JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
9 July 1997 *

In Case T-4/96,

S,

applicant,

v

Court of Justice of the European Communities, represented by Timothy Millett, Legal Adviser for Administrative Affairs, acting as Agent, with an address for service at his office at the Court of Justice, Kirchberg,

defendant,

APPLICATION for, first, the annulment of the decision of the Court of Justice of 11 April 1995, in so far as it adopted an invalidity rate of 6% for the purpose of calculating the lump sum provided for in Article 73 of the Staff Regulations of Officials of the European Communities; secondly, acknowledgement of the applicant's right to that lump sum calculated on the basis of an invalidity rate of 30%; and, thirdly, compensatory interest,

* Language of the case: French.

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

composed of: K. Lenaerts, President, P. Lindh and J. D. Cooke, Judges,

Registrar: A. Mair, Administrator,

having regard to the written procedure and further to the hearing on 5 March 1997,

gives the following

Judgment

Facts underlying the dispute

1 The applicant entered the service of the Court of Justice on (...). [1]

2 Shortly after taking up her duties she fell ill, and was obliged to stop working. On (...), the Invalidity Committee referred to in Article 13 of Annex VIII to the Staff Regulations of Officials of the European Communities ('the Staff Regulations') recognized that she was suffering from total permanent invalidity preventing her from performing the duties appropriate to a post in her career bracket. On (...), the appointing authority ('the authority') decided to retire her of its own motion and to grant her an invalidity pension under Article 78 of the Staff Regulations.

1 — A number of dates have been suppressed to protect the anonymity of the applicant.

3 Following a favourable report drawn up by the Invalidity Committee on (...), the applicant resumed her duties at the Court of Justice on (...). However, on (...), she fell ill again and gave up work altogether.

4 Thereafter, two procedures were initiated, in parallel and independently of each other, within the Court of Justice.

5 The first procedure was set in motion on the initiative of the Court of Justice on the basis of Articles 53, 59 and 78 of the Staff Regulations. On (...), the President of the Court decided to refer the applicant's case for examination by an Invalidity Committee which, once again, recognized that she was suffering from total permanent invalidity within the meaning of Article 78. On (...), the authority again decided to retire her of its own motion and to grant her an invalidity pension under Article 78. The documents before the Court show that, in the course of that procedure, the Invalidity Committee expressed no opinion as to the occupational origin of the applicant's illness (Annex 2 to the reply).

6 That procedure is not at issue in the present case.

7 The second procedure was set in motion on the initiative of the applicant on the basis of Article 73 of the Staff Regulations. Believing that the physical and psychological disorders from which she was suffering resulted from her working conditions, she applied, by letter of 18 December 1989, to have her illness recognized as being of occupational origin.

8 Following that application, the doctor designated by the Court of Justice, Dr De Meersman, in a medical report of 4 December 1990, concluded that the applicant's illness did not constitute an 'occupational disease [...] or [...] the occupational aggravation of a pre-existing disease'. On the basis of that report, and applying the

first paragraph of Article 21 of the Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease ('the rules'), the authority notified the applicant on 20 February 1991 of a draft decision rejecting her application to have her illness recognized as being of occupational origin.

9 By letter of 17 April 1991, the applicant requested that the matter be referred to a Medical Committee in accordance with the second paragraph of Article 21 of the rules. That Medical Committee made two reports.

10 In its first report, of 3 March 1993, it concluded that 'the anxio-depressive state of Mrs S [had] developed in connection with her work, but that her pathological personality [accounted] for 50% of the origin of her medical pathology, 30% [being] due to the events of life and 20% [being] due to her work'. The Medical Committee stated that 'the performance of her duties [was] neither the essential nor the preponderant cause of Mrs S's illness'.

11 Taking the view that it was not in a position to take its decision on the basis of that report, the authority put five further questions to the Medical Committee in a letter of 20 June 1994, requesting it:

'1. to determine the rate of permanent invalidity still being suffered by Mrs S;

2. to state whether she was suffering from a pre-existing illness at the time she took up her duties with the European Communities;

3. if she was not, to state whether there [was] a sufficiently established direct relationship between Mrs S's illness and her performance of her duties with the Communities;

4. if she was, to state whether it [was] sufficiently established that the illness was aggravated and that there [was] a direct relationship between any such aggravation and the performance of Mrs S's duties with the Communities;

5. if necessary, to determine the rate of invalidity arising from any such aggravation.'

12 In a second report of 12 January 1995, the Medical Committee replied to the authority's five further questions as follows:

'1. (...) the rate of permanent invalidity still being suffered by Mrs S is 30%;

2. (...) Mrs S was *not* suffering from a pre-existing illness when she took up her duties with the European Communities;

3. (...) the direct relationship between the performance of Mrs S's duties with the Communities and the illness is assessed at 20%. That is to say that, on a scale of 100, the exercise of the duties was 20% to blame, the pathological personality 50%, and the events of life 30%.

4. and 5. (...) in the light of the answer to the third question, there is no need to reply.'

