JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
23 January 2002 *

In Case T-237/00,

Patrick Reynolds, an official of the European Parliament, residing in Brussels (Belgium), represented by P. Legros and S. Rodrigues, avocats, with an address for service in Luxembourg,

applicant,

v

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

defendant,

* Language of the case: French.

APPLICATION for, first, annulment of the decision of 18 July 2000 of the Secretary-General of the Parliament terminating the applicant's secondment in the interests of the service to the political group 'Europe of Democracies and Diversities' and reinstating him in the Directorate-General for Information and Public relations and, second, compensation for the harm sustained by the applicant owing to the adoption of that decision by the defendant and to the actions of the political group and of certain of its members,

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

composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges,
Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 14 November 2001,

gives the following

Judgment

Legal framework

1 Article 37 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') provides:

'An official on secondment is an established official who, by decision of the appointing authority:

(a) has been directed in the interests of the service:

— to serve temporarily in a post outside his institution;

or

— to assist temporarily a person holding an office provided for in the Treaties establishing the Communities or the Treaty establishing a Single Council and a Single Commission of the Communities, or with an elected President of one of the institutions or organs of the Communities or the elected Chairman of one of the political groups in the European Parliament;

...'.

2 Article 38 of the Staff Regulations provides:

'Secondment in the interests of the service shall be governed by the following rules:

(a) the decision on secondment shall be taken by the appointing authority after hearing the official concerned;

(b) the duration of secondment shall be determined by the appointing authority;

(c) at the end of every six months, the official concerned may request that this secondment be terminated;

(d) an official on secondment pursuant to the first indent of Article 37(a) is entitled to receive a differential payment where the total remuneration carried by the post to which he is seconded is less than that carried by his grade and step in his parent institution; he shall likewise be entitled to reimbursement of all additional expenses entailed by his secondment;

(e) an official on secondment pursuant to the first indent of Article 37(a) shall continue to pay pension contributions based on the salary for active employment carried by his grade and step in his parent institution;

(f) an official on secondment shall retain his post, his right to advancement to a higher step and his eligibility for promotion;

(g) when his secondment ends an official shall at once be reinstated in the post formerly occupied by him.'

Facts of the case and procedure

3 At the end of September 1999, the Parliament published in its internal bulletin No 25/99 a vacancy notice concerning the post as secretary-general of the political group 'Europe of Democracies and Diversities' ('the EDD Group'). That notice was worded as follows:

'1 Secretary-General (M/F) (Grade A2) (temporary agent)

Thorough knowledge of written and spoken French and English essential.

Place of employment: BRUSSELS

Closing date for applications: 18 October 1999

Starting date: from Monday, 1 November 1999'.

4 Following publication of that notice, the applicant, who was an official in the Directorate-General for Information and Public Relations of the Parliament, in Grade LA 5, Step 3, applied for the post and was invited to attend for interview with the EDD Group; the interview took place on 3 November 1999.

5 By letter of 12 November 1999, the President of the EDD Group informed the Secretary-General of the Parliament that the bureau of the group had decided to appoint the applicant to the post of Secretary-General and requested him to authorise the applicant's secondment to the EDD Group.

6 On 22 November 1999, the applicant began to work for the EDD Group.

7 By decision of 11 January 2000, the Secretary-General of the Parliament confirmed that, on the basis of subparagraph (a) of the first paragraph of Article 37 of the Staff Regulations, the applicant was seconded in the interests of the service to the EDD Group, in Grade A 2, Step 1, for the period 22 November 1999 to 30 November 2000. A certified true copy of the original of that decision was sent to the applicant on 17 January 2000.

8 On 18 May 2000, the President of the EDD Group informed the applicant, for the first time, that at a meeting of the members of the bureau of the group which had taken place a few hours earlier, a number of sub-groups had indicated that they had lost confidence in the applicant and that, consequently, it had been decided that his secondment to the EDD Group would not be extended after 30 November 2000.

9 On 24 May 2000, at a second interview with the applicant, the President of the EDD Group confirmed that the political group wished to part company with the applicant. On the same day, the applicant informed the President that he proposed to take four weeks' leave of absence in order to consider certain matters; the President of the group agreed. The applicant also consulted his own doctor, who concluded that he was unfit for work owing to his poor state of health.

10 After 24 May 2000 the applicant did not attend work owing to his poor state of health.

11 On 23 June 2000, the applicant submitted a complaint pursuant to Article 90 of the Staff Regulations to the Secretary-General of the Parliament in respect of the acts adversely affecting him in the course of his duties with the EDD Group. According to the applicant, those acts included the fact that his access to the accounts of the EDD Group had been impeded, although such access was inherent in the very nature of the office of Secretary-General of a political group, and the fact that contradictory instructions had been given to him in a climate of mental harassment. The applicant requested that a decision be adopted in order to put an end to those acts and that their negative effects be remedied. However, he stated that he had no intention of resigning from his post as Secretary-General of the EDD Group.

12 On the same day, the applicant sent a formal request to the President of the Court of Auditors for an examination of the accounts of the EDD Group, stating, first, that such an examination was in the interests of the group and in the public interest, and, second, that his access to those accounts had been impeded.

13 After learning from, in particular, the press that such a request had been sent to the Court of Auditors, the President of the EDD Group wrote to the President of

the Court of Auditors on 30 June 2000 stating that the Court of Auditors could have free access to the accounts of his group and that the probable explanation for the applicant's request was that the applicant had been informed on 18 May 2000 that his secondment to the EDD Group would not be extended.

14 On 1 July 2000, the applicant drew up a memorandum ('the memorandum of 1 July 2000') setting out in detail his experience while on secondment to the EDD Group. The applicant supplemented that memorandum by an addendum of 2 February 2001.

15 On 4 July 2000, following a decision of the bureau of the EDD Group ('the decision of 4 July 2000'), the President of the group requested the Secretary-General of the Parliament to terminate the applicant's secondment as soon as possible.

16 On 18 July 2000, the Secretary-General of the Parliament, in his capacity as appointing authority, decided to terminate the applicant's secondment in the interests of the service to the EDD Group with effect from the evening of 14 July (Article 1 of the decision) and to reinstate him in a post as principal translator in the Directorate-General for Information and Public Relations of the Parliament in Grade LA 5, Step 3, with effect from 15 July 2000, with seniority in step fixed at 1 January 2000 and with Brussels as his place of employment (Article 2 of the decision) (the decision being hereinafter referred to as 'the contested decision').

17 That decision was notified to the applicant by letter of 25 July 2000.

18 On 8 August 2000, the applicant's legal representatives requested the Secretary-General of the Parliament to send them the documents on which the contested decision was based, in particular the letter from the President of the EDD Group of 4 July 2000 and the proposal of the Director-General for Personnel of the Parliament referred to in the contested decision.

19 On the basis of Article 90(2) of the Staff Regulations, the applicant submitted a second complaint to the Secretary-General of the Parliament, dated 28 August 2000, in which he requested that the contested decision be withdrawn and requested reparation of the harm which it caused him.

20 By application lodged at the Registry of the Court of First Instance on 8 September 2000, the applicant brought the present action.

