JUDGMENT OF THE COURT (Sixth Chamber)
17 April 1997 *

In Case C-90/95 P,

Henri de Compte, a former official of the European Parliament, residing in Strasbourg (France), initially represented by Éric Boigelot, of the Brussels Bar, subsequently by Francesco Pasetti Bombardella, of the Venice Bar, with an address for service in Luxembourg at the Chambers of Mr Elvinger, 15 Côte d'Eich,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities of 26 January 1995 in Joined Cases T-90/91 and T-62/92 *De Compte* v *Parliament* [1995] ECR-SC II-1, seeking to have that judgment set aside, save in so far as it orders the Parliament to pay the appellant the sum of BFR 200 000 by way of compensation for non-material damage,

the other party to the proceedings being:

European Parliament, represented by François Vainker, of its Legal Service, acting as Agent, and Denis Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

* Language of the case: French.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, J. L. Murray, C. N. Kakouris, P. J. G. Kapteyn and H. Ragnemalm (Rapporteur), Judges,

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

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 June 1996,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 24 March 1995, Henri de Compte brought an appeal pursuant to Article 49 of the EC Statute and the corresponding provisions of the ECSC and Euratom Statutes of the Court of Justice against the judgment of the Court of First Instance of 26 January 1995 in Joined Cases T-90/91 and T-62/92 *De Compte* v *Parliament* [1995] ECR-SC II-1 ('the contested judgment'), seeking to have that judgment set aside, save in so far as it orders the Parliament to pay the appellant the sum of BFR 200 000 by way of compensation for non-material damage.

2 According to the contested judgment, the appellant, who has been in retirement since 1 January 1989, is a former official of the Parliament, where he was an accounting officr.

3 On 18 January 1988, the appointing authority took a decision imposing on him the sanction of downgrading from Grade A 3, Step 8, to Grade A 7.

4 That decision was taken following disciplinary proceedings initiated as a result of the finding of irregularities in the Parliament's accounts, for which the appellant was allegedly responsible.

5 The disciplinary proceedings, originally initiated on 30 September 1982, were annulled by the appointing authority on 14 January 1983. The proceedings, which were reopened on 13 April 1983, led to the first sanction of downgrading. That decision was, however, annulled by judgment of the Court of Justice of 20 June 1985 in Case 141/84 *De Compte* v *Parliament* [1985] ECR 1951, on the ground that the proceedings were vitiated by a fundamental defect because witnesses were examined in the appellant's absence. The disciplinary procedure was reopened on 24 June 1987 and culminated in the downgrading of the appellant on 18 January 1988 to Grade A 7.

6 In its judgment of 17 October 1991 in Case T-26/89 *De Compte* v *Parliament* [1991] ECR II-781, the Court of First Instance dismissed as unfounded the appellant's application for annulment of the decision to downgrade him. His appeal against that judgment was dismissed by judgment of the Court of Justice of 2 June 1994 in Case C-326/91 P *De Compte* v *Parliament* [1994] ECR I-2091. By application lodged at the Court of First Instance on 20 June 1996, the appellant sought revision, pursuant to Article 125 of the Rules of Procedure of the Court of First Instance, of the judgment of 17 October 1991 in Case T-26/89 *De Compte* v *Parliament*, cited above.

7 Shortly after the disciplinary proceedings leading to his downgrading, the appellant requested the Parliament on 14 June 1988 to initiate a procedure for recognition that he was suffering from an occupational disease and entitled to the benefits provided for by Article 73 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), in accordance with Article 17(1) of the

Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease ('the Insurance Rules').

8 In a medical report dated 30 June 1989, the doctor appointed by the institution, acting under Article 19 of the Insurance Rules, refused to recognize that the appellant was suffering from an occupational disease. The appellant challenged the draft decision, drawn up on the basis of that medical report, rejecting his request for recognition that he was suffering from an occupational disease.

9 Consequently, in accordance with Article 23 of the Insurance Rules, a medical committee was set up; its report, drawn up on 22 January 1991, contains the following findings:

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

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

3. There was no aggravation of a pre-existing condition.

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

5. The date on which his injuries stabilized was 20 January 1983.

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

7. There is no need for special treatment involving one or more journeys.

8. There is no need for the assistance of a third party.'

10 On 24 January 1991 the appointing authority adopted a decision in which it found that the appellant was suffering from an occupational disease which had given rise to permanent partial invalidity at the rate of 40%, and decided to pay him the sum of BFR 9 147 091.