13 On the basis of that second report, the authority adopted the following decision on 11 April 1995:

'1. In accordance with the provisions of Article 3(2) of the [rules], it is recognized that Mrs S has a permanent partial invalidity of 30%, originating as to 20% in connection with the performance of her duties with the Court of Justice of the European Communities.

2. Mrs S is to receive a lump sum of BFR 1 094 745, calculated on the basis of 6% (30% x 20%) and taking into account the total of the basic salary payments for the twelve months preceding the medical certificate of (...) certifying an illness due to working conditions, namely: monthly basic salary, BFR 190 060 x 12 months x 8 x 6%.'

14 It is this decision which is challenged in this case.

15 On 5 July 1995, the applicant lodged a complaint against that decision under Article 90 of the Staff Regulations. Her complaint was rejected by the complaints committee of the Court of Justice in a decision of 2 October 1995, notified to her on 16 October 1995.

Procedure and forms of order sought by the parties

16 It was in those circumstances that, by application lodged at the Registry of the Court of First Instance on 15 January 1996, the applicant brought this action. Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure without any preparatory inquiry.

17 The parties presented oral argument and replied to the questions of the Court at a hearing on 5 March 1997.

18 In her application, the applicant claims that the Court should:

— annul the decision of the Court of Justice, in its capacity as appointing authority, of 11 April 1995 in so far as it adopted an invalidity rate of 6% for the calculation of the lump sum referred to in Article 73 of the Staff Regulations;

— acknowledge the applicant's right to the lump sum provided for in Article 73 of the Staff Regulations calculated on the basis of an invalidity rate of 30%;

— so far as necessary, annul the decision of 2 October 1995 rejecting the applicant's complaint; and

— order the defendant to pay the costs.

19 In her reply, the applicant further claims that the Court should:

— order the defendant to pay a sum provisionally assessed at BFR 1 973 541 by way of interest, calculated at the rate of 8%, on the lump sum to which the applicant claims entitlement under Article 73 of the Staff Regulations, for the period from 18 December 1989 to 20 June 1994.

20 In its defence, the defendant claims that the Court should:

— dismiss the action as unfounded; and

— order the applicant to pay her own costs.

21 In its rejoinder, the defendant further claims that the Court should:

— dismiss as inadmissible the applicant's claim, made for the first time in her reply, that the defendant should be ordered to pay a sum assessed at BFR 1 973 541 by way of interest; and

— in any event, dismiss the action as unfounded.

The claim for acknowledgement of the applicant's right to the lump sum provided for in Article 73 of the Staff Regulations, calculated on the basis of an invalidity rate of 30%

22 In her claims for relief, the applicant requests the Court of First Instance to acknowledge her entitlement to the lump sum invalidity payment provided for in Article 73 of the Staff Regulations, calculated on the basis of an invalidity rate of 30%. That claim would require, in effect, that the Court of First Instance should direct the defendant to calculate that lump sum on the basis of a given rate. The Community court cannot exercise a jurisdiction to issue directions to a Community institution without encroaching upon the prerogatives of the appointing authority (see the judgments of the Court of First Instance in Case T-20/92 *Moat* v *Commission* [1993] ECR II-799, paragraph 36; Case T-496/93 *Allo* v *Commission* [1995] ECR-SC II-405, paragraphs 32 and 33).

23 That claim is therefore inadmissible.

The claim that one of the documents before the Court should be partially set aside

24 The applicant notes that, in Annex 4 to its defence, the defendant has produced in its entirety the medical report drawn up on 4 December 1990 by Dr De Meersman (see paragraph 8 above). She maintains that that report is protected by medical confidentiality, and that the defendant was therefore not entitled to produce it without her prior authorization. Moreover, only the conclusions of that report, and not the full text, were relevant to this case. The applicant therefore claims that the report should be excluded from the proceedings, save for its conclusions.

25 The Court takes the view that, in the circumstances, it should reserve its decision on that demand so long as the examination of the parties' pleas and arguments does not require that report to be taken into consideration.

The claims for annulment

26 In support of her action, the applicant raises four pleas in law:

— illegality of the Medical Committee's reports;

— infringement of the duty to state reasons;

— infringement of Article 73 of the Staff Regulations, Articles 3(2) and 12(2) of the rules, and the scale of invalidity rates annexed to the rules ('the invalidity scale');

— infringement of the principle of equality.

27 Before summarizing the arguments of the parties, it is appropriate to set out the relevant legal provisions.

28 Article 73 of the Staff Regulations forms part of the provisions on social security. Article 73(1) provides, *inter alia*, that an official is insured against the risk of occupational disease, from the date of his entering the service. Article 73(2) ensures certain benefits in the events of death, total permanent invalidity and partial permanent invalidity due to an occupational disease.