21 By separate document lodged at the Registry of the Court of First Instance on the same date, the applicant sought a stay of execution of the contested decision.

22 The interlocutory hearing took place on 14 September 2000. At that hearing the President of the Court of First Instance proposed an amicable settlement to the parties, which is recorded in the minutes of the hearing.

23 By letter of 28 September 2000, the defendant informed the Court of First Instance that it did not agree with the amicable settlement.

24 By letter dated the same day, the applicant informed the Court of First Instance that he had decided not to proceed with his application for interim relief.

25 By order of the President of the Court of First Instance of 9 October 2000, the application for interim relief was removed from the Register of the Court of First Instance and the costs of the interlocutory proceedings were reserved.

26 By letter of 27 October 2000, the Secretary-General of the Parliament informed the applicant that, since there was an obvious connection between his complaint of 23 June and his complaint of 28 August 2000, and since the applicant had submitted information which would be of assistance in the assessment of those complaints in the course of the procedure before the Court of First Instance, he would respond to both complaints within the prescribed period applicable to the second complaint, that is to say, before 29 December 2000.

27 In a letter to the Secretary-General of the Parliament dated 15 November 2000, the applicant objected to that course of conduct and set out his reasons for criticising the defendant's approach. The Secretary-General of the Parliament replied by letter of 15 December 2000 and stated that the applicant's complaints were being examined.

28 Last, the President of the Parliament rejected both of the applicant's complaints by decision of 19 December 2000. That decision was communicated to the applicant by letter of 20 December 2000.

29 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure and to put a number of questions in writing to the parties. The parties replied within the prescribed period.

30 The parties presented oral argument and answered the questions put by the Court at the hearing on 14 November 2001.

Forms of order sought by the parties

31 The applicant claims that the Court should:

— annul the contested decision;

— declare that the Community has incurred non-contractual liability;

— order the defendant to pay the arrears of salary and pension owed to the applicant since 15 July 2000, together with interest at 10% per annum on the total amount, and award the applicant damages of EUR 250 000 in respect of the non-material damage caused by the contested decision;

— order the defendant to pay the costs of both the main proceedings and the interlocutory proceedings.

32 The defendant contends that the Court should:

— dismiss the action for annulment as unfounded;

— dismiss the application for damages as inadmissible and/or unfounded;

— make an order for costs in accordance with the law.

33 By implication, the defendant contends that the action for annulment is inadmissible.

The action for annulment

I — *Admissibility*

Arguments of the parties

34 The defendant submits that, according to the case-law, an official has no legitimate interest in the annulment of a decision for breach of procedure where

the appointing authority has no scope for the exercise of its discretion and was therefore bound to act as it did. In such a case, the annulment of the decision could only lead to the adoption of another decision identical in substance to the decision annulled (judgments in Case 9/76 *Morello* v *Commission* [1976] ECR 1415, paragraph 11, Case 117/81 *Geist* v *Commission* [1983] ECR 2191, paragraph 7, Case T-43/90 *Díaz García* v *Parliament* [1992] ECR II-2619, paragraph 54, and order of the Court of First Instance of 20 March 2001 in Case T-343/00 *Mercade Llodachs* v *Parliament*, not published in the European Court Reports, paragraphs 33 and 34).

35 The defendant also states that it is settled case-law that in order for an official or a former official to be able to bring an action under Articles 90 and 91 of the Staff Regulations for annulment of a decision of the appointing authority, he must have a personal interest in the annulment of the contested act (Case T-20/89 *Moritz* v *Commission* [1990] ECR II-769, paragraph 15).

36 It is apparent from those arguments that, according to the defendant, the applicant has no interest in the annulment of the contested decision, since such a sanction could only lead to the adoption of a decision, identical in substance, to the decision annulled. The defendant claims that the breakdown of the mutual confidence between the applicant and the EDD Group was undeniable and that, on his own admission, the applicant found it impossible to work in the EDD Group. Consequently, the appointing authority had no choice other than to take a decision terminating the applicant's secondment.

37 According to the defendant, that conclusion is all the more inevitable because, as recognised in a consistent line of decisions, mutual confidence is an essential element of the engagement of staff by political groups (Case T-45/90 *Speybrouck* v *Parliament* [1992] ECR II-33, paragraphs 94 and 95) and because, where that mutual confidence disappears, the political group may decide unilaterally to

cancel the contract of employment (Case 25/68 *Schertzer* v *Parliament* [1977] ECR 1729, and Case T-123/95 *B* v *Parliament* [1997] ECR-SC I-A-245 and II-697, paragraph 73). That fact, and the duty to act impartially by which the Secretary-General of the Parliament is bound pursuant to Rule 182 of the Rules of Procedure of the Parliament, have the consequence that the Secretary-General of the Parliament cannot substitute his own assessment of the existence or otherwise of a relationship of mutual confidence between the official on secondment and the political group for the latter's assessment.

38 The applicant contends that the case-law which the defendant cites as authority for its claim that the action for annulment is inadmissible is irrelevant.

Findings of the Court

39 In the course of the abovementioned arguments, the defendant referred, first, to the judicial principle that in order to bring an action based on Articles 90 and 91 of the Staff Regulations the person concerned must have a personal interest in the annulment of the contested decision and, second, to the principle that an official has no legitimate interest in the annulment of a decision for breach of procedure in a case in which the administration has no scope for the exercise of its discretion and is bound to act as it did (*Morello* v *Commission*, cited in paragraph 34 above, paragraph 11, *Geist* v *Commission*, cited in paragraph 34 above, paragraph 7, and *Díaz García* v *Parliament*, cited in paragraph 34 above, paragraph 54).

40 However, the established principle that an official has no interest in seeking annulment of a decision for breach of procedure where the appointing authority has no scope for the exercise of its discretion has no relevance to the assessment of the admissibility of an action for annulment. That principle relates to the examination of the substance of the pleas as to form which the applicant has put forward in support of such an action.

41 Consequently, for the purpose of assessing the admissibility of the present action, it is necessary only to consider whether the applicant had a personal interest in the annulment of the contested decision (see, in that regard, Case 111/83 *Picciolo* v *Parliament* [1984] ECR 2323, paragraph 29, and Case T-51/90 *Moretti* v *Commission* [1992] ECR II-487, paragraph 22), such an interest to be assessed at the time when the action was brought (Case T-49/91 *Turner* v *Commission* [1992] ECR II-1855, paragraph 24).

42 In the present case, it is clear that, at the time when he brought the present action, on 8 September 2000, the applicant had a personal interest in seeking annulment of the contested decision, which constitutes an act adversely affecting him. Although it is for the institution whose act has been annulled by the Court of First Instance to take the necessary measures to comply with the judgment, it must be admitted that annulment of the contested decision would have as the consequence, at least, that the final date of the applicant's secondment in the interests of the service to the EDD Group and the various advantages attaching to that position would be not 14 July 2000 but 30 November 2000, that is to say, the date on which it was initially envisaged that the applicant's secondment would come to an end.

43 Accordingly, the plea of inadmissibility alleging that the applicant had no personal interest in the annulment of the contested decision must be rejected.

