

Aggravation of injuries cannot be assimilated to a new accident within the meaning of Article 2 of the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease nor, consequently, can it constitute a new event giving rise to compensation. Any other interpretation would lead to introducing a system of compensation varying according to whether the injuries caused by the accident manifest themselves immediately after it or only at a later date, at the risk of bringing about unequal treatment of officials who have been the victim of an accident within the meaning of the abovementioned Rules.

2. The benefits referred to in Article 73 of the Staff Regulations are social security benefits and not benefits intended to

make good loss and damage in the context of an action for damages. The allowance provided for in Article 73(2)(b) and (c) of the Staff Regulations therefore represents the performance not of an obligation to make good loss and damage but of an obligation to pay a fixed sum of money assessed on the basis of the lasting effects of an accident.

In the event of aggravation of the injuries subsequent to the accident, that allowance, by reason both of its lump-sum nature and of the lack of provisions in the Staff Regulations or in the Rules on Insurance against the Risk of Accident authorizing an increase, cannot be increased, once the injuries have become consolidated, in order to take account of currency depreciation which has occurred in the meantime.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
28 February 1992 *

In Case T-8/90,

Michel Colmant, an official of the Commission of the European Communities, residing in Brussels, represented by Edmond Lebrun, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of L. Schiltz, 2 Rue du Fort Rheinsheim,

applicant,

* Language of the case: French.

Commission of the European Communities, represented by Sean van Raepensbusch, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of its Legal Service, Wagner Centre, Kirchberg,

defendant,

supported by

Société Anonyme Royale Belge, whose head office is in Brussels, represented by François van der Mensbrugghe, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Albert Wildgen, 6 Rue Zithe,

intervener,

APPLICATION for the annulment of the Commission's decision of 26 January 1989 fixing the amount of the additional allowances paid to the applicant under Article 73(2) of the Staff Regulations on account of the aggravation of his injuries, and of the Commission's decision of 15 November 1989 rejecting the applicant's complaint,

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

composed of: R. Schintgen, President, D. A. O. Edward and R. García-Valdecasas, Judges,

Registrar: B. Pastor, Administrator

having regard to the written procedure and further to the hearing on 11 July 1991,

gives the following

Judgment

The facts giving rise to the dispute

- 1 Mr Colmant, the applicant, a Grade A 4 official at the Commission of the European Communities, was the victim of a road accident on 29 March 1975.

- 2 By memorandum of 2 February 1979 the Director General of Personnel and Administration informed the applicant that the Medical Committee which had been charged with drawing up a report on the sequelae of his accident had assessed partial permanent invalidity ('PPI') at 5%, of which 4% related to objectively ascertainable sequelae and 1% to adverse effects on social relations. By memorandum of 23 March 1979 the Director General informed the applicant that, pursuant to Article 73(2)(c) of the Staff regulations of the Officials of the European Communities ('the Staff Regulations') and to Articles 12 and 14 of the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease ('the Rules'), a lump sum of BFR 446 182 had been awarded to him.

- 3 On 18 December 1985 the applicant submitted a request for the allowances granted to him following the accident to be reviewed on account of the aggravation of the sequelae, and requested a reassessment of the rate of PPI which had been awarded to him pursuant to Article 12 of the Rules and of the allowance which had been granted to him in respect of adverse effects on his social relations, pursuant to Article 14.

- 4 In a draft decision of 14 July 1987, notified to him in accordance with Article 21 of the Rules, the Commission informed the applicant that it was allowing his request to reopen the matter and that, in the light of the opinion of the doctor whom it had appointed, it considered that the aggravation of the sequelae could be compensated on the basis of a rate of PPI of 4%, to be added to the 5% rate fixed previously. An additional lump sum of BFR 372 946 was therefore paid to him,

calculated on the basis of the monthly amounts of salary received during the twelve months before the accident in 1975.