29 Under Article 73(2)(b), an official is entitled, in the event of total permanent invalidity, to payment of a lump sum equal to eight times his annual basic salary calculated on the basis of the monthly amounts of salary received during the 12 months before the accident. Under Article 73(2)(c), the official is entitled, in the event of partial permanent invalidity, to payment of a proportion of the sum provided for in subparagraph (b), calculated on the basis of the invalidity scale.

30 The conditions governing the application of Article 73 of the Staff Regulations are laid down by the rules.

31 Article 3 of the rules defines the concept of an occupational disease as follows:

'1. The diseases contained in the "European List of Occupational Diseases" annexed to the Commission Recommendation of 22 May 1990 (OJ 1990 L 160, p. 39) and [in] any supplements thereto shall be considered occupational diseases to the extent to which the official has been exposed to the risk of contracting them in the performance of his duties with the European Communities.

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

32 Article 12 confirms the benefits assured by Article 73(2)(b) and (c) of the Staff Regulations in the following terms:

'1. Where an official sustains total permanent invalidity as a result of ... an occupational disease, he shall be paid a lump sum provided for in Article 73(2)(b) of the Staff Regulations.

2. Where an official sustains partial permanent invalidity as a result of ... an occupational disease, he shall be paid a lump sum calculated on the basis of the rates laid down in the invalidity scale contained in the Annex hereto.'

33 The invalidity scale lays down, in precise percentage terms, the rates for various types of permanent invalidity from which officials may suffer. It also provides that, in cases of invalidity not provided for in the scale, the degree of invalidity is to be determined by analogy with the rates in the scale.

34 Article 19 of the rules provides that decisions recognizing the occupational nature of a disease and assessing the degree of permanent invalidity are to be taken by the appointing authority on the basis of the findings of the doctor(s) appointed by the institutions and, where the official so requests, after consulting the Medical Committee. Article 23(1) provides that that committee is to consist of three doctors, one appointed by the appointing authority, the second by the official concerned, and the third by agreement between the first two doctors. On completing its proceedings, the Medical Committee sets out its opinion in a report to be communicated to the appointing authority and to the official.

The first plea, alleging illegality of the Medical Committee's reports

Arguments of the parties

35 The applicant argues that the Medical Committee's reports of 3 March 1993 and 12 January 1995 are vitiated by illegality in two respects.

36 First, by breaking down into precise percentages the importance of the various causes of her illness, the Medical Committee exceeded the limits of the task conferred upon it by the appointing authority. In the third question in its letter of 20 June 1994, the appointing authority had asked it to 'state whether there [was] a sufficiently established direct relationship between Mrs S's illness and her performance of her duties with the Communities'. By answering that question in the affirmative in its report of 12 January 1995, the Medical Committee had completed

its task, so that it had no entitlement to give a breakdown which the appointing authority had not asked for.

37 Moreover, such a breakdown was neither provided for nor required by Article 73 of the Staff Regulations, Articles 3(2) and 12(2) of the rules, or the invalidity scale. The applicant refers in that respect to the arguments put forward in support of her third plea. The Medical Committee thus misinterpreted the concepts of occupational disease and of invalidity rates laid down by those provisions, so that its conclusions were unlawful (see the judgments of the Court of Justice in Case 189/82 *Seiler* v *Council* [1984] ECR 229 and Case 277/84 *Jänsch* v *Commission* [1987] ECR 4923).

38 The defendant's principal contention is that the applicant has an unduly rigid and formalistic view of what constitutes the Medical Committee's 'task'.

Findings of the Court

39 The scope of the Medical Committee's task must be determined in the light of Articles 19 and 23 of the rules.

40 It is settled case-law that those provisions are intended to confer upon medical experts the function of assessing all medical questions which are relevant to the operation of the insurance scheme set up by the rules. They are designed, in the event of dispute, to provide definitive resolution of all questions of a medical nature (see, for example, the judgments of the Court of Justice in Case 156/80 *Morbelli* v *Commission* [1981] ECR 1357, paragraphs 18 and 20; Case 265/83 *Suss* v *Commission* [1984] ECR 4029, paragraph 11; and Case C-185/90 P *Commission* v *Gill* [1991] ECR I-4779, paragraph 24).

41 That case-law establishes that the Medical Committee is entrusted with a broad task, namely, that of supplying the appointing authority with all medical assessments needed in order to adopt its decision concerning the recognition of the occupational origin of the official's disease and the determination of the degree of his permanent invalidity.

42 In the interests of efficiency, however, it is desirable for the appointing authority, when referring a matter to the Medical Committee, to indicate by clear and precise instructions, the points on which it wishes to obtain definitive medical opinion. Moreover, when it receives a report from the Medical Committee, the appointing authority is entitled, by issuing further instructions, to refine its questions more accurately or to put fresh questions in order to obtain all the advice it wishes to have (see, in that regard, the judgment of the Court of First Instance in Case T-64/94 *Benecos* v *Commission* [1995] ECR-SC II-769, paragraphs 46 and 58). In such instances, the Medical Committee is obviously under a duty to reply clearly and precisely to the appointing authority's questions. However, the instructions do not have the effect of preventing the Medical Committee from communicating to the appointing authority further medical findings capable of elucidating its decision.