II — *Substance*

Preliminary observation

44 The Court considers that, since the plea alleging infringement of Article 38 of the Staff Regulations relates to the competence of the appointing authority to adopt the contested decision, that plea must be examined first.

The plea alleging infringement of Article 38 of the Staff Regulations

Arguments of the parties

45 The applicant maintains that Article 38 of the Staff Regulations makes no provision for the appointing authority to terminate secondment in the interests of the service before expiry of the period initially envisaged. He therefore argues that the defendant infringed that provision by adopting the contested decision.

46 The defendant contends that Article 38(b) of the Staff Regulations, which provides that the appointing authority is to determine the duration of secondment in the interests of the service, must be interpreted as meaning that the appointing authority may subsequently alter the duration of secondment initially envisaged.

47 The defendant argues that such an interpretation of Article 38 is necessary in order to give practical effect to that provision. Since his secondment was decided in the interests of the service, it would be absurd if the appointing authority, when faced with a situation which had become intolerable, were not able to terminate the secondment before the agreed time. According to the case-law, the transfer of an official in order to put an end to an administrative situation which has become intolerable constitutes a measure taken in the interests of the service (Joined Cases C-116/88 and C-149/88 *Hecq* v *Commission* [1990] ECR I-599, paragraph 22, and Case T-50/92 *Fiorani* v *Parliament* [1993] ECR II-555, paragraph 35).

Findings of the Court

48 It is common ground that Articles 37 and 38 of the Staff Regulations do not expressly provide that the appointing authority may terminate a secondment in the interests of the service before expiry of the period initially envisaged.

49 However, Article 38(b) of the Staff Regulations provides that the duration of secondment in the interests of the service is to be determined by the appointing authority.

50 That provision must be interpreted in the light of the fact that 'the interests of the service' form part of the very essence of secondment provided for in subparagraph (a) of the first paragraph of Article 37 of the Staff Regulations and, accordingly, constitute an essential condition of its continuation. Consequently, it must be interpreted as meaning that, where it proves necessary in order to ensure that secondment continues to be in the interests of the service, the appointing authority has at all times the power to alter the duration initially envisaged for the secondment and, accordingly, to terminate the secondment before the end of that period.

51 As the defendant rightly observes, that interpretation is necessary in order to ensure that the provision does not lose all practical effect. Where secondment becomes incompatible with the interests of the service, in particular because the relations of mutual confidence between the official on secondment and the service to which or the person to whom he has been seconded no longer exist, the appointing authority's inability to terminate the secondment before the expiry of the period initially envisaged would be likely to harm the efficiency of that service or person and, more generally, the Community administration.

52 The Court also considers that in the present case the appointing authority was correct to take the view that it could make use of that power to terminate the applicant's secondment to the EDD Group, since it had been formally requested by the President of that group to terminate the applicant's secondment as quickly as possible. Such a request could of itself give rise to the conclusion that the secondment was no longer in the interests of the service. That conclusion is all the more necessary because, as the defendant stated in its answers to the questions put by the Court, the appointing authority was already perfectly aware, even before receiving the formal request of the President of the group, of the tension associated with the applicant's secondment.

53 In the light of the foregoing, the Court considers that the defendant did not infringe Article 38 of the Staff Regulations by adopting the contested decision in order to safeguard the interests of the service. Consequently, this plea must be rejected as unfounded.

The plea alleging infringement of the principle of respect for the rights of the defence

Arguments of the parties

54 The arguments of the parties concern, first, the existence of an obligation for the appointing authority to hear the applicant before adopting the contested decision, next, whether that obligation was satisfied in the present case and, last, the particular impact that such an obligation might have had on the contested decision in the present case.

— The existence of an obligation for the appointing authority to hear the applicant before adopting the contested decision

55 The applicant claims that, in the present case, the appointing authority was under an obligation to hear him before adopting the contested decision.

56 The defendant denies that such an obligation exists in the present case.

57 The defendant claims that, according to settled case-law, in the absence of an express provision in the Staff Regulations for an *inter partes* procedure in which any official must be heard by the administration before the latter adopts a measure concerning him, such an obligation on the administration does not exist in principle, so that the guarantees laid down in Article 90 of the Staff Regulations must be regarded as affording sufficient protection to the legitimate interests of the official (Case 125/80 *Arning* v *Commission* [1981] ECR 2539, paragraph 17, Case T-36/93 *Ojha* v *Commission* [1995] ECR-SC I-A-161 and II-497, paragraph 82, *Fiorani* v *Parliament*, cited in paragraph 47 above, paragraph 36, and *B* v *Parliament*, cited in paragraph 37 above, paragraph 38). The defendant observes that an official who wishes to rely on his interests *vis-à-vis* a measure which adversely affects him may subsequently lodge a complaint against that decision and that the appointing authority is required to adopt a position on that complaint by means of a reasoned decision.

58 According to the defendant, it is by way of an exception to that rule that an express provision of the Staff Regulations places the institution under an obligation to consult the official before adopting a decision against him. There is nothing in the Staff Regulations that states that an official must be consulted before a decision is taken terminating his secondment in the interests of the service before the expiry of the period initially envisaged.

59 The defendant further observes that Article 38(a) of the Staff Regulations expressly provides that the appointing authority is to hear the official before deciding to second him in the interests of the service, although no obligation of that kind is provided for in Article 38(b) as regards the decision whereby the appointing authority determines the duration of his secondment in the interests of the service. It follows, according to the defendant, that the legislature did not intend to impose such an obligation on the appointing authority when the latter decides to terminate a period of secondment in a case such as this.

60 The defendant also disputes the applicant's reference to Case 34/77 *Oslizlok* v *Commission* [1978] ECR 1099, paragraph 30.

61 It contends that that judgment does not lay down a general rule, but relates only to a very specific case, namely the case where, pursuant to Article 50 of the Staff Regulations, the administration retires an official in the interests of the service.

62 The defendant therefore concludes that there is no requirement to consult the official concerned before altering the duration of secondment, since the administrative procedure provided for in Article 90 of the Staff Regulations affords quite sufficient protection to the legitimate interests of the official.

— The preliminary consultation of the applicant in the present case

63 The applicant claims that the appointing authority was in breach of its obligation to hear him before adopting the contested decision, since the decision was adopted and notified to the applicant without his having first had the opportunity to express his views on the decision and on the documents on which it is based.

64 The defendant disputes that allegation.

65 While it denies that the appointing authority was under any obligation to hear the applicant before adopting the contested decision, the defendant acknowledges that the appointing authority did not formally invite the applicant to present his views before it adopted the contested decision.

66 It contends, however, that the applicant's rights of defence were sufficiently respected in the present case, since he had the opportunity to put forward his point of view during the discussions which he had with the President of the EDD Group in May 2000.

67 Furthermore, at the hearing the defendant stated that the appointing authority was able to acquaint itself with the applicant's point of view before it adopted the contested decision, since the applicant informed the appointing authority by his complaint of 23 June 2000, first, that he had been given contradictory instructions and had suffered mental harassment and, second, that it had become impossible for him to work with the group, but that he did not intend to resign from his post.