5 By memorandum of 11 September 1987 the applicant indicated his agreement to the payment of an additional lump sum on the basis of a rate of PPI of 4%, fixed in accordance with Article 12 of the Rules but, in accordance with Article 21, he made a request for consultation of the Medical Committee provided for in Article 23 in order that it might give its opinion on the question of aggravation of the adverse effect on social relations referred to in Article 14.

6 By memorandum of 11 December 1987 the Commission informed the applicant that the rate of PPI of 4% which had been awarded to him on 14 July 1987 consisted of two components of 2%, one attributable to Article 12 and the other to Article 14.

7 By memorandum of 15 April 1988 the applicant informed the Commission that he had suffered further aggravation of the physical sequelae consequent upon his accident, consisting of water on his right knee, first observed on 4 January 1988 and therefore not taken into account at the time of the examination carried out by the institution's medical officer; he expressed his disagreement with the allocation of the 4% contained in the memorandum of 11 December 1987 and requested that the Medical Committee give its opinion both on the question of the aggravation of the physical sequelae under Article 12 and on the aggravation of the adverse effect on his social relations as referred to in Article 14.

8 By memorandum of 26 January 1989 Mr Reynier, Head of Division, informed the applicant that the Medical Committee had submitted its findings, adopted by a majority, on 8 December 1988 and that, on the basis of those findings, it had taken the decision to fix the rate of PPI at 10%, that is to say, 6% under Article 12 and 4% under Article 14 of the Rules. The date of the consolidation of the aggravation of the injuries was fixed at 23 November 1988. An additional lump sum of BFR 93 236 was paid to the applicant.

9 On 26 April 1989 the applicant submitted a complaint against the decision of 26 January 1989 in accordance with Article 90(2) of the Staff Regulations, in which he disputed:

- the composition of the Medical Committee, which was not in accordance with Article 23 of the Rules, and its working methods;
- the opinion of the Medical Committee and the PPI rates fixed by it and, subsequently, by the contested decision of 26 January 1989;
- the amount of the lump sum which had been offered to him, because of the basis of calculation which had been adopted.

He requested that the lump sum be calculated on the basis of the amount of salary received during the twelve months before the date adopted for the consolidation of the injuries and new sequelae, and not on the basis of amounts of the salary received during the twelve months before the accident in 1975.

10 By memorandum of 15 November 1989 the Commission upheld that complaint in part in so far as it found that 'the Medical Committee was not in conformity with Article 23 of the Rules', decided to 'seek the opinion of a new Medical Committee, to be called upon to take a decision on the case of Mr Colmant' and considered, having regard to that finding, that there was no need to 'take a decision on the other pleas submitted in the complaint concerning the work and findings of the Medical Committee'. The complaint was rejected in part in so far as the Commission maintained that, in the event of aggravation of invalidity, the lump sum provided for in Article 73(2)(c) of the Staff Regulations must necessarily be calculated on the basis of the amounts of monthly salary received during the twelve months before the accident and not during the twelve months before the date adopted for the consolidation of the aggravation of the injuries.

Proceedings

11 Those were the circumstances in which, by an application lodged at the Registry of the Court on 14 February 1990, Mr Colmant brought the present action.

12 By order of 13 June 1990 the Court granted leave to the SA Royale Belge, in its capacity as leading insurer bound by a collective insurance agreement against the risk of accident and occupational disease concluded with the European Communities, to intervene in support of the form of order sought by the defendant. The intervener submitted its written observations at the Registry of the Court on 30 July 1990.

13 The Court decided to take measures of organization of procedure in the form of questions put to the Commission concerning the systems in force, for persons covered by social security and the scheme for civil servants, under the laws of the Member States and the law governing certain international organizations, such as the World Health Organization and the International Labour Office, as regards benefits in the event of accident giving rise to permanent partial invalidity and, more particularly, benefits in the event of subsequent aggravation of such permanent partial invalidity, with regard, for example, to the adjustment of the value of those benefits to the cost of living, to increases in remuneration or to productivity of work. The Commission replied to those questions by letter of 13 June 1991, received at the Court on 20 June 1991.