11 However, on 18 April 1991 the appointing authority revoked the decision of 24 January 1991 with retroactive effect. The statement of reasons for that revocation essentially reflects the judgment of the Court of Justice of 21 January 1987 in Case 76/84 *Rienzi* v *Commission* [1987] ECR 315, according to which an illness may be classified as occupational only if it arises in the course of or in connection with the lawful performance of his duties by the official concerned.

12 In the circumstances of this case, the appellant's illness was to be attributed to accusations essentially concerned with irregularities in keeping accounts for which he was responsible which had led to the initiation of disciplinary proceedings against him and also to the disciplinary measure imposed at the end of those proceedings.

13 The decision of 18 April 1991 also stated that in adopting the decision of 24 January 1991 the appointing authority had based its conclusion on an erroneous interpretation of the concept of 'occupational origin' in so far as it had espoused the findings of the medical committee. In consequence, the appointing authority had committed an error in assessing the concept of occupational disease for the purposes of Article 73 of the Staff Regulations and Article 3(2) of the Insurance Rules, with the result that it was entitled to revoke with retroactive effect the decision of 24 January 1991 in order to ensure compliance with the law.

14 The operative part of the decision of 18 April 1991 provided that the decision so revoked would be 'replaced by another decision to be taken in the light of the judgment to be given in Case T-26/89 *De Compte* v *Parliament*', as the outcome of the action brought by the appellant against the downgrading decision of 18 January 1988.

15 On 4 June 1991, the appellant lodged a complaint against that decision of 18 April 1991, which was rejected by the appointing authority on 23 September 1991.

16 Following the judgment of the Court of First Instance of 17 October 1991 in Case T-26/89 *De Compte* v *Parliament*, cited above, on 20 January 1992 the appointing authority adopted the decision provided for in the operative part of the decision of 18 April 1991 revoking the decision of 24 January 1991 which recognized the occupational nature of the disease.

17 The statement of reasons for that decision of 20 January 1992 was essentially based on the consideration that an illness can be classified as an 'occupational disease' only if it arises in the course of the lawful performance of his duties by the official concerned. In this case, the appellant's illness purportedly arose from the accusations levelled against him examined during the disciplinary proceedings which had resulted in the imposition of a disciplinary measure. The judgment of the Court of First Instance of 17 October 1991 in Case T-26/89 *De Compte* v *Parliament*, cited above, confirmed that that disciplinary measure was justified.

18 The operative part of the decision of 20 January 1992 concluded that 'Mr Henri de Compte has not contracted an occupational disease within the meaning of the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease'.

19 On 10 April 1992 the appellant lodged a complaint against the decision of 20 January 1992. That complaint was rejected by the appointing authority on 4 June 1992.

20 On 19 December 1991, in Case T-90/91, the appellant requested the Court of First Instance to annul the decision of 18 April 1991 revoking the decision of 24 January 1991 which recognized the existence of an occupational disease, and also the decision of 23 September 1991 rejecting his complaint of 4 June 1991. He also requested, by way of principal claim, that the Parliament be ordered to pay him the sum of BFR 9 147 091.

21 On 4 September 1992, in Case T-62/92, the appellant requested the Court of First Instance to annul the decision of 20 January 1992 refusing to recognize that he was suffering from an occupational disease and the decision of 4 June 1992 rejecting his complaint of 8 April 1992. He also sought an order for Parliament to pay him principally the sum of BFR 9 147 091.

22 In the contested judgment, the Court of First Instance dismissed the applications and ordered the Parliament to pay the appellant the sum of BFR 200 000 by way of compensation for non-material damage.

The appeal

23 The appellant claims that the contested judgment should be set aside, save in so far as it orders the Parliament to pay him the sum of BFR 200 000 by way of compensation for non-material damage, and requests the Court to give final judgment itself granting his original claims. He also asks that the defendant be ordered to bear the costs of the proceedings before both courts.

24 The Parliament claims that the Court should dismiss the appeal and order the appellant to bear the costs.

25 In support of his appeal, the appellant alleges, in the first place, that the Court of First Instance infringed the obligation to state the reasons on which a judgment is based, which implies in particular that the grounds relied upon must be legally permissible, that is to say sufficient, relevant, free from errors of law or fact, and consistent, secondly, that it infringed Article 73 of the Staff Regulations and Article 3 of the Insurance Rules, and, thirdly, that it breached the general legal principles applicable to Community law, namely, in particular, the principles of legal certainty, good faith, protection of legitimate expectations, the duty to have regard for the welfare or interests of officials, the principle that acts should be done within a reasonable time, and also the principle that all administrative acts should be based on reasons which are legally permissible, that is say, relevant and free from errors of law or fact.