— The special effect of a preliminary consultation of the applicant

68 The applicant maintains that, contrary to the defendant's contention, the principle of respect for the rights of defence is breached where the person concerned is not given a proper hearing before a decision adversely affecting him is adopted. Accordingly, there is no need to ascertain what effect, if any, such preliminary consultation might have had on the contested decision.

69 The applicant observes, moreover, that if he had been given the opportunity to put forward his point of view before the contested decision was adopted, that preliminary consultation could have had a particular effect on that decision.

70 The defendant submits that, even if the Court should conclude that the alleged obligation to hear the applicant before adopting the contested decision was not observed in the present case, that irregularity constitutes an infringement of the principle of respect for the rights of defence only if it might have had a particular effect on the contested decision (Case T-36/96 *Gaspari* v *Parliament* [1997] ECR-SC I-A-201 and II-595, paragraph 34, and *B* v *Parliament*, cited in paragraph 37 above, paragraph 40). Clearly, a preliminary consultation of the applicant could have had no such effect, since in the present case the appointing authority had no choice other than to adopt the contested decision.

71 In that regard, the defendant claims, first, that the appointing authority was required not to make its own assessment of objectively-defined facts but to take note of a purely subjective position taken by the EDD Group, namely that, in the group's assessment, there was no longer any mutual confidence (*B* v *Parliament*, cited in paragraph 37 above, paragraph 73).

72 Second, the defendant observes that it follows, in particular, from the efforts made by the political group before 4 July 2000 to resolve the matter amicably, from the applicant's reaction to those efforts and also from the latter's memorandum of 1 July 2000 that, at the time when the EDD Group requested the Secretary-General to terminate the applicant's secondment in the interests of the service, it was clear that the relationship of mutual confidence between the EDD Group and the applicant had definitively and irreparably deteriorated.

73 Third, the defendant states that the consequences of a decision terminating a period of secondment in the interests of the service are clearly laid down in Article 38(g) of the Staff Regulations, which provides that 'when his secondment ends an official shall at once be reinstated in the post formerly occupied by him'. According to the defendant, the appointing authority therefore had no discretion as to the reinstatement of the applicant in the Secretariat-General.

74 Fourth, the defendant disputes all the arguments which the applicant puts forward in order to show that a preliminary consultation could have affected the appointing authority's decision. It states that the authenticity of the matters set out in the minutes of the meeting of the bureau of the EDD Group of 4 July 2000 cannot be called into question, since it is an incontestable fact that the bureau of the group declared itself unanimously in favour of terminating the applicant's secondment before the date initially envisaged and since the presence of agents of the group was consistent with the practice and statutes of the group. The defendant also refutes the applicant's argument that where the statutes of the group are silent the procedure for dismissing the Secretary-General must follow the same procedure as that governing his appointment, that is to say, that it requires the approval of the group and not of the bureau. Article 7 of the statutes refer only to the 'choice of the Secretary-General', so that, where the text is silent, it is for the bureau of the group to decide on the dismissal of the Secretary-General.

75 Last, the defendant contends that, contrary to what the applicant claims, it was not for the appointing authority to ensure compliance with the internal rules of the EDD Group. According to the defendant, the Secretary-General of the Parliament cannot in any circumstances be called upon to monitor the application of the internal rules of each political group without infringing his duty to be impartial and neutral. Furthermore, the Members of the Parliament alone are competent to determine the internal organisation of the political groups to which they belong.

Findings of the court

— Preliminary observation

76 In paragraph 40 of the present judgment it was stated that the consistent line of cases on which the defendant relied, in which it was held that an official has no legitimate interest in the annulment on the ground of a procedural defect of a decision where the administration has no discretion and is required to act as it did (see *Morello* v *Commission*, cited in paragraph 34 above, paragraph 11, *Geist* v *Commission*, cited in paragraph 34 above, paragraph 7, and *Díaz García* v *Commission*, cited in paragraph 34 above, paragraph 54), was of no relevance to the assessment of the admissibility of the present action, since it related to the examination of the substance of the case.

77 Since the present case involves examination of the substance of a plea alleging breach of an essential procedural requirement, the Court considers that it is necessary first to ascertain to what extent that case-law is applicable in the present case. If, as the defendant claims, the appointing authority had no discretion and was required to act as it did, the present plea is inoperative in any event, so that there is no need to analyse the other arguments put forward by the parties in the context of the present plea.

— The existence of a mandatory duty in the present case

78 As stated in paragraph 50 above, Article 38(b) of the Staff Regulations must be interpreted as meaning that, where it proves necessary in order to ensure that the

secondment continues to be in the interests of the service, the appointing authority has at all times the power to alter the period of secondment initially envisaged and, accordingly, to terminate the secondment before the end of that period. In particular, the appointing authority has such a power where it establishes that the relationship of mutual confidence between the official on secondment and the service to which or the person to whom he has been seconded no longer exists.

79 In its written pleadings, the defendant claimed that where, as in the present case, the appointing authority is presented with a request from a political group to use that power because the relationship of mutual confidence between the group and the official on secondment no longer exists, it has no discretion and is required to terminate the secondment as quickly as possible.

80 In that regard, it must be held, as a general principle, that the fact that such a request has been made by the service to which or the person to whom the official has been seconded constitutes a decisive factor for the exercise by the appointing authority of the power described in paragraph 50 above.

81 The Court observes, however, that the decisive nature of the request by the service to which or the person to whom an official has been seconded that his secondment be terminated in the interests of the service does not mean that the appointing authority has no discretion in the matter and is required to comply with the request. When it receives such a request, the appointing authority is required at the very least to ascertain, neutrally and objectively, whether the request is beyond all doubt the valid expression of the service to which or the person to whom the official was seconded and also that it is not based on manifestly illegal grounds. The appointing authority cannot terminate a secondment if those minimum conditions are not satisfied.

82 That conclusion is not altered by the fact that, in the present case, the request originated in a political group and because it seeks to terminate the secondment of an official to the post of Secretary-General of that group. It is true that, as may be seen from the case-law, the post of Secretary-General of a political group is a post with very special characteristics (see *Schertzer* v *Parliament*, cited in paragraph 37 above, paragraph 45) and mutual confidence is an essential ingredient of the secondment of an official to a political group (see, as regards the employment of a temporary servant by a political group, *Speybrouck* v *Parliament*, cited in paragraph 37 above, paragraphs 94 and 95, and *B* v *Parliament*, cited in paragraph 37 above, paragraphs 72 and 73). The Court considers, however, that those elements do not authorise the appointing authority to terminate the secondment in the interests of the service of an official to the post of Secretary-General of a political group without even ascertaining whether the minimum conditions referred to in paragraph 81 above were satisfied in the case in point.

83 In the light of the foregoing, the Court considers that the established judicial principle that the applicant has no legitimate interest in seeking annulment on the ground of a procedural defect where the administration has no discretion and is required to act as it does does not apply in the present case.

84 It is in the light of that finding that the Court must examine the other arguments put forward by the parties in the context of the present plea.

— The obligation to hear the applicant before adopting the contested decision

85 The parties differ as to whether in the present case the appointing authority was under an obligation to hear the applicant before adopting the contested decision.