43 In this case, the Medical Committee concluded in its reports of 3 March 1993 and 12 January 1995 that three factors had contributed to the emergence of the applicant's illness. It also gave an evaluation, in precise percentages, of the importance of those factors.

44 The Court takes the view that, even in the absence of express instructions to carry out such an evaluation, the Medical Committee was entitled, pursuant to its function under Articles 19 and 23 of the rules, to inform the appointing authority of that assessment.

45 The Court considers that the argument that the breakdown of figures in question was neither provided for nor required by Article 73 of the Staff Regulations,

Articles 3(2) and 12(2) of the rules or the invalidity scale relates to the applicant's third plea and it will therefore be examined in that context.

46 It follows that the applicant's first plea is unfounded.

The second plea, alleging infringement of the duty to state reasons

Arguments of the parties

47 The applicant argues that the Medical Committee's reports of 3 March 1993 and 12 January 1995 are insufficiently reasoned. In her submission, they do not establish an intelligible link between the medical findings which they contain and the conclusions which they draw (judgment in Case T-154/89 *Vidrányi* v *Commission* [1990] ECR II-445, paragraph 48).

48 Those reports do not state why, having established the existence of a sufficiently direct link between the duties and the applicant's illness — a finding sufficient for it to be concluded that an occupational disease existed (see paragraph 64 below) — the Medical Committee continued with its endeavours and concluded that that illness was due as to 20% to the applicant's duties, as to 30% to the events of her life, and as to 50% to her pathological personality. Moreover, the findings contained in those reports did not explain either the method used by the Medical Committee to effect the breakdown referred to above, or the quantification of the three causes of her illness, or the meaning of the expressions 'events of life' and 'pathological personality'.

49 The applicant submits that, since the appointing authority's decision of 11 April 1995 was based on medical reports which are vitiated by defects of reasoning, it too is vitiated by the same unlawfulness and should be annulled accordingly.

50 The defendant challenges the admissibility of this plea in law on the ground that the applicant did not raise it in her complaint (judgments of the Court of First Instance in Case T-7/90 *Kobor* v *Commission* [1990] ECR II-721, paragraphs 34 to 36; Case T-361/94 *Weir* v *Commission* [1996] ECR-SC II-381, paragraphs 27 to 34; Case T-262/94 *Baiwir* v *Commission* [1996] ECR-SC II-739, paragraphs 40 to 42; Case T-118/95 *Anacoreta Correia* v *Commission* [1996] ECR-SC II-835, paragraph 43).

51 In any event, the defendant submits, adequate reasons were given in the reports of 3 March 1993 and 12 January 1995.

Findings of the Court

— The admissibility of the plea

52 The Court considers that the plea must, in all the circumstances, be declared admissible and that it is not necessary to determine whether the applicant raised the plea alleging infringement of the duty to state reasons in her complaint.

53 It is settled case-law that a plea alleging failure to state reasons for an act of an institution one which involves a matter of public policy and, as such, may be examined by the Community judicature of its own motion (see, in particular, the judgments of the Court of Justice in Case 18/57 *Nold* v *High Authority* [1959] ECR 41; Case 185/85 *Usinor* v *Commission* [1986] ECR 2079, paragraph 19; and

Case C-166/95 P *Commission* v *Daffix* [1997] ECR I-983, paragraph 24. See also the judgment of the Court of First Instance in Case T-106/95 *FFSA and Others* v *Commission* [1997] ECR II-229, paragraph 62). It follows that an applicant is not precluded from putting forward that plea merely because he did not raise it in his complaint (judgment of the Court of First Instance in Case T-534/93 *Grynberg and Hall* v *Commission* [1994] ECR-SC II-595, paragraph 59; judgment of the Court of Justice in *Commission* v *Daffix*, cited above, paragraph 25).

— Whether the plea is well founded

54 It should be borne in mind that medical opinions properly so-called, when made by the Medical Committee, must be regarded as definitive provided the conditions in which they are given are not irregular (judgments of the Court of Justice in *Suss* v *Commission*, cited above, paragraphs 9 to 15; Case 2/87 *Biedermann* v *Court of Auditors* [1988] ECR 143, paragraph 8. See also the judgments of the Court of First Instance in *Vidrányi* v *Commission*, cited above, paragraph 48; Case T-122/89 *F* v *Commission* [1990] ECR II-517, paragraph 16; Case T-88/91 *F* v *Commission* [1993] ECR II-13, paragraph 39) and that the Court's power of review is confined to questions concerning the constitution and proper functioning of such committees (judgments in *Morbelli* v *Commission*, cited above, paragraphs 18 and 20; *Suss* v *Commission*, cited above, paragraph 11; *Biedermann* v *Court of Auditors*, cited above, paragraph 8; *Commission* v *Gill*, cited above, paragraph 24) and the formal propriety of the opinions they deliver. The Court has jurisdiction therefore to examine whether the opinion contains a statement of reasons enabling the reader to assess the considerations on which its conclusions were based (judgment of the Court of Justice in Case 257/81 *K* v *Council* [1983] ECR 1, paragraph 17) and whether it establishes an intelligible link between the medical findings which it contains and the conclusions which it draws (judgment in *Jänsch* v *Commission*, cited above, paragraph 15; judgments of the Court of First Instance in Case T-165/89 *Plug* v *Commission* [1992] ECR II-367, paragraph 75, and Case T-556/93 *Saby* v *Commission* [1995] ECR-SC II-375, paragraph 35).