14 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure, which took place on 11 July 1991. Counsel for the parties presented oral argument and gave their replies to the questions put by the Court.

15 The applicant claims that the Court of First Instance should:

— declare the action admissible and well founded;

- consequently:

- annul the decision of the defendant of 26 January 1989 in so far as it fixes at BFR 372 946 and at BFR 93 236 the additional lump sum payable to the applicant for the recognition of additional degrees of PPI of 4% and 1% respectively;

- annul the decision of the defendant of 15 November 1989 in so far as it rejects the applicant's complaint concerning the basis for calculating the compensation payable in the event of aggravation of invalidity;

- declare that, in the event of aggravation of invalidity, the basis for calculating the compensation provided for in Article 73 of the Staff regulations must be the amounts of monthly salary received during the twelve months before the date adopted for the consolidation of the aggravation of the injuries or, in the alternative, declare that the sum granted in the event of aggravation of invalidity must take account of the fall in the value of the currency in which payment is made between the date of the accident and the date of the consolidation of the aggravation of the injuries;

- order the defendant to pay to the applicant, by way of a provisional supplement to the additional allowances granted to him in respect of the aggravation of the injuries sustained in the accident which occurred on 29 March 1975, the sum of BFR 1 000 000 increased by default interest at the rate of 8% per annum as from the date to be fixed by the Court of First Instance until the date of actual payment;

- order the defendant to pay the costs.

16 The Commission contends that the Court of First Instance should:

- declare the action to be unfounded;

— make an appropriate order as to costs.

17 The intervener supports the form of order sought by the Commission.

Substance

The applicant's claim for the compensation payable by virtue of Article 73(2)(c) of the Staff Regulations to be calculated on the basis of the amounts of monthly salary received during the twelve months before the date adopted for the consolidation of the aggravation of the injuries

— The single plea in law alleging infringement of Articles 5 and 73 of the Staff Regulations and breach of the general principles of law, such as the principles of equality, distributive justice and fairness

18 The applicant considers that the lump sum which must be paid, in the event of PPI, to the person concerned must be calculated, in the case of aggravation of invalidity, not on the basis of the amounts of monthly salary received during the twelve months before the accident, but on the basis of the amounts of monthly salary received during the twelve months before the date adopted for the consolidation of the aggravation of the injuries. He acknowledges that if Article 73(2)(b) and (c) were to be applied *stricto sensu* the basis of calculation of the lump sum would be that proposed by the Commission. That solution would be manifestly contrary to the principle of equality, and unjust and unfair. The applicant points out that Article 72 of the Staff Regulations does not contemplate the case of aggravation of injuries, that *lacuna* being filled by Article 22 of the Rules. In such a case, the applicant goes on to state, provisions of regulations must be interpreted in accordance with rules of law of a higher order and must simply be set aside if they are not compatible with those rules. It is for that reason, according to the applicant, that the aggravation of injuries must be treated, by analogy, as a new accident, since the aggravation constitutes a new event giving rise to compensation in the same way as the accident. He also considers that the solution resulting from the interpretation given by the defendant to Article 73 of the Staff Regulations is discriminatory and unfair because by stating that the lump sum payable on invalidity must be calculated on the basis of the amounts of monthly salary received during the twelve months before the accident, the defendant does not take into account the fact that the applicant's salary has increased since the date of the accident, as have the compulsory 'accident insurance' contributions. The applicant considers that in the present case there has been an infringement of Article 5 of the Staff Regulations in so far as it enshrines the principle of equality.