86 It has consistently been held that respect for the rights of the defence in any procedure initiated against a person which may culminate in an act adversely affecting him is a fundamental principle of Community law and must be observed even in the absence of an express provision to that effect in the rules governing the procedure in question (see Case T-169/95 *Quijano* v *Commission* [1997] ECR I-A-91 and II-273, paragraph 44, and Case T-211/98 *F* v *Commission* [2000] ECR I-A-107 and II-471, paragraph 28).

87 As stated in paragraph 42 above, the contested decision constitutes an act adversely affecting the applicant. Accordingly, in the light of the case-law cited above, the appointing authority was under an obligation to give the applicant a proper hearing before adopting the contested decision.

88 That conclusion is all the more inescapable because the principle of respect for the rights of the defence also constitutes, on a procedural level, the expression of the appointing authority's duty to have regard to the welfare of the official to whom an act adversely affecting him is addressed.

89 None of the arguments put forward in that regard by the defendant invalidates that conclusion.

90 First, the fact that the Staff Regulations do not expressly provide that an official who has been seconded in the interests of the service must be consulted before a decision terminating his secondment before the expiry of the period initially envisaged is adopted does not mean that the appointing authority was under no such obligation in the present case. As held in the case-law cited in paragraph 86

above, the principle of respect for the rights of the defence must be observed even in the absence of an express provision to that effect in the rules governing the procedure in question.

91 Furthermore, contrary to what the defendant claims, litigation involving public officials reveals a number of examples of decisions in respect of which an obligation to consult the person concerned beforehand has been established even though no such obligation had been provided for in the Staff Regulations. That applies, in particular, to the retirement decisions referred to in Article 50 of the Staff Regulations (Case 19/70 *Almini* v *Commission* [1971] ECR 623, paragraph 11, and Case T-82/95 *Gómez de Enterria* v *Parliament* [1996] ECR-SC I-A-211 and II-599, paragraph 27) and to the suspension decisions referred to in Article 88 of the Staff Regulations (*F* v *Commission*, cited in paragraph 86 above, paragraph 28).

92 Second, the Court considers that the defendant is incorrect to refer to *Ojha* v *Commission* and *Arning* v *Commission*, cited in paragraph 57 above, *Fiorani* v *Parliament*, cited in paragraph 47 above, and *B* v *Parliament*, cited in paragraph 37 above.

93 Admittedly, as the defendant points out, the Court of First Instance held in paragraph 82 of *Ojha* v *Commission*, cited in paragraph 57 above, and set aside in part on appeal in Case C-294/95 P *Ojha* v *Commission* [1996] ECR I-5863, that, in the absence of an express provision in the Staff Regulations for an *inter partes* hearing in which any official must be consulted by the administration before a measure affecting him is adopted, such an obligation on the part of the administration does not in principle exist, so that the guarantees provided for in Article 90 of the Staff Regulations must be considered adequate.

94 However, the fact that a preliminary complaint procedure is provided for in Article 90 of the Staff Regulations does not as such suffice to preclude the existence of an obligation on the appointing authority to hear the official concerned before adopting a decision adversely affecting him. It is true that the preliminary complaint procedure allows the official concerned to rely on his interests before the administration. However, he is given the opportunity to do so only after the contested decision has been adopted; and it is an absolute requirement of the principle of respect for the rights of the defence that the person concerned be heard before the decision adversely affecting him is adopted.

95 The Court further considers that it is only in special circumstances where it is impossible in practice or incompatible with the interests of the service to consult the official concerned before adopting the contested decision that the requirements of the principle of respect for the rights of the defence may be satisfied by a hearing shortly after the adoption of the contested decision (*F* v *Commission*, cited in paragraph 86 above, paragraph 34). As the defendant acknowledged at the hearing, such special circumstances did not exist in the present case, since it was not impossible in practice or incompatible with the interests of the service to hear the applicant before adopting the contested decision.

96 Furthermore, in *Fiorani* v *Parliament*, cited in paragraph 47 above, and also in *Arning* v *Commission* and the decision at first instance in *Ojha* v *Commission*, cited in paragraph 57 above, the circumstances were different from the present case. In each of those judgments, the contested measure was described as being merely a measure for the internal organisation of the service, since it had not adversely affected either the grade or the material situation of the applicant (*Fiorani* v *Parliament*, paragraph 30, the decision at first instance in *Ojha* v *Parliament*, paragraphs 85 and 86, and *Arning* v *Commission*, paragraph 17). As stated in paragraph 42 above, however, in the present case the contested decision is not merely a measure of the internal organisation of the service, since it adversely affects the applicant's material situation: it has the effect of reinstating the applicant three and a half months before the date initially envisaged into his former post at a grade substantially lower than the one he occupied while on secondment.

97 In *B* v *Parliament*, cited in paragraph 37 above, to which the defendant refers, the point at issue was not respect for the rights of the defence but respect for the preliminary information procedure of the Staff Committee provided for in Article 11 of the Internal Rules of the Parliament. Although it is true that, as the defendant claims, it follows from paragraph 19 of that judgment that the applicant had pleaded breach of his rights of defence, it is clear from the manner in which the parties presented their arguments that that plea was purely ancillary to the plea alleging breach of Rule 11 of the Internal Rules of the Parliament. Nor did the Court of First Instance at any point consider whether the applicant's rights of defence had been respected in that case. That judgment therefore has no relevance to the assessment of the present plea.

98 Last, the defendant's argument that Article 38(b) of the Staff Regulations does not entitle an official to be heard, whereas Article 38(a) provides that the official concerned is to be heard before the appointing authority decides to second him in the interests of the service, must be rejected. As stated in paragraph 86 above, respect for the rights of the defence is binding even in the absence of an express provision, so that that reasoning by contrary inference cannot be upheld (see, on that point, *F* v *Commission*, cited in paragraph 86 above, paragraph 33). Furthermore, as the applicant maintains, the principle of parallelism of forms specifically requires that the obligation for the appointing authority to hear the official before deciding to second him in the interests of the service, provided for in Article 38(a) of the Staff Regulations, also applies when the appointing authority decides to determine or to amend the duration of secondment in the interests of the service on the basis of Article 38(b); if the appointing authority was required to hear the official concerned before adopting the initial secondment decision, which determines his legal situation, it was also required to hear him before amending that decision.

99 Since it has been established in the present case that the appointing authority was under an obligation to hear the applicant before adopting the contested decision, the Court must consider to what extent that obligation was satisfied in the present case.

— Compliance with the preliminary consultation obligation in the present case

100 The principle of respect for the rights of the defence, which satisfies the requirements of proper administration, requires that any person who may be adversely affected by the adoption of a decision should be placed in a position in which he may effectively make known his views on the evidence against him which formed the basis for that decision (judgment in Case T-450/93 *Lisrestal and Others* v *Commission* [1994] ECR II-1177, paragraph 42, upheld in Case C-32/95 P *Commission* v *Lisrestal and Others* [1996] ECR I-5373, especially paragraph 21, and judgment in *F* v *Commission*, cited in paragraph 86 above, paragraph 29).

101 It is necessary to ascertain whether and to what extent that requirement was satisfied in the present case.

102 In that regard, it is common ground that the appointing authority did not invite the applicant to state his views before it adopted the contested decision.