55 It is in the light of those principles that the Court must determine whether in this case there is an 'intelligible link' between the committee's medical findings and the conclusions it reached.

56 The Medical Committee's report of 3 March 1993 describes in detail the various medical examinations undergone by the applicant. The Medical Committee questioned the applicant a number of times and took into account the notes, observations and comments made. It studied the whole of her file and her medical history. It was thus able to determine, *inter alia*, that the applicant had already had two episodes of depression in ... and ..., that she was 'scrupulous and perfectionist by nature', that she '[could not] tolerate the pressures of stress in her work', that she was in a condition of 'total medication withdrawal', and that her anxiety resulted from a 'creative (even catastrophic) anticipation of the future'.

57 The Court considers that those factors taken together indicate sufficiently the reasons for which the Medical Committee was able to identify and assess the importance of the various causes of the applicant's illness. It should be added in that regard that, in order to reach their conclusions, the experts in the Medical Committee base their reasoning not only on objective factors, such as those cited above, but also on their experience in the area concerned. Notwithstanding the importance of such experience, it is not something which is apt to be the subject-matter of a statement of reasons.

58 Therefore, the argument that the reports in question did not explain either the reasons or the method concerning the breakdown of the three causes of the applicant's illness must be rejected.

59 As to the precise meaning of the expressions 'events of life' and 'pathological personality', the Court would point out that the Medical Committee's task is confined to issuing opinions of a purely scientific nature, and precludes any legal assessment (see, for example, the judgment of the Court of Justice in Case 76/84 *Rienzi* v *Commission* [1987] ECR 315, paragraphs 9 to 12, and the judgment in Case T-122/89 *F* v *Commission*, cited above, paragraph 15). In this case, the Court considers that the meaning of the expressions 'events of life' and 'pathological personality' is apparent not only from the ordinary meaning of the words but also from the medical findings as to, *inter alia*, the applicant's personality and history.

60 The Court therefore finds that the Medical Committee's reports do establish an intelligible link between the medical findings they contain and the conclusions which they reach.

61 The applicant's second plea is therefore unfounded.

The third plea, alleging infringement of Article 73 of the Staff Regulations, Articles 3(2) and 12(2) of the rules, and the invalidity scale

Arguments of the parties

62 The applicant maintains that the procedure provided for by Article 73 of the Staff Regulations, Articles 3(2) and 12(2) of the rules and the invalidity scale comprises two separate stages.

63 The first stage consists in determining whether the official's illness constitutes an occupational disease within the meaning of Article 3(2) of the rules. In order to do that, the appointing authority and, where appropriate, the Medical Committee are required to verify whether it is sufficiently established that the official's illness originated in, or in connection with, the performance of his duties with the European Communities. Once the causal link between the official's illness and his duties is established, the applicant argues, the official is entitled to the lump sum for invalidity provided for in Article 73(2) of the Staff Regulations.

64 For the purpose of establishing that causal link, there is no provision requiring that the performance of the official's duties should be the sole, essential or predominant cause of the official's illness. On the contrary, according to the judgment in *Plug* v

Commission, cited above (paragraph 81), that causal link is established as soon as the pathological state of the official presents a sufficiently direct link with the duties performed by him. The judgment in *Seiler* v *Council*, cited above and relied on by the defendant in paragraph 74 below, is, the applicant submits, irrelevant. In the first place, it was strictly limited to the interpretation of the concept of occupational disease in the case of aggravation of a pre-existing disease. Moreover, it was delivered before, and thus rejected by, the judgment in *Plug* v *Commission*.

65 In any event, the applicant submits that it is sufficiently established in this case that her illness constitutes an occupational disease. In its reports of both 3 March 1993 and 12 January 1995, the Medical Committee established the existence of a direct link between her illness and the performance of her duties with the Communities.

66 The second stage of the procedure consists in determining the official's rate of permanent invalidity and calculating, on the basis of that rate, the lump sum for invalidity to be paid to him under Article 73(2) of the Staff Regulations.

67 In that regard, the applicant maintains that, under Article 73(2)(c), an official suffering from partial permanent invalidity is entitled to payment of a proportion of the lump sum for invalidity provided for in the case of total permanent invalidity; that, in accordance with Article 12(2) of the rules, that proportion is determined by reference to the official's invalidity rate; and that that rate is determined on the basis of, or by analogy with, the invalidity scale (judgment of the Court of Justice in Case 152/77 *B* v *Commission* [1979] ECR 2819).