Revocation of the decision of the appointing authority of 24 January 1991

26 It transpires from paragraph 52 of the contested judgment that the Court of First Instance considered that, by the contested decision of 18 April 1991, the Parliament had revoked its decision of 24 January 1991 recognizing that the appellant was suffering from an occupational disease within a period of approximately two months and 25 days, that is to say within a period of less than three months.

27 In paragraph 53, the Court of First Instance considered that, in the circumstances, such a period could not be regarded as unreasonable, in the light of the fact that it was common ground as between the parties that, as a result of reservations expressed by the insurance company which would have been liable to pay the occupational-disease benefit to the appellant, the latter had been made aware by the Parliament between 1 and 13 March 1991 of the problems to which implementation of that decision gave rise, on account of doubts as to its legality. In consequence, the appellant was wrong to claim that the decision concerning him was revoked after an unreasonable length of time.

28 As regards protection of the appellant's legitimate expectation that the decision revoked was lawful, the Court of First Instance pointed out in paragraph 61 that it was not disputed that, following the adoption of the decision of 24 January 1991, the appellant had been informed by the Parliament's staff in the first fortnight of March 1991, that is to say within one and a half months, that implementation of that decision, namely payment of the benefit granted pursuant to Article 73 of the Staff Regulations, was in jeopardy because the decision might be vitiated by illegality.

29 In paragraph 61, the Court of First Instance concluded that 'Accordingly, while, on the date on which the revoked decision of 24 January 1991 was adopted, the appellant was still able to rely upon the apparent legality of the decision and to argue that it should be upheld, that reliance was subsequently, and very swiftly, undermined in such a way that by the time the Parliament took the contested decision to revoke, the appellant was no longer entitled to entertain any legitimate expectation as to the legality of the decision revoked'.

30 Consequently, in paragraph 62 the Court of First Instance rejected the appellant's plea alleging breach of his legitimate expectations as to the legality of the revoked decision of 24 January 1991.

31 In this appeal, the appellant complains *inter alia* that the Court of First Instance rejected his plea alleging breach of the principle of protection of his legitimate expectation as to the legality of the revoked decision of 24 January 1991 and claims that the Court of First Instance was wrong to find that the revocation of the decision, which took place on 18 April 1991, was effectuated within a reasonable time so far as he was concerned.

32 The Parliament considers that those complaints have no basis in law and must accordingly be rejected. It cites the case-law of the Court of Justice and contends, first, that an error on the part of the administration as to the rule applicable can never give rise to legitimate expectations (Case 1252/79 *Lucchini* v *Commission* [1980] ECR 3753; Joined Cases 311/81 and 30/82 *Klöckner-Werke* v *Commission* [1983] ECR 1549 and Case 162/84 *Vlachou* v *Court of Auditors* [1986] ECR 481).

33 Secondly, the Parliament considers that the Court of First Instance correctly observed that it had very swiftly put the appellant on notice of the precarious nature of the revoked decision as soon as it had noticed its error, with the result that no legitimate expectation could have been created in him.

34 Thirdly, Parliament maintains that in its case-law the Court has accepted the principle that unlawful measures may be revoked, at least within a reasonable period of time, that that period must be calculated in relation to the date on which the measure was adopted and that the Court has held that decisions revoked more than six

months after they were adopted had been withdrawn within a reasonable period of time (Joined Cases 7/56 and 3/57, 4/57, 5/57, 6/57 and 7/57 *Algera and Others* v *Common Assembly* [1957] ECR 39).

35 It should be first noted that retroactive withdrawal of a favourable administrative act is generally subject to very strict conditions (see Case 54/77 *Herpels* v *Commission* [1978] ECR 585, paragraph 38). According to settled case-law, while it must be acknowledged that any Community institution which finds that a measure which it has just adopted is tainted by illegality has the right to withdraw it within a reasonable period, with retroactive effect, that right may be restricted by the need to fulfil the legitimate expectations of a beneficiary of the measure, who has been led to rely on the lawfulness thereof (Case 14/81 *Alpha Steel* v *Commission* [1982] ECR 749, paragraphs 10 to 12; Case 15/85 *Consorzio Cooperative d'Abruzzo* v *Commission* [1987] ECR 1005, paragraphs 12 to 17; Case C-248/89 *Cargill* v *Commission* [1991] ECR I-2987, paragraph 20, and Case C-365/89 *Cargill* v *Produktschap voor Margarine, Vetten en Oliën* [1991] ECR I-3045, paragraph 18).