103 However, the defendant has pleaded, in its written submissions and at the hearing, that the applicant's rights of defence were adequately respected in the present case since, first, he had the opportunity to make known his views during the discussions which he held with the President of the EDD Group and, second, it is apparent from various documents that the appointing authority was aware of the applicant's views before it adopted the contested decision.

104 As regards the defendant's argument based on the discussions which the applicant had with the President of the EDD Group in May 2000, it should first of all be pointed out that, although it is common ground that the applicant was informed during those discussions that certain members of the group had indicated that they had lost confidence in him and that the group had no intention of seeking to renew his secondment after 30 November 2000, it is not established that the applicant was informed by the group that, owing to that loss of confidence, the group was contemplating requesting the appointing authority to terminate his secondment before expiry of the period initially envisaged. Next, even on the assumption that the applicant was informed of the group's intention, although it may be particularly useful for the official to be informed by the service to which he is seconded of the reasons why it is contemplating requesting the competent authority to terminate his secondment, it none the less remains that such preliminary information cannot compensate for the lack of preliminary consultation by the competent authority. It is primarily for the appointing authority, as the sole authority competent to terminate the secondment, to hear the person concerned before adopting an act adversely affecting him.

105 The Court likewise considers that the defendant's argument that it is apparent from the file that the applicant had the opportunity effectively to make known his views before the contested decision was adopted must be rejected.

106 In order to determine whether the applicant was given a proper hearing by the appointing authority before the contested decision was adopted, all that can be taken into account is the evidence constituting a conscious and willing expression of the applicant's point of view as to the import of the decision which the administration is envisaging adopting in respect of him and as to the evidence which it has taken as the basis for that decision.

107 It is clear that in the present case the complaint of 23 June 2000 cannot be regarded as the expression of the applicant's views in that regard. Clearly, when

the applicant formulated a complaint under Article 90 of the Staff Regulations for the purpose of informing the appointing authority of the problems he was facing in the context of his secondment to the EDD Group, it was not his intention to inform the appointing authority of his point of view as regards the political group's intention to terminate his secondment before the expiry of the period initially envisaged.

108 That conclusion is all the more inescapable because it is apparent from the file that the applicant was never informed at any time before the contested decision was adopted that the appointing authority intended to terminate his secondment in the interests of the service before the expiry of the period initially envisaged. The documents to which the defendant refers cannot therefore be regarded as the conscious and willing expression of the point of view of the applicant in relation to that decision.

109 It follows from the foregoing that the appointing authority did not satisfy the obligation to give the applicant a proper hearing before adopting the contested decision.

— The particular impact of a preliminary consultation in the present case

110 In the alternative, the defendant claims that, even on the assumption that the Court should consider that the obligation to give the applicant a proper hearing was not satisfied in the present case, the failure to satisfy that obligation does not amount to a breach of the applicant's rights of defence unless such a preliminary consultation could have had a particular impact on the final decision. The defendant contends that that is not so in the present case, since the appointing authority could not call into question the position adopted by the EDD Group as regards the loss of mutual confidence and since the appointing authority was required by the Staff Regulations to reinstate the applicant in his former position.

111 That argument cannot be accepted.

112 The principle of respect for the rights of the defence is infringed where it is established that the person concerned was not given a proper hearing before the act adversely affecting him was adopted and where it cannot be reasonably precluded that that irregularity could have had a particular impact on the content of that act.

113 In that regard, the Court observes that the possibility that a preliminary consultation might have a particular impact on the content of an act adversely affecting the person concerned cannot be reasonably precluded unless it is established that the person adopting the act has no discretion and was required to act as he did.

114 As stated in paragraph 81 above, it is clear that in the present case the appointing authority had a margin of discretion, limited, admittedly, but not non-existent, as regards the exercise of the power to terminate the applicant's secondment before expiry of the period initially envisaged. It cannot therefore be entirely precluded that in the present case a preliminary consultation of the applicant could have had a particular impact on the content of the contested decision.

115 Contrary to what the defendant suggests, moreover, it is not for the Court to ascertain whether there were in the present case any factors capable of having a particular impact on the content of the contested decision. Such an examination necessarily means that the Court would take the place of the administrative authority and anticipate the result the latter would reach if it heard the person concerned before possibly adopting the act adversely affecting him, which is not permissible (see Case T-346/94 *France-Aviation* v *Commission* [1995] ECR II-2841, paragraph 39).

116 Last, the defendant's argument based on Article 38(g) of the Staff Regulations must be rejected. That provision, which states that 'when his secondment ends an official shall at once be reinstated in the post formerly occupied by him', concerns only what happens at the end of the period of the secondment in the interests of the service. It is therefore of no relevance to the question whether in the present case the preliminary consultation of the applicant might have had a particular impact on the decision to terminate his secondment.

— Conclusion

117 In the light of the foregoing, the Court holds that the plea alleging infringement of the principle of respect for the rights of the defence is well founded and, accordingly, that the contested decision must be annulled without there being any need to consider the other pleas in law put forward by the applicant.

The claim for compensation

I — *Admissibility*

Arguments of the parties

118 The defendant argues that the applicant's action for damages is inadmissible on the ground that the applicant did not observe the relevant pre-litigation procedure laid down in the Staff Regulations. The action is also inadmissible,

according to the defendant, because it relates to the acts of a political group and certain of its members.

Failure to observe the pre-litigation procedure

119 The defendant states that, according to the case-law, where the harm in respect of which reparation is sought was caused not by the contested decision but by conduct not entailing a decision, the admissibility of an action for damages is conditional upon an administrative procedure comprising two stages. First, the person concerned must submit a request to the appointing authority for compensation for the harm caused by the conduct not entailing a decision. It is only the express or implied rejection of that request that constitutes an act adversely affecting him against which a complaint may be directed and it is only after the complaint has been expressly or impliedly rejected that an action for damages may be brought before the Court of First Instance (Case T-65/91 *White* v *Commission* [1994] ECR-SC I-A-9 and II-23, paragraph 137, and the decision at first instance in *Ojha* v *Commission*, cited in paragraph 57 above, paragraph 117).

120 According to the defendant, it is clear that the alleged harm sustained by the applicant was caused by conduct not entailing a decision. That alleged harm was not in any way caused by the contested decision.

121 The defendant contends that, as is apparent both from the application and also from the memorandum of 1 July 2000 and the medical certificate of 31 August 2000 annexed to the application, it was the performance of the applicant's duties within the EDD Group that caused him to suffer serious health problems and also psychological disorders.

122 In those circumstances, the applicant should have submitted a request for reparation for the harm caused by the conduct not entailing a decision within the EDD Group before the end of May 2000. When that initial request had been refused either expressly or by implication, the applicant should have lodged a complaint. Only after the complaint had been expressly or impliedly rejected could he bring an action for damages before the Court.

123 According to the defendant, such a pre-litigation procedure was not followed in the present case.

124 The defendant contends that the complaint lodged by the applicant on 23 June 2000 cannot be regarded as a request for reparation for the conduct not entailing a decision of the EDD Group and of certain of its members, in so far as that letter makes no reference to any financial compensation.