68 In the applicant's submission, that procedure means that the performance of the official's duties is a relevant factor only at the first stage, in order to determine whether there is a sufficiently direct link between the official's illness and the performance of his duties with the Communities. It is not, however, relevant at all at the second stage. In the case of partial permanent invalidity, the proportion of the

lump sum provided for by Article 73(2)(c) of the Staff Regulations must correspond to the official's rate of invalidity.

69 Consequently, the amount of the applicant's lump sum for invalidity should have been calculated on the basis of her invalidity rate in its entirety, namely 30%. That amount should therefore represent 30% of the lump sum provided for in the event of total permanent invalidity.

70 In this case, however, the appointing authority unlawfully took account of the occupational factor at the second stage of the procedure. In order to calculate the amount of her lump sum for invalidity, it multiplied her invalidity rate (30%) only by the proportion corresponding to the occupational causes of her illness (20%), excluding the proportion corresponding to the non-occupational causes of that illness, namely her pathological personality (50%) and the events of her life (30%).

71 The defendant thereby misapplied the procedure described above and thus infringed the provisions referred to in the present plea.

72 In reply to the applicant's arguments, the defendant puts forward a main argument and an alternative argument.

73 As its main argument, it maintains that the purpose of the insurance scheme provided for by Article 73 of the Staff Regulations and by the rules is to indemnify officials in so far as their illnesses result from the performance of their duties with the Communities. Therefore, the maximum amount of indemnity which it could grant to the applicant in this case should correspond to that part of her partial permanent invalidity (30%) which originated in the performance of her duties

(20%). That amount was thus equal to 6% (30% x 20%) of the indemnity provided for in the event of total permanent invalidity.

74 In the alternative, should the Staff Regulations not permit the lump sum to be paid to the applicant to be apportioned, the defendant considers that the applicant cannot claim any benefit under Article 73. In that event, the applicant's illness could not constitute an occupational disease within the meaning of Article 3(2) of the rules. The defendant refers in that respect to the judgment in *Seiler* v *Council*, cited above (paragraph 19), in which the Court, it claims, held that when an official's illness originates in factors that are both occupational and non-occupational, the appointing authority and, where appropriate, the Medical Committee can conclude that an occupational disease exists only where the performance of duties with the Communities constitutes the 'closest link' with the official's illness. That criterion was not fulfilled in this case.

Findings of the Court

75 It should be borne in mind at the outset that under the scheme of insurance against the risk of occupational disease laid down by the Staff Regulations, officials are entitled to the benefits guaranteed by Article 73(2) of the Staff Regulations only if it is first established that their illness constitutes an 'occupational disease' within the meaning of Article 3 of the rules.

76 In the light of the arguments of the parties, the Court considers it useful to begin by recalling what is covered by the words 'occupational disease' appearing in Article 3 of those rules.

77 Article 3(1) provides that diseases contained in the 'European List of Occupational Diseases', referred to in paragraph 31 above, are to be considered occupational diseases 'to the extent to which the official has been exposed to the risk of contracting them in the performance of his duties with the European Communities'. Article 3(2) provides that any disease not included in that list also constitutes an occupational disease 'if it is sufficiently established that [it] arose in the course of or in connection with the performance by the official of his duties with the Communities'.

78 It is apparent from that provision, and from the list of types of invalidity set out in the invalidity scale, that 'occupational disease' is intended to cover a very wide range of medical conditions.

79 Thus, if an official's illness is caused solely, essentially, preponderantly or predominantly by the performance of his duties, it is an occupational disease within the meaning of Article 3(2) (see, in that regard, the judgments in *Seiler* v *Council*, cited above, paragraph 19, and *Benecos* v *Commission*, cited above, paragraph 46).

80 However, that provision would be deprived of its effectiveness if recognition of the occupational origin of an official's illness were to be limited to that hypothesis alone. Other, more complex, situations exist, where an official's illness has several causes, occupational and non-occupational, physical or psychological, which have each contributed to its appearance. In that event, it is for the Medical Committee to determine whether the performance of duties with the Communities — whatever assessment might be made of that factor's significance in relation to the non-occupational factors — bears a direct relation to the official's illness, as, for example, where it is a factor triggering that illness (see the judgments in *K* v *Council*, cited above, paragraph 20, *Rienzi* v *Commission*, cited above, paragraph 10, and *Plug* v *Commission*, cited above, paragraph 81).

81 In this case, the Court finds that, in deciding to grant the applicant a lump sum under Article 73(2)(c) of the Staff Regulations, the appointing authority recognized that she was suffering from an occupational disease within the meaning of Article 3(2) of the rules.

82 It is therefore necessary to examine whether the method used by the appointing authority in calculating the amount of that lump sum complies with Article 73(2) of the Staff Regulations, Article 12 of the rules, and the invalidity scale.