36 It is clear from paragraph 61 of the contested judgment that at the time the revoked decision of 24 January 1991 was adopted the appellant was entitled to have confidence in the apparent legality of the decision and to argue that it should be upheld. It must, however, be pointed out that the operative time for determining whether the addressee of an administrative act has acquired legitimate expectations is not the date on which the act was adopted or withdrawn but the date on which it was notified.

37 In the circumstances of this case, there is nothing to suggest that the appellant provoked the decision of 24 January 1991 by means of false or incomplete information (see, to that effect, Joined Cases 42/59 and 49/59 *SNUPAT* v *High Authority* [1961] ECR 53, and Case 14/61 *Hoogovens* v *High Authority* [1962] ECR 253).

38 It follows that when the appellant took cognizance of the decision of 24 January 1991 after it was notified to him, he was entitled to rely on the apparent legality of the act and to claim that it should be upheld.

39 It should be noted, first, that legitimate expectations as to the legality of a favourable administrative act, once acquired, may not subsequently be undermined. Second, in view of the circumstances, there is no public-policy interest which overrides the beneficiary's interest in the maintenance of a situation which he was entitled to regard as stable (see, to that effect, *SNUPAT* v *High Authority* and *Hoogovens* v *High Authority*).

40 Accordingly, the Court of First Instance erred in law in finding in paragraph 61 of the contested judgment that, whereas, on the date on which the revoked decision of 24 January 1991 was adopted, the appellant was still entitled to rely upon the apparent legality of the decision and to claim that it should be upheld and that that reliance was subsequently, and very swiftly, undermined in such a way that at the date when the Parliament took the contested decision to revoke, the appellant was no longer entitled to entertain any legitimate expectation as to the legality of the decision revoked.

41 The contested judgment must therefore be set aside, save in so far as it orders the Parliament to pay the appellant the sum of BFR 200 000 by way of compensation for non-material damage, since that part of the judgment was not challenged on appeal, and there is no need to rule on the complaint that the Court of First

Instance wrongly held that the decision was withdrawn within a reasonable period or on the other pleas raised by the appellant.

42 In accordance with the second sentence of the first paragraph of Article 54 of the EC Statute of the Court of Justice, where the Court quashes the decision of the Court of First Instance, it may itself give final judgment where the state of the proceedings so permits. The Court considers that this is the case.

43 It is sufficient to find that the withdrawal of the appointing authority's decision of 24 January 1991 by decisions of 18 April 1991 and 20 January 1992 breached the principle of protection of the legitimate expectations of the addressee of that first decision, with the result that those two later decisions must be annulled.

The pecuniary claim

44 The appellant has asked for an order that the Parliament should pay him the sum of BFR 9 147 091, together with default interest at the annual rate of 10% from 24 January 1991 until the actual date of payment.

45 Since this is a dispute of a financial character in which the Community judicature has unlimited jurisdiction pursuant to the second sentence of Article 91(1) of the Staff Regulations, that head of claim must be accepted. The claim for default interest, which also falls within the unlimited jurisdiction of the Court (see, in particular, Case T-15/93 *Vienne* v *Parliament* [1993] ECR II-1327, paragraph 42), must be granted and the rate of annual interest set at 8% to run from 24 January 1991 until the date of actual payment.

Costs

46 Under Article 122 of the Rules of Procedure, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs. Under Article 69(2) of the Rules of Procedure, applicable to appeals by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since the Parliament has been unsuccessful, it must be ordered to pay, in addition to its own costs, all the costs incurred by the appellant in the proceedings before the Court of First Instance as well as those before the Court of Justice.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Sets aside the judgment of the Court of First Instance of the European Communities of 26 January 1995 in Joined Cases T-90/91 and T-62/92 *De Compte* v *Parliament*, save in so far as it orders the European Parliament to pay the appellant the sum of BFR 200 000 by way of compensation for non-material damage;

2. In Case T-90/91, annuls the decision of 18 April 1991;

3. In Case T-62/92, annuls the decision of 20 January 1992;

4. **Orders the European Parliament to pay the appellant the sum of BFR 9 147 091, together with default interest at the annual rate of 8% to run from 24 January 1991 until the date of actual payment;**

5. **Orders the European Parliament to pay all the costs of the proceedings before both courts.**

Mancini Murray Kakouris

Kapteyn Ragnemalm

Delivered in open court in Luxembourg on 17 April 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber