regions, behaved improperly.

144 The Committee of the Regions observes that the rejection of the request for assistance under Article 24 of the Staff Regulations was not challenged within the time-limit and therefore became final. Moreover, the invalidity committee did not act in a biased manner and its proceedings were properly conducted.

Findings of the Tribunal

145 According to settled case-law, the annulment of an unlawful measure may constitute, in itself, adequate and, in principle, sufficient compensation for all non-material damage which that measure may have caused, unless the applicant demonstrates that he suffered non-material damage separable from the unlawfulness justifying the annulment and incapable of being entirely remedied by that annulment (judgment of 14 July 2011 in Case F-98/07 *Petrilli* v *Commission*, paragraph 28 and the case-law cited).

146 Since the applicant has not demonstrated in the present case that he suffered non-material damage separable from the unlawfulness justifying the annulment and incapable of being entirely remedied by that annulment, his claim for damages must be rejected.

4. *Claim for reimbursement of the expenses connected with the invalidity procedure and the complaint*

Arguments of the parties

147 The applicant seeks reimbursement of the expenses connected with the invalidity procedure, including those connected with the complaint, not defrayed under the Staff Regulations. Those expenses are in respect of stationery and copying, telephone charges, postage and faxes, together with travel costs for hospitalisation in the United Kingdom. The applicant assesses those expenses at EUR 5 000.

148 The Committee of the Regions considers that such expenses cannot be reimbursed.

Findings of the Tribunal

149 It should be noted that it has not been proven that the alleged expenses are genuine nor, *a fortiori*, has it been shown that those expenses stem from the unlawfulness of the contested decision.

150 Assuming, for the sake of argument, that by this head of claim the applicant seeks to challenge the appointing authority's decision, contained in the decision rejecting the complaint, refusing reimbursement of the expenses connected with the invalidity procedure and the complaint, it should be noted that that refusal decision has not been the subject of a complaint within the meaning of Article 90(2) of the Staff Regulations.

151 It follows that the present head of claim must be rejected.

Costs

152 Under Article 87(1) of the Rules of Procedure, without prejudice to the other provisions of Chapter 8 of Title 2 of those Rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 87(2), the Tribunal may, if equity so requires, decide that an unsuccessful party is to pay only part of the costs or even that he or she is not to be ordered to pay any.

153 It is apparent from the grounds stated above that the Committee of the Regions has, essentially, been unsuccessful in its action. Furthermore, in his pleadings, the applicant has expressly applied for the Committee of the Regions to be ordered pay the costs. As the circumstances of the present case do not justify the application of Article 87(2) of the Rules of Procedure, the Committee of the Regions must bear its own costs and be ordered to pay the costs incurred by the applicant.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (First Chamber)

hereby:

1. **Annuls the decision of the Bureau of the Committee of the Regions of the European Union of 10 September 2010 refusing to recognise that Mr McCoy's invalidity arose from an occupational disease within the meaning of the fifth paragraph of Article 78 of the Staff Regulations;**

2. **Dismisses the action as to the remainder;**

3. **Declares that the Committee of the Regions of the European Union is to bear its own costs and orders it to pay the costs incurred by Mr McCoy.**

Kreppel Perillo Barents

Delivered in open court in Luxembourg on 7 May 2013.

W. Hakenberg
Registrar

H. Kreppel
President