- 19 The Commission considers that there can be no question of an infringement of Article 5 of the Staff Regulations, since that provision is concerned only with the classification of posts in categories and grades and with the principle of correspondence of grade to post.
- 20 It maintains that the interpretation of Article 73 of the Staff Regulations proposed by the applicant is *ultra legem*. In the Commission's opinion the wording of Article 73 is sufficiently clear and there is no justification for construing that article broadly. It considers that there was only one event giving rise to compensation, namely the accident in March 1975, and that the aggravation of the sequelae can be viewed only in relation to the consequences of the accident.
- 21 The Commission goes on to examine Article 73 in the light of the principles referred to by the applicant in his plea, in particular the principles of equality and distributive justice. As regards the principle of equality, the Commission states that Article 73 applies in identical manner to all officials who have been the victim of an accident within the meaning of the Rules. As regards the principle of distributive justice or fairness, it maintains that there is no general principle of Community law to the effect that a provision in force cannot apply where it entails hardship for the person concerned which the Community legislature would clearly have sought to avoid if it had envisaged it when enacting the provision. It states that according to the case-law of the Court of Justice there is no general principle of 'objective unfairness' in Community law.
- 22 The intervener considers that Article 5 only concerns the classification of posts under the Staff Regulations and states that it cannot see how that article could provide justification for the applicant's argument.
- 23 As regards the question of infringement of Article 73 of the Staff Regulation, the intervener maintains that there are no *lacunae* in Article 73, since it lays down, in general terms, basic rules of the social security scheme for Community officials, namely the definition of the risks covered and of the benefits guaranteed, which

are calculated, in the case of PPI, on the basis of the amounts of monthly salary received during the twelve months before the accident. In the intervener's view, that article refers to all the possible guaranteed benefits and leaves to the Rules merely the function of establishing the conditions under which those guaranteed benefits are awarded. Article 22 of the Rules does not therefore amend Article 73 of the Staff Regulations at all as regards the basis of the calculation of the benefits guaranteed.

24 As regards the applicant's 'assimilation' of the consolidation of the aggravation of the injuries to the accident, the intervener adopts the same position as the defendant, namely that the accident constitutes the event which gives rise to entitlement to the benefits guaranteed and that the consolidation only has the effect of determining the amount of the benefits by fixing the degree of permanent invalidity. There is therefore no need to reason by analogy.

25 As regards the question of breach of general principles of law such as equality, distributive justice and fairness, the intervener considers that it is the applicant's interpretation which constitutes a breach of those principles, since it would lead to the establishment of a system of social security benefits which would vary according to whether or not the injuries suffered by an official subsequently resulted in an aggravation of his invalidity even though those benefits arise from the same accident. Furthermore, it is neither for the Commission nor for the Court to replace the system laid down in Article 73 with another system that they consider to be better, since that is a matter exclusively for the Community legislature.

26 The Court finds, first, that in the present case the reference to Article 5 of the Staff Regulations is irrelevant because the purpose of that provision has no connection with that of the present action.

27 The Court considers, secondly, that, in so far as Article 73 of the Staff Regulations lays down, in general terms, basic rules governing the social insurance cover of officials of the Communities by defining the risks covered and the benefits guaranteed, that provision cannot be described as incomplete simply because it

does not provide, where an accident has resulted in PPI, for the case of aggravation of injuries. By surrendering competence to determine the conditions for the application of the rules which it establishes to rules laid down by common accord of the institutions, Article 73 authorizes the institutions to make legitimate provision, within the framework of those rules, for the case of aggravation of injuries.

28 Moreover, the Court points out that under no circumstances can aggravation of injuries following an accident be assimilated to a new accident nor, consequently, can it constitute a new event giving rise to compensation, since the accident continues to constitute the event giving rise to compensation. Any other interpretation would lead to introducing a system of compensation varying according to whether the injuries caused by the accident manifest themselves immediately after it or only at a later date. Finally, the Court points out that Article 2 of the Rules regards as an accident 'any occurrence or external factor of a sudden, violent or abnormal nature adversely affecting an official's bodily or mental health' and that an aggravation of injuries does not satisfy those conditions. It follows that the system of calculation of benefits established by Article 73 on the basis of the amounts of monthly salary received during the twelve months before the accident must also be applied in the event of aggravation of injuries occurring on a date subsequent to that of the accident.