125 Even on the assumption that the letter in question may be regarded as a request for reparation, which in the defendant's submission it cannot, it is still clear that the applicant did not lodge a complaint against the express or implied refusal of that request, so that the present action for damages cannot in any event be regarded as the consequence of the rejection of that complaint.

126 The applicant refutes the defendant's allegation that his action for damages is inadmissible on the ground that he failed to follow the pre-litigation procedure.

The liability of the Parliament for the acts of the EDD Group and of certain of its members

127 The defendant contends that, as an institution, the Parliament answers only for the acts carried out by its servants in the performance of their duties or for acts directly imputable to the institution itself. In the present case, the alleged conduct not entailing a decision is imputed to certain Members of the European Parliament and not to its servants and, accordingly, is not binding on the institution. The defendant refers, in that regard, to the principle established by the Court of Justice that no provision of the Rules of Procedure of the Parliament empowers a political group to act on behalf of the Parliament with regard to third parties and that, moreover, there is no rule of Community law from which it may be inferred that the acts of a political group could be imputed to the Parliament as an institution of the Communities (Case C-201/89 *Le Pen and the Front National* [1990] ECR I-1183, paragraph 14). The defendant submits that what applies to a political group should for even more compelling reasons apply to individual Members of the European Parliament.

Findings of the Court

128 It should be observed at the outset that the applicant confirmed at the hearing that by his action for compensation he is seeking both reparation for the harm caused by the contested decision and reparation for the harm caused by the acts of the EDD Group and of certain of the members of that group.

129 The arguments whereby the defendant seeks to show that the claim is inadmissible relate only to the fact that it is directed against conduct not entailing a decision on the part of the EDD Group and of certain of its members.

On the other hand, those arguments do not call in question the admissibility of the action for damages in so far as the applicant seeks reparation for any harm which may have been caused by the contested decision.

130 Accordingly, it is necessary to consider the admissibility of the action for damages only in so far as it seeks reparation for the harm caused by the acts not entailing a decision of the EDD Group and of certain of its members.

131 It has consistently been held that, as regards an action for compensation, in the system of remedies established by Articles 90 and 91 of the Staff Regulations, such an action, which is an independent remedy by comparison with the action for annulment, is admissible only if it has been preceded by a pre-litigation procedure consistent with the provisions of the Staff Regulations. That procedure differs according to whether the harm in respect of which reparation is sought results from an act adversely affecting the applicant within the meaning of Article 90(2) of the Staff Regulations or conduct on the part of the administration which is not in the nature of a decision. In the former case, the person concerned must submit a complaint against the act in question to the appointing authority within the prescribed period. In the latter case, on the other hand, the administrative procedure must commence with the introduction of a request within the meaning of Article 90(1) of the Staff Regulations for reparation and, where appropriate, be followed by a complaint against the decision rejecting the request (Case T-500/93 *Y* v *Court of Justice* [1996] ECR-SC I-A-335 and II-977, paragraph 4, and Case T-15/96 *Liao* v *Council* [1997] ECR-SC I-A-329 and II-897, paragraph 57).

132 In the light of those principles, the applicant was therefore required to submit a request within the meaning of Article 90(1) of the Staff Regulations for reparation in respect of the conduct not entailing a decision on the part of the EDD Group and of certain of its members which caused him harm and then, if his complaint was rejected, submit a complaint on the basis of Article 90(2) of the Staff Regulations. Clearly, the applicant did not comply with the pre-litigation procedure.

133 Although the complaint lodged by the applicant on 23 June 2000 can probably be interpreted as a request for reparation of the harm which he sustained as a result of the acts of the EDD Group and of certain of its members, the administration did not respond to that request within the four-month period prescribed in Article 90(1) of the Staff Regulations (i.e. before 24 October 2000). The applicant was therefore required to submit a complaint under Article 90(2) of the Staff Regulations within a period of three months of the implied rejection of his request (i.e. before 24 January 2001). However, the applicant did not submit such a complaint.

134 It is true that that omission may be explained by the fact that the Secretary-General of the Parliament informed the applicant, by letter of 27 October 2000, i.e. shortly before the deadline laid down in the Staff Regulations by which the appointing authority was to respond to the request submitted by the applicant on 23 June 2000, that the President of the Parliament, acting as appointing authority, would respond at the same time to both the complaint of 23 June and the complaint of 28 August 2000 within the period prescribed for a response to the latter complaint, i.e. before 29 December 2000.

135 However, even assuming that, for those reasons, it was unnecessary to take that omission into account for the purpose of determining the admissibility of the present action, the applicant should at least have submitted a complaint under Article 90(2) of the Staff Regulations within three months of the decision of 19 December 2000, i.e. before 20 March 2001. By that decision, the President of the Parliament rejected both of the applicant's complaints, including the one containing his request for compensation. The applicant failed to submit a complaint against that decision.

136 Accordingly, without there being any need to consider the second argument put forward by the defendant, it must be held that the present action for compensation is inadmissible in so far as it seeks reparation for the harm caused by the conduct, not in the nature of decisions, of the EDD Group and of certain of its members.

II — *Substance*

Arguments of the parties

137 The application seeks reparation for the pecuniary and non-pecuniary harm which he sustained as a result of the adoption of the contested decision by the defendant.

138 The applicant maintains that the pecuniary harm sustained consists, first, in a significant loss of remuneration as a result of his being downgraded from Grade A2 to Grade LA 5 during the period 15 July to 30 November 2000, if not to June 2004. Second, the pecuniary harm consists in a loss of pension also resulting from the abovementioned downgrading, since pensions are calculated on the basis of the income received, also during the period 15 July to 30 November 2000, if not to June 2004. Third, the applicant claims that he was led to transfer at an earlier date than envisaged the amount of the severance grant payable under the European Communities pension scheme, namely EUR 93 387.54.

139 The applicant also seeks reparation of the non-pecuniary harm resulting from the adoption of the contested decision, which he estimates at EUR 250 000. That harm, he alleges, includes not only the damage to his professional standing and reputation but also the deterioration in his health and his psychological condition. By way of ancillary plea, he submits that that non-pecuniary harm also includes the harm sustained by his close relatives, in particular his wife and two children, owing to the distress caused to them by the constant deterioration in their husband's/father's health and psychological condition.

140 According to the applicant, it is clear that in the present case both the pecuniary harm and the non-pecuniary harm which he sustained are the direct consequence of the adoption of the contested decision by the defendant. The existence of such a causal link is also shown by the medical certificates issued by the applicant's own doctor on 31 August 2000 and 13 March 2001.

141 The defendant claims that even if the Court should consider that the adoption of the contested decision constitutes a fault of such a kind as to engage the non-contractual liability of the Community, the defendant should not be ordered to make good the harm which the applicant allegedly sustained as a result of that illegality.