83 In that respect, regard must be had to the nature and purpose of those provisions.

84 On the one hand, the cover provided for by Article 73 is based on a general scheme of insurance (judgment in Joined Cases 169/83 and 136/84 *Leussink-Brummelhuis* v *Commission* [1986] ECR 2801, paragraph 11). As the defendant has rightly pointed out, the principal aim of that scheme is to indemnify officials to the extent that the illness which caused their permanent invalidity results from the performance of their duties with the Communities.

85 On the other hand, if Article 73(2) of the Staff Regulations, Article 12 of the rules and the invalidity scale are not to be deprived of their effectiveness, they must allow the varying range of medical conditions covered by Article 3(2) to be reflected in the indemnity paid to officials.

86 That approach is, moreover, confirmed by the wording of Article 3 of the rules and by Article 3(1) in particular. That provision shows that the concept of 'occupational disease' is based on the existence of a link between the pathological state of the official and the performance of his duties with the Communities. Furthermore, it is only 'to the extent to which' that link exists that the illness may be regarded as an occupational disease.

87 It follows that where the Medical Committee finds that a number of causes, not all of them occupational, have each contributed directly to the appearance of an official's illness, the appointing authority is under a duty to take that medical finding into account in calculating the amount of the lump sum provided for by Article 73(2) of the Staff Regulations.

88 Moreover, it is quite possible that, on the basis of the various examinations it has carried out or its experience in the area concerned, the Medical Committee may consider that it is able to evaluate or quantify, in one form or another, how significant a role performance of the duties played in the appearance of the official's illness. Where the Medical Committee's conclusions give such a clear and precise evaluation, the appointing authority is entitled to reflect it in its calculation of the lump sum referred to above.

89 The appointing authority was therefore right, on the basis of Article 73 of the Staff Regulations and the rules, to decide to grant the applicant a lump sum equivalent to 6% of the lump sum provided for in the event of total permanent invalidity.

90 The applicant's third plea is therefore unfounded.

The fourth plea, alleging infringement of the principle of equality

Arguments of the parties

91 The defendant challenges the admissibility of this plea on the ground that the applicant did not raise it in her complaint of 5 July 1995.

92 In reply the applicant, citing in particular the judgments of the Court of Justice in Case 188/73 *Grassi* v *Council* [1974] ECR 1099 and Case 58/75 *Sergy* v *Commission* [1976] ECR 1139, argues that the plea alters neither the legal basis nor the subject-matter of her complaint. It challenges the validity of the Medical Committee's breakdown of her illness into three causes, which was an aspect already expressly challenged in her complaint. She maintains that, in the present proceedings, she has simply re-arranged that challenge by submitting a specific plea in law, which is closely linked to the third plea, however.

93 As to the substance, the applicant argues that the method used by the appointing authority in calculating the amount of her lump sum is contrary to the principle of equality. She relies on four arguments in support of her claim.

94 First, she submits that that method has the effect of making the amount of compensation provided for in Article 73(2)(c) of the Staff Regulations inversely proportional to the significance of the non-occupational causes of an official's illness. In the event of occupational disease, officials made more vulnerable to certain working conditions within the Communities by their personality and events in their lives would, by reason of the exclusion of the non-occupational causes of their illness, receive lower compensation than could be received by officials without that type of personality or whose life experiences were different. She submits that that difference in treatment is unjustified, Article 73 of the Staff Regulations and the rules being intended to give all officials identical cover against the risks of occupational disease, without regard to their personality or their life experiences.

95 Secondly, she argues, the method of which she complains leads, without objective justification, to the amount of the lump sum provided for in Article 73(2)(c) of the Staff Regulations being varied according to whether the illness in question is an occupational disease or the 'occupational' aggravation of a pre-existing disease. Where, as in the applicant's case, the onset of an occupational disease occurs after taking up duties with the Communities, the amount of the lump sum is deter-

mined on the basis of only that part of the partial permanent invalidity rate originating in the performance of duties with the Communities. By contrast, she maintains, in the case of an official suffering before the commencement of his duties from an illness due to his pathological personality and life experiences, and whose pre-existing illness was aggravated in connection with the performance of his duties, the amount of the lump sum is calculated on the basis of his partial permanent invalidity rate in its entirety, including the part relating to the non-occupational causes of that invalidity (pathological personality and life experiences).

96 Thirdly, no definition has been established by the Staff Regulations, the rules, the appointing authority, or even the Medical Committee of the method whereby the Medical Committee is to carry out the identification and breakdown of the various factors contributing to the emergence of an occupational disease from which an official may be suffering. The applicant submits that only prior determination of that method can prevent the Medical Committee from dealing differently with identical or similar situations.

97 Fourthly, the breakdown of the three causes of the applicant's illness into precise percentage terms is particularly theoretical. That illness was the result of a combination of closely linked factors, so that it was impossible to determine whether, in the absence of one of those factors, the illness would have developed.