29 As regards the alleged breach of the principles of equality, distributive justice and fairness, the Court points out that Article 73 applies identically to all officials who have been the victim of an accident within the meaning of the Rules and that, therefore, no discrimination can arise from such application. On the other hand, discrimination could arise if different bases of calculation were applied on the basis of the date of consolidation of the aggravation of the injuries. Those very reasons make it necessary to find, in the present case, that there has been no breach of the principles of distributive justice and fairness.

30 It follows that that plea must be rejected.

The alternative claim of the applicant that the compensation payable pursuant to Article 73(2)(c) of the Staff Regulations should take into account the fall in the value of money between the date of the accident and that of the consolidation of the aggravation of his injuries

— The single plea based on infringement of Article 5 of the Staff Regulations and breach of the general principles of law, such as those of equality, distributive justice and fairness

- 31 The applicant considers that, if his principal claim is not upheld, it would be just and equitable that the compensation payable to him by reason of the aggravation of the injuries resulting from his accident should be calculated taking into account the fall in the value of the currency in which payment is made, the Belgian franc, between the date of the accident — 29 March 1975 — and that adopted for the consolidation of the aggravation of his injuries — 23 November 1988: BFR 100 in 1975 corresponded in 1988 to BFR 198.9.
- 32 The Commission considers, for its part, that neither the Staff Regulations nor the Rules provide, in their current version, for a method enabling the amounts of monthly salary received during the twelve months before the accident to be revised upwards in order to take account of the fall in the value of currency and that a decision to that effect is a matter solely for the Community legislature. Moreover, the general principles relied upon by the applicant are not of such a nature as to serve as a valid legal basis for a decision by which the administration, when applying Article 73(2)(c) of the Staff Regulations, adjusts the level of amounts of remuneration granted, where the cost of living has changed appreciably or the currency has depreciated between the date of the accident and that of the consolidation of the aggravation of the injuries suffered. It adds that a claim such as that of the applicant is based on a confusion between reparation of loss and damage in the context of an action for damages and the principles applicable in the context of insurance against the risk of accident. Moreover, it points out that the applicant is not seeking to show that the defendant committed a fault in the form of improperly delaying the procedure of examining the request under Article 73.
- 33 In his reply the applicant considers that the result arrived at on the basis of to the wording of the provisions, as they stand at present, are unjust and unfair and that the general principles of law referred to must take precedence over the provisions

of positive law. He maintains, moreover, that he is not confusing reparation of loss and damage in the context of an action for damages with the principles applicable in the context of insurance against the risk of accident, for he is not requesting that currency depreciation be taken into account on the basis of the rules and principles relating to reparation of loss and damage in the context of an action for damages, but on the basis of the principles of law of a higher order, such as those of equality, distributive justice and fairness.

34 The intervener contends that the lump sum which an official can claim on the basis of Article 73 is not intended to make good in full the loss and damage suffered. That article is confined to establishing a social security scheme which guarantees to an official who has been the victim of an accident a fixed lump-sum benefit. What is concerned is therefore not an 'obligation to provide compensation', intended as reparation for loss and damage at the date of payment, but an 'obligation to pay a sum of money' the fixed amount of which is established by the parameters laid down in Article 73. It further notes that the wording of the provision is clear and that no provision of positive Community law provides that the said sum of money should be adjusted to take currency depreciation into account and that a 'general principle of law' to that effect does not exist, in its opinion, either in Community law or in the laws of the Member States.

35 The Court considers, first, that it should be borne in mind that the benefits referred to in Article 73 are social security benefits and not benefits intended to make good loss and damage in the context of an action for damages. The lump sum provided for in Article 73(2)(b) and (c) represents the performance not of an obligation to provide compensation intended to make good loss and damage but of an obligation to pay a fixed sum of money assessed on the basis of the lasting effects of an accident (judgment of the Court of Justice in Case 156/80 *Morbelli v Commission* [1981] ECR 1357, paragraph 34).