142 The defendant states, first, that it follows from a consistent line of decisions that the annulment of a measure of the administration may constitute, in itself, compensation that is appropriate and, in principle, sufficient for any non-material harm which the applicant official may have sustained, in particular if the measure did not involve an injurious assessment with respect to the applicant (see, in that regard, Case T-60/94 *Pierrat* v *Court of Justice* [1995] ECR-SC I-A-23 and II-77, paragraph 62, and Joined Cases T-282/97 and T-57/98 *Giannini* v *Commission* [1999] ECR-SC I-A-33 and II-151, paragraph 40). According to the defendant, the contested decision did not involve any negative assessment of the applicant himself and, furthermore, was not capable of containing such an assessment, since the appointing authority was required to take note of the subjective assessment of the EDD Group in relation to the applicant and his health.

143 The defendant states, second, that as regards the harm which the applicant claims to have sustained as a result of the transfer of the severance allowance payable under the pension scheme, the applicant does not explain to what extent that fact constitutes pecuniary harm caused by the adoption of the contested decision. The transfer was requested by the applicant himself and was made on 26 May 2000, i.e. before the contested decision was adopted.

144 Third, the defendant states that the applicant has adduced no evidence that his family did indeed sustain non-pecuniary harm.

145 The defendant contends, last, that the applicant has not proved by objective evidence that there is a causal link between the non-pecuniary harm and the contested decision.

146 In that regard, the defendant disputes the relevance of the medical certificate issued by the applicant's own doctor on 13 March 2001, since it was written approximately eight months after the contested decision was adopted and in the course of the litigation, and therefore *in tempore suspecto*. The defendant also observes that, although the applicant's own doctor had stated in the medical certificate of 31 August 2000 that the applicant might need to consult a psychiatrist, more than six months later he did not consider it necessary to refer the applicant for such a consultation. According to the defendant, there are also inconsistencies between the statements made by the applicant himself the previous year and the terms of the new medical certificate of 13 March 2001. Last, the defendant states that the applicant was called upon on a number of occasions to attend a medical examination, but did not do so until 16 January 2001 and that, following the applicant's refusal to attend for a further check-up, it was not in a position to carry out a full check of his medical situation.

Findings of the Court

147 It is settled case-law that non-contractual liability on the part of the Community supposes that the applicant proves the illegality of the allegedly wrongful act committed by the Community institution, the actual damage suffered, and the

existence of a causal link between the act and the damage which is alleged to have been suffered (Case T-3/92 *Latham* v *Commission* [1994] ECR-SC I-A-23 and II-83, paragraph 63, and Case T-589/93 *Ryan-Sheridan* v *EFILWC* [1996] ECR-SC I-A-27 and II-77, paragraph 141).

148 It follows from paragraph 117 above that the defendant acted illegally in adopting the contested decision.

149 That decision unquestionably caused the applicant to suffer a loss of remuneration in so far as he was reinstated in his former post in the Parliament at an earlier date than initially envisaged. The defendant is therefore required to pay the applicant a sum representing the difference between the remuneration which he should have received as an official on secondment to Grade A2, Step 1, and that which he received after being reinstated in Grade LA5, Step 3, for the period between the date on which the contested decision took effect, namely 15 July 2000, and the date on which the applicant should have been reinstated in his former post had the contested decision not been adopted, namely 30 November 2000. Furthermore, since the date of 30 November 2000 was expressly provided for in the decision of the appointing authority of 11 January 2000, which was not challenged within the prescribed time by the applicant, that is the only date which can be taken into account for the purposes of determining when he should have been reinstated had the contested decision not been adopted.

150 Since the applicant also sustained pecuniary harm owing to the delay in paying that sum, and since that harm is equivalent to a loss of profits corresponding to the remuneration which would have been paid to him for investing the sums payable had they been made available to him as soon as they became payable, the Court considers, in the exercise of its unlimited jurisdiction, that the defendant should be ordered to pay the applicant default interest on the sum referred to in the preceding paragraph at a rate of 5.25% per annum from the date on which the amounts constituting the sum referred to in paragraph 149 became payable until such date as payment is actually made.

151 Next, as regards the transfer of the severance allowance by the applicant, the applicant has not established either the reality of that harm or the existence of a causal link with the adoption of the contested decision.

152 Last, as regards the non-pecuniary harm in respect of which the applicant claims reparation, the Court observes that the applicant stated at the hearing that that harm was caused mainly by the conduct not entailing a decision of the EDD Group and of certain of its members and that the contested decision merely aggravated that harm. That actual circumstance is also confirmed by the findings of the applicant's doctor set out in the medical certificate of 31 August 2000.

153 As stated in paragraph 136 above, because the applicant did not observe the prescribed pre-litigation procedure, his claim for reparation of the non-pecuniary harm which he sustained as a result of the alleged conduct of the EDD Group or of certain of its members is inadmissible.

154 However, the Court considers it inevitable that the adoption of the contested decision aggravated the non-pecuniary harm which the applicant was already suffering. The fact of being reinstated in his former post, with retroactive effect and without even having been given a preliminary hearing by the appointing authority, cannot have failed to affect the applicant's dignity and self-respect. In order to make good that harm, the Court, in the exercise of its unlimited jurisdiction, holds that the defendant must be ordered to pay the applicant the nominal amount of EUR 1.

Costs

155 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since the defendant has been unsuccessful and the applicant applied for costs, the defendant must be ordered to pay the costs of the main proceedings.

156 As regards the costs of the proceedings for interim relief, however, which were reserved by order of the President of 9 October 2000, the first subparagraph of Article 87(5) of the Rules of Procedure states that a party who discontinues or withdraws from proceedings is to be ordered to pay the costs if they have been applied for in the observations of the other party on the discontinuance, unless the party who discontinues or withdraws from proceedings applies for the costs to be borne by the other party and that appears justified by the conduct of that party. Furthermore, Article 88 of the Rules of Procedure provides that in proceedings between the Communities and their servants the institutions are to bear their own costs.

157 The applicant withdrew his application for interim relief and the defendant has refused to pay the costs incurred by the applicant in the interim relief proceedings. Contrary to what the applicant claims, moreover, there was nothing in the defendant's attitude to justify ordering it to pay those costs. In those circumstances, each of the parties must be ordered to bear its own costs in relation to those proceedings.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Annuls the decision of 18 July 2000 of the Secretary-General of the Parliament terminating the applicant's secondment in the interests of the service to the EDD political group and reinstating him in the Directorate-General for Information and Public Relations with effect from 15 July 2000;**

2. **Orders the Parliament to pay the applicant a sum corresponding to the difference between the remuneration which he should have received as an official on secondment in Grade A 2, Step 1, and that which he received following his reinstatement in Grade LA 5, Step 3, for the period 15 July 2000 to 30 November 2000, plus default interest at the rate of 5.25% per annum from the date on which the amounts making up the sum referred to in paragraph 149 were payable until such date as payment is actually made;**

3. Declares the action for compensation inadmissible in so far as it relates to reparation for the harm caused by conduct not entailing a decision on the part of the EDD Group and of certain of its members;

4. Orders the Parliament to pay the applicant the sum of EUR 1 by way of nominal damages for the non-pecuniary harm which he sustained as a result of the adoption of the contested decision;

5. Orders the Parliament to pay all the costs of the main proceedings;

6. Orders the parties to bear their own costs in the interlocutory proceedings.

Jaeger Lenaerts Azizi

Delivered in open court in Luxembourg on 23 January 2002.

H. Jung
Registrar

M. Jaeger
President