Findings of the Court

98 It has been held consistently that the rule of harmony between complaint and action requires that, for a plea before the Community judicature to be admissible, it must have already been raised in the pre-litigation procedure, thus enabling the appointing authority to know in sufficient detail the criticisms made of the contested decision. The case-law also establishes that, whilst claims for relief before

the Community judicature may contain only 'heads of claim' that are based on the same matters as those raised in the complaint, those heads of claim may nevertheless be further developed before the Community judicature by the presentation of pleas in law and arguments which, whilst not necessarily appearing in the complaint, are closely linked to it (see, in particular, the judgment of the Court of Justice in Case 133/88 *Del Amo Martinez* v *Parliament* [1989] ECR 689, paragraphs 9 and 10, and the judgments of the Court of First Instance in Case T-57/89 *Alexandrakis* v *Commission* [1990] ECR II-143, paragraphs 8 and 9, and in *Allo* v *Commission*, cited above, paragraph 26).

99 It should be added that, since the pre-litigation procedure is an informal procedure and those involved at that stage are generally acting without the assistance of a lawyer, the administration must not interpret the complaints restrictively but should, on the contrary, consider them with an open mind (judgment in *Del Amo Martinez* v *Parliament*, cited above, paragraph 11).

100 In this case, the Court finds not only that the applicant's complaint of 5 July 1995 did not refer to the plea alleging infringement of the principle of equality, but also that it did not contain anything from which the defendant might infer, even if trying to interpret the complaint with an open mind, that the applicant intended to rely on that principle.

101 In those circumstances, the applicant's fourth plea must be declared inadmissible.

102 It follows from the above considerations as a whole that the applicant's claim for the annulment of the defendant's decision of 11 April 1995, in so far as it adopted an invalidity rate of 6% for the purpose of calculating the lump sum referred to in Article 73 of the Staff Regulations, must be dismissed.

The claim that the defendant should be ordered to pay the sum of BFR 1 973 541

103 In her reply, the applicant also claims that the defendant should be ordered to pay a sum of BFR 1 973 541 (see paragraph 19 above). That claim seeks compensation for the damage allegedly caused to the applicant by various faults and omissions of the defendant in dealing with her case.

104 In this connection the Court would point out that under Article 44 of the Rules of Procedure, the parties are required to identify the subject-matter of the proceedings in the initiating document. Even though Article 48(2) of the Rules of Procedure allows new pleas in law to be introduced in the course of the proceedings in certain circumstances, that provision cannot be interpreted as authorizing an applicant to bring new claims for relief before the Community judicature and thus alter the subject-matter of the dispute (see, for example, the judgments of the Court of Justice in Case 232/78 *Commission* v *France* [1979] ECR 2729, paragraph 3, and Case 125/78 *Gema* v *Commission* [1979] ECR 3173, paragraph 26; and the judgments of the Court of First Instance in Case T-28/90 *Asia Motor France* v *Commission* [1992] ECR II-2285, paragraph 43, and Case T-398/94 *Kahn Scheepvaart* v *Commission* [1996] ECR II-477, paragraph 20).

105 In this case, the applicant has, in the course of the proceedings, added to her claims for annulment an application for compensation, so that the nature of the initial dispute has been altered (judgment of the Court of First Instance in Case T-10/95 *Chehab* v *Commission* [1996] ECR-SC II-419, paragraph 66).

106 Furthermore, the claim for compensation is not closely linked to the claims for annulment. Since this is a Community staff case, its admissibility is conditional upon due completion of the prior administrative procedure provided for by

Articles 90 and 91 of the Staff Regulations. It is essential that that procedure begin with a request by the applicant to the appointing authority to make good the damage suffered, followed, if appropriate, by a complaint against the decision rejecting the request (judgments of the Court of First Instance in Case T-5/90 *Marcato* v *Commission* [1991] ECR II-731, paragraphs 49 and 50; Case T-1/91 *Della Pietra* v *Commission* [1992] ECR II-2145, paragraph 34; Case T-50/92 *Fiorani* v *Parliament* [1993] ECR II-555, paragraphs 45 and 46; *Weir* v *Commission*, cited above, paragraph 48; and *Chehab* v *Commission*, cited above, paragraph 67).

107 There has been no such pre-litigation procedure in this instance.

108 The applicant's claim that the defendant should be ordered to pay the sum of BFR 1 973 541 is therefore inadmissible.

109 Finally, as regards her application that the text of the medical report drawn up by Dr De Meersman on 4 December 1990 should be removed from the proceedings (see paragraph 24 above), since this judgment is not based on that document there is no need to rule on that application.

110 It follows from the above considerations that the action must be dismissed in its entirety.

Costs

111 Under Article 87(2) of the Rules of Procedure, an unsuccessful party is required to pay the costs if they have been applied for in the successful party's pleadings. However, under Article 88 of the Rules of Procedure, in proceedings between the Communities and their servants the institutions are required to bear their own costs. Each party must therefore pay its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Dismisses the application;

2. Orders each party to bear its own costs.

Lenaerts Lindh Cooke

Delivered in open court in Luxembourg on 9 July 1997.

H. Jung K. Lenaerts

Registrar President