36 The Court considers that neither Article 73(2) of the Staff Regulations nor Article 22 of the Rules allows for an increase, in the event of subsequent aggravation of injuries, in the amount of the lump sum paid, in order to take account of currency depreciation.

37 The Court points out, furthermore, that according to the first paragraph of Article 20 of the Rules 'the decision defining the degree of invalidity shall be taken after the official's injuries have consolidated' and that, according to the second paragraph, 'where it is impossible to define the degree of invalidity after medical treatment is terminated, the findings of the doctor(s) referred to in Article 19 or, where appropriate, the report of the Medical Committee referred to in Article 23 must specify a deadline for reviewing the official's case'. It follows from that provision that entitlement to payment of compensation for permanent invalidity does not arise as each injury consolidates but only upon consolidation of the whole of the injuries and that it is envisaged that a period of time of indefinite duration may lapse between the date of the accident and the date of the consolidation of the injuries.

38 Nevertheless, the Rules provide for the payment of provisional compensation only where the degree of invalidity is deemed to be at least 20%. In that case, the third paragraph of Article 20 of the Rules provides that the appointing authority may grant a provisional allowance corresponding to the undisputed portion of the permanent invalidity rate, the allowance being set off against the final benefit.

39 That being so, the Court considers that there is no legal basis for maintaining that the lump sum payable as compensation for permanent invalidity must, in an appropriate case, be increased once the injuries become consolidated, in order to take account of any currency depreciation which may have occurred in the meantime.

40 The Court considers, furthermore, that that solution, in so far as it applies to all officials, cannot be contrary to the general principles of law referred to in the pleas.

41 Consequently, that plea must be rejected.

42 It follows that the applicant's claim for annulment must be dismissed.

The applicant's claim that the Commission be ordered to pay him a 'provisional supplement'

- 43 The applicant claims that the defendant should be ordered to pay him, by way of a provisional supplement to the additional allowances granted to him in respect of the aggravation of the injuries sustained in the accident which occurred on 29 March 1975, the sum of BFR 1 000 000, increased by default interest at the rate of 8% per annum as from the date to be fixed by the Court until the date of actual payment.
- 44 The Commission notes that neither the Staff Regulations nor the Rules enable the person concerned to request the administration to pay allowances on a provisional basis. It points out, moreover, that the obligations imposed on the administration can derive only from the annulment of one of its acts, in accordance with Article 176 of the EEC Treaty, and that the Court does not have jurisdiction to issue orders to the administration in the context of a review of legality on the basis of Article 91 of the Staff Regulations. It follows, therefore, according to the Commission, that those claims must be dismissed as inadmissible or, at least, as unfounded.
- 45 The applicant replies that he is not requesting the award of additional allowances in the absence of findings by the institution's medical officer or the Medical Committee, but the payment of an allowance to supplement those already granted and payable, in the event of his other claims being upheld, either because the additional allowances granted have been calculated on the basis of the amounts of monthly salary received during the twelve months before the accident (29 March 1975) instead of on the basis of the amounts of monthly salary received during the twelve months before the date of the consolidation of the aggravation of the injuries (23 November 1988), or, in the alternative, because the additional allowances granted have not taken currency depreciation into account. As regards the jurisdiction of the Court to hear and determine that claim, he states that, in disputes involving the civil service, the Court has unlimited jurisdiction in disputes of a pecuniary nature and that what he is seeking is merely an order for payment of 'the amount of the underpayment'.

46 Since the Court has dismissed the claims of the applicant relating to the methods of calculating the lump sum provided for in Article 73(2)(c) of the Staff Regulation, it is necessary to dismiss the claim, the outcome of which depends on that of the foregoing claims.

47 It follows that the application must be dismissed.

Costs

48 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. However, Article 88 of those Rules provides that in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Dismisses the application;
2. Orders the parties to bear their own costs.

Schintgen

Edward

García-Valdecasas

Delivered in open court in Luxembourg on 28 February 1992.

H. Jung

R. García-Valdecasas

Registrar

President